steroids and consider increasing them. Currently, the maximum sentence for offenses involving anabolic steroids is only 33–41 months for first time offenders. And to receive the maximum sentence an offender would have to have between 40,000 and 60,000 units, which is defined as a 10 cc vial or 50 tablets.

Saving children is the ultimate goal of this legislation. About 1 out of 40 high-school seniors reported that they had used andro in the past year, according to the Department of Health and Human Services' (HHS) 2002 Monitoring the Future survey, which tracks drug use among students. The survey, conducted by HHS's National Institute on Drug Abuse, also found that about 1 out of 50 10th graders had taken andro in the previous year.

In closing, I would like to thank Chairman SENSENBRENNER and Representatives BERMAN, SWEENEY and OSBORNE for their bipartisan leadership on this issue. I strongly urge my colleagues to lend their support to this sensible piece of legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 3866, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

CONSTITUTIONAL AMENDMENT REGARDING APPOINTMENT OF INDIVIDUALS TO FILL VACANCIES IN HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 657, I call up the joint resolution (H.J. Res. 83) proposing an amendment to the Constitution of the United States regarding the appointment of individuals to fill vacancies in the House of Representatives, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The text of House Joint Resolution 83 is as follows:

H.J. RES. 83

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:

''ARTICLE —

''SECTION 1. Prior to taking the oath of office, an individual who is elected to serve as a Member of the House of Representatives for a Congress shall present to the chief executive of the State from which the individual is elected a list of nominees to take the individual's place in the event the individual dies or becomes incapacitated prior to the expiration of the individual's term of office. The individual shall ensure that the list contains the names of not fewer than two nominees, each of whom shall meet the qualifications for service as a Member of the House of Representatives from the State involved. After the individual takes the oath of office, the individual may present revised versions of the list at any time during the Congress.

''SECTION 2. If at any time a majority of the whole membership of the House of Representatives are unable to carry out their duties because of death or incapacity, or if at any time the House adopts a resolution declaring that extraordinary circumstances exist which threaten the ability of the House to represent the interests of the people of the United States, the chief executive of any State represented by any Member who is dead or incapacitated at that time shall appoint, from the most recent list of nominees presented by the Member under section 1, an individual to take the place of the Member. The chief executive shall make such an appointment as soon as practicable (but in no event later than seven days) after the date on which Member's death or incapacity has been certified. An individual appointed to take the place of a Member of the House of Representatives under this section shall serve until the Member regains capacity or until another Member is elected to fill the vacancy resulting from the death or incapacity. The State shall provide for an election to fill the vacancy at such time and in accordance with such procedures as may be provided under State law, and an individual appointed under this section may be a candidate in such an election. This section shall not apply with respect to any Member of the House who dies or becomes incapacitated prior to the seven-day period which ends on the date on which the event requiring appointments to be made under this section occurs.

''SECTION 3. During the period of an individual's appointment under section 2, the individual shall be treated as a Member of the House of Representatives for purposes of all laws, rules, and regulations, but not for purposes of section 1. If an individual appointed under section 2 is unable to carry out the duties of a Member during such period because of death or incapacity, the chief executive of the State involved shall appoint another individual from the same list of nominees presented under section 1 from which the individual was appointed under section 2. Any individual so appointed shall be considered to have been appointed under section 2.

''SECTION 4. Congress may by law establish the criteria for determining whether a Member of the House of Representatives or Senate is dead or incapacitated, and shall have the power to enforce this article through appropriate legislation.''.

The SPEAKER pro tempore. Pursuant to House Resolution 657, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on House Joint Resolution 83, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we debate whether we should amend the Constitution of the United States to allow House Members to be appointed in the wake of mass vacancies caused by a terrorist attack.

After September 11, 2001, no one would deny the real potential of such a catastrophe striking this body, but fundamentally today's debate is about whether to preserve lawmaking by a House of Representatives elected by the people or to deny the right of elected representation during the most crucial moments of American history and allow lawmaking by an appointed aristocracy.

□ 1545

I would urge the membership to soundly defeat this constitutional amendment to preserve the People's House as an elected House and not as an appointed House.

Let us be clear, any constitutional amendment denying the right to elected representation would accomplish what no terrorist could, namely striking a fatal blow to what has always been the People's House. The House, unlike the Presidency and the Senate, are unique among all branches and bodies of the entire Federal Government. It is the only branch institutionally designed to always reflect the popular will through the legislation it passes.

When terrorists attacked on September 11, 2001, it was an elected not an appointed Congress that acted in its wake; and the legislation passed by that elected Congress has a legitimacy that legislation passed by an appointed Congress would not have had. All of Congress' powers under Article I of the Constitution are only legitimately exercised by an elected House.

H.R. 2844, the Continuity in Representation Act, which passed the House on April 22 by an overwhelming bipartisan vote of 306 to 97, with more Democrats voting for it than against it, will ensure that the House is repopulated by legitimate democratic means within a maximum of 45 days after an attack causes mass vacancies. Within those 45 days, any constitutional amendment that allowed lawmaking by appointed members would pose far more risks than benefits; and legislation passed by an appointed House that did not comport with the people's will would have to be repealed by a later elected House, leading to further discontinuity at the very time when continuity is most important.

The Founders explicitly rejected the proposition that the appointment of Members is compatible with the American Republic. James Madison wrote

that ''it is particularly essential that the House should have an immediate dependence on, and an intimate sympathy with, the people'' and that ''elections are unquestionably the only policy by which this dependence and sympathy can be effectively secured.'' As Madison stated in his speech to the Constitutional Convention, ''a gradual abridgement of the right to elected representation has been the mode in which aristocracies have been built on the ruins of popular forms.''

This amendment is an abridgement of the right to elected representation. Contrary to the claim made by proponents of constitutional amendments, the President would not be unconstrained in its conduct immediately following a catastrophic terrorist attack. Of course, the President would be well within his constitutional authority to execute the laws in times of crisis.

However, the Founders also made it clear that the President would always be subject to impeachment by the House of Representatives, either a House operating on reduced membership or a later fully reconstituted House if the President abused executive authority at any time. And of course no law can be enacted solely by a House operating with a few Members alone. Further, the issue of incapacitated House members can be handled by changes to House rules. The Committee on Rules is already exploring those options.

Demonstrating this is not a partisan issue but one concerning the legitimacy of all Members of the House and of the legislation it passes, the House of Representatives, controlled both by Democrats and Republicans, throughout history has rejected all constitutional amendments authorizing appointed House Members sent to it by the Senate, even during the height of the Cold War. It is important to remember that the American people have always been able to elect their leaders, even during our Nation's darkest hour, the Civil War, when General Lee's Army was just a few miles away from this building.

Today we consider House Joint Resolution 83 sponsored by the gentleman from Washington (Mr. BAIRD). This proposed constitutional amendment contains all the flaws of amendments allowing the appointment of nonelected members, but it also has some unique additional problems.

The Baird amendment would not only override H.R. 2844, which already has passed the House by an overwhelming bipartisan vote, but it would forever strip the Congress of its discretionary authority to expedite special elections in emergency under its existing constitutional powers.

Let me repeat this. The amendment before us takes away the right of Congress under Article I, section 4, that expedites special elections in emergencies.

The amendment also requires House Members, prior to taking the oath of office, to submit a list of names to the governor that the governor can draw from in appointing that Member's replacement. This would subject candidates for Congress forever after to endless questions during their campaigns regarding whom they placed on the list and their connection to the candidate, and perhaps questions that can become embarrassing, creating needless distractions in what is supposed to be a clear contest between individual candidates.

And if a candidate did not tell the press who was on his or her list, the voters would not have a say on who the candidate's potential replacement should be. Such a list would also invite great mischief, including the placing of names on the list of those owed political favors.

Finally, H.J. Res. 83 provides that ''Congress may by law establish the criteria for determining whether a Member of the House of Representatives or Senate is dead or incapacitated.'' This provision would deny the House its existing authority under the Constitution that allows each House to adopt its own rules, an authority the Committee on Rules is already exercising, to address incapacitation by the rules, and needlessly involve the Senate in how the House operates. By doing so, it would unfortunately make addressing continuity of government more difficult than it already is.

Mr. Speaker, I doubt that any Member has faced a vote before that so clearly defines the principles stood for. Either you will vote to tear the fabric of our Constitution and deny the right of self-government under the laws passed by the people's chosen representatives, or you will vote to preserve the sacred right to elected representation.

That sacred right has endured since America's birth, through two World Wars, a Civil War, and now a shadow war waged by vicious haters of democracy. The terrorists would like nothing more than to see us rewrite our Constitution, the supreme law that comes closest to being our Nation's soul, to reflect their twisted vision of autocratic rule.

Around the world, both our friends and our enemies are watching. Vote this amendment down and show them what this House stands for and what it stands against.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Does the gentlewoman from California (Ms. LOFGREN) seek to control the time of the gentleman from Michigan (Mr. CONYERS)?

Ms. LOFGREN. Yes, Mr. Speaker, I do.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 6 weeks ago the House of Representatives passed H.R. 2844, the Continuity of Representation Act of 2003, which was written and offered by the gentleman from Wisconsin (Mr. SENSENBRENNER). This bill provides for the expedited special election of new Members of Congress to fill seats left vacant in extraordinary circumstances.

Under this bill, when such extraordinary circumstances occur, a special election must be called within 45 days. This bill was an important first step in addressing how the House continues to function in the event of a catastrophe, and that is why I voted in support of the bill.

I would note that outside scholars have questioned whether or not the Federal Government has the jurisdiction to impose this scheme on the States. I do not argue that today, but I think to some extent there is an open question as to that. There is also a more fundamental issue which may be partially addressed today, and that is what happens in the 45 days between a disaster that could eliminate the House of Representatives and the holding of these special elections.

In the 45 days following September 11, the House of Representatives cast 69 votes. Some of them were very important measures that helped us respond to the terrorism event. If there is no House of Representatives, there can be no Congress, and if there is no Congress to play its role in the constitutional scheme, the only thing that could happen in such a circumstance would be for the President to assume dictatorial powers and to end our system of constitutional government, an outcome that no one in this House or in this country wishes.

Under H.R. 2844, the House of Representatives would have no way to function for a month and a half; and without the House, there is no Congress. Several Members have introduced constitutional amendments that would address this problem. The gentleman from Washington (Mr. BAIRD) has offered an amendment which we are just about to vote on today. I have also introduced a constitutional amendment, H.J. Res. 96, which takes a different approach from the Baird proposal; and our colleagues, the gentleman from Connecticut (Mr. LARSON) and the gentleman from California (Mr. ROHRABACHER), have done similar things.

This whole issue is very complex, and it may be that none of the amendments are quite ready for our approval, but they certainly do command our attention. All deserve to be debated by Members of Congress, yet I believe that the House would be best served if the committee of jurisdiction, the Committee on the Judiciary, were to have hearings to sort through the complexities of this issue and then be able to present our findings to the full House for consideration.

However, during the 108th Congress, the Committee on the Judiciary has not had a hearing on this issue to compare the various proposals and to discuss the advantages and disadvantages

of each. In fact, I have requested a hearing. I did so during the markup of the Baird amendment in the Committee on the Judiciary, but none have been held.

Today, some may point out that there was a hearing on the constitutional amendment offered by the gentleman from Washington (Mr. BAIRD) in the 107th Congress. That is true, but the amendment on today's agenda is significantly different from the Baird amendment considered 2 years ago. This is a new amendment that was first introduced last December.

A distinguished commission that included former Speakers Foley and Gingrich, as well as Lloyd Cutler and former Senator Alan Simpson, studied this matter at some length and reached the conclusion that we need a constitutional amendment. I am not suggesting that we should simply accept their recommendations, but at the very least we should consider and evaluate their findings before we cast a vote that will define the stability or instability of the country in the event of a national crisis. Unfortunately, the Committee on the Judiciary has not had a single hearing on any of these amendments, so we will not have the benefit today of hearing from the scholars, former speakers and other distinguished leaders on this complex issue.

And now the leaders of the whole House are making the same error as the Committee on the Judiciary. They have scheduled a vote on an amendment that will decide the fate of our Congress during a catastrophe without first holding hearings to address the merits of the Baird approach and all of the others proposed by various leaders on the continuity of Congress.

