

## **IF CONGRESS WERE ATTACKED**

By Thomas S. Foley and Newt

Gingrich

*The Washington Post*

March 17, 2002

The declining cost and rising availability of weapons of mass destruction may make terrorists even more dangerous in the future. The executive branch has recognized just how real that danger is and has taken precautions to minimize the risk to the elected chain of authority. In addition to the vice president's moving to a separate, secure location in periods of high threat, we now know that scores of other senior officials are on rotating assignments outside of Washington to ensure the continuity of government in the event of a major attack.

The legislative branch has to take similar precautions. It is a sad but realistic comment on our time that we could lose a substantial number of members to a terrorist attack. Such an attack during a State of the Union address or a joint meeting to hear a foreign leader could literally decapitate the entire legislative branch of government.

The Senate could be reconstituted quickly because Article XVII of the Constitution permits governors to appoint interim senators to serve until the next election. This is a routine procedure used whenever death or resignation leads to a vacancy. Within less than a week a quorum could be reassembled for the Senate under virtually any circumstance.

Each vacancy in the House, however, requires a special election. While each state establishes the procedure for special election in its jurisdiction, in the present situation a quorum could be lost, and it could take three months or more for new members to be elected; indeed, in recent

cases it has taken an average of 117 days to fill a vacancy.

In the Information Age it is impossible for us to govern through a crisis with a protracted delay in assembling a legislative quorum. The special danger to the House is a threat to the very functioning of our constitutional system in a crisis. Since September scholars and members of Congress have framed a number of approaches to this problem, including constitutional amendments introduced by Rep. Brian Baird (D-Wash.) and Sen. Arlen Specter (R-Pa.). We consider it imperative that the House move now in the most direct way possible to meet the acknowledged threat.

The expeditious path is for the House immediately to adopt a change in its rules authorizing each member to pre-designate an interim successor who could serve for the period between a catastrophic loss of House members and the election of successors. The Constitution explicitly provides that the House shall make its own rules concerning its members and shall be the judge of its members' qualification. To make certain that Congress can continue to function, it would be reasonable for the House to recognize interim designees as fully empowered to perform the duties of the office. One doubts that this procedure would be challenged in court, but if it were, the Supreme Court would almost certainly not choose to leave the United States without constitutional governance at such a critical moment.

In the long run it would be prudent for Congress to propose a constitutional amendment to ensure that an emergency interim appointment system was beyond legal challenge. However, because any constitutional amendment can take years to craft and pass through the states, the urgent need is to change House rules now to cope

with any tragedy that might occur before such an amendment has been ratified. A simple amendment of this nature should confirm the power of Congress to regulate by law or rule the temporary filling of vacancies that might occur in the House of Representatives in the event of the death or disability of any member.

The legitimacy of this arrangement centers on the choice of designated interim successors by the currently serving members. Members of the House themselves embody the latest expression of the voters' will in each congressional constituency. The alternative of empowering governors to make such appointments is problematic for two reasons: Governors are elected on different issues and usually in broader constituencies than federal representatives and, because they may be of different parties, their appointments could alter the party balance in Congress. The latter prospect could well persuade many representatives to oppose the procedure. Giving members themselves the power to meet the dreadful contingency of a terrorist attack by naming a suitable interim successor in advance is the most promising basis for forging the bipartisan consensus needed for quick action.

In no way would our proposal change the current system of special elections to fill vacancies. What is essential is the principle that the House must address its vulnerability promptly. Without awaiting constitutional change, the House can meet that need by changing its rules to provide for constitutional continuity.

*Thomas S. Foley, a former Democratic representative from Washington, was speaker of the House from 1989 to 1995. Newt Gingrich, a former Republican representative from Georgia, was House speaker from 1995 to 1999.*

