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THE WHITE HOUSE

WASHINGTON

April 29, 1985

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS
HUGH HEWITT

We have reviewed the attached binder on Presidential succession. In addition to providing the draft letters called for at Appendices 8 and 10, we have made two substantive changes.

First, the discussion of the oath required by the Vice President or the Speaker upon assuming the Presidency, Tabs A and F respectively, has been changed. The earlier discussion stated that 5 U.S.C. § 2904(c) required that the oath be administered by a competent official acting within the United States or a territory or possession of the United States. Not only did this discussion reference the incorrect section -- it is § 2903(c) -- we have determined that § 2903(c) does not apply to the oath for the Office of the Presidency. The Vice President or Speaker, even if he is away from the United States, may simply swear the oath although considerations of decorum would probably suggest that an appropriate official perform the act. The crucial consideration is that the Vice President or the Speaker does not have to wait to return to the United States to swear the oath.

Second, we have added a cautionary paragraph to the discussion of the procedures of the Twenty-Fifth Amendment contained at Tab B. At page 3 of that discussion we have included the paragraph:

> Consideration should always be given to whether the procedures of the 25th Amendment need to be activated. If the President's disability will be brief and it is doubtful that any of his non-delegable powers will have to be exercised, it may be preferable not to employ the elaborate and untested procedures of Section 3.

This caution reflects our belief that Section 3 need not be used whenever a President undergoes a brief period of disability such as surgery. Quick resort to Section 3 may establish precedent that will be difficult to avoid in future years when a President would prefer not to pass power -- however briefly -- to a Vice President.

Attachment

89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 564

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT

JUNE 30, 1965.—Ordered to be printed

Mr. CELLER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S.J. Res. 1]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"*ARTICLE* —

"*SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.*

"*SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.*

"*SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary,*

such powers and duties shall be discharged by the Vice President as Acting President.

"SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

And the House agree to the same.

EMANUEL CELLER,
BYRON G. ROGERS,
JAMES C. CORMAN,
WILLIAM M. MCCULLOCH,
RICHARD H. POFF,
Managers on the Part of the House.

BIRCH E. BAYH, JR.,
JAMES O. EASTLAND,
SAM J. ERVIN, JR.,
EVERETT M. DIRKSEN,
ROMAN L. HRUSKA,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House passed House Joint Resolution 1 and then substituted the provisions it had adopted by striking out all after the enacting clause and inserting all of its provisions in Senate Joint Resolution 1. The Senate insisted upon its version and requested a conference; the House then agreed to the conference. The conference report recommends that the Senate recede from its disagreement to the House amendment and agree to the same with an amendment, the amendment being to insert in lieu of the matter inserted by the House amendment the matter agreed to by the conferees and that the House agree thereto.

In substance, the conference report contains substantially the language of the House amendment with a few exceptions.

Sections 1 and 2 of the proposed constitutional amendment were not in disagreement. However, in sections 3 and 4, the Senate provided that the transmittal of the notification of a President's inability be to the President of the Senate and the Speaker of the House of Representatives. The House version provided that the transmittal be to the President pro tempore of the Senate and the Speaker of the House of Representatives. The conference report provides that the transmittal be to the President pro tempore of the Senate and the Speaker of the House of Representatives.

In section 3, the Senate provided that after receipt of the President's written declaration of his inability that such powers and duties would then be discharged by the Vice President as Acting President. The House version provided the same provision except it added the clause "and until he transmits a written declaration to the contrary". The conference report adopts the House language with one minor change for purposes of clarification by adding the phrase "to them", meaning the President pro tempore of the Senate and the Speaker of the House.

The first paragraph of section 4, outside of adopting the language of the House designating the recipient of the letter of transmittal be the President pro tempore of the Senate and the Speaker of the House of Representatives, minor change in language was made for purposes of clarification.

In the Senate version there was a specific section; namely, section 5, dealing with the procedure that when the President sent to the Congress his written declaration that he was no longer disabled he could resume the powers and duties of his office unless the Vice President

and a majority of the principal officers of the executive departments, or such other body as the Congress might by law provide, transmit within 7 days to the designated officers of the Congress their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon, the Congress would immediately proceed to decide the issue. It further provided that if the Congress determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President would continue to discharge the same as Acting President; otherwise, the President would resume the powers and duties of his office.

The House version combined sections 4 and 5 into one section, now section 4. Under the House version, the Vice President had 2 days in which to decide whether or not to send a letter stating that he and a majority of the officers of the executive departments, or such other body as Congress may by law provide, that the President is unable to discharge the powers and duties of his office. The conference report provides that the period of time for the transmittal of the letter must be within 4 days.

The Senate provision did not provide for the convening of the Congress to decide this issue if it was not in session; the House provided that the Congress must convene for this specific purpose of deciding the issue within 48 hours after the receipt of the written declaration that the President is still disabled. The conference report adopts the language of the House.

The Senate provision placed no time limitation on the Congress for determining whether or not the President was still disabled. The House version provided that determination by the Congress must be made within 10 days after the receipt of the written declaration of the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide. The conference report adopts the principle of limiting the period of time within which the Congress must determine the issue, and while the House original version was 10 days and the Senate version an unlimited period of time, the report requires a final determination within 21 days. The 21-day period, if the Congress is in session, runs from the date of receipt of the letter. It further provides that if the Congress is not in session the 21-day period runs from the time that the Congress convenes.

A vote of less than two-thirds by either House would immediately authorize the President to assume the powers and duties of his office.

EMANUEL CELLER,
BYRON G. ROGERS,
JAMES C. CORMAN,
WILLIAM M. MCCULLOCH,
RICHARD H. POFF,
Managers on the Part of the House.

○

vides for termination of all authority under title II on June 30, 1969.

ADAM C. POWELL,
JAMES G. O'HARA,
DOMINICK V. DANIELS,
ROMAN C. PUCINSKI,
SAM M. GIBBONS,
WILLIAM D. HATHAWAY,
WILLIAM H. AYRES,
JOHN M. ASHBROOK,
ALBERT H. QUIE,
Managers on the Part of the House.

Mr. O'HARA of Michigan (interrupting the reading of the statement of managers on part of House). Mr. Speaker, the conference report and the statement on the part of the managers of the House has been printed in the RECORD and I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. O'HARA of Michigan. Mr. Speaker, the conference report which we bring back to the House is unanimous. It makes only two really significant changes from the House bill. The first is that authorization figures are inserted for the coming fiscal year as provided in the Senate bill rather than the House authorization of such sums as may be necessary for the coming fiscal year.