Let me repeat. Today we are being asked to vote on an amendment to the United States Constitution, but we have not had even one hearing on the amendment in the Committee on the Judiciary in this Congress. It is not often that the Committee on the Judiciary marks up a constitutional amendment to the full House before holding a hearing.

Consider, for example, the constitutional amendment to protect the rights of crime victims. That particular amendment was introduced in the 108th, 107th, 106th, 105th and 104th Congress, and on each occasion prior to markup there were Judiciary Committee hearings.

Also, consider the committee's treatment of a constitutional amendment to prohibit flag burning. A proposal on this issue was introduced in the 108th, 106th, 105th and 104th Congress, and each time the Committee on the Judiciary undertook hearings.

Finally, in the 105th and 104th Congress, a constitutional amendment was introduced to limit the Federal Government's ability to raise taxes, and hearings were permitted on each occasion.

The majority has already seen fit to schedule a series of five judiciary hearings over the course of several months to discuss the issue of same-sex marriage and a potential constitutional amendment. It only makes sense that this House should not vote on an amendment to the U.S. Constitution before the Committee on the Judiciary holds at least one hearing.

This issue of the continuity of Congress should not be an exception. It is vitally important to our democracy and requires more deliberation.

□ 1600

Today, like I did in the Committee on the Judiciary 1 month ago, I will not vote to support the Baird amendment; but I will vote on a motion to recommit so that the Committee on the Judiciary will have a chance to appropriately hold hearings and review various approaches to this vital issue to our democracy. Some will reach a reasoned, but different, conclusion relative to the Baird amendment itself; but I think all will agree this body would be better served with extensive hearings on this complicated and enormously important subject.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Michigan (Mrs. MILLER), who served two terms as Secretary of State and chief elections officer of the State of Michigan.

Mrs. MILLER of Michigan. Mr. Speaker, I rise today in opposition to this resolution, which is proposing to amend our Constitution by allowing for the appointment of Members of the United States House of Representatives in the event of a national emergency.

For over 225 years, the House of Representatives has been the people's House; and I say that I think that is so important, as we think about that, we have been known as the people's House. Members of Congress are required by the Constitution to be elected directly by the people. This requirement, of course, allows for all citizens to truly have a voice in their government and provides probably the most important of all of our checks and balances.

Under this resolution we are debating here today, elected representatives would be replaced by non-elected appointees, in a complete counter to the intent of our Founding Fathers. In a very strange irony, this provision would kick in at precisely the time when our citizens need to be heard the most, at a time of crisis.

As well, provisions of this resolution call for sitting Members of Congress to provide the names of two people to replace them in the event of their own death or incapacitation. One of these two people would then be appointed to the seat by the Governor of the appropriate State. This nonelected Member of Congress would then serve out the remainder of the relevant 2-year term, with all of the rights and privileges of an elected Member.

Yet appointing legislators who were not voted on by the public would negate the entire purpose of this House, which is to represent the people directly.

Just last month, this Chamber passed H.R. 2844, The Continuity in Representation Act of 2004, of which I was a very proud cosponsor. H.R. 2844 was passed with overwhelming bipartisan support because it puts forth a very clear, concise plan to deal with the now-real possibilities that we once considered unthinkable, quite frankly. It calls for expedited elections; and as the chairman had said here, as a former Secretary of State of a State of about 10 million people, I feel the timelines we outlined in that H.R. 2844 were very, very realistic.

Every Member of this House is an elected official who earns the right to come here to Washington and represent our constituents because we were voted in by a majority of the people in our respective districts. Rather than tinker with one of the pillars of our democracy via a reckless change to our Constitution, we should vote this amendment down and continue to press for the full adoption of H.R. 2844.

I urge a ''no'' vote on this resolution.

Ms. LOFGREN. Mr. Speaker, I yield 13 minutes to the gentleman from Washington (Mr. BAIRD), the author of this legislation.

Mr. BAIRD. Mr. Speaker, would the gentlewoman be interested in joining me in a colloquy?

I appreciate very much the comments of the gentlewoman, and I was intrigued by one thing she said. She said that even temporary appointments, I will paraphrase briefly here, would violate the entire purpose of the House of Representatives.

My understanding of Madison's approach was that there were more elements to having a house of representation than mere election, as important as that is, but also the role of checks and balances, the role of proportionate representation, the division of authorities between the legislative branch and the executive branch.

Madison specifically said: ''The accumulation of all powers, legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed or elected, may justly be pronounced the very definition of tyranny.''

What I would like to ask the gentlewoman is, if we have no House of Representatives, less than a quorum, do we have an alternative to the concentration of the power in the executive branch under current law?

Mrs. MILLER of Michigan. Mr. Speaker, will the gentleman yield?

Mr. BAIRD. I yield to the gentlewoman from Michigan.

Mrs. MILLER of Michigan. Mr. Speaker, I would say impeachment could be a possibility there. I do believe as you read the Constitution, the operative phrase, the operative theme, as we try to determine and decipher exactly what the intent of our Founding Fathers was, is that every Member of

this House needs to be directly elected by the people.

While I appreciate the gentleman's insistence on a constitutional amendment, it is obviously well thought out, the gentleman feels very passionately about it, I could not disagree more strongly.

Mr. BAIRD. Mr. Speaker, reclaiming my time, I appreciate this need to exchange, because this is exactly what we need to do. During the 45-day period, as I understand it, the gentlewoman is saying the only check on the executive would be the threat of impeachment.

Does the gentlewoman believe that is consistent with the Framers' intent, when they wrote all of article I and purposefully chose article I as the description the legislative branch, or does she believe the Framers' intent was to say the executive can have carte blanche to run the country as they might, but 45, and possibly 75, days later under the bill the gentlewoman coauthored, the Nation has to wait 75 days for impeachment as a check on the executive?

Mrs. MILLER of Michigan. Mr. Speaker, if the gentleman will yield further, I am not an expert in this part of the law, but I do believe Federalist Paper No. 47 addresses principally the gentleman's argument there. I will tell you though, as I mentioned, I was the Secretary of State for 8 years in one of our largest States, and I really looked at this bill and talked to a number of my colleagues, as well as many members involved in the elections industry, to make sure we had a reasonable time frame that we set out for expedited elections.

Mr. BAIRD. Mr. Speaker, reclaiming my time, if I may, I am not disputing that. The point before us here, we have passed that bill. The point before us here is what happens in the 45 days? I think there may be grounds to dispute whether you can have an election or not. But the point of this legislation is to say how do we get this Congress up and running promptly.

Let me give you a scenario and see if you are comfortable with it. John Ashcroft said last week or the week before that high-profile targets include this summer the Democratic convention and the Republican convention. I will take him at his word.

If it is true that we are a high-profile target, and if you are at the Republican convention or we are at the Democratic convention and terrorists attack, let us suppose they attack during the President's speech at the Republican convention, and the president is killed, heaven forbid this should happen, if the President and Vice President are killed and a number of my good friends on your side of the aisle perish, of necessity at that point the House will have to reconvene, there will be a new majority, hence a need to elect a new Speaker. Presumably at that point the Democrats control the House of Representatives, presumably we will elect a Democratic Speaker, and, under the law of succession of 1947, that person is now in line for the Presidency of the United States. That is my understanding of the status quo as it exists in law today.

I would just ask the gentlewoman if she is comfortable with that or disputes that is the status?

Mrs. MILLER of Michigan. Mr. Speaker, if the gentleman will continue to yield, my understanding is that the gentleman's amendment here today, the resolution we are talking about here today, actually would override the bill we have already passed in a bipartisan way. That is really my intent, to make sure we focus on that as well. I think that is very, very important.

Mr. BAIRD. Mr. Speaker, reclaiming my time, the legislation that I put forward, actually it would obviate, not necessarily override. I really want to underscore that point. The chairman has repeatedly, really since day one of this, I think, misrepresented this. He misrepresented it in his opening comments. He said the question before us, in essence, is whether you will have an elected Congress or an appointed aristocracy.

The true question is, will you have any Congress or not? Not my bill, not the bill of the gentlewoman from California (Ms. LOFGREN), not the bill of the gentleman from California (Mr. ROHRABACHER), not the bill of Senator CORNYN, not any of the bills put forward would in fact ban elections, as the chairman repeatedly says. It is deeply frustrating to me to have a matter of this importance be misrepresented.

No one disputes, and I firmly agree with you, that the mechanism to replace House Members should be direct election, ideally, and we should have them as promptly as possible. But if we are so concerned about an aristocracy and appointment not responsive to the people, are you not equally concerned that a party mechanism for selecting a candidate implies in itself some degree of potential beholding to those who appoint it? Is the gentlewoman concerned about that at all?

Mrs. MILLER of Michigan. Mr. Speaker, if the gentleman will yield further, no, I do not share the gentleman's consternation with that particular facet of it.

But as the gentleman has outlined, as I say, we are now dealing with a situation which we previously before 9/11 thought was absolutely unthinkable. So it is difficult for us all to stand up here and think about our own demise, numerically how many would have to be incapacitated or whatever before we would move forward with something like this.

I think the gentleman has laid out in a very speculative way a number of different scenarios. The gentleman and I, along with many others, had an opportunity to debate this at a hearing in front of the Committee on House Administration. We went through all of these different kinds of things.

I think we have just different approaches to what needs to happen here. But I feel very, very strongly, a vast majority, a bipartisan majority of this House feel that all of us should be directly elected by the people. I think the bill we passed previously does address that in a realistic way.

Mr. BAIRD. Mr. Speaker, reclaiming my time, I thank the gentlewoman for her time and appreciate her engaging in this colloquy. I sincerely do.

Mr. Speaker, the reason I asked the gentlewoman to respond is this is what we really need to do with this bill. The gentleman from Wisconsin (Mr. SENSENBRENNER) would claim that he brought this up at our request. In fact, we did not request this fashion of bringing this legislation up. What we requested was that all measures to provide for continuity be brought up for debate, including my own, the bill of the gentleman from California (Mr. ROHRABACHER), the bill of the gentlewoman from California (Ms. LOFGREN), the bill of the gentleman from Connecticut (Mr. LARSON), the bill of Senator CORNYN in the Senate, two Republicans on that list, by the way, several Democrats, that they all be brought up and we have full discussion.

I would note for the record that I see on the House floor now about six colleagues, maybe seven. Two things concern me about that: first, if we really take this seriously, I believe we ought to all take it seriously. I do not think for a second my bill is perfect. I think there is merit to the other legislation. But I do not think we are going to get to a solution unless we grapple with this issue, unless we take it seriously.

The second thing that concerns me is let us suppose this random group of survivors here, this six or seven on the floor, are the group of survivors. Under the Constitution, that is not a quorum. The Constitution, in my judgment, is rather clear that a quorum is a majority of the Members, but House Rules state it is a majority of those chosen, sworn, and living.

Importantly, would the people of the United States of America believe that the seven or eight of us here now, relatively randomly chosen if we were survivors, are consistent with the representational nature of this body? It is not just the people's House because it is directly elected, it is the people's House because it deals with proportionate representation. It is the people's House because of prompt reelections.

Would the eight of us here right now be sufficient to send this Nation into war? Would the eight of us be sufficient to impeach a President? Would we be sufficient to select one of our own as the Speaker of the House, who would then become the President of the United States? I noticed in her comments, in response from my friend from Michigan, not once did she truly address what happened in that 45 days.

We talked about the elections, and I appreciate the importance of that. Let

me, if I may, address some of the myths that have been perpetrated by the opponents of this bill.

First of all, the myth that we have already solved the problem. We have not solved the problem. We have provided for special elections in 45, possibly as long as 75, days. But this notion that it was an elected House, not an appointed House that passed legislation, is rather absurd, when the choice is there might be no House at all to pass legislation.

Secondly, this notion that continuity is somehow not urgent, that we do not have to move forward with this. It has been 3 years. On September 10, 3,000 of our fellow citizens had no idea they were living their last day, yet they were.

The notion that temporary appointments somehow subvert the right to election. Again, and I underscore it, nothing in any of the legislation put forward would take away the people's rights to election.

