

CONGRESS SHOULD ACT ON SUCCESSION

Editorial

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A Tom Clancy doomsday scenario nearly came true on 9/11. Now, almost 21 months later, a study commission is recommending a constitutional remedy should such a thing happen in the future.

In the 1994 Clancy book, "Debt of Honor," and its 1996 sequel, "Executive Orders," the president, most of the Cabinet and most members of Congress are killed when a jumbo jet hits the Capitol during a presidential address to a joint session. That's awfully close to what might have happened on Sept. 11, 2001, when hijackers – thankfully thwarted by courageous passengers -- tried to take United Airlines flight 93 back to Washington to crash into the Capitol or the White House.

Because that portion of the 9/11 attacks didn't succeed, most official attention was directed elsewhere in the aftermath. But it did raise the question of how Congress could be reconstituted for business if most of its members were killed at one time.

The law provides for presidential succession. And governors have the power to fill Senate vacancies quickly by appointment. But members of the House of Representatives cannot be appointed; vacancies can be filled only by special elections, a process that takes weeks or months to complete. A functioning Congress is a necessity, not a luxury, in a time of grave emergency because only Congress can appropriate money and pass emergency laws.

"We simply cannot exist without a functioning Congress," says Lloyd Cutler, who was White House counsel to Presidents Carter and Clinton. Cutler is co-chairman of the Continuity of Government Commission, which was created by two politically oriented Washington think tanks, the American Enterprise Institute and the Brookings Institution.

This week, the commission -- which was carefully balanced between Republicans and Democrats -- unanimously recommended that a constitutional amendment be passed allowing governors to replace members of Congress immediately if a large number of vacancies occurred at once.

The commission didn't offer specific proposals for how such an amendment would be worded. Instead, it suggested that representatives could designate their successors in advance or that they could provide a list of potential replacements from which their governors could choose.

Former Sen. Alan Simpson, R-Wyo., who is the commission's other co-chairman, said it was important that Congress act quickly in proposing a constitutional amendment for ratification by the states. Three-fourths of the state legislatures must approve an amendment proposed by Congress before it can take effect. "This is serious business," Simpson said.

Oddly, Congress has shown little interest in the subject since the terrorist attacks. A constitutional amendment accomplishing much of what the commission is recommending was

introduced in the last session, but it never got a committee hearing or vote. A judiciary subcommittee in the Senate is expected to hold a hearing on the issue sometime this year, but the House hasn't scheduled any meetings.

"We know the violence that was done on Sept. 11, and we know the bullet, literally that we dodged on Capitol Hill," said Norman Ornstein, a senior counselor to the commission and an American Enterprise Institute scholar. Both he and Simpson emphasized the need for speedy action. Even a noncontroversial constitutional amendment can take two years or more to be ratified.

Some members of Congress apparently are reluctant to entertain the idea of having appointed representatives, even on a temporary basis. But the commission said the alternative of having only a small minority of the House making decisions that affect the entire nation wasn't any better. Cutler said the "height of anti-democratic government would be to leave it to five or seven or 25" surviving representatives to act as the entire House.

Precisely. It's time that Congress stepped back from its usual partisan agendas and headed off a potential emergency before it occurs. To do otherwise would be dereliction of duty.

Certainly, it has had fair warning.