The second important difference was that the Senate bill provided for an extension of the authority under title II until 1970, while the House bill provided for such extension only until 1968. The conferees agreed upon an extension until 1969.

Mr. Speaker, I would like to cover one other point.

Some question has arisen with regard to the language on page 22 of the House committee report with respect to safeguarding against Manpower Development and Training Act substitution for private training efforts. The language used therein refers to institution of Manpower Development Training Act programs in unskilled or minimally skilled occupations for which prior training or possession of a specific skill has not traditionally been a prerequisite to employment. It is the belief of the committee that Manpower Development and Training Act training in such situations would substitute for threshhold training normally undertaken at the expense of the employer and would not add to achieving the manpower goals which are the objectives of the Manpower Development and Training Act. The committee did not intend to imply that Manpower Development and Training Act programs would not be available for training persons in technical and skilled occupations in the garment industry or any other industry for which prior training or possession of specific skills has traditionally been a prerequisite to employment. For example, it might be appropriate under the proper circumstances for Manpower Development and Training Act training to be utilized to provide skilled personnel for employment repairing, adjusting, maintaining, and rebuilding machinery used in the apparel industry.

Mr. Speaker, if there are any further questions with regard to the conference report, I would be happy to attempt to respond. In the meantime, I yield to the gentleman from Minnesota [Mr. QUIE].

Mr. QUIE. Mr. Speaker, I thank the gentleman for yielding. I will say that the gentleman from Michigan [Mr. O'HARA] states my understanding exactly as to what I believe is the congressional intent with respect to safeguarding against MDTA assistance for private training centers and its application to the apparel industry.

I might also say, Mr. Speaker, that I am in support of the conference report. I believe we reached a good compromise with the other body and it should be acceptable to all who supported this bill previously.

Mr. O'HARA of Michigan. I thank the gentleman from Minnesota.

Mr. Speaker, I now yield to the gentleman from Illinois [Mr. PUCINSKI].

Mr. PUCINSKI. Mr. Speaker, I would like to join in recommending the adoption of this conference report. It is my opinion that the conferees have done a good job. Most of the House provisions have been retained. I further believe that we have substantially strengthened this bill.

However, Mr. Speaker, there is one question which I would like to ask the manager of the bill, the gentleman from Michigan [Mr. O'HARA] so that we can establish some legislative intent.

We have provided in this bill now a greater flexibility for the use of private school facilities as a part of the manpower training program.

Now, in some areas of the country the public schools have taken the position that where there is a need for a training program and even though there is a private school that has such facilities available, the public schools must be given priority to develop a program before the Director of the MDTA can enter into agreement with the private school.

It is my understanding that the intent of the language of this bill is that if a private school is available and can provide the programs which would be available if a public school were to develop a similar program, the local director may enter into an agreement with the private school rather than wait until the public school tries to develop and put together a program to satisfy that need.

Is my understanding of this provision correct?

Mr. O'HARA of Michigan. I would advise the gentleman from Illinois [Mr. PUCINSKI] that his understanding is correct. As a matter of fact the conference report as the gentleman knows authorizes the use of private training facilities where they can expand the use of the individual referral method, a method we have found efficient in getting individuals into training quickly and at a substantial equipment savings in cost. This represents one of the advantages of the conference report.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. O'HARA of Michigan. I yield to the gentleman from Minnesota.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. O'HARA of Michigan. I yield to the gentleman from Minnesota.

Mr. QUIE. As long as the cost is of the same amount for the private school, or thereabouts, it is acceptable. However, the public schools may still go ahead and put in the program, even though it would be substantially more expensive than the private school.

Mr. O'HARA of Michigan. The gentleman from Minnesota is correct.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

COMMITTEE ON RULES

Mr. SMITH of Virginia. Mr. Speaker, I ask unanimous consent that the Committee on Rules have until midnight tomorrow to file certain privileged reports.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT

Mr. YOUNG. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 314 and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 314

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office. After general debate, which shall be confined to the resolution and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the resolution shall be read for amendment under the five-minute rule. At the conclusion of such consideration the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the resolution or committee substitute. The previous question shall be considered as ordered on the resolution and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions. After the passage of H.J. Res. 1, the Committee on the Judiciary shall be discharged from further consideration of S.J. Res. 1 and it shall then be in order in the House to move to strike out all after the resolving clause of said Senate joint resolution and to insert the provisions of H.J. Res. 1 as passed by the House.

Mr. YOUNG. Mr. Speaker, I yield 30 minutes of my time to the gentleman from Ohio [Mr. BROWN], pending which I yield myself such time as I may require.

Mr. Speaker, House Resolution 314 provides for consideration of House Joint Resolution 1, a joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office. The resolution provides an open rule with 4 hours of general debate. After passage of House Joint Resolution 1, the Committee on the Judiciary shall be discharged from further consideration of Senate Joint Resolution 1, and it shall be in order to move to strike out all after the resolving clause of said Senate joint resolution and to insert the provisions of House Joint Resolution 1 as passed by the House.

Article II, section 1, clause 5, of the Constitution of the United States contains provisions relating to the continuity of the executive power at times of death, resignation, inability, or removal of a President. No replacement provision is made in the Constitution where a vacancy occurs in the office of the Vice President.

The clause couples the contingencies of a permanent nature such as death, resignation, or removal from office, with inability, a contingency which may be temporary. It does not clearly commit the determination of inability to any individual or group, nor does it define inability so that the existence of such a status may be open and notorious. It leaves uncertain the capacity in which the Vice President acts during a period of inability of the President. It fails to define the period during which the Vice President serves. It does not specify that a recovered President may regain the prerogatives of his office if he has relinquished them. It fails to provide any mechanism for determining whether a President has in fact recovered from his inability, nor does it indicate how a President, who sought to recover his prerogatives while still disabled, might be prevented from doing so.

The purpose of House Joint Resolution 1, as amended, is to provide for continuity in the office of the Chief Executive in the event that the President becomes unable to exercise the powers and duties of the office and, further, to provide for the filling of vacancies in the office of the Vice President whenever such vacancies may occur.

Mr. Speaker, I urge the adoption of House Resolution 314.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. YOUNG. I yield to the gentleman from Iowa.