When the chairman said, and I thought it was rather remarkable, that my legislation explicitly in the Constitution authorizing the Congress to deal with the matter of incapacity, that that takes away our right to deal with incapacity, I found that rather absurd, to say the least. The legislation before us says that Congress can deal with incapacity statutorily. How does that ban our right to do so?

The myth, which is just so remarkable, that the appointees would be irresponsible to the general public does a profound disservice to the existing Members of the House of Representatives. Indeed, I find it an insult.

To believe that the people that sent us here with the authority to send their children to war, as we have chosen to do, to tax them or give them back their taxes, to impose any number of legislative remedies and sometimes problems on this country, but then the moment it comes time to make one of our most profound decisions, who would replace us in a catastrophe to carry on this institution, that moment, suddenly we lose capacity of our senses.

□ 1615

It not only insults us, it insults those who we might nominate to replace us.

By coincidence, not 30 minutes ago I met with Don Bonker, a gentleman who represented my district a little over a decade ago, a distinguished statesman with outstanding international skills. Do we seriously believe that if I nominated Mr. Bonker to be my replacement that he would act irresponsibly to care for this country? And if you believe that impeachment is a worthwhile check on the abuse by the executive, why do you not also believe that a subsequent election would be a worthwhile check on Mr. Bonker's conduct if he were to act irresponsibly? The inconsistencies and illogic are breathtaking sometimes.

I want to do one other thing. My friend, the gentleman from Arizona (Mr. SNYDER) is here; and I want to compliment him. It is rare in this body I find that we acknowledge that there may be a shortcoming in our own legislation and that an opponent of that legislation has pointed out a shortcoming. The gentleman from Arizona (Mr. SNYDER) came to me this morning, raised an issue; and I think he has a good point. I would like to be able to fix that.

I would have liked the process such as we propose in the original rule where you debate things and then have time to amend it. I doubt that is going to be allowed. But I will say, and I appreciate the gentleman very much for raising the shortcoming, I will in future drafts, if we have the opportunity, endeavor to fix that.

But I would also say right now that, even with the shortcoming, I believe with all my heart that the bill we have before us today is superior by far to the status quo. So while I expect fully that we may not pass this bill, I will intend to bring it up with modifications.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in opposition to this proposed constitutional amendment.

Every person who has ever served in this House in the over 200-year history that we have existed as a country, every person has been elected. Not one has been appointed. When one reads our Nation's founding document, it soon becomes clear that the right to elected representation was the very core of its significance and its lasting value. No constitutional amendment that allows appointed representatives would be consistent with the very essence of our Nation's reason for being and, for that reason, I oppose such amendments, including this one.

James Madison wrote in Federalist No. 57, ''Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune.''

Constitutional amendments that would allow appointed Members would deny that sacred heritage.

At the Constitutional Convention, according to the notes taken by James Madison, delegate George Mason argued strongly for ''an election of the larger branch,'' that means the House, ''by the people. It was to be the grand depository of the democratic principle of this government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it.''

It was arguments such as these that won the day when our Constitution was drafted. Constitutional amendments that would allow appointed Members would violate those principles the Founders believed were most important.

James Wilson at the Constitutional Convention, according to Madison's notes, ''contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the Federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible.''

Mr. Speaker, H.R. 2844, which I cosponsored and which passed the House on an overwhelmingly bipartisan basis, 306 to 97 right here in this House, preserves America's essential right to elected representation. This amendment, however, would override H.R. 2844 and deny the core of America's founding principles and, for that reason, I strongly oppose it.

Ms. LOFGREN. Mr. Speaker, I would note that when the Founding Fathers spoke at that time, they were contrasting with a Senate that was appointed.

Mr. Speaker, I yield 3 minutes and 45 seconds to the gentlewoman from Texas (Ms. JACKSON-LEE), a distinguished member of the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentlewoman from California for yielding me this time, and I appreciate the insight that she provided us in the Committee on the Judiciary when she asked for a delay so that we might give the kind of attention to this issue, Mr. Speaker, that I know my colleagues know it deserves.

This is a very intellectual, if you will, and high law debate. As the distinguished gentleman from Washington (Mr. BAIRD) said, it has been 3 years, so sometimes distance and absence does not make the heart grow fonder, or it certainly does not educate us about the crisis in which we are literally debating.

It is important for the colleagues who are listening to this debate and who are participating in this debate to realize what the Baird amendment actually does. He is talking about catastrophe, disaster. He is talking about a wiping out of the United States Congress, 218 Members dead or incapacitated.

It is nice to stand here and to give out pleasantries and to, if you will, assume that it could not happen to us. But, as I said this morning, the beginning of the Constitution said we have gathered to create a more perfect union, and today we are attempting to debate an issue that is to create a more perfect union in the light and the backdrop of the life we lead now: terrorism abounding throughout the world, Iraq exploding, Afghanistan exploding, and the potential of terrorist acts as the

Attorney General has announced. Whether or not it is announced with any immediate evidence, he has announced it.

So what we are saying to the American people, frankly, is that we are talking about this body being incapacitated.

Now, I know that we would not want to make light of this, because some might say something about the incapacity, but we do realize that this is the most powerful law-making body in the world. This amendment deserves more than appeasement, and that is what we are getting here.

Frankly, I believe the gentleman from Washington (Mr. BAIRD) is accurate. He wanted to have a debate, he wanted to have a hearing because this is of value to him, not personally, but he believes that this is a needed constitutional amendment because we may face a catastrophe, and he wants to incorporate the gentleman from Arizona's (Mr. SNYDER) reflection.

I am interested in finding out whether there can be amendments dealing with how the appointment process goes forward.

But this is not to undermine the constitutional aspects of election. This is to suggest that there is nobody here to have an election, that we are all dead. Does anybody understand the monument of the moment that we are speaking about?

So when we begin to take this in a very calm and light manner, this is not what the gentleman from Washington (Mr. BAIRD) is talking about. He is not suggesting that we should eliminate the constitutional provisions or the commitment that we have to a democratic and free election. He is suggesting that we are in the middle of a crisis.

Now let me just cite for my colleagues the history of this Committee on the Judiciary since I have been on it. We have had the controversial hearings dealing with Waco. We have had the controversial hearings that took up a half a year dealing with the impeachment process of the President that served just a few years ago, William Jefferson Clinton. We have had those hearings. We have had the flag-burning hearings on a constitutional amendment every single year. We have had the victims of crimes amendment every single year, or a good number of them. We are going to have the same-sex hearings over and over again. I do not know if those are life-or-death matters, but we have had our set of hearings.

Can my colleagues tell me what reason there is, what reasonable men and women could disagree that we would not placate the gentleman from Washington (Mr. BAIRD) by a lousy presentation on the floor of the House? And I will say lousy not in disrespect of my colleagues but the fact that this is limited and ridiculous as it relates to the moment that we are discussing about the incapacitation of this body, 218 dead. And might I say to my colleagues, that is real. Because on 9/11, those planes were headed for the United States Capitol.

I would simply say that we need hearings, and we should recommit this back to the Committee on the Judiciary for full hearings, and we should not appease, but we should do our jobs and respond to the crisis that may come forward and work on behalf of the American people.

Mr. Speaker, I commend our distinguished colleague from Washington, Mr. BAIRD, for his effort and leadership in pursuing a legislative answer to questions left after the House passed H.R. 2844, the Continuity in Congress Act on April 22, 2004.

Like Mr. BAIRD, I sought to obtain answers to some of the issues that I found in that bill by offering an amendment, which Mr. SCHIFF was kind enough to offer in my absence.

While Mr. BAIRD's specific problems with H.R. 2844 are slightly different than those that I had, I support his legislation because it offers us an opportunity to craft a tighter legislative remedy to the need to establish a system of continuous leadership in the House of Representatives.

However, even Mr. BAIRD's attempt will not be maximized because our colleagues on the other side of the aisle have seen fit to push this bill through Committee markup without first allowing the Members to analyze it in a legislative hearing.

Although H.J. Res. 84 doesn't seek to expand the time to file suits concerning the special election process, Mr. BAIRD suggests that the question of emergency representation be answered before the vacancy can occur—when the elected Member initially takes office.

To reiterate my proposals to improve H.R. 2844, I suggested first that the section of the bill that deals with the time in which a person(s) may file a lawsuit arising out of the Speaker of the House's announcement of vacancies in the House of Representatives that exceed 100 be increased. This change would expand the ability of an aggrieved party to file suit for either declaratory or injunctive relief.

Because not every state has a Capital Beltway or even a superhighway system, and because information travels at a different rate in every location, it is important that we establish a fair standard for a filing rule that affects every state in the country. The principle of procedural due process dictates that every citizen have a realistic opportunity to obtain legal relief through our Judicial Branch.

Next, my proposal spoke more to the issue of due process for all citizens by preserving their right to appeal the announcement of a vacancy. Because the 45 day deadline for special state elections already places significant constraints on the electoral process and on the citizens represented due to its brevity, taking away the right to an appeal from the U.S. District Court would excessively curtail the procedural due process rights enjoyed by citizens.

Given that the time in which a Federal judge has to compose an order disposing of these matters is provided in this bill, an equally expeditious appeals process should be provided so as to maintain consistency with the U.S. Constitution and the commitment to both the 5th and 14th Amendments.

Lastly, I proposed that the right to sue under the original bill be extended to the citizens of every state in addition to the chief executive. This proposal is very important to protect the interests of all citizens in the various congressional districts in the midst of party politics. As H.R. 2844 is drafted, Section 2, paragraph (4), subparagraph (iv) would confer the right to sue in the event of a vacancy announcement by the Speaker of the House solely to the "executive authority," in Houston's case, the Governor.

Such very limited language almost certainly threatens to deprive the citizens of a right that they should enjoy in the event that the Governor chooses not to participate in a suit for declaratory or injunctive relief pursuant to a vacancy announcement made by the Speaker of the House. In order to protect the rights of every person who truly has an interest in a call for a special election, we must allow citizens to sue for relief.

A careful review of the Judiciary Committee's history with respect to its past treatment of constitutional amendments evidences a strong practice of holding hearings prior to any scheduled full Committee markup of that particular amendment.

Consider, for example, the constitutional amendment to protect the rights of crime victims. That amendment was introduced in each consecutive Congress since 1994 (the year the current Majority took control of the House), and on each occasion, it was the wisdom of the Committee to schedule a hearing.

Also, consider the Committee's treatment of the constitutional amendment to prohibit flag burning. A proposal on this issue was introduced in the 108th, 106th, 105th and 104th Congress and each time the Committee undertook hearings prior to scheduling a markup.

Moreover, consider the Committee's treatment of the constitutional amendment to limit the federal government's ability to raise taxes. A proposal on this topic was introduced in the 105th and 104th Congress, and hearings were held on both occasions.

With this apparent and undeniably longstanding tradition, we are now told that a hearing is unnecessary under the present set of circumstances because a hearing was already held on the Baird amendment introduced in the 107th Congress. This line of reasoning lacks merit for two important reasons.

First, as previously mentioned, it has been the well-established practice of the Judiciary Committee to schedule a hearing on such proposals prior to proceeding to a markup. This hard and steadfast rule has prevailed, even under circumstances where the proposed amendments were virtually identical in nature.

Second, even assuming the general rule was subject to change, the two versions of the Baird amendment, H.J. Res. 67 (introduced in the 107th Congress) and H.J. Res. 83 (introduced in the current Congress), are distinct enough to warrant two separate hearings on their own merits. H.J. Res. 83, for example, uses a distinct threshold for making temporary appointments; places considerable limits on the discretion of the chief executive when he or she is authorized to make such appointments; and provides a mechanism for an incapacitated Member to regain his or her seat after recovery from incapacity.

Our Committee has already seen fit to schedule a series of five hearings, over the course of the next several months, to discuss the issue of same-sex marriage. With this in

mind, one single hearing to discuss and consider ideas on how best to ensure the continuity of our government in the event of a catastrophic incident is more than reasonable.

Mr. Speaker, I ask that my colleagues think about the gravity of what this Constitutional amendment will entail. We need to recommit this bill to the committee of jurisdiction, the Judiciary, and revisit the important issues that I have stated above.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE), a member of the Committee on the Judiciary.

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I thank the chairman for yielding me this time.

