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Sunday, September 21, 2003

If terrorists strike the White House, who is president?

By Sen. John Cornyn
Guest columnist

More than two years after the Sept. 11 attacks, we have made many improvements to our national and homeland security, yet our system of providing for the continuity of our government in the event of a disaster remains simply inadequate. That must change.

The Constitution provides Congress with ample authority to ensure continuity of the presidency, yet the current presidential succession law has long troubled legal scholars as unworkable and even unconstitutional.

Consider three scenarios that illustrate the weakness of the current law:

- The president and vice president are killed. Under current law, next in line to act as president is the speaker of the house, who happens to be a member of the party opposing the deceased president. Out of party loyalty, the secretary of state asserts a legal claim to the presidency, arguing that members of Congress are legislators and, thus, are not "officer[s]" constitutionally eligible to act as president. Who is the president?
- The president and vice president are killed. The speaker is a member of the party opposing the deceased president. He declines the opportunity to succeed to the presidency, however, in a public-minded effort to prevent a terrorist attack from effectuating a change in party control of the White House. The secretary of state becomes acting president. But then, the secretary takes a series of actions that upset the speaker. The speaker asserts his right under the statute to become acting president. Who is the president?
- The president, vice president, and speaker are killed, along with many congressmen. The remaining members of the House - a small fraction of the entire membership, representing a narrow geographic region of the country or a narrow portion of the ideological spectrum - claim to constitute a quorum and elect a new speaker, who then argues that he is acting president. The Senate president pro tempore and the secretary of state each assert competing legal claims to the presidency. Who is the president?

In every one of these scenarios, current law provides no clarity. And if we cannot answer that question now, when these arguments are not pressing, how will we answer them following an attack and ensuing chaos?



Jim Borgman is *The Cincinnati Enquirer's* Pulitzer Prize winning editor

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Survey

In a time of terrorism and war, this issue is no longer mere fodder for suspense novels and television dramas.

Recent hearings were an opportunity to address the many flaws of the presidential succession statute, and we will soon introduce the necessary legislation to correct the inadequacies. And Sen. Mike DeWine, R-Ohio, who has shown leadership on this issue, introduced legislation earlier this year to place the secretary of the Department of Homeland Security eighth in the line of presidential succession. Currently, he is not included in the statute, and if added under the current system, he would be 18th in line.

Even if we in government fall, we must not leave our nation's citizens without representation, without order, without defense. We must fix the presidential succession statute, to ensure that our government remains strong, even in the face of disaster.

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.

Sen. John Cornyn, R-Texas, is chairman of the Senate Subcommittee on the Constitution, Civil Rights and Property Rights. He recently co-chaired a joint hearing of the Senate Judiciary and Rules Committees to examine needed reforms of the Presidential succession statute. More hearings are planned before the end of the Senate session.

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