

SUCCESSION LAW SHOULD PROVIDE FOR CONTINUITY OF POLICY

By Brad Sherman

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If the recent presidential election reminded us of one thing, it was that no matter how archaic or antiquated provisions of our Constitutional structure may seem, when the time comes to employ these provisions, they are the law of the land.

An issue that has all but escaped the attention of Congress and the American public provides an example: presidential succession--who becomes chief executive if both the president and vice president have died or are otherwise incapacitated. The issue has not been discussed in Congress in more than a decade.

We all know that if the president dies or is impaired, the vice president succeeds to that office. We all know that a vice president who thus becomes president can appoint a successor to the vice presidential office, subject to House and Senate confirmation with the attendant delay. However, there could come a time, after the death or removal of the president from office, when we would go for months or even years without a vice president, as was the case when Gerald Ford became president after the resignation of Richard Nixon. One can imagine the crisis we might have faced had President Ford faced some untoward calamity.

Succession laws ought to provide two things: certainty and continuity. The present statute does provide certainty. It states that if there are vacancies in the offices of both the president and vice president, the next person in line is the speaker of the House, then the president pro tempore of the Senate, followed by the various cabinet officials in order of the seniority of their departments. This system provides for certainty as to who holds the office of president.

But we also need continuity, and by this I mean continuity of policy. Our friends and our adversaries around the world should know that even if there is no one serving as vice president, the next person in line will carry on the same policies. The securities markets should know that a heart attack may change the person in the White House but not radically alter economic policy. Most important, it is key that any potential assassin not believe that he or she can radically change the United States' foreign or domestic policies with a bullet.

Unfortunately, our present laws do not meet that standard because the person in line after the vice president may not be of the same political party. In 1974, with Ford serving as president, the country could have radically changed policy if House Speaker Carl Albert, a Democrat, had assumed the presidency.

Recent events have shown that problems with the structure of our democracy that seem merely imaginary can become real. From 1886 to 1947, we had a statutory scheme that provided both certainty and continuity by providing that after the vice president, the line of succession went to the cabinet officers in the chronological order in which their departments had been created. This guaranteed that potential successors would be of the same party as the incumbent.

We changed the statute in 1947 because it was believed that the first four persons in line to become president should be elected officials.

We can maintain the policy of the line of succession extending to elected officials, rather than appointed officials, but still ensure continuity. Next month, I will introduce a bill providing that every president may file with the clerk of the House and the secretary of the Senate an official document indicating who shall be third and fourth in the line of succession, chosen from among the speaker of the House or the House minority leader, and the majority or minority leader in the Senate. Thus the

persons third and fourth in line would be members of Congress held in high esteem by their colleagues and of the president's political party.

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