I rise to relish this debate. It is precisely the type of issue that, as I was a boy first falling in love with the Constitution of the United States, as no doubt the gentleman from Washington (Mr. BAIRD) did as well, I hoped some day to be a part of here.

I congratulate the distinguished gentleman from Washington State for his passion on this issue, and I believe in his well-intentioned efforts to address what is, unfortunately, an issue that this Congress must continue to confront in the years ahead.

But with regard to House Joint Resolution 83, however well-intentioned, Mr. Speaker, I would offer that it is nonetheless bad policy.

When terrorists attacked America on September 11, I was here in the Congress, and that very next day, I witnessed that it was an elected Congress that responded in the wake of those attacks. Had the 107th Congress been comprised of appointed officials, the legislation we passed would not by definition have carried the same validity. The truth is, it would hardly have been reassuring to the American people immediately following a terrorist attack to see the faces of hundreds of strangers running their government; and, gladly, it did not occur.

The Constitution could not be clearer on this point. Article I states, ''The House of Representatives shall be composed of Members chosen by the people of the several States,'' and that ''when vacancies happen in the representation of any State, the executive authority shall issue writs of elections to fill such vacancies.''

Of this point James Madison wrote in Federalist No. 52, ''As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the House should have an immediate dependence on and an intimate sympathy with the people.''

Frequent elections are unquestionably the only policy by which a dependence and sympathy for the people can be equally secured. In fact, it would be Madison himself who in a speech years later would suggest ''a gradual abridgement of the right to suffrage or to elected representation has been the mode in which aristocracies have been built on the ruins of popular forms.''

That is not what we are about here today, nor would I imply it or suggest it to my friends and colleagues. But I am here to say that this business of the People's House being the exclusive province of the national government where one must be elected by the people to serve is a principle worth defending.

For that reason, despite my admiration for the gentleman from Washington, I urge my colleagues to oppose this resolution inasmuch as it does undermine the core principle that this place on this floor should ever be the People's House.

Ms. LOFGREN. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER), a distinguished member of the Committee on the Judiciary and the ranking member of the subcommittee.

Mr. NADLER. Mr. Speaker, we are asked today to consider the most serious question likely to come before the Congress: how to maintain our government as a democratic representative government in the event of a catastrophic terrorist attack. We must think carefully about the unthinkable, and we must do it now while we have the opportunity to do so.

Unfortunately, this proposed amendment is being brought up by the Republican leadership under a closed rule, with 90 minutes of debate, no hearing in the Committee on the Judiciary or in any committee of this Congress. An alternative proposed by a Republican colleague from California cannot even be debated under this rule. As the ranking Democratic member of the Subcommittee on the Constitution, the subcommittee with the responsibility to consider all proposed constitutional amendments, I can tell my colleagues that this proposed amendment has never been the subject of a hearing in this Congress.

Let me read what the Republican report on this bill says: ''No hearings were held on H.J. Res. 83,'' period. We have found the time for five hearings on same-sex marriage, and we have found the time to consider a bill to declare the oak tree the official tree of the United States. We have found time for hearings on flag burning but not on how to prevent the destruction of our democratic institutions.

□ 1630

We have found the time to consider a balanced budget constitutional amendment, but no time to consider how to maintain the voice of the American people in the consideration of taxing and spending measures.

These are the twisted priorities of this Republican leadership. How do we protect our democracy in the event of a terrorist attack? Who knows. I would like to know how we can protect our democracy right now. Clearly an issue that is of the highest importance to the Nation, an issue that should be nonpartisan is being handled in a partisan manner. That is anti-democratic.

Is this amendment the right solution to a significant problem? Perhaps. Frankly, I think it goes in the right direction. I have some amendments to it that I would make, if they were in order, if we had time to consider it. We ought to hold hearings.

This House passed a bill to guarantee elections in 45 days. Frankly, I think that 45 days is too quickly. What do you do as a practical matter, especially after a catastrophe, what do you do within those 45 days? I think that the best amendment would probably be something that would be along the lines of this amendment that we are considering now, but I think there ought to be a mandate that there be a special election within a reasonable time period, not 45 days, but maybe 120, 180 days.

What is practical? I think there are other things. But the fact is how do you determine when someone is incapacitated and when he is no longer incapacitated? We ought to have serious hearings. We ought to consider this properly. We ought to consider the gentleman from California's (Mr. ROHRABACHER) suggestions, my suggestions, other people's suggestions. We ought to consider the suggestions of law professors. We ought to do this right. This is a serious matter.

Instead, what we have done is take up the chairman's bill. Why? Because he is the chairman. We do not consider anything else. We know that many people think that that is not an adequate bill, but they did not have proper hearings either. Now because of criticism, we are taking up this bill with no amendments and no other considerations.

Frankly, the trouble that Members are having answering these questions is because the Republican leadership will not allow the proper minimal consideration of this issue. That is no way to protect our democracy in these dangerous times.

I would urge that this bill should be sent back to the Committee on the Judiciary. I will vote for it because it is the best thing we have in front of us. We ought not to be in the position we are in.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to respond to the complaints about the process in the Committee on the Judiciary. It is true there were no hearings on the amendment of the gentleman from Washington (Mr. BAIRD) during this Congress. There was a hearing in the last Congress. There was not very much support for the notion of appointing replacement Members of the House of Representatives.

The gentleman from Washington (Mr. BAIRD) introduced House Joint Resolution 83. Until the day it was reported by the Committee on the Judiciary, it had no co-sponsors at all. Then there were two people who added their names to the joint resolution, including the gentleman from New York. There was

one amendment that was offered during the committee markup when the resolution was open for amendment at any point, and it was subsequently withdrawn.

When the Committee on Rules had its hearing last night, none of my Democratic friends offered any amendments for the Committee on Rules to consider. The gentleman from California (Mr. ROHRABACHER) did offer an amendment.

I would point out that on November 15, 1983, when the Democrats were controlling the House, the House considered the Equal Rights Amendment, a very important constitutional amendment under suspension of the rules where there was only 40 minutes of debate and no amendments were offered. Two-thirds vote was required under suspension, as it is for constitutional amendments; and it was voted down.

But anybody who complains about this process where there is 90 minutes of debate, no amendments because it is a closed rule and, except for the gentleman from California (Mr. ROHRABACHER), nobody offering any amendments, I think really ignores how the ERA was considered 21 years ago.

Now, finally the gentleman from Washington (Mr. BAIRD) filed a discharge petition. He wanted to bring the bill up out of the regular order, without any hearings, and without any committee consideration. What I did is there was a full markup at the committee where the amendment was open for amendment at any point. There was a vote in the committee. And the majority of the committee reported it out adversely.

So I think that anybody who says we need more hearings should not have been on that discharge petition.

Mr. Speaker, I yield 2½ minutes to the gentleman from Virginia (Mr. FORBES), a member of the committee.

Mr. FORBES. Mr. Speaker, I rise today in strong opposition to House Joint Resolution 83. I myself was elected to serve in the House of Representatives 3 years ago this month in a special election when my predecessor passed away. If my predecessor had been forced to make a list of successors, would have I been on it? I do not know the answer to that question. But I do know that it is unlikely that my constituents would have wanted their representative decided for them in any other manner than by election.

In a time of national emergency, the people I represent should have a right to choose their next representative. To deny them this right would be autocratic and unjust, no matter how well intentioned the motive.

Today, Mr. Speaker, we are considering a powerful amendment that could alter the very nature of our government. It would strip the voice of the people at a time of national emergency, a time when the people's voices are most necessary and most moving. Without elections, our government becomes bureaucracy in action rather than democracy in action. It is precisely at such a time in such an emergency that we need to guard and defend the rights of our citizens to vote and not yield to the temptation to absolve that right.

This bill undermines the legitimacy of the House of Representatives. It is no accident that our Founders designed the House of Representatives to be composed solely of elected representatives of the people.

George Washington said: ''The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered deeply, perhaps as finally, staked on the experiment entrusted to the hands of the American people.''

Mr. Speaker, our experiment with democracy has worked. As a Nation we have survived many national emergencies, disasters, and tragedies. We are the oldest working democracy because we make it clear that power in this government must remain with the people.

I urge my colleagues to vote against House Joint Resolution 83.

Ms. LOFGREN. Mr. Speaker, I yield 1 minute to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, I rise in opposition to H.J. Res. 83. And for those Members who are undecided on how they are going to vote today, I suggest two questions: First of all, have my colleagues read this proposal? If they have not, please go to the computer, pull it up, and read it. The language is confusing. It does not work. I do not believe it accomplishes the purposes that the sponsors have set out for us.

Today is not the day of the vote for this proposal. It is still in a draft form and needs more work.

The second question, What does one consider to be the essence of democracy? Is it continuity of government, or is it the right of a free people to be represented by those people whom they elect? If one believes in a seamless continuity, there has always been a way to do that. We have had kings. The king is dead. Long live the king. Succession just passes to the son or daughter.

This particular proposal says succession will pass to people who we select. We die and the government will appoint one of those two people. That, in my view, provides continuity, but it does not preserve what I think is the essence of democracy, the right of a free people to be represented by those whom they elect.

Finally, on the motion to recommit, which I believe is coming, the language that I read, I believe it is the current draft, says that this resolution will be sent back to committee for full hearings on this resolution.

In the spirit of what has been said by the gentleman from New York (Mr. NADLER) and others, I would hope that language would be modified asking the committee chair to have hearings on all the proposals out there.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I rise in strong opposition to this legislation. Of course, it is well intended. We have all worked together. The request was made of me that we have a chance to vote up or down on this constitutional amendment. The gentleman from Wisconsin (Mr. SENSENBRENNER) and I worked this out.

Now the author of the amendment says it is flawed. We have the ranking minority member of the Subcommittee on the Constitution saying it is flawed. We have a proposal before us. It should be unanimous that we vote ''no.'' It is a bad idea, and it should not be done.

The thing that troubles me is while I know that my colleagues would like to ensure that there are elections, their proposal does, in fact, provide the opportunity for appointed individuals to serve in the House. There was a debate in 1787 on this very issue. Charles Pinckney, as he discussed the issue of the first branch, talked about the fact that Members of the House should be appointed. Why should they be appointed? He said the people were less fit judges.

Now, I am not claiming that the people who are proponents of this constitutional amendment believe that the people are less fit judges. I am not claiming that they do not want to have elections. But I will say that as we look at the debate in 1787, Madison, Mason, Dickerson and other Framers, I think, got it right and concluded correctly with Madison's quote when he said: ''The right of suffrage elections is certainly one of the fundamental articles of democratic government. A gradual abridgement of this right has been the mode in which aristocracies have been built on the ruins of popular forms.''

I think it is very important for us to note that it was the James Madison view that prevailed, ensuring that the people are elected when they serve in the people's House. Remember, it was Federalist 53 when Madison said: ''Where elections end, tyranny begins.''

This proposal would, in fact, have something take place before elections. So I think that we have the opportunity with this amendment before us to tragically move in the Pinckney direction, which did, in fact, say that the people are less fit judges. And that is why I believe it would be wrong for us to potentially have a totally appointive government which we conceivably could have if this constitutional amendment were to prevail. It is possible that we could have an appointed President, Vice President, an entire United States Senate and, with this proposal, appointed Members of the House. That is why James Madison was

so careful, and that is why he was so correct in ensuring that at least one entity could not serve, could not have any power unless it is vested in them by the people.

Mr. Speaker, the author and other Members have now admitted that this is flawed. The gentleman from Arkansas (Mr. SNYDER) just came forward having offered a proposal to the gentleman from Washington (Mr. BAIRD) about making a modification, and he has come forward and said he would like to have another proposal.

Well, we have gone through this for a long period of time, and as the gentleman from Wisconsin (Mr. SENSENBRENNER) has said, a hearing on the constitutional amendment was, in fact, held in the last Congress. We know what it consists of. A constitutional amendment consists of having appointed, rather than elected, Members of the House. And the proposal itself is flawed, as has been admitted.

That is why I encourage my colleagues in an overwhelming bipartisan way, just as we in an overwhelming bipartisan way by a vote of 306 to 97 voted in favor of our expedited election legislation, we should come together in the same way and vote down this ill conceived measure that would fly in the face of the vision put forth, the inspired vision of the Framers of our Constitution.

