

PANEL PROPOSES PLUGGING 'HOLE' IN CONSTITUTION

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WASHINGTON – Amending the Constitution may be the only way to provide for the event of a catastrophically reduced House of Representatives, according to representatives of a blue-ribbon panel based in Washington, DC.

There is "a true hole in the Constitution, and it needs plugging," stated Lloyd Cutler, co-chair of the Continuity of Government Commission, a joint project of the American Enterprise Institute and Brookings Institution. The commission declares as its purpose to "study and make recommendations for the continuation of our government institutions in the event of a catastrophic attack."

The project, whose honorary co-chairs are former Presidents Jimmy Carter and Gerald Ford, plans to issue a report of findings and recommendations in January, 2003, according to commission participants at an introductory press conference in Washington last week.

Sept. 11, 2001 was "the mother of all wake-up calls" for addressing the possibility of a suddenly much-reduced Congressional roll, said Norman J. Ornstein, a resident scholar at the American Enterprise Institute and a senior counselor to the commission.

"The problem, in a nutshell," Cutler said, "is that the necessary quorum for the House of Representatives to do business is prescribed in the Constitution." The

Constitution provides specifically that a quorum requires the presence of a majority of elected House members.

In the event that a catastrophe suddenly reduced the House membership by more than half, commission representatives said, the U.S. government would be unable to conduct essential business at a most critical time. The mechanism now in place for filling House vacancies is the special election- which takes four months on average, the commission says.

While pledging to consider a full range of possible remedies, and while acknowledging the political challenges to altering the Constitution, the commission's representatives returned repeatedly to the constitutional amendment as likely the best alternative.

"It seems as if a constitutional amendment is the only way to solve the problem," said Thomas Mann, a senior fellow at the Brookings Institution and the commission's other senior counselor. Ornstein, too, described an amendment as "[t]he only way" we can resolve the issue.

The Senate does not face such a problem, Cutler noted, thanks to the 17th amendment, which provides that a governor may appoint a temporary senator in case of a vacancy. But "there is no comparable provision on the House side," he said.

There are initiatives in that direction, however. Proposed constitutional amendments to address the House situation already have come from Rep. Brian Baird (D-Wash.), Sen. Arlen Specter (R-Pa.), and Rep. Zoe Lofgren

(D-Calif.). The Baird and Specter proposals would give governors the power to make temporary appointments to the House. The Lofgren proposal would let Congress make provisions for temporary appointments.

Still, commission representatives depicted the constitutional amendment approach as an uphill battle. There are those members of Congress who think that amending the Constitution should be "avoided at all costs," Mann said. Moreover, House members are very wary of proposals - such as filling vacancies by appointment - that would change the House's historical status as a body chosen strictly by election, commission members noted.

For the commission, too, recognizing the likely necessity of a constitutional amendment was "a reluctant conclusion," but one necessitated by circumstances, Ornstein said. There are precedents for fixing this kind of constitutional "hole," he said, for instance with the passage of the 25th amendment that allowed for the filling of a vacancy in the vice presidency.

Time is of the essence, commission representatives emphasized. "As unpleasant as the subject is, and as much as we'd like to push it under the rug, this is something we can't avoid facing," said Mann.

Although the most recent amendments to the Constitution have allowed state legislatures up to seven years to ratify amendments proposed by Congress, the country does not have that luxury of time now, Cutler said. "We have to get this done in one year," or in one cycle of state legislatures, he said.

If a constitutional amendment is the chosen course, Ornstein said, the top priority will be for Congress to come to a decision quickly on the nature of the amendment so that the state ratification process can begin.

Should Congress so act, said Mann, "I have no doubt that the visibility and sense of urgency [surrounding the issue] will lead the states to ratify on a timely basis."

To facilitate the process, the commission has staked out for itself the role of studying alternative solutions short of an amendment, as well as grappling with the implications of different amendment proposals. There is, Ornstein noted, "a whole series of extremely difficult issues" involved in designing a satisfactory amendment, such as defining the circumstances under which it takes effect. "Figuring out how you trigger this is tricky," he said.

The commission's goal is to offer a "bipartisan" judgment to Congress on "what it should consider" as a solution, noted Tom Foley, former speaker of the House and a commission member. "We think this commission can do a lot" simply by reviewing the alternative solutions, Foley said.

In addition to the question of how to replace large numbers of suddenly deceased House members, the commission will ponder the potentially stickier issue of mass incapacitation. Should the Sept. 11 terrorists have succeeded in assaulting the Capitol, Ornstein said, "the most likely scenario" would have been to place many members of Congress "in burn units for months." "[N]either the House nor the

Senate has adequate procedures for dealing with large numbers of incapacitated members, who cannot be replaced by appointment or special election," a commission document states.

The commission was assembled not to bury Congress, but to preserve it. "We love Congress," and want to be sure it is able to function in a crisis, Ornstein said. The commission is offering some "tough love" regarding the realities of Congressional self-preservation: "It's time to get a will" in case something happens to you.

Pool reports are the news items reporters write to inform one another when logistics restrict the number of reporters who can attend an event. For example, only a handful of print reporters can travel on Air Force One, and they are obliged to inform their excluded colleagues of what happened on board. The same applies to radio and television reporters.