

United States Senate

WASHINGTON, DC 20510-4305

November 5, 2003

Dear Colleague,

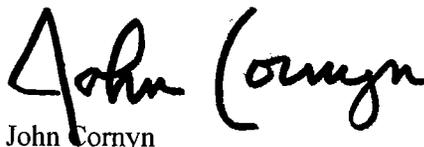
As members of Congress, our most profound and fundamental duty to the American people is to ensure our national security against all possible threats. Yet under our current laws and Constitution, we cannot guarantee that Congress will be able to enact emergency legislation or approve emergency appropriations in the immediate aftermath of a catastrophic terrorist attack – as it did just days after September 11. Indeed, but for a late departure and the ensuing heroism of the passengers, Congress could have been destroyed by the hijackers of United Airlines Flight 93. Accordingly, I introduced this morning a constitutional amendment and implementing legislation to ensure our ability to maintain a functioning Congress – just as the 20th and 25th Amendments help ensure continuity of the Presidency.

Earlier this year, the Continuity of Government Commission – a bipartisan panel of former Congressional leaders and government officials from across the political spectrum, sponsored by the American Enterprise Institute and the Brookings Institution – issued a unanimous report concluding that our current laws are inadequate, and that a constitutional amendment is necessary, to ensure continuity of Congress. And at a September 9 Senate Judiciary Committee hearing I chaired on this subject, expert witnesses agreed with that conclusion. After all, Article I of the Constitution requires “a Majority of each [House to] constitute a Quorum to do business.” Yet the Constitution provides no mechanism for immediately filling vacancies or incapacities in the House, or incapacities in the Senate. Indeed, if a majority of Senators is incapacitated, for example, by a biological weapons attack, Congress could be shut down for as long as *four years* – the time it could take for a sufficient number of general elections to be held. (The 17th Amendment permits immediate appointments in the Senate only to fill vacancies, not to cure incapacities.)

Although there is widespread agreement that we have a problem, there is some disagreement on the solution. Some members of Congress want to authorize emergency interim appointments to fill vacancies and cure incapacities in the House and Senate, while other members believe that expedited special elections alone are sufficient. My proposal specifically refrains from choosing sides in this debate. Following the model of the 17th Amendment, my proposal would give each state the option to choose which procedures to use. The proposed constitutional amendment would simply defer the question to Congress, and the implementing legislation would simply defer the question to the states.

In an age of terrorism and a time of war, few things could be more important than ensuring that all branches of the United States government – the nation’s most vital instrument of national security – are failsafe and foolproof, capable of surviving even the most devious and destructive of terrorist plots. Accordingly, I welcome and invite your support and co-sponsorship of this important legislation. If you are interested in co-sponsoring this legislation or have any questions or concerns, please feel free to contact me, or my subcommittee staff at (202) 224-7840.

Sincerely,



John Cornyn