Ms. LOFGREN. Mr. Speaker, I yield 3 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, I rise today in strong support of this measure and commend my good friend and colleague, the gentleman from Washington (Mr. BAIRD), for his outstanding leadership on this critical issue.

This important legislation would amend the Constitution to allow temporary appointments to fill vacancies in the House only in the event of a catastrophic attack. If we do not pass this legislation, Mr. Speaker, we risk disenfranchising large portions of the country in a time of national crisis or, worse, in the case of mass incapacitation of Members preventing the House from even convening to conduct the people's business.

Some Members will argue today that a constitutional amendment is not necessary to address the problem of congressional continuity. While I understand some of their concerns, I question whether Congress has investigated the matter enough to even come to that conclusion.

The AEI Brookings Continuity of Government Commission after studying the issue thoroughly endorsed a constitutional amendment even though some members began the process undecided or opposed to that course of action.

Mr. Speaker, others will note that the House already addressed this matter by passing legislation in April to require expedited special elections within 45 days.

□ 1645

Well, Mr. Speaker, I would point out that in the 6 weeks after the attacks of September 11, the Congress passed numerous pieces of legislation authorizing, among other things, the use of military force, an airline assistance measure, an economic stimulus bill, the Defense Authorization Act, numerous appropriations bills, the farm bill, and legislation pertaining to bioterrorism, victims assistance and terrorism financing.

Well, Mr. Speaker, without a constitutional amendment to allow temporary appointment after a disaster, the most important decision that our body can make, the decision to declare war, could have been made with a greatly diminished or unrepresentative House.

I am disappointed that we are being given only 90 minutes to debate one of the most important topics that this Congress can address. I know that other Members have proposed their own constitutional amendment to address the issue of congressional continuity, and we deserve hearings and discussion on those recommendations as well.

Mr. Speaker, it is our duty to prepare the legislative branch for any kind of disaster; and this constitutional amendment is necessary to ensure that the House will be able to continue its work even in the worst circumstances. I urge my colleagues to support this legislation. I congratulate the gentleman from Washington (Mr. BAIRD) for his leadership and passion on this issue.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. COX), the chairman of the House Republican Policy Committee.

Mr. COX. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I thank the author of this proposal before us. It was 2 years ago that the Speaker asked me, along with the gentleman from Texas (Mr. FROST) as my co-chair, to chair the Continuity of Congress Working Group that was a predecessor for the outstanding work that the Committee on the Judiciary has done legislatively in subsequent years.

Our working group, which existed for over a year, took a first look at these problems after the horrible events of September 11 shocked us into realizing that it could happen, that the entire Congress or virtually the entire Congress could be destroyed at once. This is a problem for the House much more than it is for the Senate because, of course, senators can be appointed. They can be replaced immediately. The House cannot because we have, as you have heard throughout this debate, since the inception of our country always been an elected body.

So the working group recommended a resolution that was adopted unanimously by this House, urging the States to advance special elections in the event of an emergency, to speed up that process. When the States did not, except for California, respond to that resolution, we passed the very thing here recently requiring that that take place. We have also, as a result of the work of the Speaker's working group, the bipartisan working group on continuity of Congress, seen a lot of our recommendations brought into effect.

I want to commend the author of this proposal, the gentleman from Washington (Mr. BAIRD), because he was one of the moving forces in making sure that all of this happened.

We have completed the following: There is now a reformed House resolution on expedited special elections. There is now a change that we routinely employ to the concurrent adjournment resolution so that, in the event of a catastrophe, we could reconvene in some other place other than the Capitol. There is now an emergency recess rule so that if the Speaker or whoever is presiding learns that there is an imminent attack we can adjourn under our rules, and the Congress could reconvene elsewhere under the proceeding reform.

There is a very important change in the way we account for vacancies in the House that otherwise, if there were a lot of Members killed, would prevent us from mustering a quorum. This change allows the Speaker to announce the adjustment of the whole number of the House upon notification of the death, resignation, or expulsion of a Member. And the Speaker's announcement, importantly, is not subject to appeal.

We also have changed the rules for Speaker succession. Much in the same way that the author of this proposal has suggested that we repopulate the House, we have made sure that there will be a Speaker. There is now going to be a list of Members who will succeed the Speaker in the event of a vacancy in the office, and that Member will act in this role until the House reconvenes in order to elect a new Speaker.

The challenges that are under debate today remain. We do not have a national consensus. We cannot get two-thirds in the House and Senate. We know that, but we are moving the process forward.

I will vote against this only because it is not perfect, but I commend the gentleman for offering it.

Ms. LOFGREN. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. WATT), a distinguished member of the Committee on the Judiciary.

Mr. WATT. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I voted for H.R. 2844, the expedited election procedure which provides that States should try to have expedited elections in the event of a catastrophe within 45 days.

I voted for that measure because I thought it was better than nothing,

and prior to that we did not have a process in place. I voted for it because, on a motion to recommit, the opposing side, the Republican side, decided that they would accept the motion to recommit to at least make whatever State procedures were in place subject to the civil rights laws of our country and other voting rights laws.

H.R. 2844 provided a transition position that will expedite an election within 45 days, but I still think that there is a need to have a debate about whether there ought to be a different process for replacing Members in the event of a catastrophe in a shorter time frame, and I am satisfied that the only way that that can happen would be through a constitutional amendment.

I am probably the least likely person to be supporting a constitutional amendment, and I rise today neither in support of nor in opposition to H.J. Res. 83, the proposed constitutional amendment that the gentleman from Washington (Mr. BAIRD) has offered. What I am disappointed about is that we have taken this very weighty national issue and turned it into what has essentially become a partisan issue, a political issue; and we have used this opportunity, instead of as an opportunity to hear from the people and to try to form a consensus about what should happen under these circumstances, to basically one-up the other side. Let me rush this thing to the floor without any real debate.

I think the sad thing today really is that we have not had an opportunity to review and study and have hearings on either the Baird proposal or a number of other proposals that are out there that cry out for hearings and the kind of debate that we believe are necessary and that the public deserves.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. FEENEY).

Mr. FEENEY. Mr. Speaker, I thank the chairman of the Committee on the Judiciary for yielding me time; and I appreciate his leadership on this issue.

I rise to note a couple of important points. I would start with the proposition that Lord Churchill pointed out, and that is that democracy is the worst form of government, except for all the others. It is an inconvenient form of government even at the best of times, but the gentleman just spoke and suggested that we need to have more debate about how the People's House should have its representatives selected.

The truth of the matter is, from the inception of our Republic we have had that great debate and our Founding Fathers have solved that debate for us. They have told us that the People's House need to be elected by the people.

Speaking of the inconvenience of democracy, George Mason during that great debate suggested that ''whatever inconvenience may attend the democratic principle, it must actuate one part of government.'' By the way, that is us. He continued, ''It is the only security for the rights of the people.''

Mr. Speaker, I would suggest to you that doing away temporarily with democracy is something that a lot of aspiring democracies in third world countries have done, and temporary turns out to be a long time and sometimes forever. The worst thing that we can do is to throw out our traditions because we are having a serious crisis.

It is a shame that a great, honorable debate about how we continue the traditions our Founding Fathers gave this great House, the People's House, always elected by the people of the various States, it is a shame that it has descended into sort of a partisan roughhouse here because that certainly is inappropriate. But I would point out that the Democratic party, big D, is being very undemocratic, small d, in this debate. The Republican party is being very, small r, republican during this debate because it is the Republic that our Founders gave us that we are trying to defend, especially as it relates to article 1 and how the people of this House, that represent all of the citizens of the United States, are selected.

I would end up by stating that James Madison, the prime author of our Constitution itself, suggested he ''considered the popular election of one branch of national legislature an essential plan of every free government.''

Mr. Speaker, I would ask every Member of the House to support Madison's version, our version, of a free government, defend elections, and do not do away with elections temporarily or ever.

Ms. LOFGREN. Mr. Speaker, I yield 3¾ minutes to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, I rise in support of H.J. Res. 83. I support this constitutional amendment not because I believe this is the best proposal or a perfect proposal but because I believe we need a constitutional amendment to assure the continuity of Congress, and the Baird proposal is the only option that we have been allowed to vote on.

I agree with the gentleman from Washington (Mr. BAIRD) that this subject deserves better treatment than it has gotten so far, and I will be voting for his motion to recommit with instructions to the Committee on the Judiciary to hold hearings on several proposals.

One of those proposals, House Joint Resolution 92, is mine. I asked the Committee on Rules yesterday to make my proposal in order as a substitute and was turned down. So I am taking this opportunity to explain my substitute to our fellow colleagues today.

My amendment would provide for a temporary acting successor, actually, a choice of five in case any of us become deceased or incapacitated. That would go for senators as well. I want to stress this point because there has been some misunderstanding. What we are talking about is the proposal on the floor today or my own proposal. The debate is not whether or not a seat should be filled by an elected representative. We keep hearing that. No. Elected representatives are certainly the best option to go whenever you have that opportunity.

The choice that we are talking about today is whether the death or incapacitation of a representative or a senator should result in a State or district going unrepresented for months or whether representation should be continued during this period by someone who has been appointed or been selected by us, by those of us who were elected, and that selection is made known to the voters prior to the selection so that the voters will approve not only the representative or senator but the choice of an alternative in case that senator or representative becomes incapacitated or killed.

We are not talking about not having an elected official or elected officials here. That is a bogus argument. I am sorry. We are talking about the 45 days in which, before there would be a special election, whether or not that our country will remain vulnerable because we do not have people representing the people of the United States or, in my proposal, whether or not during those 45 days the American people will have a chance to vote for an alternative when they vote for us to get us elected in the first place.

□ 1700

This makes all the sense in the world. We elect a Vice President of the United States that way right now. Is that to say if the President is incapacitated or dies that we have someone who is unelected when the Vice President steps up? No. He is elected even though his name is not on the ballot.

There is no reason why we should not have this in the legislative part of the government as well as the executive. This goes to the heart of whether or not we are going to be prepared for an emergency.

Let me note that on September 11, when we were in our desperate situation, I remember when we met on the steps, the gentleman from Washington (Mr. BAIRD) and I, I grabbed him and said, look, we have got to sing ''God Bless America'' right now because the American people need this. We are in a crisis, and they need this.

Today, the American people need a constitutional amendment to come to grips with this challenge that terrorism threatens to bring upon us. We need to make sure we are ready in case of an emergency. The Republican proposal is to leave us totally at risk for 45 days. That is ridiculous. Let us amend the Constitution and take care of this problem, and the people's right to vote will be taken care of as well.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SMITH) a member of the Committee on the Judiciary.

Mr. SMITH of Texas. Mr. Speaker, first of all, I would like to thank the chairman of the Committee on the Judiciary for yielding me time.

Mr. Speaker, Article I, section 2 of the Constitution states as follows: ''The House of Representatives shall be composed of Members chosen by the People of the several States. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.''

The Constitution emphasizes the right of the people to govern themselves through their elected representatives. We should not ignore that Constitution.

However, the constitutional amendment we are considering today would create unelected representatives. It would have vacancies during a disaster filled by appointees.

The House already has passed H.R. 2844, introduced by the gentleman from Wisconsin (Mr. SENSENBRENNER), which passed by a three to one margin. It requires special elections to occur within 45 days of a disaster that kills more than 100 Members of Congress.

While some wonder how the government would operate while we are waiting for those elections, there is a House rule that provides that a quorum shall consist of all Members who are living. During a time of disaster when many Members have died, the Speaker can adjust the required quorum to reflect the number of Members still living.

On the other hand, by law, Senate vacancies are filled by the governor of the affected State. So if a significant number of House and Senate Members were killed during an attack and if House Members were appointed as well, as this constitutional amendment we are considering describes, we would then have a Congress of mostly unelected officials. That is another reason we must preserve the right of the American people to have elected representatives in the House.

Some claim that a constitutional amendment providing for the immediate appointment of representatives is necessary for a government to function, but Congress has granted the President significant powers to act during a national emergency. Congress could utilize that reduced quorum until elections are held.

Mr. Speaker, any constitutional amendment that would deprive the American people of the right to elect their representatives should be defeated. Democracy is always better than bureaucracy.