Mr. GROSS. I should like to express my appreciation to the gentleman for the fact that the Committee on Rules has finally brought us legislation under an open rule, so that we can amend it and otherwise work our will on it.

Mr. YOUNG. I appreciate the gentleman's observation.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may desire.

Mr. Speaker, as the gentleman from Texas, my colleague on the Rules Committee, has explained, this rule makes in order, with 4 hours of general debate, House Joint Resolution 1, which in turn would amend the Constitution of the United States and put into the Constitution certain arrangements or procedures in connection with the line of succession to the Presidency and the filling of any vacancy that might occur in the office of the Vice President.

In order for this resolution to be adopted by the Congress, a two-thirds or a two-to-one vote in favor of the House Joint Resolution is required. I do not oppose the rule. I am opposed to the House Joint Resolution because I believe it is unwise and unnecessary, and is legislation that should not be enacted.

I notice, as we look at the report concerning House Joint Resolution No. 1, there has been some divergence of view and the original author of the bill, or someone on the committee saw fit to strike out a great deal of the original House Joint Resolution and rewrite it, bringing in a new resolution. There must have been some disagreement among those very able lawyers, 35 I believe, who make up the House Judiciary Committee. The report also has some minority or divergent views expressed.

If this joint resolution is approved by a two-to-one vote in both the House and Senate, the question of amending the Constitution will be submitted to the States, and will require a three-fourths vote, or 38 States, to ratify the amendment. I hope there will be enough judgment, sound judgment, in a sufficient number of legislatures in the several States of our Union to ensure that this amendment will never become a part of the Constitution.

I am not setting myself up as a constitutional lawyer, more able and wise than those who serve on the distinguished Judiciary Committee.

Yet, I am not unmindful of the fact that the Constitution itself—and it is still a rather important document, although it seemingly has lost some caste in the minds of some people here in the Capital City—which sets up the office of the Presidency, provides that the responsibility of fixing the line of succession and of filling any vacancy which may exist in the office of the Presidency rests entirely with the Congress of the United States.

I direct your attention to article II:

> In case of the removal of the President from office, or at his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The Congress, by statute, has provided for a line of succession in the office of the Presidency. That statute still is in existence. In my opinion, it is a grave mistake to freeze into the Constitution another provision because conditions can change. It is a grave mistake to authorize another provision and not meet our own responsibility in fixing a line of succession by statutory enactment.

Let me remind you that this resolution also provides that the President shall, in case of a vacancy in the office of Vice President, appoint a Vice President subject to the approval of the Congress. In other words, we could disapprove. I made a statement when this bill was before the Committee on Rules, and I stand on that statement today. Under certain conditions and certain circumstances, a vacancy could exist in the Vice-Presidency and a President could name a billy goat as Vice President and some Congresses would approve of that nominations and that selection.

I think that inasmuch as the Constitution itself provides that the House of Representatives shall have the responsibility of electing a President, in case an electoral college cannot select a President, that it might be wiser to provide by statute or constitutional amendment, that in case there is a vacancy in the office of Vice President, that the vice-presidency shall be filled by a vote of the House of Representatives just as the Presidency is filled by a vote of the House of Representatives under Article II of the Constitution. What is the difference? Why should we agree here and write into the Constitution that which the Founding Fathers refused to do—that the President can in his wisdom name his own successor? If you will read the constitutional debates held when this Nation was founded, you will see that there were delegates to the Constitutional Convention who believed that George Washington should be named a monarch and that there be a line of succession from him. The Convention decided otherwise and I think wisely so, and provided that the people should elect their President and Vice President through the electoral college and, if the college could not agree on a President, the House of Representatives should elect a President, and the line of succession should be fixed by statutory enactment of the Congress. That is exactly what has been done. Why change it now?

Why go back to the theory and idea that the President can name whomever he pleases as Vice President and put his choice in a position to succeed him if he wishes to resign the next day as President? The man named Vice President could be an individual who was never elected to any public office. Congress in the line of succession statutes now provides that those who have been elected—the Speaker of the House and the President pro tempore of the Senate—shall succeed to power and authority as President.

In my opinion, we will be making a grave mistake if we adopt this resolution in the House today. Oh, I know, the way is pretty well greased for it. It has the support of some very able individuals. But I have a right to stand here and differ with them, because they may be wrong. When one is wrong in amending the Constitution, it is a difficult wrong to correct. Members have learned this by hard experience in the last few decades.

When we amend the Constitution, to fix in the document itself, certain things that should be done by statute, we are doing something dangerous and some-

thing we may regret in future years. Too often we have to try to interpret, either ourselves or through the courts, exactly what the provisions mean. Some of the testimony heard before the Rules Committee indicates that under certain circumstances even the members of the committee who sponsored this resolution are not certain of the answers to the problems which could arise.

Why shackle ourselves? Why say that we, as the representatives of the people, will vote away our own responsibilities and write into basic law something that cannot be corrected easily if we make a mistake?

Mr. DEVINE. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Ohio.

Mr. DEVINE. When the committee appeared before the Rules Committee on this legislation, does the gentleman know whether any consideration was given to a possible constitutional amendment to permit the people to select a first Vice President and a second Vice President, rather than to leave the choice up to the President in case of a vacancy? There was some talk at one time that perhaps if there were a first and second Vice President, in the event of a vacancy in the Presidency, each would move up and we would not face the problem of a vacancy in the office of Vice President. Does the gentleman know whether that was considered?

Mr. BROWN of Ohio. I cannot say what may have been considered by the Judiciary Committee. I do not believe that matter was discussed in the Rules Committee.

Mr. DEVINE. I thank the gentleman.

Mr. BROWN of Ohio. I remind my distinguished colleague from Ohio of the fact that we do provide, under the line of succession, that the Speaker of the House, elected by the people of his district and in turn elected to his high position by a vote of the majority of this House, shall succeed to the Presidency. That was the situation until last January 20, and had been for over 1 year. In my opinion, it was a very safe situation. I was not concerned about the welfare of my country so long as I knew that the Speaker of the House would succeed to the Presidency if it became necessary. Nor was I concerned by those who followed him under the statutory line of succession.

I believe that perhaps in our desire to meet every condition which might possibly arise as a result of past history, or some of the things that frighten us a bit, we have gone overboard.

Mr. ICHORD. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Missouri.

