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MARKUP OF CONTINUITY OF GOVERNMENT LEGISLATION

BUSINESS MEETING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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HEARING HELD IN WASHINGTON, DC, FEBRUARY 17, 2005

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MARKUP OF CONTINUITY OF GOVERNMENT LEGISLATION

THURSDAY, FEBRUARY 17, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 2:05 p.m., in Room 1310, Longworth House Office Building, Hon. Robert W. Ney [chairman of the committee] presiding.

Present: Representatives Ney, Ehlers, Doolittle, Reynolds, Miller of Michigan, and Millender-McDonald.

Staff present: Paul Vinovich, Staff Director; Fred Hay, Counsel; Matt Petersen, Counsel; Jeff Janas, Professional Staff Member; George Shevlin, Minority Staff Director; Charles Howell, Minority Chief Counsel; Matt Pinkus, Minority Professional Staff; and Tom Hicks, Minority Professional Staff.

The CHAIRMAN. Committee is now in order for the purpose of consideration of H.R. 841, the Continuity and Representation Act of 2005. Last year, the full House of Representatives passed important legislation that would ensure that a functioning House would be in place with the ability to operate with legitimacy if, heaven forbid, a catastrophic terrorist attack would ever to take place that killed dozens of Members of this body.

By overwhelming vote of 306 to 97, the House voted to enact the Continuity and Representation Act of 2004, which established a framework for conducting expedited special elections to fill House vacancies resulting from extraordinary circumstances. I want to stress extraordinary circumstances. Unfortunately, this important piece of legislation was never taken up by the Senate during the last Congress, thus necessitating that we once again consider new continuity legislation in this Congress. There is an urgent need to pass a bill that preserves the continuity of Congress in the event of a catastrophic attack, and the reasons I think are obvious. The horrifying events of September 11, 2001, a day on which terrorist enemies of the United States murdered over 3,000 innocent American citizens in cold blood while striking symbols of our country's economic and military might, painfully reminds us of the evil intent of the terrorists and their increasingly sophisticated and deadly attacks.

That day forced each of us to consider the alarming possibility of a terrorist attack aimed at the heart of our Nation's government here in Washington, D.C. Potentially carried out with nuclear, chemical or biological weapons of mass destruction that could decimate large portions of the Federal Government and kill or maim

hundreds of Members of Congress. If such an attack were ever to occur, the presence of strong national leadership would be more important than ever before. The American people would be desperately seeking the reassurance that their government remained intact and retained the capability of acting vigorously in the Nation's defense.

Therefore, it would be essential that a functioning Congress be in place with the ability to operate with legitimacy as soon as possible. This is not a comfortable scenario for any one of us to confront, for it compels us to contemplate the possibility of our own demise in a catastrophic attack. Nevertheless, as elected representatives of the people of the United States, we have a duty to ensure that the peoples' House continues to function effectively and legitimately during times of national emergency. As we consider how best to ensure the continuity of the House of Representatives in the event of a devastating terrorist attack, it is vital that we reflect on fundamental roles that the House plays in our constitutional structure.

When drafting the Federal Constitution, our Founding Fathers designed the House to be the branch of government closest to the people. They believed the only way this objective could be accomplished was through frequent elections. Consequently, the Constitution, in Article 1, section 2 clause 4, provides that vacancies in the House may be filled only through special elections. As a result, no Member has ever served in this House who was not first elected by the people he or she represents.

Today I will be offering an amendment in the nature of a substitute to H.R. 841. This amendment presents a balanced solution to the complex and difficult issues we are considering. It will ensure the continued operation of the House during times of national crisis, while at the same time, preserving the character of the House as an elected body. The amendment is similar in structure and details to H.R. 841, which is virtually identical to the bill passed last year by the House. However, a number of modifications have been made to accommodate issues that have been raised by the minority, and our ranking member is here today, as well as concerns related to us by the States. The amendment requires expedited special elections be held within 45 days of the Speaker of the House announcing that more than 100 House vacancies exist.

The candidates running the special elections will be selected either by the State political parties, which would have up to 10 days after the Speaker's announcement to nominate the candidate or by other methods the State deems appropriate, including holding primary elections providing the State is otherwise able to meet the 45-day deadline for conducting the special election.

Thus, under the amendment, the States are given greater flexibility regarding the process by which candidates can be selected for expedited special elections. Also under the amendment, a State will not have to hold an expedited special election if a regularly scheduled general election or previously scheduled special election were to be held within 75 days of the Speaker's announcement, thus providing in essence, a 30-day extension for the States.

The amendment maintains H.R. 841 provision that protects the ability of military personnel and overseas citizens to fully partici-

pate in the special election by instructing that absentee ballots be transmitted to such voters within 15 days of the Speaker's announcement requiring that such absentee ballots be counted if received not later than 45 days after the State transmits them. The amendment makes clear that the expedited special election procedures set forth in this bill are equally applicable to the representatives of the District of Columbia and the U.S. territories. Moreover, the amendment includes language reiterating that the Nation's voting and election laws will remain in effect for the expedited special elections.

Finally, the amendment provides for judicial review of any legal challenge to the Speaker's announcement. We are under no illusion that holding expedited special elections would be challenge-free for the States. Even under the best of circumstances, administering elections prevents many logistical hurdles. Nevertheless, a number of States already require House vacancies to be filled within 45 days or less. Doug Lewis, executive director of the Election Center, testified before this committee last year stating that it appears the election administrators from combined responses nationwide feel that they can conduct an election within as few as 45 days. Thus, the majority opinion of the Nation's chief election officials appears to be that 45 days would prove to be sufficient time to plan and prepare for an expedited special election. Therefore, I believe, the amendment I'm introducing to the Continuity in Representation Act for 2005 strikes the proper balance between the demand to fill House vacancies through the special elections in as short a time frame as possible, and the need for election officials and the voting public to have the time necessary to get ready for the election to make informed choices of who they are going to vote for.

