

Statement
United States Senate Committee on the Judiciary
Ensuring the Continuity of the United States Government: The Presidency
September 16, 2003

The Honorable John Cornyn
United States Senator , Texas

Senator John Cornyn (R-TX), Chairman
Senate Subcommittee on the Constitution, Civil Rights and Property Rights

OPENING STATEMENT OF SENATOR JOHN CORNYN

Thank you, Senator Lott, for your thorough introductory remarks, and for your leadership of this very important hearing. As you recounted, the Senate Rules Committee has jurisdiction over the Presidential succession statute. And the Senate Judiciary Committee has jurisdiction over constitutional issues, through the subcommittee I chair, the Senate Subcommittee on the Constitution, Civil Rights and Property Rights. So today's joint hearing of the two committees on the topic of Presidential succession is quite appropriate – and after 9/11, critically important.

I also want to thank Senator Hatch, chairman of the Judiciary Committee. Shortly after I spoke on the floor of the Senate to announce subcommittee hearings on continuity of government, Chairman Hatch invited me to hold these hearings in the full committee. Of course, I accepted that offer, and I want to thank him again today, for his leadership of the committee, and for giving these issues the serious attention and respect that they deserve.

Last Tuesday, I chaired the first in a series of hearings on continuity issues, to examine serious weaknesses in our ability to ensure continuity of the Congress. Fortunately, with respect to today's hearing, the Constitution gives us ample authority to ensure continuity of the Presidency – even as it may be inadequate with respect to Congress itself. Unfortunately, however, the current Presidential succession law, enacted in 1947, has long troubled the nation's top legal scholars across the political spectrum as both unconstitutional and unworkable.

This situation is dangerous and intolerable. We must have a system in place, so that it is always clear – and beyond all doubt – who the President is, especially in times of national crisis. Yet our current succession law badly fails that standard. Imagine the following scenarios:

- The President and Vice President are both killed. Under current law, next in line to act as President is the Speaker of the House. Suppose, however, that the Speaker is a member of the party opposite the now-deceased President, and that the Secretary of State, acting out of party loyalty, asserts a competing claim to the Presidency. The Secretary argues that members of Congress are legislators and, thus, are not “officer[s]” who are

constitutionally eligible to act as President. Believe it or not, the Secretary has a strong case – in fact, he can cite for support the views of James Madison, the father of our Constitution, who argued this very point in 1792, as well as legal scholars on the left and right. Who is the President? Whose orders should be followed by our armed forces, by our intelligence agencies, and by our domestic law enforcement bureaus? If lawsuits are filed, will courts take the case? How long will they take to rule, how will they rule, and will their rulings be respected?

- Or imagine that, once again, the President and Vice President are killed, and the Speaker is a member of the opposite party. This time, however, the Speaker declines the opportunity to act as President – in a public-minded effort to prevent a change in party control of the White House as the result of a terrorist attack. And imagine that the President pro tempore of the Senate acts similarly. The Secretary of State thus becomes Acting President. In subsequent weeks, however, the Secretary takes a series of actions that upset the Speaker. The Speaker responds by asserting his right under the statute to take over as Acting President. The Secretary counters that he cannot constitutionally be removed from the White House by anyone other than a President or Vice President, because under the Constitution, he is entitled to act as President “until the disability [of the President or Vice President] be removed, or a President shall be elected.” Confusion and litigation ensue. Who is the President?

- Or imagine that the President, Vice President, and Speaker are all killed, along with numerous members of Congress – for example, as the result of an attack during the State of the Union address. The remaining members of the House – a small fraction of the entire membership, representing just a narrow geographic region of the country and a narrow portion of the ideological spectrum – claim that they can constitute a quorum, and then attempt to elect a new Speaker. That new Speaker then argues that he is Acting President. The Senate President pro tempore and the Secretary of State each assert competing claims that they are President. Who is the President?

- Or finally, notice that the President, Vice President, Speaker, Senate President pro tempore, and the members of the Cabinet all live and work in the greater Washington, D.C. area. Now, imagine how easy it would be for a catastrophic terrorist attack on Washington to kill or incapacitate the entire line of succession to the Presidency, as well as the President himself. Who is the President?

In every one of these scenarios, we do not know for sure who the President is – a chilling thought for all Americans. In an age of terrorism and a time of war, this is no longer mere fodder for Tom Clancy novels and episodes of “The West Wing.” These nightmare scenarios are serious concerns after 9/11. On that terrible day, federal officers ordered a dramatic evacuation of the White House, even shouting at White House staffers: “Run!” On that day, the Secret Service executed its emergency plan to protect and defend the line of Presidential succession – for the first time ever in American history, according to some reports. And in subsequent months, the President and Vice President were constantly kept separate, for months and months after 9/11, precisely out of the fear that continuity of the

Presidency might otherwise be in serious jeopardy.

We must fix the Presidential succession law – and fix it now – so that these nightmare scenarios will never come true, and will never again be able to haunt the American people. I look forward to the testimony of these exceptional witnesses, and to learn their suggestions for reforming the Presidential succession law. After all, we have had two years since 9/11 to do this. Two years is too long, and the time to plan for the unthinkable is now. Thank you, Senator Lott.