

Statement of

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Hearing on

Continuity of Congress in the Wake of a Catastrophic Attack

Before the

Subcommittee on the Constitution, Civil Rights and Civil Liberties

House of Representatives

July 23, 2009

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Mr. Chairman, Ranking Member Sensenbrenner, and Members of the committee: Thank you for the opportunity to appear before you today.

You have asked me to provide an overview of issues related to the continuity of Congress in the wake of a catastrophic attack. This is an issue of broad interest to Congress. At the center of Washington DC, the Capitol is the seat of government; it houses the Congress; it is a national symbol of unity, an internationally recognized icon of American government and American values, and a popular tourist attraction for people from across the United States and around the world. As demonstrated by the September 11, 2001 attacks, in which the Capitol was subsequently reported to have been one of the potential targets of the hijackers aboard United Airlines flight 93<sup>1</sup> (brought down in Pennsylvania by its passengers), it is also a potential target of high symbolic and strategic value to adversaries of the United States government.

At an institutional level, a catastrophic attack on Congress has the potential to disrupt government at the very time critical government decision making and resources could be needed to respond to the incident. A successful attack on the Capitol that is not followed by a competent, expeditious effort to reconvene Congress could have significant effects on the government's ability to carry out its constitutional responsibilities. Nationally and internationally, the morale of the American public, as well as U.S. allies and adversaries could be affected. These effects could have profound implications for the manner in which the United States responds to an attack. The nature of congressional recovery could also signal an adversary whether to initiate or abandon follow-on attacks.

Today, I will do four things:

- provide some background on congressional continuity planning;
- discuss actions taken by Congress related to continuity of congressional representation since 2001;
- review the post 9/11 era arguments for a constitutional amendment and their similarities to concerns raised in the early years of the Cold War; and
- offer some concluding thoughts.

## **Background**

Planning to ensure the continuity of Congress incorporates a number of related areas of effort.

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<sup>1</sup> National Commission On Terrorist Attacks On The United States, *The 9/11 Commission Report*, (Washington: GPO, 2007), pp. 155, 492; and Daniel Rubin, "Capitol was Flight 93 Target, Arab TV Reports," *Pittsburgh Post Gazette*, September 9, 2002, p. A7.

Of particular interest in today's hearing, and where I will focus my remarks, is the continuity of congressional representation. In the event of a successful attack or other interruption, these plans might be deployed to reconstitute the chambers if an attack kills or incapacitates a significant number of Members. Other congressional continuity and preparedness concerns include the following: (1) assuring the continuity of congressional operations; (2) assuring the continuity and endurance of constitutional government; and (3) emergency preparedness planning.

- *Assuring the continuity of congressional operations.* Members of Congress are supported in their efforts by a vast network of staff, technologies, and organizations in the legislative branch. If Congress is to withstand a catastrophic incident and resume its activities in a timely manner, it may be necessary to have plans to reestablish those resources if they are disrupted, and to ensure that existing plans are operational.
- *Assuring the continuity and endurance of constitutional government.* In a governing system characterized by the separation of powers, some argue that it is imperative to ensure congressional recovery following an attack to maintain the balance between Congress, the President and the executive branch. Current executive branch continuity policy identifies “ensuring the continued functioning of government under the Constitution, including the functioning of the three separate branches of government” as a national essential function of its continuity planning effort. The presidential directive<sup>2</sup> states “that each branch of the federal government is responsible for its own continuity programs,” and requires an official designated by the Chief of Staff to the President to “ensure that the executive branch’s [continuity] policies ... are appropriately coordinated with those of the legislative and judicial branches in order to ensure interoperability and allocate national assets efficiently to maintain a functioning federal government.” The legislative branch and the federal judiciary maintain continuity programs consonant with their positions as coequal branches of government.
- *Emergency preparedness planning.* For Congress, emergency preparedness planning includes activity in Washington and congressional field offices to develop and maintain immediate response plans to emergency situations, which might include fires, natural disasters, technology failures, power interruptions, civil disturbances, or an attack. The scope of preparedness efforts may be scalable, encompassing responses that might affect one or two offices, or incidents that could threaten the entire legislative branch of government. Plans could include delineating evacuation routes, drafting alert and notification protocols, acquiring supplies and equipment to shelter in place, or creating exercises and drills to ensure that the plans work as intended.

