

Potential threat if senators try to delay vote

Confirming Cabinet members quickly is essential to continuity of government and safety, says James C. Ho

By James Ho

A number of senators are reportedly considering various tactics to delay confirmation of new Cabinet members until well past Inauguration Day, in an effort to hamper incoming President Donald Trump's first 100 days in office.

National security experts and leading legal scholars have warned, however, that such delay tactics are dangerous to U.S. security interests because they would encourage foreign interference with the inauguration of a new president. Such tactics should therefore be a nonstarter — especially for anyone who has expressed concern about Russian interference with the presidential election.

The Continuity of Government Commission — which has been chaired by former Presidents Jimmy Carter and Gerald Ford and former Sens. Alan Simpson and David Pryor — was established in the wake of the 9/11 terrorist attacks to investigate threats to national security.

As the commission concluded in its June 2009 report, “the most dangerous time for presidential succession is the inauguration of a new president, when the outgoing line of succession is gathered together and the incoming line is not yet in place.”

Here's why: The incoming president, vice president, speaker of the House and president *pro tempore* of the Senate — along with the rest of the Senate and House — all gather in close proximity for the inauguration ceremony. As a result, the commission warned that terrorists could effectively reverse the results of the presidential election by launching a strategically timed attack at this precise moment of vulnerability.

If successful, such an attack could effectively elect a Cabinet member of the outgoing administration as our new president. Imagine a terrorist attack designed to replace incoming President Trump with outgoing Secretary of State John Kerry (or Barack Obama with Condoleezza Rice). It is a strong incentive for any ideologically motivated domestic or foreign terrorist group.

That's why the Senate traditionally holds an immediate vote on as many Cabinet appointees as possible, within hours of a new president taking office on Jan. 20, to enable the new president to have a handpicked line of succession immediately in place to protect the election results (as Senate Republicans allowed Obama to do in 2009).

And it's why the commission recommended an even more accelerated process to further strengthen national security: a protocol of cooperation between administrations, in which the outgoing president would nominate the incoming Cabinet, so the Senate could vote on confirmation even *before* — but in all events, certainly no later than — Jan. 20.

The commission's recommendation was premised on the work of then-freshman Sen. John Cornyn, who chaired a series of hearings in 2003 and 2004 to investigate national security vulnerabilities with respect to continuity of government.

Cornyn authored Senate Resolution 419 to codify the Jan. 20 protocol. And his resolution was applauded not only by national security experts, but also by the nation's leading liberal legal scholars.

Laurence Tribe hailed the Jan. 20 protocol as not only “extremely wise” but “crucial, especially during a period of our history when fanatic international terrorism threatens to disrupt our political and governmental processes.”

Legal scholar Cass Sunstein also cheered the resolution, noting that, “in the event of terrorist attack or other large-scale disruption, it would reduce the risk that there would be ‘gaps’ in the personnel and operation of the executive branch,” and ensure appointment of “personnel of the president’s choosing.”

And former Solicitor General Walter Dellinger praised Cornyn, writing that “on rare occasions a suggestion comes along that is truly a good government idea. The ‘smooth transition’ resolution you have proposed is a premier example. It is a simple idea that would strengthen our government, regardless of party and regardless of ideology.” Confirming the incoming Cabinet by no later than Jan. 20 is “not merely a convenience: It is essential in an era in which our government must be ever vigilant.”

In sum, the delay tactics currently being considered by various senators against the incoming Cabinet

squarely contradict the advice and counsel of professors Tribe, Sunstein and Dellinger.

Every senator has the right, of course, to vote their conscience on incoming Cabinet members. But the overwhelming majority of incoming Cabinet nominees are destined to be confirmed by the newly reelected Republican Senate majority. So there is absolutely no reason to delay votes on these Cabinet nominees past Jan. 20. Delay only threatens our security.

This has been one of the most divisive presidential elections in our nation’s history. But the election is over. Our nation’s leaders should follow the recommendations of the Continuity of Government Commission and Tribe, Sunstein and Dellinger. They should allow swift confirmation votes on the incoming Cabinet in order to protect the results of our national election, and to eliminate the perverse incentive of an ideologically driven terrorist attack.

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