

JUDICIARY KEY TO CONTINUITY PLAN

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Roll Call

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Even as they hoped the release of their much-anticipated report would incite Congress to pass a constitutional amendment to preserve the institution in the event of calamity, members of the Continuity of Government Commission said the largest roadblock to their plan is likely to be the House Judiciary Committee.

"I think personally the biggest challenge in the House will be the Judiciary Committee," said co-chairman and former Sen. Alan Simpson (R-Wyo.).

Sen. John Cornyn (R-Texas), who chairs the chamber's Judiciary subcommittee on the Constitution, announced that he would hold hearings later this year to look at an amendment.

"We are hopeful but we have no commitment yet from the House Judiciary Committee" on hearings, American Enterprise Institute scholar and Roll Call contributing writer Norman Ornstein said at a press conference Wednesday announcing the report's release.

"The chairman is open to considering legislation on this issue, but I think there are a lot of Members that have serious concerns about amending the Constitution," Jeff Lungren, spokesman for House Judiciary Chairman Jim Sensenbrenner (R-Wis.), said. "There's other ways of addressing the issue.

"One of the things is that House

Members have always been elected by the people. It's a point of pride for House Members and is a tradition that you would not change without careful deliberate consideration," Lungren added.

Although neither chamber has yet taken comprehensive steps toward fixing the biggest gap in ensuring the federal government could continue to function if there was an attack on Washington – a constitutionally legitimate way to replenish the House if large numbers of Members were killed or incapacitated – House Members in particular have been reticent about fundamentally altering the way they come to represent their districts.

The 17th Amendment gives state governors appointment powers to fill Senate vacancies, but House Members have always been directly elected.

"You talk to a House Member and they say, 'Since the birth of the nation we've been the people's House ... and that has to be,'" Simpson said, adding that such a posture was all well and good except for the fact that doing nothing would leave open the remote, but very real, possibility that only a handful of House Members might survive a terrorist attack and proceed to make decisions by decree. "I don't think they think much of that in Salt Lake or San Francisco.

"This is serious business. It's a pretty grave step to go to a constitutional amendment," the former Wyoming Senator added. "[But] we're going at it in a way that should not offend Congress. And we all know how sensitive they are."

Simpson emphasized that any scheme that allowed for appointments to the House, whether by a governor, via a succession list individual Members would create, or some combination thereof, would be temporary and only intended to give the chamber legitimacy until special elections could be held.

Last year a committee headed by Reps. Christopher Cox (R-Calif.) and Martin Frost (D-Texas) drafted and saw passed a nonbinding resolution encouraging the states to redraft their election laws to ensure swift special elections. But even if all of the states obliged, the 60 to 90 days a special election requires could still provide what many deem a too lengthy period without a fully functional House.

After months of study and collaboration with constitutional scholars, former Members of Congress and Cabinet officials, the continuity report recommends a concise constitutional amendment giving Congress the authority to pass legislation for temporary appointments to fill vacancies due to death or incapacitation (the latter provision also affects the Senate, as there are currently no provisions to fill vacancies there except after death).

Put together by AEI in collaboration with the Brookings Institution and co-chaired by Simpson and former presidential counsel Lloyd Cutler, the report includes proposed constitutional amendments dealing with these issues going back to 1954. The report also recommends that the amendment adhere to general principles: It should allow temporary replacements to be made immediately by

governors or a succession list drawn up by Members, the language should be concise; and replacements for incapacitated Members should stand in only during recovery time.

"Just to be clear, we haven't proposed specific text of an amendment," commission executive director John Fortier noted.

But the question looming large at the press conference was undoubtedly what Congress would do with the commission's work.

Rules Chairman David Dreier (R-Calif.) held a hearing Wednesday on creating a bicameral committee to address continuity of Congress.

And the House Judiciary Committee held hearings on a proposed constitutional amendment last year.

"We did the hearing last year. I would say that the committee is looking at the issues," Lungren said, adding that just because there hasn't been visible action doesn't mean the committee isn't still actively working. "We're just not any further along in the [hearing] process at this point."

House Administration Chairman Bob Ney (R-Ohio), who held hearings on continuity of Congress last year, said he hasn't yet talked to Sensenbrenner or Dreier about the report or what they plan to do. "We haven't talked yet, but we will."

As for the constitutional amendment itself, Ney said he generally supports the idea, as long as it's done with a "common-sense approach." He said he

sympathized with the notion that Members have always been directly elected, but his tenure chairing the panel overseeing the chamber's operations has made him aware of just what kind of chaos would ensue if the body were to lose a substantial portion of its Members.

Asked if there was the political will to deal conclusively with the issue this year, Ney said: "I think there has to be." But he added that "leadership has got to let it jaw out among Members who are interested in it" before that can go forward.

Former Rep. Lynn Martin (R-Ill.), who served on the commission, said as a former Member she understood the inclination toward "a quick fix" and then getting back to "what's really important," but that she herself reluctantly came to the conclusion that a constitutional amendment was the only way to go. "This is not a perfect solution, but it is truly the best," she said.

And like others, she expressed an understanding that Members don't want to discuss their own "death and dismemberment."

But Rep. Brian Baird (D-Wash.) who has focused on this issue since Sept. 11, 2001, said Members can't have an attitude of "blase fatalism," believing that it's only their lives that are at stake.

He added that he hopes Speaker Dennis Hastert (R-Ill.) "will recognize the gravity of this and the urgency. There is nothing preventing us except will from gathering together a select group of Members of the House and Senate" to address the issue by the

summer, he said. "Those who are in a position of responsibility, who could act on this need to make sure we do."