In its current iteration, efforts to ensure that Congress can continue to carry out its constitutional responsibilities have been in place since at least September 2000. Administrative planning by congressional officials began pursuant to a directive issued by House and Senate majority and minority leaders that directed the Capitol Police Board – comprising the Sergeants at Arms of the House and Senate and the Architect of the Capitol – to “develop and manage” a “comprehensive Legislative Branch emergency preparedness plan.” To facilitate this effort, the board was to work

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<sup>2</sup> National Security Presidential Directive (NSPD) 51, which is also identified as Homeland Security Presidential Directive (HSPD) 20 (NSPD 51/HSPD 20), *National Continuity Policy*, issued by President George W. Bush, May 9, 2007. See CRS Report RS22674, *National Continuity Policy: A Brief Overview*, by R. Eric Petersen.

“with the Attending Physician and the Chief, US Capitol Police, and in coordination with the Officers of the Senate and House” in developing “an integrated architecture which will address all hazards which could impede the continuity of essential Legislative Branch functions.” According to the directive, this integrated architecture was to include “at a minimum, emergency preparations, response, mitigation and stabilization activities, and recovery operations.”<sup>3</sup>

### **Continuity of Congressional Representation**

While the operational and administrative side of congressional continuity planning is ongoing, questions remain for some concerning the continuity of congressional representation. Much of the focus on the continuity of Congress since 2001 has been on filling large numbers of vacant seats in the House or Senate, or addressing concerns related to incapacitated or missing Members. In instances of death or incapacitation, current congressional practices appear to be based on a membership disruption of one Member at a time, and do not address the potential implications of mass congressional casualties, or the perceived need to quickly reconvene Congress after an incident so it can continue to carry out its constitutional responsibilities.

The House and Senate have longstanding procedures regarding the death of an individual Member. House vacancies are addressed in the Constitution in Article I, Section 2, paragraph 4, which requires states to issue a writ of election to fill vacancies. Procedures governing vacancies in the Senate were initially established by Article I, Section 3, as later amended by paragraph 2 of the 17<sup>th</sup> Amendment, which provides state legislatures with the authority to grant temporary appointment authority to governors until an election can be held. Consequently, in the House, the existence of a vacancy is communicated to the appropriate state, and a special election to fill the seat is held pursuant to state law. The laws of most states authorize governors to make temporary appointments to the Senate, with the exceptions of Connecticut, Massachusetts, Oregon, and Wisconsin, where the governors are not permitted to make interim appointments. Any Senate vacancy from those states must be filled by special election.

Issues related to Members who are missing or incapacitated, affect both chambers, but concerns related to mass vacancies in membership appear to fall more heavily on the House, because of the constitutional requirement that its Members be selected only by election. As a consequence, questions have been raised about the ability of the House to meet constitutionally mandated quorum requirements to conduct business after an incident in which a sizable number of Members have been killed, injured, or go missing.

Where procedures regarding the death of a Member of Congress are well established, matters related to the capacity or availability of a Member to serve have been addressed by the House and Senate only on a case by case basis.

Following the September 2001 attacks and receipt of anthrax-laden mail by media and political figures – including Members of Congress – concerns were raised about the potential loss or

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<sup>3</sup> Quotes taken from Trent Lott, (then Senate Majority Leader), J. Dennis Hastert, (then Speaker of the House), Thomas A. Daschle, (then Senate Minority Leader), and Richard A. Gephardt, (then House Minority Leader), “Directive to the United States Capitol Police Board.” September 6, 2000.

incapacitation of large numbers of Members. Broadly, two approaches were advanced: Some argued that it was necessary to change chamber rules and enact new procedures governing special elections in the House; others believed that a solution to the challenges of continuity of congressional representation might only have a solution through amendment of the Constitution.

### **Congressional Actions Since 2001**

During the 109<sup>th</sup> Congress (2005-2006), Congress took two actions that addressed the issue of continuity of congressional representation. In the first instance, the House adopted rules to establish a provisional quorum after catastrophic circumstances,<sup>4</sup> formally codifying a House practice dating to 1906 that “a quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.”<sup>5</sup> Under the rule, the Speaker or Speaker pro tempore now typically announces a revised whole number of the House in light of changes in the membership of the House.