Consequently, I wholeheartedly support the amendment and invite my colleagues to join in passing this important measure out of the committee and sending it to the House floor. At this time, I would like to recognize the ranking member, Ms. Millender-McDonald, and any other members.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman. Mr. Chairman, I am pleased to have the opportunity to address this issue that is outlined in H.R. 841, the Continuity of Representation Act of 2005 and to discuss a significant amendment I intend to propose. I am not sure that the bill as currently designed in its current form can be improved enough to make it workable, but I am grateful to the chairman for scheduling this markup and for his willingness to accept some useful ideas from the minority to improve legislative language in part of the bill. We did accept the chairman's invitation to look at the bill for what it is and to at least attempt to perfect it. But H.R. 841, Mr. Chairman, as introduced and with the forthcoming adoption of the manager's amendment in the committee today, differs only slightly from H.R. 2844 as passed last year by the House. I voted against that bill in the committee markup last year and I will likely do so again here today.

The core problem remains. The bill's rigid deadlines are tailor-made to foster confusion and litigation at a time of future national crisis when the American people will need to renew the legitimacy of the elected representatives in the House. It imposes a new un-

funded mandate upon the States. In its zeal to expedite process, H.R. 841 compromises democracy. I say that after looking at the process in the last Congress. We have the benefit of hindsight and we should use that to refine our actions this year. It was apparent in the 108th Congress that the sponsors of H.R. 2844, which is virtually identical to this year's version, had not carefully considered the impact of its provisions before the bill was put on the express track to the House floor. The Sensenbrenner bill was essentially a wish list of deadlines and other procedures which might be achievable in some States and in some circumstances following a future catastrophe, but not necessarily in other States under different conditions.

That bill, as originally introduced, had a deadline of only 21 days to hold special elections, a number apparently made up out of whole cloth. There were no guarantees that the bill as structured would achieve the goal of national special election uniformity it sought. And some of us have reservations about whether that goal is desirable. The bill sets up conditions which must be met, conditions which would require States to amend their laws and sometimes their State's constitutions to come into compliance. The States must essentially invent mechanisms to implement what may be radical changes in their own election laws and political structures.

What could happen if the States failed to do so? Last year's bill did not say. Neither does the new version.

Two major amendments sponsored by the minority were accepted last year, one of them very reluctantly, on the House floor. The first amendment dealt with the time frame for sending ballots to overseas absentee and military voters. The other was adopted as the motion to recommit after the Rules Committee refused to allow Ranking Member Larson to present it in the Committee of the Whole in the form of an amendment. It was intended to protect major civil rights and voting rights laws, and laws to protect handicapped voters, from being gutted. What was most revealing is that the sponsors apparently never considered these basic issues themselves before they introduced the bill, nor did they attempt to amend it in committee to include them.

During last year's debate, Mr. Chairman, critics of the bill were attacked, not with a strong defense of the bill, but rather with unfair and misleading attacks on various ideas for constitutional amendments intended to plug gaps in the bill or to address related continuity of government issues. And I make that observation as a member who voted against not only the bill last year, but both Representative Baird's constitutional amendment providing temporary appointments to the House and Representative Dreier's constitutional amendment approved on January 4, 2005, the one masquerading as a House rule, which gives the House, without a quorum, all sorts of extraordinary powers which the Framers of the Constitution explicitly prohibited it from exercising.

Now as for the bill before us today, H.R. 841, it purports to provide a maximum of 45 days for the entire special election process. But the requirement adopted last year in the motion to recommit, which I mentioned earlier, to comply with other applicable Federal

laws, may be incompatible with such a deadline. We don't know how long these elections may take, even if this bill was enacted.

But for purposes of this markup, I will take the 45 days at face value. The amendment, which I will shortly offer would allow a total of 60 days. The House last year rejected an amendment proposing 75 days. So I believe this is a reasonable compromise. In California, we currently have a special election in progress for the late Congressman Bob Matsui's seat using approximately that time frame. The amendment would introduce great flexibility into the expedited process, to allow more time for the elections and to give States additional options on how to conduct them. 60 days is not a magic bullet, Mr. Chairman, any more than 45 days is, and members can find many supporters of different deadlines.

Proponents of the bill have often cited Doug Lewis, executive director of the Election Center, which represents States and local election officials nationwide, but he has not endorsed this bill and has said in other venues that 45 days is still too short and that a time frame closer to 60 days would provide States with greater assurances of success. State and local election officials at election process forums over the last 2 years have raised questions about the time frame as well. And I have talked with Secretaries of State even before I came to the meeting today, and they are still not clear as to why the 45 days was chosen and not a longer period.

In testimony prepared by this committee in September of 2003, Mr. Lewis framed the debate as follows and I quote:

> What is an election? Is that a date certain event so that voters can vote or is it more than that? Is an election in American democracy really a process and includes time for the identification of candidates, the ability of candidates to mount a campaign, to raise funds, to attract supporters, to inform the voters of what their choices are between individual contestants and then going to the polls to make that choice? The point is this: If it is only an event, then we can structure an event in a short time frame and carry out the events as flawlessly as possible. If however, you define it in the broader process terms, then you have to allow the process time to work.

