

**BAIRD FORMALLY INTRODUCES
AMENDMENT**

By Suzanne Nelson

Roll Call

November 24, 2003

Rep. Brian Baird (D-Wash.) introduced language Wednesday that would amend the Constitution to allow the temporary appointment of House Members in the event that a majority of the chamber is "unable to carry out their duties because of death or incapacity." His amendment - the second to be introduced this Congress - would require Members to draw up a list of possible successors from which state governors would draw if a terrorist attack were to kill or incapacitate large numbers of lawmakers. The list would also be used if the chamber were to adopt a resolution "declaring that extraordinary circumstances exist which threaten the ability of the House to represent the interests of the people."

The latter option, Baird said, could be used if a majority of lawmakers survive an attack but do not, in the views of the House, adequately represent the nation (if an entire region were wiped out, for instance). The language prohibits the use of temporary appointments under "normal" circumstances, maintaining the use of special elections to fill vacant seats.

"The American people need to know that their voice will be heard at all times," Baird said in a statement. "This bill is unique because it absolutely protects the constitutional right to ultimately replace members by special election, while protecting our legislative branch with temporary

appointments to represent the people until states can hold the necessary elections."

Baird has championed the continuity issue since Sept. 11, 2001, and has requested that the House leadership provide a week to debate various proposals to deal with what many inside and outside Congress believe is an intractable problem: Large numbers of vacancies in the House or mass incapacitation in either chamber could trigger a constitutional crisis.

If the House leadership refuses to allow such debate, Baird said, he plans to circulate a discharge petition to provide for a rule to bring proposals to the floor.

Last week the House Administration Committee reported out on a party-line vote a bill that would expedite states' special elections if the Speaker were to declare more than 100 Members had been killed.

Chairman Bob Ney (R-Ohio) lauded the measure - sponsored by House Judiciary Chairman Jim Sensenbrenner (R-Wis.), Rules Chairman David Dreier (R-Calif.) and Rep. Candice Miller (R-Mich.) - for furthering the "essential objective of ensuring that a functioning House would be in place with the ability to operate with legitimacy in the wake of a catastrophic attack."

Ney acknowledged at the markup that many lawmakers and independent experts believe a constitutional amendment is necessary but said the committee wouldn't take a position on an issue "outside of its jurisdiction."

The panel's ranking member, Rep. John Larson (D-Conn.), nonetheless opposed the bill on grounds that any measure expediting special elections should move in tandem with amendment language, in part to prevent the issue from fading before he and others believe it is fully resolved.

Larson said at the hearing that he plans to draft his own language and will hold a forum with academic experts in Hartford, Conn., on Dec. 1 to "involve the public directly in the critical debate we must have."

"I believe it is essential to consider a constitutional amendment that is the only way to effectively remedy structural deficiencies in the Founders' plan for our country, deficiencies which they could not have foreseen."

The 17th Amendment allows governors to fill Senate vacancies by appointment in the case of death, resignation or expulsion from the chamber. But the Constitution provides that House vacancies must be filled by special election. And both chambers could potentially be rendered inoperable without a quorum if a majority of their Members were incapacitated.

Speaker Dennis Hastert (R-Ill.) has publicly said he favors the approach taken by Sensenbrenner, Dreier and Miller rather than a constitutional amendment. No Republican House Member has come out in favor of amending the Constitution.

On the other side of the Capitol, Sen. John Cornyn (R-Texas), who chairs the Judiciary subcommittee on the Constitution, has introduced amendment

language and held several hearings on the subject of government continuity.

His amendment and accompanying implementing legislation differ from Baird's in that it leaves the states to decide whether to pass laws permitting the emergency interim appointment of House Members. His package allows states to choose appointment by the governor, the legislature, pursuant to a list of successors drafted by incumbent Members, some other mechanism or not at all. Cornyn's measure would limit the duration of appointments to 120 days (with possible extension), while Baird's amendment would allow temporary lawmakers to serve until special elections could be held.

Dreier and Sensenbrenner have testified at hearings held in both chambers that they oppose appointments, even temporary, to the House on the grounds that it would change the fundamental character of the institution, which has since the beginning of the republic only sworn in Members who were directly elected.

Larson has described his amendment as one that would permit temporary appointees chosen by the state legislatures, or, in the event they don't act, by governors. The former history teacher has said he favors this approach because it would be similar to the way the members of the First and Second Continental Congresses were chosen.

Like the Baird and Cornyn proposals, under Larson's plan the temporary House Members would serve until special elections were held, but Larson has toyed with the idea of prohibiting those appointed

Members from running in the special elections, so as to prevent candidates from benefiting from incumbency.

In other continuity news, Rep. James Langevin (D-R.I.) has sent around another "Dear Colleague" letter asking Members to consider his proposal to study emergency communications systems before Congress adjourns for the year. All Members currently have BlackBerry e-mail devices, but Langevin's proposal would study the feasibility of a more elaborate system to allow deliberation.

His bill, co-sponsored by Baird, would direct the Government Accounting Office, the National Academy of Sciences and the Librarian of Congress to study the creation of an emergency communications system for Members, to be used in a situation in which Congress could not assemble in a single location. The agencies would also be asked to consider constitutional and procedural issues related to such a system.

Ney has said Langevin's bill is an important part of continuity planning and intends to report it out of his committee.

Clinging to Congress' centuries-old tradition of personal contact between Members to handle the institution's day-to-day affairs, some Members have quietly opposed Langevin's bill on the grounds that it might allow interpersonal communication to be replaced by electronic transmissions. But Langevin has said that protecting continuity of operations will not replace face-to-face communication except in the most extraordinary of circumstances.