Mr. ICHORD. This resolution has some very meritorious provisions in respect to the inability of the President, but I have been quite concerned about the change in the line of succession. Now the Speaker of the House is second in the line of succession. This would not completely remove the Speaker of the House from the line of succession but, as a practical matter, would it not remove the Speaker?

Mr. BROWN of Ohio. Not if the President, who might have been the Vice President and is President, wished to name the Speaker.

Mr. ICHORD. Does the gentleman consider this measure as diminishing the prestige of the House?

Mr. BROWN of Ohio. Certainly. It takes away from the House a constitutional right it now has to select a President. How can anyone justify the idea that the House of Representatives can be trusted to select a President but cannot be trusted to select a Vice President?

Now I want to answer the gentleman from Missouri [Mr. ICHORD], further about this disability situation. Our Founding Fathers had pretty good foresight themselves. The Constitution itself says that:

> The Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and the Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.

We have the complete constitutional right and authority, in my opinion, and I believe in the opinion of most lawyers, to fix by statute the line of succession and to provide for filling any vacancies that may occur because of disability, temporary or otherwise, of the President and the Vice President of the United States. I say to you it is simply a foolish thing to consider, enact, and approve legislation like this.

I hope that if we do not realize now how foolish it is, that before 38 States will ratify such a constitutional amendment someone will say, "No, no. This is not good commonsense and ought not to be done."

Mr. PUCINSKI. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Illinois.

Mr. PUCINSKI. It is not often that I find myself in agreement with the gentleman, but in this instance I must congratulate him for his statement. I agree. The observation that the gentleman made is a very serious one. I had no discomfort last year or any great fears when the Speaker of this House was next in line in succession for the Presidency had the occasion required. Is it possible that under the language as now proposed conceivably at some future date in the history of this country you might have a person recommended to be Vice President under certain circumstances who had never run for public office and who had never had any experience in the Government and who knew nothing about the problems and, invariably, since the President becomes the leader of his party, it is rather difficult to conceive of the majority party wanting to go against the wishes of the President.

Mr. BROWN of Ohio. Certainly. The gentleman is just as right as he can be. And, to convince this House that you are right, let me point out one situation to prove the correctness of the facts that you and I have expressed. Lyndon B. Johnson became President. He was Vice President but he became President when President Kennedy was assassinated. That created a vacancy in the office of Vice President of the United States. If this resolution had been a part of the Constitution at that time, President Johnson could have appointed any individual he wished as Vice President and nominated him subject to the final approval of the Congress. The Congress could disapprove, but do you think they would under those circumstances? That individual would not have needed to have any qualifications or background as a public official. He could have been any neighbor or friend of the President, or any individual he might have selected. I am not saying he would make a bad selection, but I am saying that when you write into the Constitution and fix into the basic law of the land certain rules and regulations that are not flexible, as statutory law is, anything can and may happen.

That is what they are trying to meet here, situations we fear might happen. Why not do it the sensible way, by statute, instead of by constitutional amendment?

Mr. PUCINSKI. Mr. Speaker, will the gentleman yield further?

Mr. BROWN of Ohio. I yield.

Mr. PUCINSKI. The point is this. We are a young country. The question in my mind is this—perhaps the gentleman may want to comment on it—assuming, for some reason or other, the Congress does not respond to the President's recommendation. There is a great deal of debate and furor in the Congress. What have we resolved? We have a built-in delay in the succession of our Government that is not there now, when the Speaker would automatically succeed to the Presidency when the need arises.

Mr. BROWN of Ohio. The committee is trying to meet that by provisions of this resolution. That will have to be explained by members of the committee. Under certain circumstances, if the Congress does not act within a certain time, certain results will follow. If anyone will ask these distinguished constitutional lawyers, perhaps some of them can explain. There seems to be some difference of opinion as to how this would work in the case of the very situation the gentleman from Illinois has described. That, again, is a danger. It can be corrected by statute. It cannot be corrected quickly by constitutional amendment. For that reason I am opposed to writing into the Constitution all of these complicated provisions.

This resolution has been amended, and when you see how much of the resolution has been stricken out and rewritten you can realize that even lawyers sometimes may agree among themselves that they may have made a mistake. Let us hope that all the mistakes, if there were any in connection with this resolution, have been in writing the resolution, and not in what goes into the Constitution of the United States.

Mr. YOUNG. Mr. Speaker, I yield 15 minutes to the distinguished gentleman from Virginia [Mr. SMITH].

Mr. SMITH of Virginia. Mr. Speaker, I ask unanimous consent to revise and

extend my remarks, to include extraneous matter, and to speak out of order.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SMITH of Virginia. Mr. Speaker, for the past decade the Congress and the country have been kept in a constant political turmoil over Federal legislation and judicial decisions of the Federal courts concerning the question of civil rights, culminating in the demonstrations, riots and disorders in Selma and other parts of Alabama. We have seen thousands of people from all over the country flocking to Alabama to indulge in demonstrations to pressure the Congress into passing another so-called voting rights bill. We have seen invasion by persons posing as tourists, staging a sitdown strike in the White House itself and permitted to remain there for hours before they had to be forcibly ejected.

We have seen similar invasion of the Capitol of the United States by demonstrators who remained until they were dragged down the Capitol steps and placed under arrest. We have seen picketing and demonstrations day after day at the White House, and sitdown demonstrations obstructing Pennsylvania Avenue in front of the White House, at the very time when the administration had acceded to their demands and was actually and feverishly preparing the legislation which they demanded.

Such organized demonstrations have not occurred in the past and do not occur spontaneously. There must be some deep-seated plan, well organized and well financed behind the movement. In the beginning it may have been well meaning, well intended, with a righteous purpose of seeing that all American citizens enjoy their civil rights.

But when it reaches the crescendo of this movement, which is even called by some of its leaders a revolution, it is time to look into its background and to review what has gone before and what remedies have been taken to correct the alleged evils.

Now that the hysteria has partially subsided and the mob spirit of Selma has temporarily abated, and the captains and the king of the mob have departed from the scene, it would seem timely for people in a calmer mood to begin to inquire and think about what, if any, ulterior motives may be building up behind the scenes.

Many good, well-meaning, Christian people have been drawn into the movement with the best of motives and thus have served to clothe the mobs with an air of respectability. It is time for these good people to consider whether they are maybe playing with fire. There can be no doubt that many Communists, subversives, fellow travelers, and others of doubtful loyalty to their country, have attached themselves to this movement. Many of them, whose past subversive activities are known in Government circles, were present at Selma during the demonstrations. It is time for well-meaning Christians and loyal citizens to calm down and take stock of whether they are being led, and what is the ultimate objective of their leader.

