

## **CONGRESS GRAPPLING WITH LEGISLATION IN CASE OF OWN DEMISE**

By Frank Davies

*Knight Ridder Newspapers*

April 5, 2002

WASHINGTON - Members of Congress rarely grapple with issues of life and death, especially their own. But the threat of terrorism is forcing them to look for ways to ensure the continuity of government if they are wiped out.

In an age of "suitcase" nuclear devices, the "doomsday scenario" poses horrific questions: How would America's government function if Congress were destroyed? What would happen if many lawmakers were incapacitated, perhaps by a bioterrorist attack?

"This is an issue no one likes to deal with," said former Speaker of the House Newt Gingrich, R-Ga., who joined ex-Speaker Tom Foley, D-Wash., in urging Congress to do just that. "There's a growing realization that we have to have some system in case of a true catastrophe."

Before last year, such a calamity might have seemed like an absurd Tom Clancy plot. Then came the terrorist attacks on New York and Washington and the anthrax-laden mail that shut down Capitol Hill buildings for weeks.

Congressional leaders initially ignored questions of how to revive the legislature after a disastrous attack, citing more pressing issues. But that changed when the news leaked that the Bush administration is maintaining a "shadow government," rotating scores of officials to secure sites outside the city, because of the threat of nuclear terrorism.

"Congress was shaken by that, because it was clear there was genuine concern that a 'suitcase nuke' could wipe out much of official

Washington," said Norman Ornstein, an expert on Congress at the American Enterprise Institute, a conservative policy research center. He helped organize a group of scholars to advise on the issue.

By Friday, a majority of the House of Representatives - 218 members - had signed a letter to Speaker Dennis Hastert, R-Ill., and Minority Leader Richard Gephardt, D-Mo., urging them to appoint a panel of members to examine the issue and make recommendations in three months.

"Few things that come before us will have been more important," the letter says.

The threat of incapacitation lies mainly in the House. Governors could reconstitute the Senate quickly by making appointments to fill vacancies, as they do now. But the Constitution requires direct election to the "people's House," as its members like to call it. It takes 117 days to fill a vacancy on average, a recent study found. In a crisis, even an accelerated election process could take weeks, at a time when the nation might need emergency laws and expenditures.

House members suggest a number of possible solutions:

- Rep. Brian Baird, D-Wash., offers a constitutional amendment that would allow governors to appoint interim House members until special elections are held if 25 percent of the House were killed or incapacitated. Sen. Arlen Specter, R-Pa., has introduced a similar amendment, setting the threshold at 50 percent.

During the Cold War, the Senate passed an amendment three times giving governors the power to make temporary appointments to the House, but the House never passed it.

"Congress was like the person who puts off making a will, but we can't avoid this issue any

longer," said Baird, a psychologist. "Not to deal with it would be the height of irresponsibility."

- Republican Gingrich and Democrat Foley, antagonists while in Congress, said a constitutional amendment might be necessary, but that enacting one was a time-consuming process. One quick fix they favor is changing House rules to allow each member to designate an "interim successor" who could serve until a special election.

"It's a jury-rigged solution until something long-term can be worked out," Gingrich said. He said House members "embody the latest expression of the voter's will" in each district and would be better suited than the governor, who's often from a different party, to appoint a temporary successor.

"The fact that Tom Foley and I are working on this says to the country that this transcends politics," Gingrich said.

- The line of presidential succession, last changed in 1947, is also under scrutiny. If the president and vice president died, the House speaker and the senior member of the majority party in the Senate are next in line.

House Speaker Hastert is 60, but the senior majority-party senator is Robert Byrd, D-W.Va., who is 84. Last year it was Strom Thurmond, R-S.C., now 99.

This line of succession could make an elderly member of Congress, or one from a party different from the president, the next commander-in-chief. Several pending proposals would let the president designate top congressional leaders from his or her own party as potential successors.

- Legislators also are examining provisions for teleconferencing or electronic meetings if convening Congress becomes impossible, and various ways to determine that a member is

incapacitated and to declare his or her seat vacant.

Possible solutions provoke plenty of disagreement. Foley and Gingrich said their plan would pass constitutional muster because the House could make its own rules for membership. Others doubt that.

"I have difficulty believing the Supreme Court would support even temporary appointments," said Don Wolfensburger, a former House staffer who's now at the Woodrow Wilson International Center for Scholars, citing the constitutional requirement of direct election.

Not all House members see an urgent need to prepare for doomsday. After all, during the nation's gravest crisis, the Civil War, in the absence of Congress President Lincoln assumed emergency powers some regarded as extra-constitutional. When Congress returned, both houses largely ratified what he had done.

Rep. Barney Frank, D-Mass., said it was impossible to prepare for or predict every possibility. "It's something other people have to worry about after I'm dead," he told the Kansas City Star.

Rep. Ileana Ros-Lehtinen, R-Fla., sees no need for an emergency plan, except for "maybe speeding up special elections. These apocalyptic scenarios might make good Hollywood movies, but I don't think they will ever occur. It's certainly not worth changing the founders' very specific plan: Representatives are elected, not appointed."

Ros-Lehtinen said her colleagues were not spending any time thinking about whom they might designate as temporary successors. In the past, spouses and other relatives often have succeeded members who died in office.

"I don't think my daughters have eyes on this seat," she joked.