Mr. Chairman, I prefer to come down on the side of the interests of democracy. And my instincts as a candidate in many elections at the local, State and national level tell me that 45 days is simply too short.

If my 60-day amendment were to be adopted, I then would propose technical changes in the bill's provisions relating to military and overseas absentee voting without changing their substance, since these provisions as written in the bill are geared to the 45-day schedule.

Mr. Chairman, of course, no House can bind a future one and the House can make its own judgment on seating Members based on the totality of facts in any potential election contest. However, since the intent of the bill is to fill vacancies in the House, we should not create artificial barriers to doing so. And I would remind my colleagues that nothing in the bill itself provides that a Member-elect would rush to the floor to be sworn in at the end of 45 days, 60 days or any other such framework. States must correct their results, certify their returns, await receipt of absentee ballots, and possibly recount ballots in close elections. The 2004 Washington gubernatorial race demonstrates the possibilities of controversy and delay inherent in the election administration process.

I will put the rest of my statement in the record. But I do feel strongly about this issue because California has an election system in which people take great pride in exercising their franchise and don't like being dictated to by anyone. The original bill would have gutted our State's long-standing political traditions at a time when a reconstituted Congress needs to renew its legitimacy from the American people.

[The statement of Ms. Millender-McDonald follows:]

REP. JUANITA-MILLENDER McDONALD
MARKUP STATEMENT

COMMITTEE ON HOUSE ADMINISTRATION
WEDNESDAY, FEBRUARY 17, 2005

Mr. Chairman, I am pleased to have the opportunity to address the issues in H.R. 841, the Continuity of Representation Act of 2005, and to discuss a significant amendment I intend to propose.

I am not sure that the bill as currently designed can be improved enough to make it workable, but I am grateful to the Chairman for scheduling this markup and for his willingness to accept some useful ideas from the Minority to improve legislative language in parts of the bill. We did accept the Chairman's invitation to look at the bill for what it is, and to at least attempt to perfect it. But H.R. 841 as introduced, and with the forthcoming adoption of a Manger's amendment in the committee today, differs only slightly from H.R. 2844 as passed last year by the House.

I voted against this bill in the committee markup last year, and will very likely do so again here today.

The core problem remains. The bill's rigid deadlines are tailor-made to foster confusion and litigation at a time of future national crisis, when the American people will need to renew the legitimacy of their elected representatives in the House. It imposes a new unfunded mandate upon the states. In its zeal to expedite process, H.R. 841 compromises democracy.

I say that after looking at the process in the last Congress. We have the benefit of hindsight, and we should use that to refine our actions this year. It was apparent in the 108th Congress that the

sponsors of H.R. 2844, which is virtually identical to this year's version, had not carefully considered the impact of its provisions before the bill was put on the express track to the House Floor. The Sensenbrenner bill was essentially a wish-list of deadlines and other procedures which might be achievable in some states and in some circumstances following a future catastrophe, but not necessarily in other states or under different conditions. The bill as originally introduced had a deadline of only 21-days to hold special elections, a number apparently made up out of whole cloth. There were no guarantees that the bill, as structured, could achieve the goal of national special election uniformity it sought, and some of us have reservations about whether that goal is desirable.

The bill set up conditions which must be met, conditions which would require states to amend their laws, and sometimes their state constitutions, to come into compliance. The states must essentially invent mechanisms to implement what may be radical changes in their own election laws and political structures. What would happen if the states fail to do so? Last year's bill did not say. Neither does the new version.

Two major amendments sponsored by the Minority were accepted last year, one of them very reluctantly, on the House Floor. The first amendment dealt with the time frame for getting ballots to overseas absentee and military voters; the other was adopted as the motion to recommit after the Rules Committee refused to allow Ranking Member Larson to present it in the Committee of the Whole in the form of an amendment. It was intended to protect major civil right and voting rights laws, and laws to protect handicapped voters, from being gutted. But what was most revealing is that the sponsors apparently never considered these basic issues themselves before they introduced the bill, nor did they attempt to amend it in committee to include them.

During last year's debate, critics of the bill were attacked, not with a strong defense of the bill, but rather with unfair and misleading attacks on various ideas for constitutional amendments intended to plug gaps in the bill or to address related continuity of government issues.

And I make that observation as a Member who voted against both Rep. Baird's constitutional amendment providing temporary appointments to the House, and Rep. Dreier's constitutional amendment approved on January 4, 2005--the one masquerading as a House rule--which gives a House without a quorum all sorts of extraordinary powers which the Framers of the Constitution explicitly prohibited it from exercising.

Now as to the bill before us today, H.R. 841, it purports to provide a maximum of 45-days for the entire special election process. But the requirement adopted last year in the motion to recommit which I mentioned earlier, to comply with other applicable Federal laws, may be incompatible with such a deadline. So we don't really know how long these elections may take even if this bill were enacted. But for purposes of this markup, I will take the 45-days at face value.

The amendment which I will shortly offer would allow a total of 60 days. The House last year rejected an amendment proposing 75 days, so I believe this is a reasonable compromise. In California, we currently have a special election in progress for Bob Matsui's seat using approximately that time frame.

The amendment would introduce greater flexibility into the expedited process, to allow more overall time for the elections, and to give the states additional options on how to conduct them. 60 days is not a magic bullet, any more than 45 days is, and Members can find many supporters of different deadlines.