Legislation was also enacted during the 109<sup>th</sup> Congress to require states to hold special House elections when extraordinary circumstances cause mass vacancies in the House. The act, codified at 2 U.S.C. 8(b), authorizes the Speaker of the House to declare that extraordinary circumstances exist when vacancies in the chamber exceed 100 seats. States in which a vacancy exists in its House representation are then required to hold a special election within 49 days, subject to some exceptions. States are required to make a determination of the candidates who will run in the special election not later than 10 days after the Speaker’s vacancy announcement. This can be done by the political parties authorized by state law to nominate candidates, or by any other method the state considers appropriate. The states are also to ensure, to the greatest extent practicable, that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters not later than 15 days after the Speaker announces that the vacancy exists. Valid ballots or other election material from an absent uniformed services voter or an overseas voter, are to be accepted and processed as long as the ballot or other materials are received by the appropriate state election official not later than 45 days after the state transmits the ballot to the voter. In addition, the statute sets forth requirements for judicial review of any action brought for declaratory or injunctive relief to challenge a vacancy announcement, and requires the judiciary to provide a final decision within three days of the filing of such an action. The law makes a final decision non-reviewable.<sup>6</sup>

During its consideration, election officials raised a number of election administration questions about the nature of special elections held under emergency circumstances.<sup>7</sup> Some critics of the

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<sup>4</sup> House Rule XX, Cl. 5(c).

<sup>5</sup> House Rule XX, Cl. 5(c) (7) (B). See U.S. Congress, House, *Hind’s Precedents of the House of Representatives of the United States*, vol. IV (Washington: GPO, 1907), p. 64.

<sup>6</sup> See U.S. Congress, House, *Continuity in Representation Act of 2005, Report to accompany H.R. 841*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 109-8, Part I (Washington: GPO, 2005); and U.S. Congress, House, *Report to accompany H.R. 2985*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 109-139 (Washington: GPO, 2005).

<sup>7</sup> Concern was expressed that a 45-day period, as then was proposed, could affect the quality of the administration of a special election, and could raise questions about how effectively all potential voters (including overseas and military voters in particular) could participate. Other concerns included relatively short campaigns that could leave citizens unable to make reasoned, informed decisions about candidates and issues. For example, a more compressed campaign could put candidates who are not as well funded or as well known at a comparative disadvantage. See

statutory approach argued that holding special elections to seat new Representatives up to seven weeks after an announcement of extraordinary circumstances could deprive the nation of a functional, broadly representative legislative response at what would likely be a time of great national challenge.<sup>8</sup> In addition to those potential challenges, the measure did not address how special congressional elections might occur in the specified time frame if a number of states were attacked, or if a natural occurrence caused widespread damage or necessitated quarantine measures.

Proponents of a combination of rules changes and statutory efforts related to the continuity of congressional representation have attempted to enable the House to withstand a range of interruptions that could kill or incapacitate large numbers of Members, while supporting the principle that membership in the chamber is gained only through election by the people. Those who supported the adjustment of the quorum and enactment of a law requiring special elections in extraordinary circumstances believe those provisions afford the House sufficient institutional protections.

Those who oppose current House practices regarding provisional quorum procedures argue that those protections may not be sufficient, and could raise constitutional objections. They argue that contrary to recent rule changes that reflect longstanding House practice, quorum requirements are properly based on the number of seats in either chamber, and not on the number of Members present to conduct business. Article I, Section 5, Clause 1 of the Constitution states, in part, that "... a majority of each [chamber] shall constitute a Quorum to do Business ...," but does not specify whether the majority is based on the number of living Members or the number of seats authorized for the chamber. Some of the same concerns arise regarding the Senate, which in 1864 resolved that a quorum in that chamber consists of a majority of the Senators duly chosen. In 1877, the Senate revised its rules, providing that a quorum should consist of a majority of Senators "duly chosen and sworn."<sup>9</sup> Under current law and practice, most vacant Senate seats could be replenished in a relatively brief period through appointments<sup>10</sup> (assuming state-based authorities were available to make such appointments). If a sufficient number of Senators survive but are incapacitated, or if their whereabouts are unknown, there are concerns that the Senate may not be able to conduct business because of a lack of quorum. As a consequence, some observers argue that the policies adopted or enacted since 2001 may not provide adequate protection against a sudden loss of membership in either chamber, and may raise constitutional and implementation concerns. They believe that these concerns can only be

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individual testimony, prepared statements and written submissions of Thad Hall, Doug R. Lewis, Cory G. Fong, and Curtis Gans, in U.S. Congress, Senate, Committee on the Judiciary, hearing on *Ensuring the Continuity of the United States Government: The Congress*, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 9, 2003 (Washington: GPO, 2003), pp. 22-24, 26-41, 86-100.

