

CONGRESSIONAL CONTINUITY AT RISK

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Congress must pass a constitutional amendment allowing for immediate and temporary appointments to the U.S. House of Representatives in the event of a major terrorist attack on the body, a report from a commission sponsored by two influential Washington think tanks stated.

Alan Simpson, co-chairman of the commission and a former U.S. senator, said that the events of Sept. 11, 2001, have shown holes in the U.S. Constitution regarding the death or incapacitation of many members of Congress at one time.

"The Senate can be back in session within 24 to 48 hours, that is not the problem in the Constitution," Simpson, R-Wyo., said Wednesday at a briefing on the report at the conservative American Enterprise Institute.

"The problem is in the House," he said.

AEI and the liberal-leaning Brookings Institution jointly sponsored the bipartisan Continuity of Government Commission. The body was charged with examining the process of succession and capacity prospects in the aftermath of a catastrophic attack on each of the three major branches of the federal government.

Lloyd Cutler, former counsel to presidents Bill Clinton and Jimmy Carter, is co-chairman of the commission. The 15 members of the body included Kenneth Duberstein,

former chief of staff to President Ronald Reagan; Donna Shalala, former secretary of Health and Human Services in the Clinton administration; Lynn Martin, Secretary of Labor under President George H.W. Bush; and Thomas Foley, D-Wash., former representative and speaker of the House.

The commission recommended that a concise constitutional amendment be adopted that gives the body the mandate to make temporary appointments for the vacancies that result from a catastrophic attack. They argue that such a move would ensure Congress could continue to legislate if too many members were incapacitated.

Although the 17th Amendment to the Constitution provides for temporary appointments to the Senate in the event of a member's death, the document decrees that members of the House be replaced through a special election. That process could take several months, leaving the body unable to fulfill its constitutional duties during a time of national emergency.

"We simply can not exist without a functioning Congress," Culter said at the briefing.

Despite being largely leery of promoting a change to the constitution, the commission members decided the best course of action available was an amendment that would allow for the appointment of new members. Congress could decide exactly how such a task would be accomplished by legislative action following approval of the amendment by three-quarters of the state legislatures.

In addition, the report called on Congress to clarify the quorum requirement for voting. House and Senate rules allow for each body to vote if a majority of the living members are present but this interpretation is inconsistent with constitutional requirement for a majority of the entire body.

Norman Ornstein, a resident scholar at AEI and senior counselor to the commission, said that the possibility of an attack with a chemical, radiological, or even nuclear weapons, although small, is real and must be addressed.

"What used to be the stuff of a Tom Clancy novel is the stuff that we have to now deal with," Ornstein said at the briefing. "In the event of some awful catastrophe, we need to continue to have the force of our Constitution intact."

Although the proposal has bipartisan support and some interest on Capitol Hill, it is not without critics. John Samples, director of the center for representative government at the libertarian Cato Institute, said that such an amendment is not needed. Not only are the odds of such an attack minute, but appointing replacement representative is unlikely to do any good following such a major terror strike on the legislative branch.

"It has always seemed like a great deal (of fuss) about very little," Samples told United Press International. "It seems very small compared to the problem of executive succession."

Samples added that legitimacy problems would plague a House of Representatives with appointed members

and that voters would likely dump those appointed as soon as elections were conducted.

"I think we ought to be more concerned about democratic legitimacy than this kind of proposal suggests," he said.

Michael Horowitz, a senior fellow at the conservative Hudson Institute said that we have to think about balancing the country's needs should such an attack occur, even if it is unlikely to happen, so we will emerge securely as a nation. Horowitz added that academic or philosophical-based opposition to the idea is overwhelmed by the need to have a reasonable solution in place as quickly as possible.

"This is a bipartisan initiative that makes all of the sense in the world," Horowitz told UPI. "It is impudent not to make contingency plans for a disaster and the people who have done so are to be commended."

However, Samples said the whole idea reflects the political establishment in Washington musing about itself and ignores the reality of what happened in the aftermath of 9-11. He proposed that instead of appointing replacements, Congress stay out of session until there were election -- likely only a month or two --because it is unlikely to be an effective governmental body in such a situation.

"Even if you appointed people immediately, it would not do much good," he said. "I don't think it would change the results in the end. Congress would be in some sense subordinated to the executive (branch) for some period.

That is pretty much what happened after Sept. 11."

The future of the proposal remains uncertain at this time. Despite some interest in the issue from Congress, many on the Hill remain opposed to the idea of a constitutional amendment, including House Judiciary Committee Chairman James Sensenbrenner, R-Wis., whose committee would oversee any legislation on the issue.

Preliminary discussions are under way between the House Rules Committee, Judiciary Committee and Administration Committee about the prospect of legislation mandating special elections 21 days after an attack. In addition, efforts are underway to create a joint House-Senate committee to review congressional procedures.

Senate Majority Leader Bill Frist, R-Tenn., was briefed on the proposal by commission members on Wednesday. A spokesman for Frist told UPI that the senator thinks that the continuity of Congress following a terror attack is an important issue but that it is not currently on the legislative front burner.

Nevertheless, proponents of the move believe that it has a good chance of becoming law. Although previous attempts to amend the Constitution in a similar fashion during the Cold War failed, they believe the mandate for change has grown in the aftermath of Sept. 11.

"I would say the interest has been growing," Thomas Mann, a senior fellow in governance studies at Brookings and a senior counselor to the commission, told

UPI at the briefing. "I actually believe there is a good chance of Congress taking this up in a very timely manner."

Horowitz agreed that the political will for such an amendment is present in a way not seen in the past.

"It is now not just some hypothetical scenario that we are doing just to tidy up a gap in the law," he said. "It is a real prospect that we have to contend with on a day-to-day basis."