

PANEL: CONGRESS NEEDS CONTINUITY PLAN

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The newly created Continuity of Government Commission, a joint project of the American Enterprise Institute and the Brookings Institution, has given itself a sticky task: spurring members of Congress to more carefully consider the ramifications of their own demise.

The commission, which will hold its first meeting on Capitol Hill on Monday, will explore how the three branches of government could create safety nets strong enough to ensure their continuity if large numbers of their members were killed or injured in an attack on Washington.

"Last week we not only had the anniversary of September 11th, but we had these al Qaeda operatives say . . . that the fourth target, the target of United Flight 93, was the Capitol dome. This ought to be the mother of all wake-up calls," said congressional scholar Norman J. Ornstein, whom a commissioner called the "Paul Revere" of the issue. "It is just not acceptable to leave open the risk that we could be without representative institutions." According to Ornstein, who will serve as a senior counselor to the commission, the group hopes to create "a new level of public discourse and an impetus to get something done a year after it should have been done."

The most vexing questions surround how Congress would operate, though scholars say there are also unresolved issues regarding the line of presidential succession and the working of a diminished Supreme Court.

"My concern remains what it was on the night of September 11th. While we at least now understand the problems, all of those problems

still exist today," said Rep. Brian Baird (D-Wash.), an advocate of action on continuity issues who will testify before the group next week.

The bipartisan commission is being co-chaired by Lloyd Cutler, former White House counsel to President Bill Clinton, and former senator Alan K. Simpson (R-Wyo.). It also includes former House speakers Thomas Foley (D-Wash.) and Newt Gingrich (R-Ga.), and former Cabinet members Lynn Martin and Donna E. Shalala. Former presidents Jimmy Carter and Gerald Ford are serving as honorary co-chairs. Brookings's Thomas E. Mann also is a senior counselor.

"The problem is that there is a true hole in this Constitution and it needs plugging," Cutler said. "We want to lay something before the Congress so it can make a decision when it gets back in January."

The House is particularly problematic because, unlike the Senate, there is no provision allowing governors to appoint temporary replacements for missing members. The House must wait for the results of special elections to fill newly emptied seats.

"The senators could be replaced, some of them in a matter of hours," Simpson said. "But with 435 House districts, you could have everything from six days to six months before you had continuity of government."

Another problem lies in having a shrunken House that might be skewed in terms of party or geography. Or, if members live through the crisis but are incapacitated, the House might not be able to function because the Constitution mandates that a majority of members must be present to constitute a quorum and do business.

"What we would face as a country are decisions like the suspension of habeas corpus, a declaration of war or authorization of

military force, immediate emergency appropriations for disaster relief, new security measures -- the most sweeping and sensitive decisions you can imagine," Ornstein said. "Our choice is having this done by a wildly unrepresentative and tiny group of people, or having a period of benign -- we hope -- martial law until we can figure this out."

Several bills have been introduced to address continuity-of-government issues, and two House committees have held hearings. But much of the action has come from a bipartisan House task force headed by Rep. Christopher Cox (Calif.), chairman of the Republican Policy Committee, and Rep. Martin Frost (Tex.), chairman of the Democratic Caucus, which has held seven formal meetings since last fall.

Cox said next week the task force will bring a resolution to the floor "directed to governors and legislative leaders of the 50 states urging them to amend their election laws to accelerate special elections in the event of a national catastrophe."

The task force is also working on proposed amendments to House rules governing the definition of quorum rules, which could be adopted by the new Congress in January.

Making progress on the issue is difficult partly because many solutions involve amending the Constitution, which lawmakers are loath to do.

"It is extraordinarily difficult to achieve two-thirds consensus in both the House and the Senate on any subject . . . but especially in this case where it would upend centuries of precedent," Cox said.

Ornstein praised the task force but was impatient with the pace. "I'm not critical of the failure to enact a constitutional amendment in a year. I'm critical of the leadership for not starting the process of deliberating over this earlier," he said.

The next phase of the AEI-Brookings project will take up questions about the Presidential Succession Act, which "is 55 years old and needs a serious overhaul," Ornstein said. "Every person in the line of succession for the presidency is a Washington figure."

Making sure Congress can survive a catastrophe "is not an easy problem to solve," Foley said at a news conference yesterday. "But I think to say: 'There's too many problems; we shouldn't consider it,' is a very strange attitude to have today."