

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
January 27, 2004

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Senate Committee on the Judiciary
Hearing on Ensuring the Continuity of the United States Government
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Ensuring the continuity of our Government is undoubtedly an important and serious matter. It was considered by the Founders who forged our national charter, the Constitution. They faced personal threats as well as threats to our governmental representatives in the earliest days in which they worked together to create this nation and its democratic institutions.

Proposed constitutional amendments are, likewise, very serious matters. Their proponents bear a heavy burden. Constitutional amendment has been rare since adoption of the Bill of Rights. It is only appropriate when there is a clear, pressing need that cannot be addressed by other means.

From the inception of our Republic, there have been concerns about the continuity of Congress, and numerous proposals for constitutional amendments have dotted our history. We have survived the burning of the Capitol, explosions, and shootings. We have seen war and nuclear threats.

The tragic events on September 11, 2001, have renewed attention to security. Each of us can recall where we were that morning. I was meeting with the Chief Justice and the Judicial Conference across the street at the Supreme Court building. Upon learning of the planes crashing into the World Trade Center in New York and the Pentagon, I returned to the Senate, our Senate offices and joined with others on the steps of the Capitol to show our resolve to continue working on behalf of the American people. I sensed then, and have become more convinced since, that the fourth plane, whose heroic passengers and crew forced it down in Pennsylvania, was also headed for Washington, and, most likely, for the Capitol building itself.

Following those attacks we experienced the still unsolved anthrax attack when letters addressed to Senator Daschle and to me were laced with deadly anthrax spores and sent to our offices. The aftermath was one in which postal workers were killed, a number of staff were made sick, and the Senate office buildings were evacuated and closed for many weeks, and in some cases months, until they could be opened safely.

In those days, we joined together in bi-partisan efforts. I worked to review our laws to ensure that we are in the best position to fight terrorism, but also to preserve our democratic principles and our liberties. We were not deterred but doubled our efforts on behalf of the American people.

In connection with the topics raised by this hearing today, I look forward to hearing from governors, State legislatures and our citizens about proposals to change the ways in which Senators and Representatives are elected or chosen. As we consider proposals to amend our Constitution, we need to be cognizant of the constitutional guaranty of the right to vote that is the bedrock of our constitutional democracy. Throughout our history we have always acted to broaden the right to vote. Indeed, it is the 17th amendment, providing for direct election of Senators by the people in our States, that allows each of us to serve in the Senate today. Americans have made sure the Constitution protects the right to vote without regard to race or gender, prohibited discriminatory poll taxes and have included among eligible voters young adults.

I understand that in addition to Senator Cornyn's original proposal to direct the States to choose from among several mechanisms to replace both House and Senate members, he intends to introduce another proposal for our consideration focused exclusively on incapacities in the Senate. Of course, the 17th amendment, which provided for direct election of Senators, already provides for governors to make appointments to fill Senate vacancies that occur during a term. Whether the Constitution should be amended to address this issue is what we will be asked to consider. As currently framed, the proposal is not triggered until one-fourth of the Senate is affected.

That numerical trigger needs to be carefully considered as does the concept of "incapacity" and who and how "incapacity" is to be determined. We will want to consider what can be accomplished through statutes and through statutory clarification and how best to involve the States and the voters.

There are many important questions that must be resolved before we can move forward on proposed changes. I am pleased that we will be hearing from distinguished scholars on these issues, and I look forward to their testimony. I welcome the witnesses invited by Senator Cornyn and thank them for their testimony. I look forward to our studying this matter and helping develop a full record for the Committee and the Senate.

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