<sup>8</sup> Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress Is Failing America and How to Get It Back on Track* (Oxford: Oxford University Press, 2006), pp. 200-207; and Avi Klein, "Death Wish," *The Washington Monthly*, Nov 2006, pp. 19-22.

<sup>9</sup> See *Hinds Precedents*, vol. IV, pp. 64-65. No action has been taken on the matter of incapacitation of a large number of Senators.

<sup>10</sup> S.J.Res. 7, proposing an amendment to the Constitution relative to the election of Senators, has been introduced in the 111<sup>th</sup> Congress. The measure would require Senate vacancies to be filled by special election. If passed by Congress and ratified by the states, the Senate would be in a position similar to that of the House regarding challenges in filling mass vacancies in its membership.

remedied by amending the Constitution to allow for the rapid replenishment of vacant seats in the event of a significant loss of membership in either chamber.

### **An Alternative Approach: Constitutional Amendment**

Several proposed constitutional amendments to address the consequences of catastrophic losses of congressional membership have been introduced since the 2001 attacks. Table 1 summarizes the number of measures introduced since 2001. Table 3 summarizes the proposals themselves.

**Table 1. Number of Proposed Amendments to the Constitution Related to the Continuity of Congressional Representation, 2001-2009**

Congress	Years	Proposed Amendments
111 <sup>th</sup>	2009	1
110 <sup>th</sup>	2007-2008	2
109 <sup>th</sup>	2005-2006	1
108 <sup>th</sup>	2003-2004	6
107 <sup>th</sup>	2001-2002	3

**Source:** Legislative Information System. 111<sup>th</sup> Congress data are current through July 17, 2009.

In the 111<sup>th</sup> Congress (2009-2010), one continuity measure has been introduced thus far. On May 20, 2009, Representative Brian Baird introduced H.J.Res. 52, proposing an amendment to the Constitution to fill temporarily mass vacancies in the House and the Senate if “a catastrophe results in the death, incapacity, or disappearance of a significant number” of Members. The measure, which was also introduced by Representative Baird in the 110<sup>th</sup> Congress (2007-2008), would amend the Constitution to require individuals elected to the House or Senate to provide and revise a list of at least three designees, ranked in order of preference, to take their place in Congress if they die, become incapacitated, or disappear prior to the end of their term of office. Designees would be required to meet the qualifications of Representative or Senator, as appropriate. The Speaker of the House, Vice President, or President pro tempore of the Senate would fill vacancies in their respective chambers with individuals from the most recent lists of designees provided (in the order provided on the list) by Members whose seats were vacant. Designees would be treated as Representatives or Senators in all respects, but would not be required to provide a list of designees of their own. If a designee fills a vacant seat in the House or Senate, the executive authority of the state involved would be required to call an election “as soon as possible” to have another Member chosen. The proposed amendment requires Congress to establish by law criteria to determine whether a Member of Congress is dead, incapacitated, or has disappeared, and grants Congress the authority to enforce the proposed article through appropriate legislation.

Supporters of proposals to amend the Constitution to allow prearranged, temporary replenishment of congressional membership contend that the possibility of catastrophic losses in either chamber warrants taking precautions to ensure that Congress could continue to carry out its constitutional responsibilities and operate effectively during a national emergency. While no single proposal can address all of the challenges that might arise at a time of national or

international crisis, proponents of such measures assert that allowing for advance directives for filling vacancies in congressional membership could help ensure each state's representation in Congress if a significant number of Members in either chamber were suddenly killed, missing, or incapacitated. From their perspective, establishing provisions for an expedited response before an incident occurs could also demonstrate the country's determination to continue a representative form of government, consonant with their interpretation of the constitutional requirements of a quorum in both chambers, even in extraordinary times. Further, providing for a predetermined mechanism to fill vacancies could eliminate the need to hold special expedited House elections, as mandated by current law, under potentially difficult conditions.

