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March 2, 2005

The Honorable Robert W. Ney
Chairman
Committee on House Administration
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the American Bar Association, I commend the Committee and the House of Representatives for addressing an issue of paramount importance to our country – that of continuity of the government in a time of national crisis. Consistent with H.R. 841, the Continuity in Representation Act of 2005, the ABA supports legislation to enact uniform expedited special election procedures for filling vacancies in the House in the event of a catastrophe. We strongly believe in maintaining the historical representative nature of the “People’s House” and H.R. 841 would accomplish this goal. We would, however, like to raise a few issues for your consideration.

The main goal of continuity legislation should be to reconstitute the House in a timely manner while maintaining the integrity of the electoral process and avoiding the disenfranchisement of any portion of the eligible voting population. H.R. 841 requires special elections to be held within 45 days of an announcement by the Speaker that a vacancy exists. Current state laws vary widely on timing requirements for special elections, ranging from 28 to 180 days, with the majority falling within a 40- to 90-day period. This provides some guidance on the period of time state election officials feel they may need in order to hold expedited elections. The most relevant recent example is the gubernatorial recall election in California in 2003, a statewide election held within 78 days of the announcement of the recall, with no reports of major or widespread problems in the election process. After studying this and several previous examples, the ABA recommends 56 days as the most reasonable period of time in which to require special elections under these provisions.

The ABA also strongly supports the principle of ensuring the voting participation of our servicemembers and citizens residing abroad. H.R. 841 provides, to the extent practicable, that ballots be transmitted to uniformed or

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overseas voters within 15 days of the Speaker's announcement of a vacancy and that such ballots be counted if received within 45 days of the transmittal. We are concerned the timing of these provisions could allow a sizeable number of voters to actually cast their ballots after election day, when preliminary information on election results may be readily available. To avoid this situation, we would suggest, instead, that a ballot cast by a military or overseas voter be counted if it is received or postmarked on or before the date of the election. The many methods now available to military and overseas voters to receive and return absentee ballots, along with priority handling of overseas ballots and the existence of the federal write-in absentee ballot, should ensure that such ballots that are postmarked by election day are returned in time to be counted. This method also provides more certainty to the absentee voters regarding the absolute deadline on which their ballot must be cast.

The prospect of large-scale vacancies in the House of Representatives and the method in which they are filled impact one of the basic tenets of our democracy – the principle of representative government. The ABA supports filling such vacancies by expedited special elections and, with the above-mentioned views in mind, urges the House to enact H.R. 841 or similar legislation encompassing this principle as soon as possible.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans