

Testimony of  
**The Honorable Orrin Hatch**

September 9, 2003

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on

"Ensuring the Continuity of the United States Government: The Congress"

I want to thank Senator Cornyn for chairing this very important hearing before the Full Committee today. There is good reason to believe that the Capitol was the target of the fourth plane hijacked two years ago on September 11th. Congressional action was vital in ensuring that our nation quickly responded to the terrorist attacks by passing critical legislation.

Immediately after the attacks on our nation, the members of both legislative bodies gathered together on the Capitol steps. We did that, at least in part, to demonstrate to the nation and the world that the work of the American government would continue. In the weeks after September 11, Congress passed: a \$40 billion emergency supplemental for recovery and response to terrorist attacks on the United States; the Air Transportation Safety and System Stabilization Act to preserve the continuity of the U.S. transportation system; legislation to honor fallen firefighters; and Treasury and General Government Appropriations Act to provide funding for counterterrorism measures. The work of the people needed to be done - it needed to be done immediately and the Congress responded.

September 11th revealed that we are resilient people whose government is capable and prepared to respond in a national emergency. However, the fact remains that if a horrific event caused mass casualties in the Congress, there is no way to quickly reconstitute the House of Representatives. The Constitution provides for the replacement of House members through the special election process, which on average could take four months. In the event of a catastrophic attack, elections could certainly take longer.

In the 99th through 107th Congress, the average time it took states to hold special elections to fill House vacancies caused by death was 126 days, or over 4 months. Some of these vacancies lasted as long as nine months. With this as a backdrop, it is particularly troubling that there is no precedent for holding dozens or hundreds of special elections at the same time.

The Seventeenth Amendment provides that Senate vacancies can be replaced by gubernatorial appointment until special elections can be held. But the truth of the matter is that neither body of Congress is prepared for the possibility of having a large number of incapacitated members.

One of the possible solutions to this dilemma is to look to the Constitution. Our Constitution gives us specific provisions for filling vacancies in the House and Senate, however, we do not have a procedure in place to fill mass vacancies without a constitutional amendment. A Constitutional amendment could give Congress the power to provide by legislation for the appointment of temporary replacements to fill vacant seats in the House of Representatives after a catastrophic attack and to temporarily fill seats in the House of Representatives and Senate that are held by incapacitated members.

The question of a Constitutional Amendment is a serious one to consider and I know that my colleagues in the Senate and House are always reluctant to amend the Constitution - as am I. And I agree that these are issues which will require considerable debate and a thorough examination of the possible options. Consideration of how our country and our governmental institutions would operate in the aftermath of an attack which caused mass vacancies in Congress present difficult questions my colleagues in the Congress and the American public must identify and resolve.

I thank the witnesses for appearing before us today and I look forward to hearing from all of you about these very important issues.

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