Opponents of continuity planning through constitutional amendments could argue that the current approaches to address congressional continuity, including rules changes in each chamber, statutory procedures to expedite election to fill large numbers of seats in the House, and the ability to fill most Senate seats by appointment, are sufficient. They could argue that the changes were far less cumbersome to implement than amending the Constitution and an amendment might not afford a better assurance of congressional continuity than existing practices. Further, opponents could maintain that resorting to temporary appointments might contribute to unrest or fear among the nation's citizens or U.S. allies by casting doubt upon the government's ability to respond to crises. In addition, they might point out that if such an automatic Member replenishment process were ever to be invoked, it could create two classes of Members: those who became Members through the crucible of the electoral process, and those who were part of a cohort that was appointed. A sudden shift in membership in either chamber could result in a change in the legislative agenda, or majority control, although the circumstance necessitating the use of temporary members would arguably determine the nature of work a newly replenished Congress might consider. Nevertheless, the actions of the short-term appointees could have long-term effects.

Finally, opponents could argue that allowing the temporary appointment of indirectly elected or appointed alternative Representatives would depart from the basic tenet of a House kept close to the people, where each Member has taken his seat only as a result of direct election by the voters in the Member's district.

### **Proposed Congressional Continuity Amendments in the Cold War Era**

The post-9/11 era is not the only time that the continuity of congressional representation has received congressional consideration. During another period of uncertainty following the end of World War II, similar measures were proposed. In current times, the perceived need for such measures is based on the possibility that an adversary could target Congress itself, or the Washington, DC region. Earlier, the emergence of the Cold War (1945-1991) between the United States and its allies and the Soviet Union and its allies, the successful testing of an atomic bomb by the Soviets in September 1949, and subsequent claims that they might be stockpiling atomic weapons, brought considerable interest to the issue of filling congressional vacancies in the event of a national emergency among some Members of Congress.

From the 79<sup>th</sup> Congress (1945-1947) through the 87<sup>th</sup> Congress (1961-1963), 32 proposed constitutional amendments were introduced, providing for temporarily filling House vacancies or



selecting successors in case of the disability of a significant number of Representatives.<sup>11</sup> Table 2 summarizes the number of measures introduced between 1946 and 1962 that included congressional continuity provisions. During that period, hearings on various proposals and related issues were held in both the House and Senate. On three occasions, the Senate passed by large margins different proposed constitutional amendments that provided for the temporary filling of House vacancies caused by a national emergency. In the first instance, the House took no action on the measure.<sup>12</sup> The second measure<sup>13</sup> was referred by the House to the Committee on the Judiciary, which took no further action.<sup>14</sup> The House struck continuity provisions in the final bill before voting to pass the measure, which subsequently became the 23<sup>rd</sup> Amendment.

**Table 2. Number of Proposed Amendments to the Constitution Related to the Continuity of Congressional Representation, 1946-1962**

Congress	Years	Proposed Amendments
87 <sup>th</sup>	1961-1963	6
86 <sup>th</sup>	1959-1961	3
85 <sup>th</sup>	1957-1959	3
84 <sup>th</sup>	1955-1957	6
83 <sup>rd</sup>	1953-1955	6
82 <sup>nd</sup>	1951-1953	4
81 <sup>st</sup>	1949-1951	1
80 <sup>th</sup>	1947-1949	2
79 <sup>th</sup>	1945-1947	1

**Source:** Individual measures introduced.

<sup>11</sup> The proposals are as follows: 79<sup>th</sup> Congress (1945-1947)—H.J.Res. 362; 80<sup>th</sup> Congress (1947-1949)—H.J.Res. 34, S.J.Res. 161; 81<sup>st</sup> Congress (1949-1951)—H.J.Res. 48; 82<sup>nd</sup> Congress (1951-1953)—H.J.Res. 155, H.J.Res. 166, S.J.Res. 59, S.J.Res. 75; 83<sup>rd</sup> Congress (1953-1955)—H.J.Res. 135, H.J.Res. 159, H.J.Res. 244, H.J.Res. 507, S.J.Res. 39, S.J.Res. 150; 84<sup>th</sup> Congress (1955-1957)—H.J.Res. 50, H.J.Res. 295, H.J.Res. 322, H.J.Res. 325, H.J.Res. 475, S.J.Res. 8; 85<sup>th</sup> Congress (1957-1959)—H.J.Res. 52, H.J.Res. 105, S.J.Res. 157; 86<sup>th</sup> Congress (1959-1961)—H.J.Res. 30, H.J.Res. 519, S.J.Res. 85; 87<sup>th</sup> Congress (1961-1963)—H.J.Res. 29, H.J.Res. 74, H.J.Res. 91, H.J.Res. 508, H.J.Res. 893, and S.J.Res. 123.

