

## JOINT RESOLUTION

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification.*

“Section 1. When vacancies in the House of Representatives happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

“Section 2. The legislature of any state may empower the executive thereof to make temporary appointments of Members of the House of Representatives until the people fill the vacancies by election as the legislature may direct; Provided, That a temporary appointment shall not last longer than ninety days or until an election to fill the vacancy, whichever is sooner.

### ADVANTAGES OF SHORT FORM AMENDMENT

1. The triggering occasion is a familiar one under the Constitution -- when a “vacancy” “happens” in the representation from a state. It is what has existed for both Houses with respect to issuance of writs of election. It will keep uniformity in constitutional text between the House and the Senate. Particular causes for creation of vacancies – death, resignation, failure to qualify, or disability would not be listed. But while constitutional text would be uniform, each House could maintain or develop its own precedents on what constitutes a vacancy.
2. The triggering occasion is simple in another respect. It requires a determination only about the status of an individual seat. Triggers that involve a judgment about a large event – has there been a “national disaster, or an extensive factual predicate – are there 109, 145, or 218 vacancies, introduce uncertainty into the use of temporary appointments. Governors might be reluctant or unable to act until facts are determined about a substantial number of members from many states, not just about vacancies in their states. If they fill seats and it is then argued that the predicate had not been met, the validity of temporary appointments for even clearly vacant seats might be questioned. A central purpose of the temporary appointment mechanism, to put government on a sound footing that is indisputable, would be undermined.
3. The proposed amendment differs from the 17<sup>th</sup> Amendment in one key substantive respect. Temporary House appointments would not last longer than ninety days or until a special election, whichever occurs first. This recognizes the special concern that representation in the House not be based on anything but election for any longer than necessary.
4. The short form amendment gives states a choice, as they have for temporary appointments of senators. The 17<sup>th</sup> Amendment does not vest temporary appointment power directly in governors, but empowers state legislatures to do so. A state, through its legislature, may determine that the principle of filling seats by election only outweighs the state’s interest in representation during the time it takes to hold a special election. Or it may determine that the state’s need for representation is the weightier consideration. Or it may determine that there should be a threshold in that state for

the governor's use of temporary appointment authority, i.e., vacancies in a percentage of the state's House delegation. It may be easier to secure ratification of the proposed amendment by state legislatures if each knows it has the final say about use of the amendment in its state, not with respect to the choice of individual appointees, but as to whether the governor will have temporary appointment authority.