They have adopted the slogan, "We shall overcome."

I pose the question, "Whom and what do they aim to overcome?"

How many of the mob that traveled hundreds and thousands of miles to Selma know what sort of company they were keeping and how many subversive and disloyal persons were there to incite violence and law violations?

I am the author of the Smith Act of 1939 that became so effective in the Truman administration in apprehending, prosecuting, and convicting leading Communists. The constitutionality of that act, when the late, great Chief Justice Vinson presided, was tested and sustained in the famous Dennis case. Thereafter, during the Truman administration, many Communists, subversives, and disloyal people were prosecuted, convicted, and sent to jail.

As a Member of Congress in the mid-thirties, I helped establish the Dies committee that did a magnificent job of exposing communism, and was succeeded by the present permanent Un-American Activities Committee. During those years I have learned much of the methods of subversives and Communists.

Where there is strife and organized disorder, there is the seedbed for subversive activity. There a few disloyal agitators, well planted and concealed, sow their poisonous doctrines. The more respectable the movement and the more prominent the participants, the more eager are their efforts.

I am sure that a great many well-meaning people who went to Selma would be humiliated and distressed to find themselves in that sort of company. I ask again, whom and what are the leaders of the "we shall overcomers" aiming to overcome?

Let us review what has been done by the courts and the Congress in the past 12 years for the cause of civil rights.

Let us recall that in 1954 the present Supreme Court changed the constitutional meaning of the 14th amendment that had been in effect for 50 years and thus has brought about integration in the public schools.

Remember that in 1957 the Congress passed by a large majority, and the President signed, the Civil Rights Act of 1957. That act established a Commission on Civil Rights as an executive branch of the Government with elaborate powers to investigate, hold hearings at any place, at any time, with the power to subpena witnesses and report to the President any violations of the civil rights of any person.

That act of 1957 further provided full Federal protection of the right of citizens to vote to be enforced upon the application of the Attorney General by the Federal District Courts of the United States by permanent or temporary injunction or other order, and by criminal procedure of contempt for any disobedience. This act, which established the Civil Rights Commission, gave that Commission the power to investigate and report any violation of the constitutional right to vote, after which the Attorney General was authorized to go into the district court, and seek an injunction to prevent interference with any voter's rights. The court could issue the necessary order to enforce those rights and send the State officials to jail for contempt of court if they did not obey.

That is what the agitators asked for, that is what they got. That law is still on the books. If there were any wrongs, why did they not correct them through legal processes instead of stirring up more mobs. But following the act of 1957, they immediately began to agitate for more legislation instead of using what they had asked for. And 3 years later, the same groups of civil rights agitators urged the Congress to pass another Civil Rights Act, and Congress passed, and the President on May 6 signed, the Civil Rights Act of 1960, and in that act, among other things, at the instance of the same groups of agitators in the atmosphere of an approaching national election and using all of the political persuasion and threats they could command, induced the Congress to pass a second Federal voting law.

The Civil Rights Voting Act of 1960, under the political pressure of the civil rights groups, enacted provision for the appointment by the courts of Federal voting referees in event of violation of any constitutional voting rights of any citizen. I quote the act:

> The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, • • • to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law.

That was what they asked for; that is what they got.

Under that act, Federal registrars were appointed in certain places. The agitators got what they asked for with full power in the Federal courts to enforce registration and voting through the Federal referees at the behest of the Attorney General. Although the machinery was set up at that time, so few people applied for Federal registration that it has been rarely used.

I ask you again, What do the "we shall overcomers" really seek to accomplish? Is it the vote, or the constant effort to create strife and turmoil and revolution?

The agitators, demonstrators, and rioters got from the Congress the law they asked for in 1957. They got from Congress what they asked for in the law of 1960. They got the Federal voting referees that they asked for in 1960.

They got what they asked for and they had at every step of the way, the full cooperation and all the powers of the Federal Government to see that the law was enforced and no effort was spared.

Were they satisfied? What happened next?

They immediately started building up other demonstrations, other mobs, other

agitations, other political pressures, until the Congress passed and the President signed on July 2, 1964, the Civil Rights Act of 1964.

Political threats are more potent and political pressures are more effective in a presidential election year, and so the latter part of 1963 and the early part of 1964, the demonstrators began to demonstrate, the mobs began to mobilize, and the furor was renewed with a vehemence culminating in the march on the Capital just as if no Civil Rights Act had ever been passed by the Congress before.

Again there was a big chapter in the bill entitled, "Voting Rights." That provision gave the Attorney General the authority to ask the courts to establish what was termed a "pattern or practice of discrimination." It also deprived the States of their constitutional duty and power to establish qualifications of voters and substituted a Federal provision making anyone competent who had completed the sixth grade in the public schools.

Just last year the Congress passed the third Civil Rights Act in 7 years, and the President signed it, and it became the law of the land with the President's signature on July 2, 1964.

Still complaining, agitating, and rioting, the ink was barely dry on the Civil Rights Act of 1964, before the country was thrown into the present turmoil of demonstrations, sitdowns, riots, law violations, and hysteria, ostensibly to force the Congress to pass the "we shall overcome" Civil Rights Act of 1965.

This bill, if passed, will completely abolish the constitutional power and duty of the States to fix the qualifications of voters.

And the Congress, yielding again to the menace of the howling mobs, are preparing to pass the Civil Rights Act of 1965, in the framing of which the Attorney General has apparently thrown all respect for the Constitution to the four winds, and proposes to reduce the sovereign States of the Union to mere puppets of the Federal Government, prescribing heavy criminal penalties and making guilt or innocence of sovereign States dependent upon the number of votes cast in the last presidential election, and imposing penalties on whole States and individuals in direct violation of the ex post facto prohibition in the Constitution for acts done long before the bill was ever conceived.

Now, will the act of 1965, if passed, allay the mob spirit? Will it satisfy Martin Luther King? Of course not. The history of the movement for more and more and more legislation demonstrates that more than legislation is sought. They had no sooner been assured by the administration in no uncertain terms of the passage of the fourth drastic Civil Rights Act in 7 years, than their leader, Martin Luther King, in order to keep alive the agitation, disorder, and promote his revolution, has already announced his next program with an arrogance that smacks of outright rebellion.

