

The Need for a 28th Amendment

By Cathy Travis, Author, *Constitution Translated for Kids*

The United States Constitution has only been amended 27 times in its 214-year history, underscoring the rarity of the need for amendments and the difficulty in amending our most supreme legal document.

No shortage exists for ideas to amend the Constitution, and several ideas are perennial ones that regularly fail the first test for an amendment: winning a 2/3 vote in both Houses of Congress. The regular candidates for amendments include: prohibiting flag burning, repealing the electoral college, requiring a balanced budget, prohibiting abortion, requiring prayer in school, re-wording the 2nd Amendment, and many more.

September 11, however, illuminated a problem that would have crippled our government had the attack on the United States Capitol not been foiled in the skies over Pennsylvania. If, God forbid, Members of Congress were killed in a catastrophic attack, the nation has no constitutional provision to immediately re-populate the House of Representatives, the legislative body intended to be closest to the people. (The 17th Amendment allows Governors to appoint Senators if they die or leave office.)

Given that Congress is Article I – and the U.S. House of Representatives is the first and most democratic organ of our government – it is time to provide for a reconstitution of the U.S House of Representatives under dire circumstances. The trick is to do it fairly for Republicans and Democrats, otherwise the razor-close partisan edge in Congress will prevent passage in Congress, or provide for partisan tinkering in Congress by governors at the worst time possible.

Congress must establish this standard as they work: would this be considered fair by Republicans if Democratic governors did the appointing and vice versa? When considering constitutional matters, fairness must never be figured in the short term political advantages for either party. Fairness must always be framed in this way: if a politician you always disagree with had this power, would it still be fair? If the answer is “no,” then that power should not be enshrined in the Constitution.

Here is the outline for an amendment to re-populate the U.S. House of Representatives quickly should terrorists kill even a small number of U.S. House members: empower governors to (concurrently) call for new elections and to appoint new, temporary House members, following strict guidelines. (Elections will take weeks at least, months at most, so appointments will be urgently necessary to conduct business until voters elect new members.)

Since the House of Representatives is the only truly democratic organ in the Constitution (Senators can be appointed by governors and Presidents are selected by the Electoral College), the 28th Amendment must follow our democratic constitutional traditions as closely as possible. Article I, Section 2 of the Constitution says it is the people who vote for the largest body of their state legislatures who are eligible to elect members of the U.S. House of Representatives.

A 28th Amendment can hew closely to that instruction by having a governor appoint members of the lower house of the state legislature to the U.S. House of Representatives for

a temporary appointment to fill vacancies in the state's delegation, and they must appoint by party affiliation of delegation members lost.

For example, if a state delegation lost two Republicans and one Democrat, the Governor would appoint two Republicans and one Democrat currently serving in the largest body of the state's legislature (usually called a State House of Representatives).

Temporarily appointed members to the U.S. House of Representatives would be prohibited from seeking election to the U.S. House in the concurrent special election, to focus their time and energy on the work of Congress, leaving the campaigning and elections to others in the state.

This amendment would serve two purposes: it would keep the partisan makeup in Congress consistent with what state voters endorsed in the last election, and it would provide for continuity of Congress until voters can elect new Representatives.

The Constitution can be amended two ways (laid out in Article V) but only one formula has ever been followed: both Houses of Congress must pass a proposed amendment with a two-thirds majority. Then it must be approved by three-fourths of the states.

Everyone has a favorite issue they would like to see illuminated in the United States Constitution. But the continuity of our government, particularly at a moment of great constitutional peril, is a cause to be endorsed by all Americans, whatever their partisan preference.

Congress can do this in such a way to prevent partisan tinkering. The only question now is will they? Or will they, by inaction on this amendment, endorse partisan tinkering in our representative government at a moment of constitutional crisis?

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