

Statement of
The Honorable Orrin Hatch.

United States Senator
Utah
January 27, 2004

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:
A PROPOSED CONSTITUTIONAL AMENDMENT TO
GUARANTEE A FUNCTIONING CONGRESS"

I want to thank Senator Cornyn for chairing this very important hearing before the Full Committee today. In September, 2003, we held two hearings in the Judiciary Committee. Our first hearing explored the continuity in Congress and the second hearing dealt with the continuity of the Presidency.

There is now good reason to believe that one of the airliners from the September 11th terrorist attack may have been headed for the White House and/or Capitol, but never made it to their targets. And also by chance, the President was out of Washington when the attacks happened, even though Congress was in session and most members and their staffs were in the Capitol or in the connecting office buildings. Thankfully, our country did not have to suffer a leadership crisis that would have arisen had President George Bush, Vice-President Dick Cheney, Speaker of the House Dennis Hastert, and then President pro tempore Senator Robert Byrd been killed in attacks on the White House and the Capitol. In addition, Secretary of State Colin Powell, who is next in line for Presidential succession, was out of the country.

Continuity in the House of Representatives raises some very important issues because 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.

I also know that there appears to be strong agreement that we do have a problem and that current law is inadequate and does not ensure a functioning Congress.

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 both of you about these very important issues.

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