Ms. LOFGREN. Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. BAIRD), the author of the amendment.

Mr. BAIRD. Mr. Speaker, I thank the gentlewoman from California for the time.

I would just note that it was my distinguished colleague from Texas who, when we were given the opportunity, my colleague was asked for unanimous consent in the Committee on the Judiciary hearing to let me speak to my own bill. It was a UC request. All it needed was one member of their body to speak up and say no, and it was the gentleman from Texas.

On the one hand, the opponents of this legislation argue that we must have elected representatives. On the other hand, they suppress the rights of those elected representatives to speak to their own legislation.

Our 90 minutes are about up. I want to take a little bit of time, if I may, to thank the gentleman from Texas (Mr. FROST) and the gentleman from California (Mr. COX) for their outstanding work on the Working Group. I would like to commend the gentleman from Connecticut (Mr. LARSON); the gentleman from California (Mr. ROHRABACHER) for his intelligent and thoughtful comments; the gentleman from Rhode Island (Mr. LANGEVIN); the gentlewoman from California (Ms. LOFGREN) for her leadership on this issue, the gentleman from California (Mr. SHERMAN) for his work on presidential succession matters.

I would also like to commend the work of the Continuity of Government Commission. We have spent 90 minutes on this issue today. The Continuity of Government Commission spent virtually a year on the matter. All of the members of that commission began saying we should not amend the Constitution, much like my friends on the other side have. Yet, to a person, they agreed at the end that we need to or we will be without the checks and balances so fundamental to our great Republic.

I also want to thank the opponents of this bill, the chairmen of the various committees. I also want to thank the ranking members.

The discussion today I think makes the proposal we will end up with a stronger proposal. That is part of the crucible of this institution. My fear, however, is that that crucible itself is in jeopardy. There will be silence on this floor if we perish or there will be chaos and discord as partisan rancor evolves in the aftermath when this lack of constitutional clarity emerges.

People have said what the American people would want, my friends on the other side. One of the things we do far too seldom here is go back to the people themselves and ask them. I would invite my colleagues to do as I have. Hold some town halls, go to some Rotaries or Kiwanis or Lions or whatever group you want and give it a fair question. Say here is the choice, a fair and balanced question. Say do you want in the aftermath of a crisis, do you believe we should have temporary appointments, nominated by the people you most recently elected and thereby are most likely of the same party and political ideology or would you have complete vacancy for 45, possibly 75 days? Ask them and see what they say. Ask them.

If my colleagues can come back to me and say that the people I talked to would say we would rather have no voice in Congress as our Nation goes to war and my sons and daughters are committed to a conflict, we would have no voice in Congress as our civil rights are usurped, we would like to have no voice in Congress as someone accedes to the presidency who was never elected but who was, in fact, themselves appointed, ask them, and I believe with great confidence they will tell my colleagues we would like a voice imperfect, indirect though that voice may be if unelected. At least they were appointed by the person most recently elected. At least the political makeup of this great body will be preserved. At least some of the most consequential decisions in the history of this country will be made under a model of checks and balances that, yes, Mr. Madison and Mr. Jefferson and Mr. Mason and the rest of the Founders found so essential.

Elections are sacred, but so, too, is representation. I would urge my colleagues to vote yes on the motion to recommit. Let us have a full and fair debate in the committee and bring back a still better bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER), a member of the Committee on Rules.

(Mr. LINDER asked and was given permission to revise and extend his remarks.)

Mr. LINDER. Mr. Speaker, I thank the chairman for yielding this time, and I rise in opposition to the underlying resolution.

I will agree with the argument that the Founders could not have envisioned airliners being used as missiles against skyscrapers, or even the U.S. Capitol. I do not, however, subscribe to the theory that the Founders were unable to envision in their minds a terrorist attack with the ability to take the lives of Members of Congress en masse.

On November 5, 1605, 13 co-conspirators placed 36 barrels of gunpowder in a cellar beneath the British House of Lords with the intent of destroying the entire British parliament and killing King James I, who was charged with convening the legislative body on that day. Only through an anonymous letter and the quick action of a few members of Parliament was a British soldier named Guy Fawkes arrested minutes before he was to light a fuse that was designed to spur a revolution in England.

My point is that the Founders were cognizant that a terrorist attack on the government resulting in the deaths of scores of Members of Congress could occur. The Founders drew a great deal of our constitutionally-formed system of government from the British parliamentary system and English common law. They were perhaps the greatest political thinkers in history. Yet, despite this knowledge of British history and clear references in the Federalist Papers to the dangers of any effort that would deny the right of elected representation, there are those who

have argued today under the assumption that the Founders never contemplated such a situation.

Despite knowing that a surprising and devastating attack could befall this government, the Founders were adamant in their belief that under no circumstances were Members of the House to be selected by any means other than popular elections. Elections are the key events that connect the American people to their government, and these elections have a legitimacy no appointment process ever could.

Although we can all agree that an attack on this body would threaten the fabric of this country, that same fear should not drive us to weaken the very foundations upon which this Congress, as the Federal government's legislative branch, operates.

Federalist No. 52 says it best: "the right of suffrage is very justly regarded as a fundamental article of republican government. To have submitted it to the discretion of the states would have been improper . . . for the additional reason that it would have rendered too dependent on the State governments that branch of the Federal government which ought to be dependent on the people alone."

In addition, I am concerned that the constitutional amendment before us today would not only override H.R. 2844, which already passed the House by an overwhelming vote of 306–97, but it would remove the Congressional authority to expedite special elections in emergencies under its existing Article I, Section 4, clause 1 authority. H.R. 2844, as passed by the House, is designed to ensure that the House can be repopulated by legitimate democratic means within 45 days after an attack causes multiple vacancies in the House.

The proposed constitutional amendment also includes a provision that states that "Congress may by law establish the criteria for determining whether a Member of the House of Representatives or Senate is dead or incapacitated . . ." I am quite concerned that this particular provision would deny the House its existing authority to address incapacitation by House Rules. This is an authority the House Rules Committee is already exercising. The provision of the constitutional amendment needlessly involves the Senate in how the House operates. By doing so, it would unfortunately make addressing continuity in government more difficult than it already is.

Mr. Speaker, and I continue to believe that government should neither exist nor change but with the express will of the people by whom and for whom it is created. I am hopeful that the prevailing will of this body will reflect that of our nation's Founding Fathers and will ultimately preserve its own popularly-elected nature by defeating this resolution.

With that Mr. Speaker, I urge my colleagues in the House to join me in voting against this resolution.

Ms. LOFGREN. Mr. Speaker, I yield 10 seconds to the gentleman from Washington (Mr. BAIRD) to make a correction.

Mr. BAIRD. Mr. Speaker, I apparently misspoke earlier when I mentioned it was the gentleman from Texas (Mr. SMITH) who expressed objection to my opportunity to speak in the Committee on the Judiciary. I regret that. There was a member of the majority. I thought it came from the gentleman from Texas (Mr. SMITH). I apparently was in error, and I apologize for the mistake.

Ms. LOFGREN. Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE), a member of the Committee on the Judiciary when he is not busy as chairman of the Committee on Agriculture.

Mr. GOODLATTE. Mr. Speaker, I rise in opposition to this resolution.

On April 22 of this year the House, overwhelmingly passed H.R. 2844 by a vote of 306 to 97, a measure introduced by the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, which would provide for the continuation of the House of Representatives in the event of a catastrophic loss of Members of the House. This legislation would also ensure that each Member of the House is elected, just as our Constitution mandates. Ensuring the election of Members of the House is the right approach for structuring legislation to provide for the continuity of government.

The direct election of Members of this body by the people is a fundamental principle established by the Founders of our Constitution. Specifically, the U.S. Constitution states, ''The House of Representatives shall be composed of Members chosen by the people of the several States. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.''

This was not what the Constitution provided for the other body, and ever after we have been known as the People's House. That principle would be severely eroded with the adoption of this resolution.

Congress has a duty to set forth procedures to ensure that the government continues to function in the event of a catastrophe. However, Congress also has a duty to protect the direct link to the people that has always characterized the House of Representatives. Especially during the aftermath of a catastrophic event, it is important that we prevent the possibility that the government could consist only of unelected officials.

I have some serious concerns about House Joint Resolution 83. Specifically, I am deeply concerned about the idea that every Member of this House would designate two or more other people to effectively shadow Members of Congress under somewhat secretive circumstances. I am also concerned that if one of these officials were appointed to Congress then that person would have an inherent advantage over anyone else in the subsequent election by reason of the implicit endorsement by the former Member of Congress. This provision would chip away at the premise that the people and only the people should have the authority to determine who their representative should be.

For these reasons, I urge the opposition of this resolution and urge Members of the House to vote no on House Joint Resolution 83.

Ms. LOFGREN. Mr. Speaker, I reserve my time.

Mr. SENSENBRENNER. Mr. Speaker, I am prepared to close debate if the gentlewoman from California will do so first.

Ms. LOFGREN. Certainly.

The SPEAKER pro tempore (Mr. SIMPSON). The gentlewoman from California (Ms. LOFGREN) is recognized for 4 minutes.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

I think it is important that we have hearings in the Committee on the Judiciary to examine this subject matter. Several speakers have suggested that to have a constitutional amendment to provide for the temporary replacement of Members of the House so that we could have a Congress that acts before elections can be held would be the end of democracy. I think that we need to come to grips with the fact that if they kill us all, we have some bad choices. Here they are.

□ 1715

We can have an appointed government, because there is a line of succession to the Presidency, in the Senate there is a provision in the Constitution for their appointment, and no House of Representatives, which means that the appointed President would assume dictatorial powers. Or we could have a constitutional amendment that allows for the temporary appointment of Members of the House until special elections can be held so that the House is made up of elected representatives. I think those are the choices that face us.

Now, the American Enterprise Institute did a good thing. They put together a commission that looked at this whole issue, and here is what they said in their report: ''While some protections,'' they say, ''exist for reconstituting the Presidency, Congress would have a far more difficult time. It might not function well or at all. Ensuring the continuity of Congress is now a more pressing need than at any previous time in our history. According to two of the 9/11 plotters, the fourth plane that crashed in Pennsylvania was headed for the Capitol, and it is entirely conceivable the Congress will again be a target.''

It is interesting that although we have proceeded on pretty much a party-line basis in the discussion of this matter, not completely but almost completely, and it was certainly a party-line vote in the House Committee on the Judiciary, the commission itself was very bipartisan. The honorary cochairmen were President Jimmy Carter and President Gerald Ford. The cochairmen were Lloyd Cutler and former Senator Alan Simpson.

Tom Foley, the former Speaker, and Newt Gingrich, the former Speaker, who did not agree on a lot, agreed on this. Further, Bob Michel, who was the minority leader for so many years and is so well regarded, served on this commission with Leon Panetta, and they agreed as well that what we need is a constitutional amendment.

The alternatives to a constitutional amendment do not solve the problems of mass vacancy. They have a chapter indicating why special elections are helpful but not sufficient, and here is what they say: ''The President would act without a check, extra constitutionally in some cases, until Congress reconstituted itself. In addition, there is a possibility that a Congress of greatly reduced size would act, and that the vast majority of Americans could view this Congress as illegitimate. Shorter election cycles would not eliminate any of these problems but only slightly shorten their duration.''

They point out that ''clarifying the quorum requirement is not a solution.'' And they say, ''While the commission sees the value of clarifying the interpretation of the quorum requirement, it does not believe that making the requirement more lenient will ensure the constitutional continuity of Congress. Quite the opposite. A lenient quorum requirement might result in a small number of Members acting as the whole Congress and calling into question the legitimacy of congressional actions. The commission does favor a clarification of the quorum requirement, but not as a substitute for the constitutional amendment.''

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have debated this constitutional amendment for almost an hour and a half now. I think that the issue is very clear, and that is whether the House should maintain its function as a House that no one enters without first being chosen by the people, or whether there should be some procedure for the appointment of Members of the House should there be a catastrophe.

