

## **CURRENT LAW IS INADEQUATE TO ENSURE SURVIVAL OF THE PRESIDENCY**

***THE PRESIDENTIAL SUCCESSION LAW MUST BE CLEAR, CONSTITUTIONAL,  
AND CAPABLE OF ENSURING CONTINUITY OF THE PRESIDENCY***

***TERRORISTS SHOULD NOT BE ALLOWED TO CHOOSE OUR GOVERNMENT***

Legal scholars and constitutional experts across the political spectrum have condemned the current Presidential succession law as quite arguably the worst drafted law on the books today. They have repeatedly expressed their firm belief that current law is unconstitutional, unclear, and incapable of ensuring continuity of the Presidency at all times.

Moreover, everyone should agree that terrorists should never have the ability by terrorist attack to shut down our government, or to determine that a different political party should have control of the government. Yet under the current law, we are faced with precisely that possibility.

This situation clearly demands reform. **The Presidential Succession Act and the Continuity of the Presidency Resolution of 2004** together provide badly needed reforms to our system of Presidential succession.

A joint September 16, 2003 hearing of the Senate Judiciary and Rules Committees (chaired by Senators Cornyn and Lott) explored a variety of scenarios in which we do not know for sure who, if anyone, is the President – 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, and demand reform now to ensure that the federal government is failsafe and foolproof. We must send the message to terrorists that there is nothing they can do to stop the American government from securing freedom here and around the globe. Over two years have passed since 9/11. Two years is too long, and the time to plan for the unthinkable is now.

Accordingly, **the Presidential Succession Act of 2004** would fundamentally reform the succession law – for the first time since 1947 – by doing the following:

- **Remove members of Congress from the line of succession.** In doing so, the legislation would not only cure a potential constitutional defect in the law. It would also ensure that terrorists cannot, by terrorist attack, change which party is in control of the government – *e.g.*, when Bill Clinton was President and the Speakership was held by Newt Gingrich, or when Ronald Reagan was President and the Speakership was held by Tip O’Neill.
- **Make other changes to the presidential succession law to ensure that it is clear, constitutional, and capable of ensuring continuity of the Presidency – namely:**
  - Provide that any officer serving as acting President serves either until a new President is elected or the disability of the President or Vice President is removed, thereby eliminating the “bumping off” problem under current law (and curing a potential constitutional defect)

- Eliminate the statutory requirement that officers must resign in order to serve as acting President (curing a potential constitutional defect)
- Ensure that only individuals previously duly confirmed to the Cabinet are eligible to serve in the line of succession, thereby preventing acting Cabinet secretaries from acting as President
- Provide for the event that a person serving as Acting President under the succession law is himself killed or incapacitated
- **Place the Secretary of Homeland Security in the line of succession, immediately following the Attorney General** – consistent with legislation introduced by Senator DeWine and already approved by the Senate.

In addition, **the Continuity of the Presidency Resolution of 2004** establishes a new, non-binding protocol to ensure that terrorists cannot change which party is in control of the government, by launching a terrorist attack during a specific window of special vulnerability – during the inauguration of a new President. A terrorist attack at that time could effectuate a change in the political party in control of the White House, if at the time the cabinet is still comprised of individuals from the outgoing Administration, as has been typical throughout history.

Specifically, the resolution would establish a **new, non-binding protocol, by expressing the sense of Congress that an outgoing President should always cooperate with the incoming President and the Senate to ensure smooth continuity of government. The protocol has three components:**

- (1) **the outgoing President should nominate,**
- (2) **the Senate should confirm, and**
- (3) **the outgoing President should commission and appoint**

**as many incoming members of the line of succession as possible, prior to the inauguration of the incoming President.**

This new protocol is reminiscent of the first transfer of political control of the White House in our nation's history, when John Adams peacefully transferred the Presidency to Thomas Jefferson. After a tough and bitter election, the two parties and the two men worked together to ensure a smooth transfer of power and proper continuity of government, putting aside political and partisan interests in order to further the interests of the American people.