

CONSTITUTIONAL AMENDMENT COULD KEEP CONGRESS IN ACTION

By Bruce Kauffmann
The Oregonian
September 7, 2003

In the past 212 years, only 27 amendments have been added to the Constitution, including the original 10, the Bill of Rights. Those of you wondering what might make an appropriate 28th, let me suggest you first recall (as if you could forget) the events of this week in 2001.

First the World Trade Center and the Pentagon were hit by hijacked airplanes piloted by al-Qaida terrorists. In the skies over Pennsylvania a fourth hijacked plane was apparently headed for Washington, D.C. But that plane was 40 minutes late taking off, allowing its passengers to learn via cell phone calls from loved ones that they too were being hijacked.

They fought the terrorists for control of the plane and it crashed in Pennsylvania instead of what is now believed to be its intended target -- the U.S. Capitol building where Congress sits.

Which raises the question: Had the terrorists in the last plane successfully crashed into Congress, how many of our nation's lawmakers would have died? And, had a considerable number of them perished, how would the government run?

It's not a theoretical question. When U.S. senators die or are incapacitated, the governor of their home state can replace them by special appointment. But the Constitution allows members of the House of Representatives to be replaced only through special elections, something that would take many months

to organize in the chaotic wake of a successful terrorist attack on Congress.

In the meantime, the House could well lack a quorum, which the Constitution states is a prerequisite before it can conduct official business.

As things stand today, 218 of the 435 members of the House are needed for a quorum. Whether a direct hit on the Capitol building would have killed that many is anybody's guess. Had that happened, from a constitutional standpoint Congress would be unable to make laws, including declaring war or passing spending bills designed to fund war-making or counterterrorist activities.

Granted, either the Senate, or more probably the White House, would assume some emergency powers to deal with such a crisis. But in addition to being unconstitutional it might well smack of being dictatorial and invite some kind of intergovernmental-branch power struggle.

Which brings us to the idea of a 28th Constitutional Amendment, something many legal experts, most prominently Norman Ornstein of the American Enterprise Institute, are advocating. Ornstein favors a simple amendment that grants Congress, regardless of quorum, the authority to establish guidelines for selecting temporary members in an emergency.

Something to think about given that, if at first they don't succeed, al-Qaida's members have been known to try, try again.