First, he has publicly announced that he will defy and violate any law of the land that he disagrees with. This is the language of rebellion and anarchy.

He has even admonished all citizens to violate any law of the land which they consider as "morally wrong." Is this the kind of leadership that loyal American citizens are ready to follow?

Second, he has publicly announced that he is conspiring with his leaders to inaugurate an economic boycott, of doubtful legality, against the whole people of Alabama, friends and foes alike. He has demanded that the U.S. Government remove all installations, moneys and economic benefits from their State. He must know this would cause untold suffering and unemployment to the people he claims to aid, and are least able to bear it.

He has negotiated with Hoffa's Teamsters Union to refuse to transport goods to and from the State of Alabama.

The notorious Harry Bridges has entered his conspiracy with the promise that his Maritime Union will refuse to load and unload ships destined to or from Alabama. Who is Harry Bridges? An alien, former Communist, who has been twice ordered deported from the United States. Is that the kind of leadership that loyal American citizens are ready to follow?

And when Martin Luther King was asked would he call off his proposed boycott of Alabama, if appealed to do so by the President of the United States, his reply was an unequivocal "No."

Before we pass any more "we shall overcome" voting laws, I ask again, what is the ultimate object of the "we shall overcomers" who even now, before their proposed fifth civil rights law is passed, are laying the foundation and making their boasts of what they will do to the country. Even since King has been assured by the President and the Congress of the passage of the thoroughly unconstitutional legislation now pending, he is sending out throughout the country letters soliciting funds for the support and continuation of his movement, whatever its objects may be. So widespread are these solicitations mailed out in March 1965 that they are being received by people well known to oppose the King revolution.

In conclusion, I insert a thoughtful warning published in the Washington Sunday Star on the date of March 28, by a wise, courageous clergyman who has had an unusually close and intimate opportunity to observe public affairs, Dr. Frederick Brown Harris, Chaplain of the U.S. Senate.

[From the Washington Star, Mar. 28, 1965]

WHO SPEAKS FOR THE CHURCH?

(By Dr. Frederick Brown Harris, Chaplain, U.S. Senate)

A fear-haunted question is raised in a recent letter from a highly intelligent lifelong friend, prominent in the affairs of a great eastern city. He poses an agonizing query growing out of the disruption and dislocation in contemporary yeasty humanity. He asks, "Into what kind of a world are our grandchildren headed?" An influential Communist, who is a Judas to his United States citizenship, answered in the dedication of a book he wrote some years ago—"To my great-grandson, J.W.K., who will live in a Communist United States." That would mean that he would live under a coercive government where the vote is not denied to just a tiny minority but in a system in which no one is allowed to vote except where the ballot is stamped by a dictator.

Concerning the right to vote in our land, this is a time of seething emotion bordering on hysteria. In some demonstrations dunce caps and martyr halos are strangely mixed.

In such a time it needs to be said, especially to the churchmen who are so aroused, that in facing squarely domestic adjustments to meet the tests of true government by the people, the unpardonable sin is for Americans out of zeal to redress any national flaws, to allow themselves, unknowingly, to be used by a sinister world conspiracy against human dignity. This blasphemous system is engaged in a lying world campaign to utterly distort the true image of this Nation of our pride and prayer. The hate America propaganda, whose poison is being blown around the planet, is born of communism's fear complex that the United States of America, with its material and moral might, is the one and only power that can thunder to this scourge of fetters—"You shall not pass." Never in history has there been such a colossal campaign to peddle lies about any country. Lenin's directions are now in full operation that any distortion or prevarication is permissible if it advances the cause he fathered.

For instance, one of the charges being made about "imperialistic America" is that the one-tenth of its population belonging to the Negro race, the descendants of slaves snatched from the savage tribes of Africa, are here treated with contempt, denied all opportunities for advancement, and in spite of the Emancipation Proclamation held in virtual subjection. American Negroes thousands of miles from home, members of Joey Adams entertainment group touring the world, nailed down that lie at a public question and answer period in a foreign country. They were being taunted by communistic stooges about the place of their race in America. One of the quartet indignantly answered for them all. Glaring at the questioners he said: "Listen, pals, outside of heaven there is only one place I want to be and that's the United States of America. Sure, we got problems, but we've got laws, and we've got courts, and we've got millions of Americans of all races and creeds and all colors, who are willing to lay down their lives to make possible the freedom of a man called Abraham Lincoln. We've got it made in our country." This black man was exposing the fiction of the communistic line.

Let no one in America, now deeply concerned about voting rights for some groups belonging to one-tenth of our population, be so naive as to be oblivious to the ugly fact that the communistic conspiracy which is out to deny the sacred right of the vote for everybody, is using the present agitation in America to advance their own evil cause. There is more back of that statement than can be put in this article.

The question we are raising here, with no condemnation for religious leaders who are marching today in a cause that grips their conscience, is: Have these same leaders any vivid realization of what is in store for all Americans if the world objectives of that blasphemous, godless system, are attained? And, make no mistake about it, it is so far on its way as to blanch our faces with fear. But with this menace hanging like a Damocles sword over the fragile thread of our liberties, are these same religious leaders so vociferous now as they deal with growing pains of a democracy, equally vocal as they face the most dastardly system the ages have known? It is a tragic fact that the answer to that question must be "No." Among those who are assuming national and world leadership among the churches, it must be

admitted that so far as communism is concerned, there is, to use a scriptural phrase, "A silence that could be heard in heaven."

One of these leaders has said, "Let us quit moralizing about communism and to communism." His word for that conspiracy, and that of many of his colleagues, is accommodation, coexistence, cooperation. We are speaking now of Protestant leadership. Thank God the Roman Catholics are arrayed against religion's most malignant foe. Would to God that in every church in America the perils of this Godless force were being poured into the minds of the young—and, of the older. Would that every church, as its bounden duty, would have its entire membership familiar with every chapter of J. Edgar Hoover's "Masters of Deceit." There could be no more effective antidote to the tragically mistaken attitude of some church leaders as they encourage the coming generation to stroke the ferocious leopard (which has not changed its spots) and to murmur, "pretty pussy."

It is high time for religious people of every name or sign to raise the question in this time of dire crisis, "Who speaks for the church?"

Mr. YOUNG. Mr. Speaker, I have no further requests for time. I yield back the balance of my time and move the previous question.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of House Joint Resolution 1, with Mr. FASCELL in the chair.

The Clerk read the title of the joint resolution.

