

Statement of

The Honorable John Cornyn

United States Senator
Texas
May 13, 2004

U.S. Senate Subcommittee on the Constitution, Civil Rights and Property Rights

U.S. Senator John Cornyn (R-TX), Chairman

Executive Business Meeting

S. J. Res. 23, A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the Members of either the House of Representatives or the Senate are killed or incapacitated [Cornyn/Chambliss]

Thursday, May 13, 2004, 9:30 a.m.

Dirksen Senate Office Building Room 226

Call to Order

This meeting of the Senate Subcommittee on the Constitution, Civil Rights, and Property Rights - our second markup of this Congress - shall come to order.

Last June, the subcommittee considered the issue of victims' rights. That proceeding led eventually to the Senate's approval of the Crime Victims' Rights Act last month by a vote of 96-1. This morning, the subcommittee will consider an issue that also deserves bipartisan support - a constitutional amendment to ensure the continuity of Congressional operations in the wake of a catastrophic terrorist attack.

I will keep my remarks short. Today's meeting is the fourth in the Senate on continuity of government, and I have also written on the issue of continuity of Congress on various occasions - so without objection, those documents will be made a part of the record this morning.

I just want to briefly address two subjects: why a constitutional amendment is the only way to ensure continuity of Congress, and what Senate Joint Resolution 23 would do.

In the days and weeks following 9/11, Americans soon realized that another such attack could cripple Congress and trigger a constitutional crisis. But for a late departure and the ensuing heroism of its passengers, United Airlines Flight 93 might have destroyed the Capitol Building and disabled Congress, leaving the nation with no constitutional means of legislative response. The emergency funding and legislation enacted in the days and weeks following 9/11 might not have been available had events unfolded differently that day.

Under the Seventeenth Amendment, state legislatures may empower governors to make immediate temporary appointments if a Senator dies in office, and 47 states have done so. But several months are required to fill vacancies in the House by special election - time we may not have.

Last month, the House approved legislation that would require expedited special elections in the event that more than 100 House Members are killed. The House legislation is controversial, to be sure. But although continuity of

government is a problem for both Houses of Congress, because neither chamber can approve funds or enact legislation without the other's consent, I believe that each chamber should be primarily responsible for establishing its own procedures for ensuring continuity.

The House legislation, however, addresses only one kind of continuity problem - the death of a large number of members. But what if large numbers of Representatives or Senators are not killed, but incapacitated - perhaps by a biological or chemical attack, such as anthrax or ricin?

Experts in constitutional law from across the ideological spectrum agree with the unanimous conclusion of the bipartisan Continuity of Government Commission: Only a constitutional amendment can ensure continuity of Congress in the wake of mass incapacitation. Without an amendment, terrorists could disable Congress for as long as four years - the time it would take to elect a new majority of Senators.

Without objection, letters of support from constitutional law professors Laurence Tribe, Michael Glennon, Michael Gerhardt, and others will be submitted for the record. The unanimous commission report will also, without objection, be made a part of the record - a report that represents distinguished former public officials of both parties, including former President Jimmy Carter, former House Speaker Tom Foley, Kweisi Mfume, Leon Panetta, Jamie Gorelick, Donna Shalala, and Lloyd Cutler.

Senate Joint Resolution 23 simply authorizes Congress to enact laws to provide for Congressional succession, just as Article II of the Constitution authorizes Congress to enact laws to provide for Presidential succession. S. J. Res. 23 prefers neither special elections nor appointments for ensuring continuity of Congressional operations. Thus, members of the House who prefer special elections can and should support this amendment, because it permits the use of special elections to redress incapacities - a power which Congress currently does not possess.

S. J. Res. 23 authorizes special succession measures only in catastrophic circumstances - the death or incapacity of one-fourth of the House, or the incapacity of one-fourth of the Senate. One hopes, of course, that this authority will never be triggered. But if triggered, the emergency procedures must have a sunset provision. The amendment thus provides that this emergency authority be available for just 120 days. In addition, Congress can, under S. J. Res. 23, enact legislation to limit the length of time individuals can serve pursuant to procedures established under the amendment.

S. J. Res. 23 is co-sponsored by Senator Chambliss, and supported by House members of both parties. I am also pleased that Senator Feingold and his staff have been so supportive of this effort. In addition, Senators Dodd and Lott have joined me in introducing legislation to implement S. J. Res. 23. It is important that this effort be bipartisan - I can't think of a more bipartisan issue than ensuring the survival of our form of government. Indeed, in the past the Senate has repeatedly approved similar continuity constitutional amendments by overwhelming margins in 1954, 1955, and 1960.

Twenty years ago, after nearly killing Prime Minister Margaret Thatcher and leading members of her government, I.R.A. terrorists issued a chilling threat: "Remember, we only have to be lucky once. You have to be lucky always." The American people should not have to rely on luck. They deserve a constitutional system of government that is failsafe and foolproof. Nobody likes to plan for his own demise, but failure to do so is not an option. We must plan for the unthinkable now - before our luck ever runs out.