

Testimony of Rep. Dana Rohrabacher
Before the Subcommittee on Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
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Mr. Chairman, thank you for this opportunity to testify today. Providing for the continuity of Congress has been a special cause that my colleague, Mr. Baird, and I have shared since our shared experience on September 11, 2001. It was clear that day what could have happened, and what could still happen, to this branch of government. Brian and I each have our own proposals (House Joint Resolutions 52 and 53, respectively) as to how to address the continuity of Congress in case of a man made or natural catastrophe. However, we both have co-sponsored each other's proposals in the belief that either proposal is better than keeping our dangerous status quo.

Today, I'd like to address specifically my proposal, House Joint Resolution 53, which not only will allow Congress to continue operations in the face of a possible massive tragedy, but also will make Congress a more "small d" democratic institution in the face of the smaller tragedies and problems that we face every year.

Today in the Senate, we have seen Massachusetts and West Virginia lose half their representation for weeks or months at a time, because of senators' health problems. Not long ago, South Dakota lost the benefit of half its Senate delegation for almost a year because our Constitution has no provision for dealing with a long-term disability, if a Senator declines to resign his seat.

We have seen major controversies regarding the filling of Senate vacancies in Illinois and New York because the Constitution in its current form provides gubernatorial appointment as the only alternative to a lengthy vacancy followed by a highly expensive special statewide election. Until last Thursday, my home state of California had two fewer Representatives than we are entitled to (and still has one fewer) because President Obama saw our delegation as a source of talent for his Administration. Under our Constitution, there is no alternative provided to a lengthy vacancy and lack of representation prior to a special election.

H.J.Res. 53 would solve all of these constitutional problems by providing that each person elected to the House and Senate must be elected in combination with an Alternate. This provision is, of course, modeled on how we currently elect our President and Vice President, ensuring that if tragedy befalls our President, as it has with several Presidents in the past, that there is another nationally elected official who is ready to assume the powers and duties of the Presidency.

By providing for elected Alternate Representatives and Alternate Senators, H.J.Res. 53 would continue the tradition of the House of Representatives that no one can vote here who has not been elected by the people, and largely apply that principle to the Senate, as well. My proposal provides that an Alternate becomes Acting Representative or Acting Senator until a new Representative or Senator is elected. It also provides for disability of a Representative or Senator in the same manner as the 25th Amendment provides for disability of the President. (Under the 25th Amendment, the President can transfer his powers and duties to the Vice President with a written declaration, and can reclaim those powers and duties in the same way.)

Mr. Chairman, I don't think we should accept any longer a situation where states and districts are routinely deprived of their representation for months at a time for no fault of their own. I see nothing democratic in a system by which a governor, no matter how politically discredited, can pick an unelected person as a U.S. Senator, perhaps even changing the partisan composition of the Senate in the process. Today, any enemy who wants to vastly change the nature of our government, or paralyze it entirely, can do so by killing or disabling a large enough group of us. All of these unacceptable situations can be fixed by adoption of H.J.Res. 53, and I ask for your support.