<sup>12</sup> S.J.Res. 39, 83<sup>rd</sup> Congress (1953-1955), authorized governors to make temporary appointments to the House after notification of vacancies and “whenever by reason of the occurrence of acts of violence during any national emergency or national disaster, the total number of vacancies in the House of Representatives shall exceed one hundred and forty-five....”

<sup>13</sup> S.J.Res. 8, 84<sup>th</sup> Congress (1955-1957), provided that when the number of vacancies in the House was greater than one half of the authorized membership, for a period of 60 days a state governor would have authority to make temporary appointments to fill any vacancies in the representation from his state in the House of Representatives.

<sup>14</sup> S.J.Res. 39, 86<sup>th</sup> Congress (1959- 1961), would have authorized governors to fill vacancies in the House “on any date that the total number of vacancies ... exceeds half of the authorized membership.” The governor’s appointive authority would have been limited to 60 days, and the appointee would have served until a successor was elected in a special election.

### **Conclusion: Different Eras, Similar Challenges**

Many of the proposals introduced since 2001, and between 1946 and 1962, have been designed to address two or more of the following issues:

- the conditions under which the vacancies would be filled;
- the number or percentage of vacancies needed to invoke implementation of the measure;
- who would select replacement Members; and
- the duration of temporary appointments.

For example, some proposals would have directed state legislatures to meet and select persons to take the place of deceased Senators or Representatives. The measures also stipulated that this procedure would go into effect only if a majority of the House or Senate Members were unable to perform their duties. Some of the earlier proposals required a notification procedure in which the President, the Speaker of the House, or some other specified official would be required first to declare that a national emergency or disaster existed and a specified number of the seats in the House or Senate were vacant. Governors would then make temporary appointments until elections could be held. The notification process raised a number of questions related to the definition of terms and the establishment of procedures. For example “national disaster” was not specified, and it was not always clear who would determine when it occurred. To address those concerns, later proposals authorized governors to make temporary appointments to the House when vacancies in the House exceeded half of the authorized membership. Some post-2001 proposals, like the 111<sup>th</sup> Congress version, would have limited the scope of potential appointees to those specified in advance by a Representative or those who were elected in their own right as an alternate representative.

Recent arguments in favor of, or in opposition to, amending the Constitution to provide for the temporary appointment of Senators or Representatives are similar to those made during the early years of the Cold War. The events of September 11, 2001, and actions taken in response, however, may have altered the circumstances under which those issues are considered. Some concern has been expressed that the advent of suicidal terrorists who are independent of national governments and, thus, may not be deterred from using weapons of mass destruction (WMD) because of the possible consequences for their own people, may make the use of these weapons more likely in the future. On the other hand, the lack of state support, or the challenges of acquiring or improvising a WMD and then delivering it to a target that affects significant numbers of Members of Congress, might prove beyond the capacity of a terrorist adversary. At the same time, some observers argue that the United States Capitol and Congress have been targeted in the past, and that they continue to be targets of high social, political, and symbolic significance.

If Congress believes that no action is needed to ensure the continuity of congressional representation, it might continue the status quo. Otherwise, Congress may explore additional statutory or constitutional approaches to address issues related to congressional representation in contingent circumstances.

Among the matters that Congress could consider, and which might, or might not, require a constitutional amendment, are explicitly defining a number of concepts related to the continuity

of congressional representation. These concepts might include the following: “dead,” “missing,” “incapacitated,” or “significant number” of Members for purposes of implementing provisions of continuity of representation. With more explicit definitions of these terms, Congress might develop clearer implementation mechanisms and procedures.

In addressing any effort to assure its continuity following a catastrophic attack or other significant operational interruption, Congress would face consideration of the balance between the demands of representative government on the one hand, and what some perceive as a need to assure that the legislative branch maintains the capacity to carry out its constitutional responsibilities in challenging circumstances on the other. It may also take into account the following issues:

- whether focusing on one element of congressional continuity, such as continuity of representation, may cause insufficient attention to be paid to potential vulnerabilities in other areas of congressional preparedness planning, such as continuity of operations, or emergency planning;
- the extent to which further consideration of these issues might be necessary; and
- whether developing additional plans for continuity of representation would better prepare Congress to withstand potential interruptions.