Proponents of the bill have often cited Doug Lewis, executive director of the Election Center, which represents state and local election officials nationwide. But he has not endorsed this bill and has said in other venues that 45 days is still too short and that a timeframe closer to 60 days would provide states with greater assurance of success. State and local election officials at election process forums over the last two years have raised questions about the time frame as well.

In testimony prepared before this Committee in September, 2003, Mr. Lewis framed the debate as follows:

"What is an election? Is it a date-certain event so that voters can vote, or is it more than that? Is an election in American democracy really a 'process' that includes time for the identification of candidates, the ability of candidates to mount a campaign, to raise funds, to attract supporters, to inform the voters of what their choices are between the individual contestants, and then going to the polls to make that choice?"

"The point is this: if it is only an event, then we can structure an event in a short time frame and carry off the event as flawlessly as possible. If, however, you define it in the broader 'process' terms, then you have to allow the process time to work."

A slightly longer time frame allows states more time to deal with the mechanics of elections, and allows the public more time to gain awareness of the candidates and the campaign.

After polling elections officials from around the country, Doug Lewis summarized the results:

"While the responses indicated a variety of dates ranging from the shortest time period of 35 days (after determination of who the candidates will be) to a period of four months, it appears

that elections administrators feel that they can conduct an election with as few as 45 days. However, the elections officials would be far more confident that the interests of democracy would be best served by having up to 60 days to get the elections organized and held. Each additional day beyond the 45-day minimum time frame creates greater confidence in the process." [testimony of Doug Lewis, page 3]

Mr. Chairman, I prefer to come down on the side of the interests of democracy. And my instincts as a candidate in many elections at the local, state and national level tell me that 45-days is simply too short.

If my 60-day amendment were to be adopted, I would then propose technical changes in the bill's provisions related to military and overseas absentee voting without changing their substance, since these provisions as written in the bill are geared to the 45-day schedule.

The bill urges, but does not require, states to ensure to the greatest extent practicable, including use of electronic means, that absentee ballots are transmitted not later than 15 days after the Speaker declares that the 100-vacancy threshold has been reached. It also requires states to accept and process such ballots if received not later than 45 days after the state transmits the ballot.

Some questions have arisen whether this time frame--like the overall time frame imagined in the bill--is adequate. However, my amendment would retain the provision within the 60-day overall limit I am proposing

I considered another amendment, but will not offer it here today. It may be submitted later. It would add a new provision which states that, in the event a state is unable for some reason to finish conducting an election within the overall time frame, that

fact alone could not be used to disqualify the eventual election winner from being seated in the House.

Of course, no House can bind a future one, and the House can make its own judgments based on the totality of facts in any potential election contest. However, since the intent of the bill is to fill vacancies in the House, we should not create artificial barriers to doing so. And I would remind my colleagues that nothing in the bill itself provides that a Member-elect would rush to the Floor to be sworn in at the end of 45- days, 60-days or any other such framework; states must correct their results, certify their returns, await receipt of absentee ballots and possibly recount ballots in close races. The 2004 Washington gubernatorial race demonstrates the possibilities for controversy and delay inherent in the election administration process.

Now I want to briefly discuss some of the other issues in the bill. A major controversy surrounded the provision in section 3 requiring that party nominees be selected within 10 days of the Speaker's announcement. This provision had the effect of banning primaries to select nominees for the House and requiring that a party committee or related entity make the decision, a completely unnecessary restriction which did nothing to enhance the bill's overall objective. The Manager's amendment, while not excising this language, is intended to render it advisory and to allow the states to consider having primaries, and other options to nominate candidates.

Some states already use a party-committee system to conduct special elections under normal circumstances, but they could use the slightly longer 60-day time limit I am proposing to allow candidates to decide whether to run, and for the party entities to meet. However, many other states conduct primary elections, and any system which cuts the electorate out of critical decisions would be anathema to voters in those states.

I feel strongly about this issue because California has a weak party system, the people take great pride in exercising their franchise and don't like being dictated to by anyone. The original bill would have gutted our state's long-standing political traditions at a time when a reconstituted Congress would need to renew its legitimacy from the American people.

On another issue, at our November 19, 2003, markup on this bill I raised concerns about how the trigger mechanism would be activated by the Speaker when the threshold of 100 vacancies is reached. While the bill does not say so specifically, apparently provisions of House rules allowing a "Speaker pro tempore" designated from a list left by a deceased Speaker to pull the trigger would kick in.

There is still a problem with this formulation. What would happen if all of the Members were killed or incapacitated, leaving no one to pull the trigger, or if the surviving Members were not on the former Speaker's list of substitute presiding officers? I believe that these questions need to be explored further, since they represent another potential weak spot in the bill.

The Manager's amendment does address another problem with the trigger. As originally written, the bill would have cancelled ongoing special elections once the trigger point was reached, with candidates perhaps already chosen and campaigns already in progress, and forced new campaigns under provisions of the Federal statute, possibly with new candidates and certainly with chaos. It is easy to imagine such a scenario if a catastrophe creates many vacancies in the House, but still fewer than 100.

The chief executive authorities of states must, under the Constitution, issue writs of election to fill these vacancies under terms of state law. Imagine a scenario where Members may be

suffering from radiation poisoning or severe burns, with fatalities occurring over a period of time. It might be some time before 100 vacancies were reached, in stages.

The new provision would clarify that any special elections which are already in progress to fill vacancies at the time that the threshold of 100 is reached could continue, under a new 75-day deadline following the Speaker's announcement. Only vacancies not declared until after the triggering would fall totally under the Federal provisions. I would have preferred to allow the pre-trigger special elections to proceed to their normal conclusion under state law.