This is a philosophical difference, and it is a philosophical difference that no amount of hearings will be able to bridge. Maybe this constitutional amendment is improperly drafted, maybe it is not; but the thrust of the constitutional amendment is to allow the appointment of Members of the House of Representatives to act, supposedly in the people's name, when there is a national catastrophe of unspeakable proportions. Any action by appointed officials will lack the legitimacy of action by elected officials, and that is why I think it is important to reconstitute the House with people who come to Congress with a mandate from the people should there be a disaster that wipes out most of our government.

Now, let us look at what House Joint Resolution 83 proposes to do. It says that prior to taking the oath of office, every Member elected to the House shall designate at least two temporary successors and will send that list to the Governor.

Now, during a campaign, when candidates are running against each other, there is no way that candidates will be able to avoid telling the press and the public who they will name as temporary successors. And that would be a distraction that would take away from the issue of choosing a representative in Congress who, hopefully, will serve for the full 2-year term. And all kinds of extraneous issues, such as how much the temporary successor designee contributed or whether they have special interests and things like that, will end up becoming an ancillary, but very important, issue in the campaign and take the campaign's focus away from the issues that the candidates espouse in their platforms. And that would not be good for democracy at all.

Now, it puzzles me greatly that people who have said how important it is that we deal with this issue and deal with it properly are now attacking the Committee on the Judiciary and asking for a delay. On October 23 of last year, the author of this amendment, the gentleman from Washington (Mr. BAIRD), said ''The more urgent matter is to put the measure before the body.'' That is what is being done today, yet now I hear him and others saying, well, we need more hearings.

Well, Mr. Speaker, more hearings will just continue the debate on whether or not there should be appointed temporary successors or the House should maintain its tradition constitutionally of being entirely comprised of people who are elected by the voters of the various States.

The Continuity in Government Commission's report, which endorses appointed representatives, says ''The exact details of a solution are less important than that the problem be addressed seriously and expeditiously.'' Today we are debating that issue. We ought to send a clear message on whether this House wants to have temporary successors appointed, which will only be done by a constitutional amendment, or whether we want to continue our tradition of having people who come here to be elected.

I urge that the motion to recommit be voted down and that the amendment be voted down so we can show the people of America and the world what this House stands for and what it stands against. I ask for a ''no'' vote on the motion to recommit and a ''no'' vote on the constitutional amendment.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 657, the joint resolution is considered as having been read for amendment and the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read a third time.

MOTION TO RECOMMIT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Speaker, I offer a motion to recommit with instructions.

The SPEAKER pro tempore. Is the gentlewoman opposed to the joint resolution?

Ms. LOFGREN. I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. Lofgren moves to recommit the joint resolution H.J. Res. 83 to the Committee on the Judiciary with instructions to conduct hearings on the subject matter of the joint resolution.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from California (Ms. LOFGREN) is recognized for 5 minutes in support of her motion.

Ms. LOFGREN. Mr. Speaker, in the 45 days after September 11, this House first met to show the American people that their Congress was still intact, and then we went to work.

On September 13, we provided for the expedited payment for public safety officers who were killed or suffered catastrophic injury; we passed on September 13 the Victims of Terrorism Relief Act, the Emergency Supplemental Appropriations Act; on September 14 we authorized the United States Armed Forces to take action against those responsible for the attacks; we adopted the Air Transportation Safety and Stabilization Act; we made appropriations; we adopted bills to combat terrorism and adopted the Financial Anti-terrorism Act, the Bioterrorism Enforcement Act, and the list goes on and on.

Those were important activities. And if there were no Congress, those either could not have occurred or the executive would have had to assume the legislative authority that is by Constitution vested with the Congress. And as has been stated before, the Congress cannot exist unless the House of Representatives exists.

Now, we know that the temporary appointments can only be made if we are to change the Constitution. And although some think this is a bad idea, what we are asking is that we have a thorough study of this whole subject in the committee of jurisdiction in the House Committee on the Judiciary.

There are many issues that we need to discuss. There are, as the commission pointed out, several approaches that can be made, a broad approach that delegates to the Congress the ability to provide for replacements by statute, or a prescriptive approach similar to the one promoted by the gentleman from Washington (Mr. BAIRD).

What is incapacitated? How do we define that? If there is an appointment, is that person eligible to run for reelection? And if they are serving because of incapacity, will they be replaced when the incapacitated Member resumes their abilities? Who would do the appointments: the courts? the Member?

the governor? the legislature of each State? These are many questions that need to be answered, and all of them should be studied.

Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. BAIRD), the author of the amendment.

Mr. BAIRD. Mr. Speaker, I thank the gentlewoman from California for yielding me this time.

The reason I think we need to recommit this bill, and it is rare, I think, for an individual who has authored a bill to suggest a motion to recommit, because when I called for the discharge petition to bring this bill to the floor, it was not just this bill. I wanted to bring many different approaches so we could fully discuss it.

The fundamental question I would urge the chairman of the Committee on the Judiciary and its members and this body as a whole to consider is this: it is a fine thing to defeat this legislation, and I respect the judgments of the people who may choose to do so, but you have yet today, or in the prior discussion of the chairman's own bill, answered the question satisfactorily for the American people as to what happens during the 45 or 75 days. People continue to say, no one should ever serve in the House who was not elected. We would all prefer that that be the case. But you have never said clearly and unambiguously, with clear-cut constitutional justification, how our government runs without a House of Representatives. You have yet to do so. You have offered pleasantries, reassuring promises; but you have never said how the country runs.

Madison did want the representatives to be elected, but he wanted there to be representatives. The people back home want to have representatives. Who will choose to send your kids to war? Who will choose to protect your civil rights? Maybe you can just rely on someone you do not know, an unelected representative whom you do not know. Maybe you can rely on that. And if they send your kid to war wrongly or usurp your civil rights, you can take great reassurance that 75 days later you can impeach them, assuming that one of their actions in the interim has not been to somehow reduce your right to do that.

You are rolling the dice, my friends. You are rolling the dice, and you have not yet put in place a solution. Mine may not be perfect, it is not; but let us, please, have an opportunity to revisit this issue and answer that question.

Ms. LOFGREN. Mr. Speaker, I would ask only that we approach this on a bipartisan basis in the committee. We should hold hands and work on this as a team, not fighting each other on party-line votes.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, passing this motion to recommit will not serve to do anything but to continue a debate that has gone on for almost 45 years. In 1960, the Senate passed an amendment to allow for the appointment of House Members.

□ 1730

It was never voted on in the House of Representatives, and that was during the height of the Cold War when everybody was afraid that the Soviet Union would unleash a missile or massive numbers of bombers, and if we did not make it down to the bunker at the Greenbriar in West Virginia, the entire Congress would be wiped out. That was a crisis time, and the Congress did the right thing: It ignored what the Senate did in terms of appointment of House Members.

Sending this resolution back to committee is not going to change anybody's mind on whether replacement House Members should be appointed or elected. We ought to hit this issue directly on the nose and vote on the amendment after defeating the motion to recommit.

Now I am again very puzzled by the fact that many of the proponents of this amendment, including the Commission on Continuity in Government, and their spokesperson is Norman Ornstein of the American Enterprise Institute, have said that the problem should be addressed seriously and expeditiously. This is what we are doing today.

And the author of the resolution, who now wants to have more hearings, told Roll Call on October 23, 2003, that the more urgent matter is to put the measure before the body. The measure is before the body today. We ought to vote down the motion to recommit. We ought to have a clear vote on whether Members want to have temporary successors appointed or to preserve Madison's principle of having the People's House be elected by the people. It is time to stand up and be counted, not to have more hearings on the subject. Vote no on the motion to recommit and vote no on the joint resolution.

Mr. PAUL. Mr. Speaker, I rise in opposition to H.J. Res. 83, which amends the United States Constitution to allow appointed persons to fill vacancies in the House of Representatives in the event of an emergency. Since the Continuity of Government (COG) Commission first proposed altering our system of government by allowing appointed Members to serve in this body. I, along with other Members of Congress, journalists, academics, and policy experts, have expressed concerns that having appointed Members serve in the House of Representatives is inconsistent with the House's historic function as the branch of Congress most directly accountable to the people.

Even with the direct election of Senators, the fact that Members of the House are elected every 2 years while Senators run for statewide office every 6 years means that Members of the House of Representatives are still more accountable to the people than are members of any other part of the Federal government. Appointed Members of Congress simply cannot be truly representative. James Madison and Alexander Hamilton eloquently made this point in Federalists 52: "As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured."

Mr. Speaker, there are those who say that the power of appointment is necessary in order to preserve checks and balances and thus prevent an abuse of executive power. Of course, I agree that it is very important to carefully guard our Constitutional liberties in times of crisis, and that an over-centralization of power in the executive branch is one of the most serious dangers to that liberty. However, Mr. Speaker, during a time of crisis it is all the more important to have representatives accountable to the people making the laws. Otherwise, the citizenry has not check on the inevitable tendency of government to infringe on the people's liberties at such a time. I would remind my colleagues that the only reason we are reexamining provisions of the PATRIOT Act is because of public concerns that this act gives up excessive liberty for a phantom security. Appointed officials would not be as responsive to public concerns.

Supporters of this plan claim that the appointment power will be necessary in the event of an emergency and that the appointed representatives will only serve for a limited time. However, the laws passed by these "temporary" representatives will be permanent.

Mr. Speaker, this country has faced the possibility of threats to the continuity of this body several times throughout our history, yet no one suggested removing the people's right to vote for Members of the House of Representatives. For example, when the British attacked the city of Washington in the War of 1812 nobody suggested the States could not address the lack of a quorum in the House of Representatives though elections. During the Civil War, Virginia which borders Washington, DC, and where today many Capitol Hill staffers reside and Members stay when Congress is in session, was actively involved in hostilities against the United States Government, yet President Abraham Lincoln never suggested that non-elected persons serve in the House.

Adopting any of the proposals to deny the people the ability to choose their own representatives would let the terrorists know that they can succeed in altering our republican institutions. I hope all my colleagues who are considering supporting H.J. Res. 83 will question the wisdom of handing terrorists a victory over republican government.

The Constitution already provides the framework for Congress to function after a catastrophic event. Article I Section 2 grants the governors of the various States authority to hold special elections to fill vacancies in the House of Representatives. Article I Section 4 gives Congress the authority to designate the time, manner, and place of such special elections if states should fail to act expeditiously following a national emergency. As Hamilton explains in Federalist 59, the "time, place, and manner" clause was specifically designed to address the kind of extraordinary circumstances imagined by the supporters of H.J. Res. 83. Hamilton characterized authority over Federal elections as shared between the

States and Congress, with neither being able to control the process entirely.

Last month, this body fulfilled its Constitutional duty by passing H.R. 2844, the Continuity of Representation Act. H.R. 2844 exercises Congress's power to regulate the time, place, and manner of elections by requiring the holding of special elections within 45 days after the Speaker or acting Speaker declares 100 or more Members of the House have been killed. This proposal protects the people's right to choose their representatives at the time when such a right may be most important, while ensuring continuity of the legislative branch.

In conclusion, I call upon my colleges to reject H.J. Res. 83, since it alters the Constitution to deny the people's right to elect their representatives at a time when having elected representation may be most crucial.

Mr. HOLT. Mr. Speaker, I rise in opposition of this amendment.

The Founding Fathers designed the House of Representatives to guarantee the preferences and will of the people was represented. They included provisions in the Constitution, such as a 2-year term of office and requiring that vacancies be filled in all events by a special election, to ensure that the Members serving in this Chamber would be held directly accountable to the people.

Although the 17th amendment expanded this ideal of representation by requiring Senators to be directly elected by citizens of their State, it still permitted the use of appointments to fill vacancies. Therefore, the unique nature of the House of Representatives remained intact and to this day no Member has ever entered this body except by the mandate and popular vote of his or her constituents.

The stark realities of the 21st century, where terrorists seek to destroy our Nation and the incapacitation of a large portion of this Chamber is no longer inconceivable, require us to reexamine the continuity of our government. However, I believe that even in a terrorist attack or other catastrophe enough Members would survive to conduct the business of the Congress. The small probability that no Members would survive to serve does not warrant amending the Constitution to circumvent the electoral process. Suffrage is fundamental to the success of our democracy, and it must be protected even in times of crisis and uncertainty.

I urge my colleagues to vote against this amendment.