Thank you again for inviting me to testify. I will be happy to address any questions you might have.

**Table 3. Continuity of Congressional Representation: Measures Introduced to Amend the Constitution Since 2001**

Measure, Congress	Circumstances	Extent of Vacancy or Incapacity	Selecting Agents	Implementation	Duration of Appointment
H.J.Res. 52 111 <sup>th</sup> Congress and H.J.Res. 56 110 <sup>th</sup> Congress	Death, incapacity, or disappearance of a significant number of Members in either chamber	Significant number and incapacity are not defined	Congressional candidates choose three designees who stand for election with the candidates	The Speaker, Vice President, or President Pro Tempore would fill vacancies in their respective chambers with ranked individuals from the most recent list of designees provided	Until a special election is held to elect a new Member in the case of a vacancy, or until a declaration that a Member's inability no longer exists, or if a Member records his presence in the chamber
H.J.Res. 57 110 <sup>th</sup> Congress	A member who dies, resigns, is expelled or declared by his chamber to be unable to discharge his office, or a Member-elect who fails to qualify	One Member or Member-elect	An alternate elected with each Representative and Senator	When an individual vacancy occurs, or when either chamber is unable to establish a quorum for three days	Until a special election is held to elect a new Member
H.J.Res. 26 109 <sup>th</sup> Congress	Death or inability of Member to discharge the powers and duties of office	Unspecified, but provisions applied to individual Members	Three ranked alternates elected with each Representative and Senator	Death of a Member: the first alternate would become the acting member until a new Member is elected  Incapacity: The Member, or the three alternates by majority vote, could declare the Member's inability	Unspecified, but a Member could revoke a declaration of inability and return to office
H.J.Res. 77 and H.J.Res. 83 108 <sup>th</sup> Congress	Death or incapacity of a majority of the House membership, or declaration by the House of extraordinary circumstances	Death or incapacity of a majority of the House membership	Representatives-elect provide state governors with a list of at least two potential successors	Governors appoint replacement members following House action	Until a special election is held to elect a new Representative
H.J.Res 89 108 <sup>th</sup> Congress	Unspecified	Vacancy in the majority of the number of seats in the House	State legislatures or governors	State legislatures or governors appoint a replacement Member	Until a special or general election, as provided by state law

<b>Measure, Congress</b>	<b>Circumstances</b>	<b>Extent of Vacancy or Incapacity</b>	<b>Selecting Agents</b>	<b>Implementation</b>	<b>Duration of Appointment</b>
H.J.Res. 90 108 <sup>th</sup> Congress and H.J.Res. 77 107 <sup>th</sup> Congress	30% vacancy in House due to death or resignation	30% vacancy in House due to death or resignation	Unspecified	Would authorize Congress to enact legislation providing for the temporary appointment of Representatives	Unspecified
H.J.Res. 92 108 <sup>th</sup> Congress	A member who dies, or is unable to serve in Congress	One Member or Member-elect	Three to five potential temporary successors specified by congressional candidates	Upon the death of a Member or declaration of inability, which could be established by the Member, or the three alternates by majority vote	Until a special election is held to elect a new Member, or declaration by a Member that the inability has resolved
S.J.Res. 23 108 <sup>th</sup> Congress	25% of either chamber deceased or incapacitated	25% of either chamber deceased or incapacitated	Congress would declare who would serve until disabled Members recovered or new Members were elected	Unspecified	120 days, with an additional period of 120 days if 25% of the seats in either chamber remained vacant or occupied by incapacitated Members
H.J.Res. 67 107 <sup>th</sup> Congress	Death or incapacity of 25% or more of the House membership	Death or incapacity of a majority of the House membership	Governors	Unspecified	90 days or less until a special election is held to elect a new Representative
S.J.Res. 30 107 <sup>th</sup> Congress.	Death or incapacity of 50% or more of the House membership	Death or incapacity of a majority of the House membership	Governors	Appointee would be required to be of the same political party as the member being replaced	Unspecified

**Source:** Individual measures, as noted.