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Congressional Use of Advisory Commissions Following Crises

Throughout U.S. history, Congress has used advisory commissions to assist in the development of public policy. Among other contexts, commissions have been used following crisis situations, including the September 11, 2001, terrorist attacks. Advisory commissions can provide Congress with a potential high-visibility forum to assemble expertise that might not exist within the legislative environment and allow for the in-depth examination of complex, cross-cutting policy issues.

As Congress considers its range of responses to the coronavirus pandemic, the creation of one or more congressional advisory commissions is an option that could provide a platform for, over time, evaluating a myriad of pandemic-related policy issues. Past congressional advisory commissions have retrospectively evaluated policy responses, brought together diverse groups of experts, and supplemented existing congressional oversight mechanisms.

What Are Congressional Advisory Commissions?

Congressional advisory commissions are formal, temporary groups, created to obtain advice, develop recommendations, or find solutions to short- and long-term public policy problems. A congressional advisory commission is generally defined as a multimember independent entity that

1. is established by Congress,
2. exists temporarily,
3. serves in an advisory capacity,
4. is appointed in part or whole by Members of Congress, and
5. reports to Congress.

This definition differentiates a congressional commission from a presidential commission, an executive branch commission, or other bodies with “commission” in their names (e.g., the Federal Election Commission), while including most entities that fulfill the role commonly perceived for commissions: studying policy problems and reporting findings to Congress.

Congressional Commissions Established in Response to a Crisis: Examples

As part of its response to crises or emergencies, Congress may establish a congressional commission both to provide a retrospective view on the causes and to develop recommendations for legislative or administrative action to help prevent or mitigate future such crises.

Among the best-known examples of crisis-related commissions is the National Commission on Terrorist

Attacks upon the United States (known as the “9/11 Commission”). The 9/11 Commission, established in November 2002, was directed to report to Congress and the President regarding the causes of the 9/11 attacks, and to make recommendations to prevent future terrorist attacks.

In addition to retrospective commissions, Congress has also occasionally created commissions to address potential future crises. For example, the NASA Authorization Act of 2005 provided for the creation of a Human Space Flight Independent Investigation Commission. Such a commission would be established in the event of a future space flight disaster resulting in the loss of human life. The commission would report to Congress and the President on the causes of the incident and make recommendations for corrective action. It has never been formulated, as a relevant disaster has not occurred since 2005.

Potential Advantages of Congressional Advisory Commissions

Should Congress create a commission to respond to an emergency or crisis, such an action could have several potential advantages. Advantages might include obtaining expertise, overcoming issue and political complexity, building consensus, reducing partisanship, solving collective action problems, and raising visibility.

Obtaining Expertise

Congress might authorize a commission when legislators and staff do not have the desired specialized knowledge or expertise in a particular policy area. In such an environment, outside expertise can supplement Congress’s existing expertise.

Overcoming Issue or Political Complexity

Complex policy issues may cut across congressional committee jurisdictions. As an alternative or supplement to multiple committees considering an issue in addition to their other work, a commission may be set up to devote itself fulltime to its mission, without competing policy responsibilities.

Building Consensus

Legislators considering policy changes may be confronted by an array of political interests. When these interests clash, the result may be legislative gridlock. Commissions, however, can potentially provide a more flexible policy environment to consider and suggest a range of possible solutions across the political spectrum.

Reducing Partisanship

Solutions to policy problems produced within the normal legislative process may in some cases be perceived through the lens of partisanship. Most commissions are structured to

be nonpartisan or bipartisan. Such a structure might make a commission's findings and recommendations more politically acceptable to diverse viewpoints.

A commission's bipartisan or nonpartisan arrangement can give its recommendations strong credibility, both in Congress and among the public. Commissions can also facilitate compromise, bypassing the potential pitfalls of public negotiations. Further, because commission members are not elected, they may be better suited to suggesting unpopular, but potentially valuable, policy solutions.

Solving Collective Action Problems

A commission may allow legislators to solve collective action problems. Collective action problems occur when individual legislators seek to protect their district's or state's interests, despite often widespread agreement that change would be beneficial. In these circumstances, a commission can serve to create general consensus about a particular policy solution without the proposed solution being impeded by individual concerns about its implementation or impact.

For example, in 1988 Congress established the Base Closure and Realignment Commission (BRAC; P.L. 100-526; 102 Stat. 2623, October 24, 1988) to study the need for military bases closures. BRAC facilitated recommendations to close and consolidate military bases regardless of individual Member preferences. Once BRAC made its recommendations, the law required that Congress either accepted or rejected the commission's findings as a whole, thus bypassing traditional congressional processes for potential amendments focused on individual bases.

Raising Visibility

A commission can also sometimes provide a policy issue with a highly visible forum. Commissions composed of notable public figures may allow personal prestige to be transferred to recommended policy solutions. Meetings and press releases from a commission may receive more media attention than corresponding congressional information. After report issuance, commission members can also advocate for the commission's recommendation, thus potentially increasing awareness of the policy issues.

Past Criticism of Commissions

The creation of congressional advisory commissions is not without critiques. Criticisms of commission use include that Congress is abdicating responsibility for a public policy issue, democratic accountability is reduced since non-elected officials are making recommendations, and commissions can be financially inefficient.

Abdicated Responsibility

Critics have argued that commissions are primarily created to avoid blame should recommendations be unpopular or unworkable. Commissions can provide distance between Congress and controversial recommendations. If the commission's work is popular, legislators can claim credit. If the commission's recommendations are unpopular, legislators can shift responsibility to the commission itself.

Reduced Democratic Accountability

Commissions might be considered by some to be undemocratic. This criticism has historically taken three forms. First, commissions may not represent the general population and/or popular opinion. Second, commissions are seen by some to lack popular accountability, because commission members are commonly unelected and often insulated from constituent opinion. Third, commissions, depending on statutory requirements, may not operate publicly. This stands in contrast to Congress, whose meetings, hearings, and other activities are generally required to be held in public.

Financial Inefficiency

Some commissions might have high costs and low policy returns. Costs vary widely, ranging from several hundred thousand dollars to over \$10 million. In most cases, Congress is under no obligation to act on, or even respond to, the work of a commission. If legislators disagree with the commission's results or recommendations, they may simply ignore them. Further, there is no guarantee that any commission will produce a quality product, as commissioners may also have their own agendas, biases, and pressures.

Considerations for Congress

Should Congress decide to create an advisory commission to study a crisis situation, several considerations might be made. First, whether a commission is a congressional or executive branch entity generally affects its scope and mission. For example, a congressional commission might have broad authority to study a policy issue across jurisdictional boundaries, whereas an executive branch entity might be restricted to the home agency's mandate.

Second, congressional commissions generally work at a slower pace than executive branch commissions. Because congressional commissions take time to set up, (e.g., hire staff, conduct research, and write a report), most have had 12 to 18 months to complete their work. By contrast, executive branch commissions have reported in as few as 90 days. Additionally, congressional commissions must be individually authorized and provided powers, duties, and funding, whereas executive branch entities often derive their authority from their parent agency.

For more information about congressional advisory commissions, see CRS Report R40076, *Congressional Commissions: Overview and Considerations for Congress*; and CRS Report R45826, *Congressional Commissions: Funding and Expenditures*.

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