

Statement of  
**The Honorable F. James Sensenbrenner Jr.**

United States Representative  
United States House of Representatives  
March 11, 2009

Hearing Statement of Constitution Subcommittee Ranking Member  
F. James Sensenbrenner Jr.

Joint Senate-House Constitution Subcommittee Hearing on Senate Vacancy Amendments  
(S.J.Res. 7 and H.J.Res. 21)

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Currently, the Constitution's Seventeenth Amendment provides for the popular election of Senators, but it provides an exception in which States can allow State Governors to appoint Senators to fill vacancies until a special election is held. As we have seen recently, such an appointment process is not only undemocratic, but it is prone to abuse.

The time has come for Congress to pass an amendment to the Constitution that would require all Senate vacancies be filled by special election. I am grateful to Rep. David Dreier and my Wisconsin colleague on the other side of the Capitol, Senator Feingold, who have introduced such an amendment, which we will consider today. I am an original cosponsor of the amendment.

The amendment would correct a constitutional anomaly that has too often been overlooked. When the Senate was first created, Senators were elected by state legislatures, not the people of the several states. Because state legislatures were often in session only a few months a year, the original Senate provision of the Constitution included a means of replacing Senators when the state legislatures were not in session. That mechanism was the temporary appointment by Governors of replacement Senators.

Then came a series of notorious instances of corrupt deals between state legislators and those whom they selected as Senators. As the Senate Historical Office points out, "Intimidation and bribery marked some of the states' selection of senators. Nine bribery cases were brought before the Senate between 1866 and 1906."

The result was passage of the Seventeenth Amendment in 1913, which provided for the popular election of Senators.

However, in an effort to change as little of the original constitutional language as possible, the sponsors of the Seventeenth Amendment simply carried over the state governor's appointment

authority in the case of vacancies that was contained in the original Article I, Section 3. They did so with little debate, even though the removal of state legislatures from the election process rendered the original rationale for allowing temporary appointments obsolete.

Indeed, the only direct mention of the "vacancies" provision of the Seventeenth Amendment during Congressional debate on that amendment in both the House and Senate was made by Congressmen Mann and Rucker. Their remarks are exceedingly short, focusing mainly on grammatical points, and they do not include reference to any policy rationale behind the decision to retain the provision that allows Governors to appoint replacement Senators. That is not surprising, as there remained little policy rationale for the provisions.

Consequently, it is clear from the historical record that the debate over the Seventeenth Amendment focused entirely on the policy of requiring the direct election of Senators, and not at all on the ability of Governors to appoint people to fill Senate vacancies.

Today, however, with the recent example of the former Democratic Governor of Illinois and his appointee, Congress can no longer ignore the constitutional anomaly created by the Seventeenth Amendment. It is now clear that the gubernatorial appointment provision can be subject to abuse as well, and it is time for Congress to belatedly address that issue.

My own state of Wisconsin recognized the importance of codifying elections as an essential element of Senate Membership the very same year the Seventeenth Amendment was ratified. In 1913, Wisconsin passed a law requiring all Senate seats to be filled by special election, on an expedited basis. That provision has been successfully administered since then. The amendment we consider today would allow the rest of the country, however belatedly, to consider amending our shared founding document to fully enshrine elections as a prerequisite for serving the people in our democracy.

I look forward to hearing from all our witnesses today, and I would like to extend a special welcome to Kevin Kennedy of the Government Accountability Board of my own state of Wisconsin.