The Manager's amendment would also allow expedited special elections under the Federal statute to fill the seats of the four delegates to the House and the resident commissioner of Puerto Rico, if those seats were vacant at the time the 100-Member threshold was reached. I support this provision, which was suggested by our colleague from the District of Columbia, Eleanor Holmes Norton, during the Floor debate last year and the bill's sponsors indicated they would accept it.

The delegates and resident commissioner are not Members of the House elected from states, and their presence or absence would have no effect on the whole number of the House or its ability to achieve a quorum. The Speaker does not take formal notice of vacancies in these positions under the House rules. However, allowing their constituencies to participate in expedited elections could help ensure that new delegates might appear more quickly to serve as a voice, if not a vote, in the repopulating House of Representatives. How the exercise of this provision might affect these unique constituencies in practice is, of course, unclear, as it is for congressional seats generally.

Finally, Mr. Chairman, this legislation imposes an unfunded mandate upon the states. It does so because the bill's principal purpose is to impose a uniform special election system on the states following a catastrophe, which the states must then cope with somehow.

Special elections to fill vacancies occur in every Congress, under provisions of state law. We have one going on right now in my state. If special elections occur outside the time frame and structure of elections for other offices which have already been planned, state incur additional costs. Some states allow special elections to be timed to coincide with other forthcoming events, such as primaries, to reduce costs. Others choose not to use primaries to pick special election nominees, a choice acceptable to the voters who permit that practice.

The new Federal mandate, according to a report of the Congressional Budget Office printed in our committee report of December 8, 2003, would require 40 states to adopt a quicker time frame than they already have for holding special elections which do not coincide with a regularly scheduled election, and some states would need to amend their state constitutions. Estimating the financial cost is extremely difficult. CBO estimates that the cost to run a special election is between $200,000 and $500,000 per district in 2004 dollars. But CBO estimates that the overall additional costs generated by the bill might not exceed $60 million beyond what would normally be spent. How those extra costs might be spread around the country is, of course, a complete unknown.

But we need to look at the costs in another way. What is the cost to democracy from passing this bill? The costs are profound. This bill would deprive the public of the benefits of a full and open campaign, with opportunities to meet the candidates, observe

political debates, learn about the issues in the media, and receive and read literature about the candidates. In states which were forced to abandon their primaries because of lack of time caused by the 45-day deadline, the public could not choose its own candidates. That function would fall to a party entity of some kind, a committee, caucus or convention. In many districts, which lack two-party competition, the choice at this level would dictate the final outcome of the pro forma election which would follow. Candidates might not be able to make the political and personal decisions required to offer themselves as candidates.

Not every person who would make a good Member of Congress is an instant candidate just waiting to run. Starting a campaign requires consulting the family, weighing finances, assessing staff, gauging support from other political figures and organizations, and establishing a campaign committee with the ability to operate within the Byzantine framework of today's campaign finance laws. And some who may wish to run might not be able to if petition signatures were required to get on the ballot, or money had to be raised to pay filing fees or meet other qualifications which might be disrupted by the deadlines in the legislation.

The public may suffer because of lack of time to manage the election competently and fairly. There are significant problems with voter registration lists, voting by felons, voting with provisional ballots, and transmitting, receiving and counting absentee ballots, and staffing the polls with voting machines and election workers, even under the best of circumstances in normal elections. After a catastrophe, we can add a potential breakdown in communications systems and other infrastructure, including transportation, along with potential inability to order voting machines and ballots.

Mr. Chairman, I urge my colleagues not to rush this bill through the House again, and to allow an open amendment process. We saw what happened last year, when the Senate refused to consider it. Pass essentially the same bill, make the process partisan, and risk getting the same result—nothing.

We have heard complaints from some that the Senate should have deferred to the House because the bill affected only House elections. However, the bill affected the structure and functioning of the entire government, which impacts directly on the Senate and the constituents senators represent. The failure last year ultimately validated the constitutional structure set up by the Framers, which requires that Congress can, by law, change state laws governing Federal elections, and denies to either chamber of Congress alone the power to set the conditions for the conduct of elections to fill its seats. I hope that whatever finally passes the House this year receives full and fair scrutiny in the Senate.

The CHAIRMAN. I thank the gentlelady. Any other statements.

Mrs. MILLER. I certainly want to begin by commending you, Mr. Chairman, as well as Chairmen Sensenbrenner and Dreier for all the work that all of you have put into this issue. The legislation we are going to be marking up today deals with the most serious situation, and so I commend everyone for the very serious consideration they have given this issue, as well as their commitment to achieve a solution that I think enjoys bipartisan support. The need for this legislation is so very important in the wake of the absolutely horrific attacks on our Nation of 9/11. And as we all remember so vividly, on that day, the enemies of freedom clearly targeted the pillars of our Nation.

The terrorist attack at the World Trade Towers, which represented our economic freedoms. The enemies of freedom also attacked the Pentagon, which represents our military strength. And certainly by all accounts flight number 93 was targeted at either the White House or the Capitol building, both symbols of our Democratic form of government and of our freedom. If it had not been for the absolutely heroic actions by those passengers, really ordinary Americans who exhibited extraordinary bravery, that particular plane may very well have reached its intended targets.

The results would have been unthinkable. So now we contemplate how best to prepare for the unthinkable. The Congress must ensure that our government remain strong and stable in the event of a catastrophic attack. As we grapple with this issue, we want to remind to ourselves that the U.S. House of Representatives is the peoples' House. For the entirety of our national existence, Members of the House have been directly elected by the people and even a terrorist attack should not be reason enough to change its historical content.