By unanimous consent, the first reading of the joint resolution was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New York [Mr. CELLER] will be recognized for 2 hours and the gentleman from Ohio [Mr. MCCULLOCH] will be recognized for 2 hours.

The Chair recognizes the gentleman from New York [Mr. CELLER].

Mr. CELLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this resolution, House Joint Resolution 1, has bipartisan support. I particularly offer praise to the gentleman from Ohio [Mr. MCCULLOCH] and the gentleman from Virginia [Mr. POFF] who participated in the fashioning and polishing of this resolution. They did so most wisely and painstakingly. They immersed themselves into the intracacies of the legislation. Their help was immeasurable. By naming them, Mr. Chairman, I do not wish to detract from the constructive work done by most of the members of our committee, Democrats, and Republicans alike. I want to point out particularly likewise in that regard the gentleman from Colorado [Mr. ROGERS], the gentleman from New Jersey [Mr. RODINO], the gentleman from Texas [Mr. BROOKS], the gentleman from Massachusetts [Mr. DONOHUE], the gentleman from Wisconsin [Mr. KASTENMEIER], the gentleman from California [Mr. CORMAN], the gentleman from New York [Mr. LINDSAY], and the gentleman from Florida [Mr. CRAMER]. To them I, indeed, offer an accolade of distinction for genuine service.

This is by no means, ladies and gentleman, a perfect bill. No bill can be perfect. Even the sun has its spots. The world of actuality permits us to attain no perfection. Admirable as is our own Constitution, it had to be amended 24 times. But nonetheless, this bill has a minimum of drawbacks. It is well-rounded, sensible, and efficient approach toward a solution of a perplexing problem—a problem that has baffled us for over 100 years.

As to attaining perfection, let me call your attention to a very pertinent remark made by Walter Lippmann in the New York Herald Tribune of June 9, 1964, when he referred to this proposed amendment. He said:

It is a great deal better than an endless search for the absolutely perfect solution, which will never be found and, indeed, is not necessary.

As was said by the distinguished former Attorney General of the United States, the honorable Herbert Brownell—I commend his words indeed to the gentleman from Ohio [Mr. BROWN]—speaking for himself and speaking for the American Bar Association:

Certainty and prompt action are * * * built into this proposal—namely, House Joint Resolution 1. * * * During the 10-year debate on Presidential disability * * * many plans have been advanced to have the existence of disability decided by different types of commissions or medical experts, by the Supreme Court, or by other complicated ad hoc procedures. But upon analysis, * * * they all have the same fatal flaw, * * * they would be time consuming and divisive.

We tried to avoid freighting down this amendment with too much detail. We leave that to supplementing, implementing legislation. We make the provisions as simple yet as comprehensive as possible.

This is certain: we have trifled with fate long enough on this question of Presidential inability. We in the United States have been lucky, but luck does not last forever. The one sure thing about luck is that it is bound to change.

Sir Thomas Brown once said:

Court not felicity too far and weary not the favorable hand of fortune.

We can no longer delay. Delay is the art of keeping up with yesterday. We must keep abreast of tomorrow. Let us stop playing Presidential inability roulette. Let us pass this measure, which has the approval of the American Bar Association and the American Association of Law Schools. This measure has the approval of 36 State bar associations, including, incidentally, the bar association of the distinguished gentleman on the Rules Committee, the gentleman from Ohio [Mr. BROWN].

Let me read the roster of State bar associations which have approved this measure. The bar associations of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Missouri—one of the gentlemen from that distinguished State had some doubts about it, according to his question, but his bar association approved this measure—New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming.

If I were perplexed and baffled over a legal question, I would not be likely to go to the gentleman from Ohio. More than likely I would go to a lawyer. The gentleman from Ohio is not a lawyer. This is a constitutional legal question. I would not go to Attorney General Brown; I would go to Attorney General Brownell. What did Mr. Brownell have to say on this subject, as to the need for a constitutional amendment and the fact that it would be dangerous to offer a mere statute? Mr. Brownell said:

The number of respected constitutional authorities have argued that there can be no temporary devolution of Presidential power on the Vice President during periods of Presidential inability.

And whatever we may think of that argument, I think a statute would not protect the Nation adequately with the doubts that have been raised, which have been raised too persistently. As long as there is doubt, lingering doubt, concerning the constitutionality of the statute, as long as there is a question concerning the disabled President's constitutional stature after the recovery, I do not believe any inability, as a practical matter, however severe it may be, would be recognized lest recognition of that disability would oust the disabled President from office. Moreover, if the President's inability were severe and prolonged, you should note that devolution of the Presidential power on the Vice President would be somewhat of a crisis itself.

Beyond that, the present Attorney General, a very erudite scholar and a very practical Attorney General, similarly before the Committee on the Judiciary of the House and the Committee on the Judiciary of the Senate gave eloquent testimony as to the need for a constitutional amendment. I shall not burden you at this moment with his words but shall insert them in the RECORD.

A host of city bar associations all over the country have asked for this bill. The U.S. Chamber of Commerce and chambers of commerce throughout the Nation have likewise asked for this bill in the form of a constitutional amendment and not a statute. When this body is asked to adopt a constitutional amendment, the recommending committee must establish an imperative need for such action. Everyone will agree that amending the basic document, the charter, if you will, of our Nation is not a task to be undertaken lightly. Today, however, we are faced with filling a gap which has existed since our beginnings, and this gap becomes more threatening as the com-

plexity of the domestic and foreign policy grows.

Article II, section 1, clause 5, of the U.S. Constitution reads:

In case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Now, even a cursory reading reveals that it raises a host of questions. How do we distinguish between temporary and permanent vacancies? Who determines the inability? In what capacity does the Vice President act in the event of a temporary inability? No distinction is made or even intimated between a voluntary and involuntary inability of the President to discharge the powers and duties of his office. In the event of an inability which a President refuses to acknowledge, who shall declare such inability and, once declared, how does the President recover Executive authority if he be fit to do so? Precedent itself answered the question of the capacity in which a Vice President acts when the President dies. John Tyler took the oath as President of the United States when President William Henry Harrison died, and so it has been ever since because of this precedent that Presidents have been reluctant to declare a temporary inability since it has been feared, and rightly so, that a Vice President might take the oath of office as President even though the inability were of a temporary nature.

