

TIME FOR 28TH AMENDMENT?

Editorial

Milwaukee Journal Sentinel

June 3, 2003

Two very different Washington veterans - one a longtime confidant of Democratic presidents, the other a crusty, savvy Wyoming Republican - have joined forces to confront an ominous but plausible question. What's more, they also have supplied a possible answer to the problem it highlights. What if United Airlines Flight 93 had reached its destination on Sept. 11, 2001? Flight 93 was the plane hijackers may well have hoped to crash into the Capitol building in Washington, D.C. Instead, it went down in a Pennsylvania field.

The likely result of such a decapitating attack would be not only national trauma, but government paralysis - an unnecessary paralysis, according to Lloyd Cutler, counsel to Presidents Carter and Clinton, and Alan Simpson, GOP senator from Wyoming between 1979 and 1997.

In the Senate, the 17th Amendment empowers governors to fill vacancies almost immediately by making temporary appointments. But no such mechanism exists for replacing members of the House, Cutler and Simpson note. Neither is there any constitutional mechanism to replace a senator or member of the House who has become incapacitated - injured, perhaps, in a terrorist attack.

A commission headed by Cutler and Simpson has recommended a potential solution - a 28th Amendment to the Constitution. It would enable Congress

to propose and pass legislation providing for the prompt, temporary appointment of replacements to fill vacancies in the House after a catastrophic attack. The law also would provide a way to temporarily fill seats in the House and Senate held by members who have become incapacitated.

These caretaker lawmakers would serve only until special elections could be held to choose permanent successors or until the incapacitated lawmakers recovered, died or concluded their terms of office. Exactly how these replacements would be chosen at the state level is something Congress would have to decide. But absent a constitutional amendment, Congress does not now have the power to choose any method to deal with the kind of mass murder that the age of terrorism has made possible.

Republicans and Democrats have deep differences, and they may well disagree about this proposal being promoted by Simpson and Cutler. But at a minimum, the issue is one that their friends on Capitol Hill ought to engage and debate.