Article 1, section 2 of our Constitution states when vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies. The operative phrase is election. In the bill we are marking up today continues the tradition we fell firm to for as I say the entirety of our national existence certainly allows us to remain true to the course that was charted for us by our Founding Fathers.

Our Constitution and our laws have already addressed the other branches of government. The President would be replaced quickly by the existing line of succession. The courts would be replaced quickly by presidential appointment. The Senate would be reconstituted very quickly through the gubernatorial appointments, as the 17 amendment outlines.

Only the House, the House of Representatives, would not be able to function quickly during a time of national emergency because of the constitutional provision which requires direct elections of the Members. I believe that this legislation that we are considering today is a very well thought out and reasonable approach which will serve our Nation well into the future. This bill requires special elections to fill vacancies in the House of Representatives within a 45-day period after a vacancy is announced by the Speaker of the House in the extraordinary circumstances that the number of vacancies exceeds 100. Some will argue as the, minority leader just did, that more time is necessary, but I certainly disagree with that.

Last week this committee held a hearing on the Help America Vote Act. One effect of that law that was not discussed actually was its impact on election officials in preparing for a special election. Local clerks now have the tools would HAVA, actually, to conduct a special election much more easily than they could have previously. And this is not to say such an undertaking would be easy. It would be difficult.

I can tell you, based on my experience as the chief elections officer in the great State of Michigan previously, I am very confident that our election officials across our Nation will rise to the occasion to complete the required work especially in a time of national emergency. It has been said that the price of freedom is remaining ever vigilant and the enemies of freedom will find that America is. Thank you very much.

The CHAIRMAN. Thank the gentlelady for her statement. Mr. Reynolds? If not, the Chair lays before the committee H.R. 841 open to the amendment and the Chair offers an amendment in the nature of a substitute. And this is the amendment I previously mentioned with the change and I appreciate the minority made to make the bill better and to improve a couple of those issues in the bill. Any discussion on this?

[The information follows:]

.....

(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER introduced the following bill; which was referred to the Committee on _____

A BILL

To require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Continuity in Representation Act of 2005".

1 **SEC. 2. REQUIRING SPECIAL ELECTIONS TO BE HELD TO**
2 **FILL VACANCIES IN HOUSE IN EXTRAOR-**
3 **DINARY CIRCUMSTANCES.**

4 Section 26 of the Revised Statutes of the United
5 States (2 U.S.C. 8) is amended—

6 (1) by striking "The time" and inserting "(a)
7 IN GENERAL.—Except as provided in subsection (b),
8 the time"; and

9 (2) by adding at the end the following new sub-
10 section:

11 "(b) SPECIAL RULES IN EXTRAORDINARY CIR-
12 CUMSTANCES.—

13 "(1) IN GENERAL.—In extraordinary cir-
14 cumstances, the executive authority of any State in
15 which a vacancy exists in its representation in the
16 House of Representatives shall issue a writ of elec-
17 tion to fill such vacancy by special election.

18 "(2) TIMING OF SPECIAL ELECTION.—A special
19 election held under this subsection to fill a vacancy
20 shall take place not later than 45 days after the
21 Speaker of the House of Representatives announces
22 that the vacancy exists, unless a regularly scheduled
23 general election for the office involved is to be held
24 at any time during the 75-day period which begins
25 on the date of the announcement of the vacancy.

1 "(3) NOMINATIONS BY PARTIES.—If a special
2 election is to be held under this subsection, not later
3 than 10 days after the Speaker announces that the
4 vacancy exists, the political parties of the State that
5 are authorized to nominate candidates by State law
6 may each nominate one candidate to run in the elec-
7 tion.
8 "(4) EXTRAORDINARY CIRCUMSTANCES.—
9 "(A) IN GENERAL.—In this subsection,
10 'extraordinary circumstances' occur when the
11 Speaker of the House of Representatives an-
12 nounces that vacancies in the representation
13 from the States in the House exceed 100.
14 "(B) JUDICIAL REVIEW.—If any action is
15 brought for declaratory or injunctive relief to
16 challenge an announcement made under sub-
17 paragraph (A), the following rules shall apply:
18 "(i) Not later than 2 days after the
19 announcement, the action shall be filed in
20 the United States District Court having ju-
21 risdiction in the district of the Member of
22 the House of Representatives whose seat
23 has been announced to be vacant and shall
24 be heard by a 3-judge court convened pur-

1 suant to section 2284 of title 28, United
2 States Code.
3 "(ii) A copy of the complaint shall be
4 delivered promptly to the Clerk of the
5 House of Representatives.
6 "(iii) A final decision in the action
7 shall be made within 3 days of the filing
8 of such action and shall not be reviewable.
9 "(iv) The executive authority of the
10 State that contains the district of the
11 Member of the House of Representatives
12 whose seat has been announced to be va-
13 cant shall have the right to intervene either
14 in support of or opposition to the position
15 of a party to the case regarding the an-
16 nouncement of such vacancy.
17 "(5) PROTECTING ABILITY OF ABSENT MILI-
18 TARY AND OVERSEAS VOTERS TO PARTICIPATE IN
19 SPECIAL ELECTIONS.—
20 "(A) DEADLINE FOR TRANSMITTAL OF AB-
21 SENTEE BALLOTS.—In conducting a special
22 election held under this subsection to fill a va-
23 cancy in its representation, the State shall en-
24 sure to the greatest extent practicable (includ-
25 ing through the use of electronic means) that