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in support of the efforts of our colleague Representative BRIAN BAIRD to secure House consideration of the issue of amending the Constitution of the United States to ensure the continuity of Congress. I had hoped for hearings on this critical issue in the Judiciary Committee, followed by ''regular order'', and I had hoped for consideration of a number of Constitutional amendments sponsored by Members of the House, including H.J. Res. 89, which I introduced. One subcommittee hearing conducted 2 years ago does not really do this subject justice.

Many Members were looking for an opportunity to use the normal legislative process to develop and perfect their proposals regarding the continuity of the House, relying on the collective wisdom of the Members, and input from constituents. Such a discussion could have helped to educate both Members and the public on the importance of a Constitutional amendment. But because the truncated process foreclosed on that option, I did not submit my joint resolution to the Rules Committee.

Should the opportunity arise, I will vote to recommit this joint resolution to the Judiciary Committee, in the hope that there can be an open discussion, and broad debate on the matter. And I will vote for Rep. BAIRD's amendment, H.J. Res. 83, on final passage, in the hope that all Members who support the concept of a Constitutional amendment, will similarly express themselves on the worthiness of that objective, even though we may differ about which amendment would best serve this Nation. For I think this issue will arise again, and perhaps there will be an opportunity in the next Congress to more fully discuss and debate the issue. Sen. CORNYN's proposed Constitutional amendment is making its way through the Senate, so the issue is bound to arise again in some form.

While I believe the need for a Constitutional amendment is self-evident, I understand other Member's reservations about tinkering with the Constitution. Nonetheless, I have yet to hear a satisfactory answer to the question of what the Legislative Branch—not just the House—could constitutionally do in the weeks or months following an attack, if deaths and incapacitation left either chamber bereft of a quorum, incapable of legislating, or so unrepresentative as to deligitimize any actions it might take.

H.R. 2844, the ''Continuity of Representation Act'', which passed in April, and which called for special elections within 45 days after a certain number of vacancies occurred in the House, did not address that question. I think we need to be realistic about the consequences of a non-functional Legislative Branch at what is likely to be the most critical juncture in our Nation's history.

And I would like to put to rest the notion that the continuity of Congress debate is in any way partisan. There is no partisan content whatsoever to this issue. Neither Republicans nor Democrats are advantaged or disadvantaged by any of the ideas we are discussing. The vote on H.R. 2844 should have put that notion to rest, when a majority of Democrats voted for the bill, joining all but a handful of Republicans.

Members will no doubt recall that in the days and weeks following September 11, 2001, the House passed numerous pieces of vital legislation, which allowed the government to function both in war, and in furtherance of domestic policy goals. We did not hand out a ''closed for business—trust the Executive'' sign. We exercised the checks and balances essential to a stable and mature democracy, and we got the job of legislating done in record time.

In the absence of a Constitutional amendment, there is the sad prospect that the National could be governed by either martial law, or by other extra-Constitutional actions by the Executive, of potentially dubious legal status. This would be happening at the most critical time in the Nation's history, since that would be the only means left to run the government without a functioning Legislative Branch. And that would trample upon one of the core principles of the Framers of our Constitution—our system of checks and balances.

The Framers feared a powerful executive. And in the early days of our Republic, the office of President was fairly weak. However it has grown stronger over time, as the institutions of government have evolved, and as the Nation's needs have changed. The essential roles of Congress includes restraining the Executive, and that role remains paramount in maintaining our democracy today.

We cannot predict how the Executive, claiming potentially dictatorial powers, will operate in the absence of a functioning Legislative Branch, or whether such actions will withstand legal challenge. But we do know how to prevent this situation from ever occurring. We need only to remove our heads from the sand, and take the proper steps to legally address the issue under the Constitution.

While it is essential that we protect the ''people's House'' by populating it with popularly elected representatives from the 50 states, it is also essential that we protect the ''people's interests'' by taking action to prevent the Legislative Branch from ever being shut down for weeks and months following a catastrophic event.

I want to take a moment to discuss my own proposal, which I believe is less cumbersome and more straightforward than some of the other concepts. It would provide for the appointment of temporary Members of the House by state legislatures or, in some instances, by state governors, to serve pending the filling of vacancies through special elections. I think this procedure would be less cumbersome than using lists of potential successors which Members would have to create each and every time they ran for office. In the next Congress, I might consider leaving the appointment power to governors alone.

My amendment would require that all temporary replacements be from the same political party as the Members they succeeded, and that their tenure cease as soon as a popularly elected successor presents credentials to the House. I look forward to future hearings to debate that aspect of the proposal, since issues have been raised as to how someone's party affiliation can be determined in some states.

The amendment would also bar the temporary replacements from seeking office in the next election for the House, in order to ensure that they focus on representing their new constituencies, and coping with the emergency, rather than creating fund-raising committees and filming television commercials.

The subject is also deserving of significant debate, since I know some have argued that temporary replacements should have the right to present themselves to the public for election in our democratic system. I believe, however, that during a crisis following a potential attack, it is more important to keep the government running, and there is nothing in my amendment which would bar these temporary replacements from running at a future time, after they have finished discharging the responsibilities of the office to which they were appointed.

My proposed Constitutional amendment also addresses the complex subject of incapacity, by giving Congress the power, by law, to address it. The issue is better suited to examination in a law-making, or rule-making process, rather than to being specified in detail in the Constitution. As ranking member of the House Administration's Committee, which has jurisdiction over the incapacity question, I hope to press for Committee debate on the subject.

Mr. Speaker, I ask unanimous consent to insert at this point in the RECORD, the text of H.J. Res. 89, and a section-by-section summary of the resolution, and yield back the balance of my time.

H.J. RES. 89

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:

''ARTICLE —

''SECTION 1. A smaller number than the majority of the House may resolve that a vacancy exists in the majority of the number of seats of the House of Representatives provided by law.

''SECTION 2. After the adoption of a resolution under section 1, the legislature of any State in which a vacancy in the membership of the House of Representatives exists shall convene a special session to appoint an individual to fill the vacancy.

''SECTION 3. If the legislature of a State does not convene a special session under section 2 during the 5-calendar day period which begins on the day after the date the House adopts the resolution described in section 1, or if the legislature convenes a special session during such period but does not appoint an individual to fill a vacancy in a seat during the 3-calendar day period which begins on the date the legislature convenes the special session, the chief executive of the State shall appoint an individual to fill the vacancy.

''SECTION 4. An individual appointed under this article shall meet the qualifications for service as a Member of the House of Representatives, and shall serve as a Member until an election is held to fill the original vacancy. The State shall provide for such an election at such time and in accordance with such procedures as may be provided by law, except that the individual appointed under this article may not be a candidate in the next election for the House. An individual appointed under this article shall be a member of the same political party as the Member of the House who previously held the seat.

''SECTION 5. The procedures and requirements described in sections 2 through 4 shall apply only with respect to a vacancy existing as of the date of the adoption of the resolution described in section 1 or a vacancy first occurring during the 20-calendar day period which begins on such date. In the case of a vacancy first occurring during such 20-calendar day period, section 3 shall apply as if the reference to the date on which the House adopts the resolution described in section 1 were a reference to the date on which the vacancy first occurs.

''SECTION 6. For purposes of carrying out the provisions of this article, Congress shall have the power by law to specify circumstances constituting when a vacancy happens in the Representation from any State in the House of Representatives, and to address the incapacity of Members of the House of Representatives.

''SECTION 7. Congress shall have power to enforce this article through appropriate legislation.''.

SUMMARY OF HOUSE JOINT RESOLUTION 89, A CONSTITUTIONAL AMENDMENT INTRODUCED BY REPRESENTATIVE JOHN B. LARSON TO ALLOW TEMPORARY APPOINTMENTS TO FILL VACANCIES IN THE HOUSE OF REPRESENTATIVES

Section 1. A smaller number than a majority of the House may resolve that a vacancy exists in the majority of the number of seats in the House provided by law, triggering the temporary appointment provisions.

Section 2. The legislature of any state in which House vacancies exist shall then convene a special session to appoint persons to temporarily fill the vacancies.

Section 3. If the state legislature does not convene within five calendar days after passage of the House resolution, or if the legislature does not complete selection of temporary House Members within a period of three calendar days beginning on the date of convening, the governor is required to make the appointments.

Section 4. Members serving temporarily in the House by appointment must meet the constitutional requirements for service in the House, and will exercise the full powers of membership until the vacancies are filled by election as provided by law. A temporary Member may not be a candidate in the succeeding election and must be of the same political party as the Member who previously held the seat.

Section 5. The temporary appointment authority applies to vacancies which exist at the time of adoption of the resolution by the House, or to any additional vacancies which occur within 20 days thereafter. If vacancies occur within this 20-day period, the time limits relating to action by the state legislatures and governors begin again with respect to those House seats.

Section 6. For the purposes of this article, Congress shall have the power by law to specify circumstances constituting when a vacancy happens in the House, and to address the incapacity of Members of the House.

Section 7. Congress shall have the power to enforce this article through appropriate legislation.

The article would become part of the Constitution if ratified by the legislatures of three-fourths of the states within seven years of the date of its submission to them.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. LOFGREN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes, as ordered, on the question of passage on each of three motions to suspend the rules on which proceedings were postponed yesterday and earlier today.

The vote was taken by electronic device, and there were—ayes 194, noes 221, not voting 18, as follows:

[Roll No. 218]

AYES—194

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Chandler
Clay
Clyburn
Cooper
Cramer
Crowley
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
Delahunt
DeLauro
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Rohrabacher
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—221

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood

Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—18

Ballance
Bereuter
Carson (OK)
Conyers
Costello
Cummings
Davis (FL)
DeGette
DeMint
Deutsch
Emerson
McCarthy (NY)
Nadler
Napolitano
Pickering
Stark
Tauzin
Wilson (NM)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1756

Ms. GINNY BROWN-WAITE of Florida and Messrs. JOHNSON of Illinois, SHERWOOD, HEFLEY, BEAUPREZ and BRADY of Texas changed their vote from ''aye'' to ''no.''

Mr. TANNER and Mr. PASCRELL changed their vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the joint resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 63, nays 353, answered ''present'' 2, not voting 15, as follows:

[Roll No. 219]

YEAS—63

Baird
Bell
Berkley
Blumenauer
Brown (OH)
Capuano
Case
Chandler
Crowley
Davis (TN)
DeFazio
Dicks
Dooley (CA)
Engel
Eshoo
Evans
Frost
Gephardt
Gutierrez
Hastings (FL)
Hinchey
Honda
Hooley (OR)
Inslee
Jones (OH)
Kennedy (RI)
Kilpatrick
Langevin
Larsen (WA)
Larson (CT)
Lowey
Lucas (KY)
Matheson
McCollum
McInnis
Meeks (NY)
Miller (NC)
Miller, George
Oberstar
Pascrell
Payne
Pelosi
Rangel
Rohrabacher
Rothman
Ruppersberger
Ryan (OH)
Sabo
Sánchez, Linda T.
Schakowsky
Schiff
Sherman
Slaughter
Smith (WA)
Souder
Strickland
Tauscher
Towns
Udall (CO)
Vitter
Watson
Waxman
Weiner

NAYS—353

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bereuter
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (IN)
Carter
Castle
Chabot
Chocola
Clay
Clyburn
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Delahunt
DeLauro
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
English
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Lantos
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matsui
McCarthy (MO)
McCotter
McCrery
McDermott
McGovern
McHugh
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Spratt
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Waters
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

ANSWERED ''PRESENT''—2

Jackson-Lee (TX)
Watt

NOT VOTING—15

Ballance
Carson (OK)
Conyers
Costello
Davis (FL)
DeGette
DeMint
Deutsch
Emerson
McCarthy (NY)
Nadler
Napolitano
Stark
Tauzin
Wilson (NM)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1805

Mr. EDWARDS, Ms. ROS-LEHTINEN, and Mrs. BONO changed their vote from ''yea'' to ''nay.''

So (two-thirds not having voted in favor thereof) the joint resolution was not passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. NAPOLITANO. Mr. Speaker, on rollcall No. 218 and 219, had I been present, I would have voted ''yea.''

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to clause 8 of rule XX, proceedings will resume on three motions to suspend the rules previously postponed.

Votes will be taken in the following order: