

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.

“Congress shall have power to regulate by law the filling of vacancies that may occur in the House of Representatives in the event that a substantial number of members are killed or incapacitated.”

Advantages

1. The issue is too complicated to be addressed in sufficient detail in the Constitution, which is properly reserved for general principles of governance. This approach will allow Congress to enact a statute (such as Title 3, dealing with presidential succession) with sufficient detail to address all unforeseen contingencies.
2. No consensus has yet developed concerning the substance of a solution; chances are that thinking will evolve as the hearing and ratification process proceeds, and it is possible that, even after implementing legislation is enacted, new and better solutions will emerge. Implementing legislation is more flexible and can be modified more easily than the Constitution.
3. The momentum that now exists for a constitutional amendment could fade if the debate bogs down over competing solutions. Better to take advantage of the widespread belief that some solution is needed, and to open the door to its enactment when a consensus finally develops on specifics. The adoption of this necessary predicate will “get the ball rolling” and make more likely the later enactment of a well-considered solution.
4. This approach is familiar to, and follows the pattern of, other constitutional amendments that permit Congress to “fill in the blanks” with implementing legislation. The courts, here as elsewhere, can review such legislation to ensure that it is within the limits set out by this and other constitutional provisions.

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