1 absentee ballots for the election are transmitted
2 to absent uniformed services voters and over-
3 seas voters (as such terms are defined in the
4 Uniformed and Overseas Citizens Absentee Vot-
5 ing Act) not later than 15 days after the
6 Speaker of the House of Representatives an-
7 nounces that the vacancy exists.
8 "(B) PERIOD FOR BALLOT TRANSIT
9 TIME.—Notwithstanding the deadlines referred
10 to in paragraphs (2) and (3), in the case of an
11 individual who is an absent uniformed services
12 voter or an overseas voter (as such terms are
13 defined in the Uniformed and Overseas Citizens
14 Absentee Voting Act), a State shall accept and
15 process any otherwise valid ballot or other elec-
16 tion material from the voter so long as the bal-
17 lot or other material is received by the appro-
18 priate State election official not later than 45
19 days after the State transmits the ballot or
20 other material to the voter.
21 "(6) RULE OF CONSTRUCTION REGARDING FED-
22 ERAL ELECTION LAWS.—Nothing in this subsection
23 may be construed to affect the application to special
24 elections under this subsection of any Federal law
25 governing the administration of elections for Federal

1 office (including any law providing for the enforce-
2 ment of any such law), including, but not limited to,
3 the following:
4 "(A) The Voting Rights Act of 1965 (42
5 U.S.C. 1973 et seq.), as amended.
6 "(B) The Voting Accessibility for the El-
7 derly and Handicapped Act (42 U.S.C. 1973ee
8 et seq.), as amended.
9 "(C) The Uniformed and Overseas Citizens
10 Absentee Voting Act (42 U.S.C. 1973ff et seq.),
11 as amended.
12 "(D) The National Voter Registration Act
13 of 1993 (42 U.S.C. 1973gg et seq.), as amend-
14 ed.
15 "(E) The Americans With Disabilities Act
16 of 1990 (42 U.S.C. 12101 et seq.), as amended.
17 "(F) The Rehabilitation Act of 1973 (29
18 U.S.C. 701 et seq.), as amended.
19 "(G) The Help America Vote Act of 2002
20 (42 U.S.C. 15301 et seq.), as amended.".

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. _____ OFFERED BY MR. NEY

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Continuity in Rep-
3 resentation Act of 2005".

4 **SEC. 2. REQUIRING SPECIAL ELECTIONS TO BE HELD TO**
5 **FILL VACANCIES IN HOUSE IN EXTRAOR-**
6 **DINARY CIRCUMSTANCES.**

7 Section 26 of the Revised Statutes of the United
8 States (2 U.S.C. 8) is amended—

9 (1) by striking "The time" and inserting "(a)
10 IN GENERAL.—Except as provided in subsection (b),
11 the time"; and

12 (2) by adding at the end the following new sub-
13 section:

14 "(b) SPECIAL RULES IN EXTRAORDINARY CIR-
15 CUMSTANCES.—

16 "(1) IN GENERAL.—In extraordinary cir-
17 cumstances, the executive authority of any State in
18 which a vacancy exists in its representation in the

House of Representatives shall issue a writ of election to fill such vacancy by special election.

"(2) TIMING OF SPECIAL ELECTION.—A special election held under this subsection to fill a vacancy shall take place not later than 45 days after the Speaker of the House of Representatives announces that the vacancy exists, unless, during the 75-day period which begins on the date of the announcement of the vacancy—

"(A) a regularly scheduled general election for the office involved is to be held; or

"(B) another special election for the office involved is to be held, pursuant to a writ for a special election issued by the chief executive of the State prior to the date of the announcement of the vacancy.

"(3) NOMINATIONS BY PARTIES.—If a special election is to be held under this subsection, the determination of the candidates who will run in such election shall be made—

"(A) by nominations made not later than 10 days after the Speaker announces that the vacancy exists by the political parties of the State that are authorized by State law to nominate candidates for the election; or

"(B) by any other method the State considers appropriate, including holding primary elections, that will ensure that the State will hold the special election within the deadline required under paragraph (2).

"(4) EXTRAORDINARY CIRCUMSTANCES.—

"(A) IN GENERAL.—In this subsection, 'extraordinary circumstances' occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.

"(B) JUDICIAL REVIEW.—If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:

"(i) Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

1 "(ii) A copy of the complaint shall be
2 delivered promptly to the Clerk of the
3 House of Representatives.
4 "(iii) A final decision in the action
5 shall be made within 3 days of the filing
6 of such action and shall not be reviewable.
7 "(iv) The executive authority of the
8 State that contains the district of the
9 Member of the House of Representatives
10 whose seat has been announced to be va-
11 cant shall have the right to intervene either
12 in support of or opposition to the position
13 of a party to the case regarding the an-
14 nouncement of such vacancy.
15 "(5) PROTECTING ABILITY OF ABSENT MILI-
16 TARY AND OVERSEAS VOTERS TO PARTICIPATE IN
17 SPECIAL ELECTIONS.—
18 "(A) DEADLINE FOR TRANSMITTAL OF AB-
19 SENTEE BALLOTS.—In conducting a special
20 election held under this subsection to fill a va-
21 cancy in its representation, the State shall en-
22 sure to the greatest extent practicable (includ-
23 ing through the use of electronic means) that
24 absentee ballots for the election are transmitted
25 to absent uniformed services voters and over-

