

**THREATS AND RESPONSES:
CONGRESS; PANEL CALLS FOR
AMENDMENT TO FILL HOUSE
SEATS IN EMERGENCY**

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WASHINGTON – Congress should act swiftly to amend the Constitution so that House vacancies caused by a catastrophe or terrorist attack could be filled temporarily by appointment, a private bipartisan commission urged today.

While Senate vacancies can be filled by appointment, special elections are now the only constitutional way to fill House vacancies. But it takes an average of four months from the time a member is killed or incapacitated until an election can be held, warned the Continuity of Government Commission, which said an attack could easily kill or incapacitate so many members that the House would be unable to do business or to appear legitimate if it tried.

Lloyd N. Cutler, counsel to two Democratic presidents, Jimmy Carter and Bill Clinton, and a co-chairman of the commission, said that while the public might joke that there would be nothing wrong with a third of the House being killed, in fact, "we simply cannot exist without a functioning Congress."

The commission's report underscored the point, saying, "If anyone doubts the importance of Congress in times of crisis, it is helpful to recall that in the days after Sept. 11, Congress authorized the use of force in Afghanistan; appropriated funds for reconstruction of New York and for military preparations; and passed major legislation granting

additional investigative powers and improving transportation security."

"In a future emergency," it continued, "Congress might also be called upon to confirm a new vice president, to elect a speaker of the House who might become president of the United States, or to confirm Supreme Court justices for lifetime appointments. In the event of a disaster that debilitated Congress, the vacuum could be filled by unilateral executive action -- perhaps a benign form of martial law. The country might get by, but at a terrible cost to our democratic institutions."

Alan K. Simpson, a former Republican senator from Wyoming who is a co-chairman of the commission, said it was important for Congress to act quickly on an amendment. "This is serious business," Mr. Simpson said.

Mr. Cutler said, "We haven't got seven years," the usual time Congress sets for ratification of an amendment.

Thomas E. Mann of the Brookings Institution, a senior counselor to the commission, said Congress should propose an amendment to the states by Sept. 11, 2003, and see it ratified in less than two years.

To do so, said Norman J. Ornstein of the American Enterprise Institute, another counselor to the commission, "we need leadership" in Congress.

The commission neither proposed specific language for an amendment nor chose a method for temporary appointments. It said that Congress should draft a concise amendment and grant "Congress the power within certain

broad limits to legislate provisions for temporary appointments to fill vacancies."

The commission suggested three possible ways to make temporary appointments: having governors make them, having members designate in advance who would replace them, or having governors choose from a short list of replacements prepared by members. Any of these methods, the report said, would allow appointments to come swiftly.

The report acknowledged that many House members would resist any method that altered its democratic, entirely elected character. But Mr. Cutler contended, in response to a question, that the "height of anti-democratic government would be to leave it to 5 or 7 or 25" surviving representatives to act as if they were the whole House.

The commission was unanimous in its conclusions. The other members were Philip Chase Bobbitt, a University of Texas law professor who served under Presidents Carter and Clinton; Kenneth M. Duberstein, a Washington lobbyist and former chief of staff for President Ronald Reagan; Thomas S. Foley, former speaker of the House; Charles Fried, a Harvard Law School professor and former solicitor general of the United States.

The commission also includes Newt Gingrich, former speaker of the House; Jamie S. Gorelick, vice chairwoman of Fannie Mae and former deputy attorney general; Nicholas deB. Katzenbach, former attorney general and deputy secretary of state; Lynn Martin, an adviser to the accounting firm Deloitte &

Touche, and a former secretary of labor and United States representative from Illinois; Kweisi Mfume, president of the N.A.A.C.P. and a former congressman from Maryland; Robert H. Michel, former House minority leader; Leon E. Panetta, a former congressman, director of the Office of Management and Budget and White House chief of staff under Mr. Clinton; and Donna E. Shalala, president of the University of Miami and secretary of health and human services in the Clinton administration.