

Statement of  
**The Honorable John Cornyn**

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Texas  
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Opening Statement of Sen. John Cornyn

Ensuring the Continuity of the United States Government:  
A Proposed Constitutional Amendment to Guarantee a Functioning Congress

Senator John Cornyn (R-TX), Chairman, Subcommittee on the Constitution

Tuesday, January 27, 2004, 9:30 a.m., Dirksen Senate Office Building Room 226  
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Two days before the two year anniversary of 9/11, this committee examined potential vulnerabilities in our constitutional system of government.

It was painful to recall the events of September 11, but a stark reminder of just how close terrorists came that day to successfully decapitating the United States government. Were it not for the late departure of United Airlines Flight 93 and the ensuing heroism of its passengers, the Capitol building might have been destroyed--potentially killing numerous senators and representatives, and perhaps even disabling Congress itself.

The American people must be able to rely on a functioning Congress in the wake of a catastrophic terrorist attack. Although not in session year-round, Congress may need to convene immediately in a time of crisis. In the days and weeks following September 11, Congress enacted numerous emergency laws and appropriations measures to stabilize our economy and bolster national security.

Yet we lack the constitutional tools needed to ensure continuity of Congressional operations.

Under our Constitution, a majority of each House of Congress is necessary in order to "constitute a Quorum to do Business." After all, our Founders understood the need for a nationally representative Congress, and rightly so.

That important commitment carries with it certain vulnerabilities, however.

If a terrorist attack killed a majority of House members, Congress would be disabled until special elections were conducted around the country - a process that takes months, according to every election official who has contacted my office - time we may not have. Moreover, if a majority of representatives is incapacitated, the House would be shut down until the inauguration of a new Congress - a delay of as long as two years.

The situation could be even more dire in the Senate. The Seventeenth Amendment permits state legislatures to empower governors to make immediate appointments to fill vacancies in the Senate, and every state except Oregon and Wisconsin has chosen to do so. Yet the Constitution provides no

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mechanism whatsoever for dealing with Senators who are incapacitated, but not killed. If a biological weapons attack incapacitated a majority of Senators, Congress could be shut down for four years.

Our Constitution does not prepare us for such dire circumstances, because our Founders could not have contemplated the horrors of 9/11. After all, they lived in a world free of weapons of mass destruction. They established a Presidency to command an army and navy, but no air force. They structured our system of government specifically to disfavor standing armies.

Yet the Founders, in their great wisdom, well understood that they could not predict everything that this new nation might someday need, or what the future might someday hold. They wisely ratified the constitution specifically because it included a built-in procedure for amendment, in Article V of the Constitution.

Accordingly, last November, I introduced a constitutional amendment and accompanying legislation to ensure continuity of Congress, in a manner consistent with the vision of our Founders.

The amendment, Senate Joint Resolution 23, authorizes Congress to enact laws providing for Congressional succession -- just as Article II of the Constitution authorizes laws providing for Presidential succession. The implementing legislation, S. 1820, authorizes each state to craft its own mechanism for filling vacancies and redressing incapacities in its congressional delegation -- just as the Seventeenth Amendment authorizes states to decide how to fill vacancies in the Senate.

My proposed amendment authorizes the creation of special emergency procedures that would be available for 120 days, or longer if at least one-fourth of either House continues to remain vacant or occupied by incapacitated members. Any appointment or election of a member of Congress made pursuant to such emergency procedures would last for as long as the law would allow (that

is, until the expiration of the regular term of office, or earlier as Congress may allow) - but the emergency procedures themselves would be available only for the period of time permitted under the proposed constitutional amendment.

I recognize that some House members favor emergency interim appointments to ensure immediate continuity of House operations, while others prefer to rely solely on expedited special elections. My November proposal takes no sides in this debate.

Some states, in order to expedite the conduct of special elections, may be prepared to adopt Internet voting, enact same-day registration laws, or abandon party primaries - while other states may be concerned that expedited special elections are undemocratic or will disenfranchise military voters. Under my approach, each state would make its own choice.

Moreover, today I will introduce new implementing legislation, focusing exclusively on the Senate, called the Continuity of the Senate Act of 2004. If House members decide to rely solely on special elections to cure continuity problems in their chamber, I will not stand in their way. By the same token, the House should not prevent Senators from resolving continuity issues in our chamber.

This proposal gets the job done, while respecting the prerogatives of each House of Congress. It deserves to be enacted into law.

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.

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