1 seas voters (as such terms are defined in the
2 Uniformed and Overseas Citizens Absentee Vot-
3 ing Act) not later than 15 days after the
4 Speaker of the House of Representatives an-
5 nounces that the vacancy exists.
6 "(B) PERIOD FOR BALLOT TRANSIT
7 TIME.—Notwithstanding the deadlines referred
8 to in paragraphs (2) and (3), in the case of an
9 individual who is an absent uniformed services
10 voter or an overseas voter (as such terms are
11 defined in the Uniformed and Overseas Citizens
12 Absentee Voting Act), a State shall accept and
13 process any otherwise valid ballot or other elec-
14 tion material from the voter so long as the bal-
15 lot or other material is received by the appro-
16 priate State election official not later than 45
17 days after the State transmits the ballot or
18 other material to the voter.
19 "(6) APPLICATION TO DISTRICT OF COLUMBIA
20 AND TERRITORIES.—This subsection shall apply—
21 "(A) to a Delegate or Resident Commis-
22 sioner to the Congress in the same manner as
23 it applies to a Member of the House of Rep-
24 resentatives; and

1 "(B) to the District of Columbia, the Com-
2 monwealth of Puerto Rico, American Samoa,
3 Guam, and the United States Virgin Islands in
4 the same manner as it applies to a State, ex-
5 cept that a vacancy in the representation from
6 any such jurisdiction in the House shall not be
7 taken into account by the Speaker in deter-
8 mining whether vacancies in the representation
9 from the States in the House exceed 100 for
10 purposes of paragraph (4)(A).

11 "(7) RULE OF CONSTRUCTION REGARDING FED-
12 ERAL ELECTION LAWS.—Nothing in this subsection
13 may be construed to affect the application to special
14 elections under this subsection of any Federal law
15 governing the administration of elections for Federal
16 office (including any law providing for the enforce-
17 ment of any such law), including, but not limited to,
18 the following:

19 "(A) The Voting Rights Act of 1965 (42
20 U.S.C. 1973 et seq.), as amended.

21 "(B) The Voting Accessibility for the El-
22 derly and Handicapped Act (42 U.S.C. 1973ee
23 et seq.), as amended.

1 "(C) The Uniformed and Overseas Citizens
2 Absentee Voting Act (42 U.S.C. 1973ff et seq.),
3 as amended.
4 "(D) The National Voter Registration Act
5 of 1993 (42 U.S.C. 1973gg et seq.), as amend-
6 ed.
7 "(E) The Americans With Disabilities Act
8 of 1990 (42 U.S.C. 12101 et seq.), as amended.
9 "(F) The Rehabilitation Act of 1973 (29
10 U.S.C. 701 et seq.), as amended.
11 "(G) The Help America Vote Act of 2002
12 (42 U.S.C. 15301 et seq.), as amended.".

Ms. MILLENDER-MCDONALD. Mr. Chairman, at this time I would like to offer an amendment to the amendment in the nature of a substitute which has been distributed to the members.

The CHAIRMAN. The clerk will report the amendment.

[The information follows:]

AMENDMENT OFFERED BY MS. MILLENDER-MCDONALD TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

In section 26(b)(2) of the Revised Statutes of the United States, as proposed to be added by the amendment, strike "45 days" and insert "60 days".

The CLERK. Amendment offered by Ms. Millender-McDonald to the amendment in the nature of a substitute. Section 26 B 2 of the revised statutes of the United States as proposed to be added by the amendment, strike 45 days and insert 60 days.

The CHAIRMAN. Question is on the amendment which was previously discussed. Those in favor of the amendment will say aye. Those opposed will say nay. In the opinion of the Chair, the nays have it and the amendment fails. Question is now on the amendment in the nature of a substitute. Those in favor of the amendment will say aye. Those opposed will say nay. The amendment is agreed to. The Chair recognizes Mr. Ehlers for the purpose of offering a motion.

Mr. EHLERS. Mr. Chairman, I move that the committee order H.R. 841 as amended be reported favorably to the House of Representatives.

The CHAIRMAN. Moved and seconded. The question is on the motion. Those in favor of the motion will say aye. Those opposed will say nay. In the opinion of the Chair, the ayes have it. The motion is agreed to. And the committee orders that H.R. 841 be reported favorably to the House of Representatives.

I ask unanimous consent that members have 7 legislative days for statements and materials to be entered into the appropriate place in the record. Without objection, the material will be so entered. I ask unanimous consent that the staff be authorized to make technical and conforming changes on all matters considered by the committee at today's meeting. Without objection, so ordered.

Ms. MILLENDER-MCDONALD. Mr. Chairman, I now announce, pursuant to the provisions of clause 2(1) of rule XI, my intention to seek not less than the two additional calendar days provided by that rule to prepare additional views to be filed with the committee report.

The CHAIRMAN. The gentlelady is in order for her request. Without objection, the request is granted. I want to thank the gentlelady for the thoughtful amendments and the amendment you proposed. I thank the members for your time. And I also want to recognize all of the special guests we have today visiting the Capitol, but also one of our State representatives, Mary Taylor from the 43rd District in Ohio.

Ms. MILLENDER-MCDONALD. Mr. Chairman, let me just thank you for at least bringing this bill to the committee. It certainly could have attempted to bypass us and gone directly to the floor. It is because of your leadership that we had at least an opportunity to speak on it.

The CHAIRMAN. We did that when Congressman Larson was here. And your request, I think it was a right request for you to make. With that, if there is no further business, the committee will be adjourned.

[Whereupon, at 2:30 p.m., the committee was adjourned.]