On the other hand, Vice Presidents have been reluctant to move forward without precise definition from Congress to undertake the powers and duties of the Office when a President has been temporarily incapacitated lest he, the Vice President, be accused of unwarranted seizure of power. That was the case, you may remember, after the assassination of President Garfield. Vice President Arthur was most reluctant to assume the powers of the Presidency because he feared he might be deemed a rogue, he might be deemed a usurper, and therefore was most hesitant and reluctant to assume that power.

And so it was with the lingering illness, after the stroke that laid low President Wilson, when Vice President Marshall likewise was very reluctant to go forward.

In the meanwhile, what? We had no President, we had no Acting President, and things went into the doldrums, as it were, from an executive standpoint. Foreign potentates came to this country and could not be received and many bills became law without the signature of the President. Many other inadequacies developed because of that lack which we now seek to fill.

House Joint Resolution 1 answers as many questions as it is humanly possible in drafting a proposal to meet contingencies as yet unforeseen. We cannot meet every conceivable contingency. That is impossible, because sometimes if you try to meet some improbable contingency you open, as it were, a can of worms and you create more difficulties and inequities than you create equities. Therefore it is most difficult even for my colleagues on the committee, wise as they are, to be able to envisage every conceivable eventuality that might be conjured up by the imagination of man. We do not propose to do that. We are simply trying to meet the practical human problems with reference to Presidential inability. Foreseen contingencies have, in my opinion, been succinctly and adequately covered. The language is clear, the procedures sharply in focus.

House Joint Resolution 1 also fills another vacuum. It makes provision for a Vice President in the event there is a vacancy in that office.

Sixteen times the United States has been without a Vice President; or, to put it another way, 37 years of our existence have seen the Office of Vice President vacant. Now the Office of Vice President is assuming more and more importance in this atomic age and in this age of jet planes and spaceships. The Vice President is part of the official family of the President. He is involved with the National Aeronautics and Space Agency; he is involved with the Fair Employment Practices Commission; he is involved in many other activities of the President, including the National Security Council. He attends Cabinet meetings. He represents the President in many functions. He is essential, I would say, in present-day government. He is no longer a "Throttlebottom." He is an important personage. We dare not longer trifle with this situation by neglect. If there is a vacancy, the vacancy must and should be filled.

How the course of history was changed when, for example, as I said before, President Garfield died after lingering for so many days we shall never know.

Again, when President Wilson suffered the severe stroke in 1919, when he was laid low for many months, no effort was made to insure the stability of government. We had petticoat government then. I say that with all due respect to the ladies, because Mrs. Wilson sought to run the show at that time. I do not know how well she ran it. I do not know whether the show was run at all. It was a dangerous situation. We dare not let that happen again.

So, Mr. Chairman, again a negative factor made affirmative history.

On three occasions during the Eisenhower administration there was temporary incapacity on the part of the President. And, to President Eisenhower's credit, he attempted to minimize the danger of executive lapse by means of a private agreement with Vice President Nixon. Such private agreements, we can all agree, are hardly adequate to meet the situation. There can be as many private agreements as there are differences in the varying temperaments of Presidents and Vice Presidents.

Mr. Chairman, as I said on the opening day of our hearings on Presidential inability on February 9, 1963:

I for one have had a deep and probing interest in solving the problem which arises from the vague language of article II of section 1, clause 5, of the Constitution relating to Presidential inability.

In 1955 the chairman of the Judiciary Committee ordered a staff study into this problem and I appointed a special subcommittee of the ranking members to further the study. This study sought out the views of a select group of leading constitutional law professors and leading political scientists by way of a questionnaire. These answers and analysis were published by this committee in 1957. While that study and the subsequent hearings did not result in a definite legislative proposal, I am convinced that it laid a sound groundwork for the future congressional activities which have taken place in this field.

As a result also of the activity of the press and the public and professional groups, the public has been educated to the seriousness of the situation. There can be no doubt in anybody's mind that this Nation cannot permit the Office of the President to be vacant even for a moment. Opposition of world leadership demands that we avoid the terrible crisis which would result if a vacancy existed in the Office of President for even a short time. The President stands for the sovereignty and unity of the American people. He leads the national administration and he is the Commander in Chief of all the Armed Forces. In this nuclear age his finger rests upon the trigger. He is the sculptor, the administrator of our foreign policy. One would have to be blind not to see and acknowledge the danger and the risk we are faced with at this very moment, lacking a constitutional procedure for the smooth transition of the successor to the office and to the powers and duties of the President.

Fate has been most kind to Americans, but we should not continue to tempt it. I believe that the provisions of House Joint Resolution 1 are classic in their simplicity, classic in their clarity.

First. In case of the removal of the President from office by death or resignation, the Vice President shall become President. Whenever there is a vacancy in the Office of Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of the Congress.

The President selects his vice-presidential running mate before the convention. He should have the right to do so after the convention, and after the election. In the event there is no Vice President he can fill that vacancy.

There has been some talk about the degrading of Congress, that Congress does not play a part. Congress does play a part because the President cannot select anyone to become Vice President without the consent of both Houses of the Congress. It has been said we should let the Congress, the Members of Congress, select the Vice President. We would have a Donnybrook affair then, indeed. We would have a kind of wheeling and dealing. How would you select a man to be Vice President? The whole Congress? No. He would be chosen by a few select Members of Congress, and a few select Members of the Senate, convening in a caucus, either a Republican caucus or a Democratic caucus. Our method is more democratic. We would have to put the seal of approval upon the man who is selected by the President. The whole Congress does that, not a mere select few, not the elite, I may put it, of either the House or the Senate.

Second. Section 3 deals with a situation where the President voluntarily declares his inability. When the President transmits his written declaration to the President pro tempore of the Senate and the Speaker of the House of Representatives that he is unable to discharge the powers and duties of his office, such powers and duties are to be discharged by the Vice President as Acting President until the President so transmits in a written declaration to the contrary.

I would ask the gentleman from Ohio, where in the Constitution is there a provision, the present wording of the Constitution, any kind of provision, that would permit an Acting President? The term is never used. The statute would be utterly worthless, as worthless as a 2-foot yardstick. We must have a constitutional amendment in that regard. This provision removes the reluctance of both the President and Vice President to move when necessity so dictates. The President is assured of his return to office. The Vice President, as Acting President, will not face the charge that he is usurping the ffice of President. We are thus assured of the continuity of Executive authority, which is highly important, the continuity of Executive authority. Once the President says "I am cured, I am able to function again," he goes back to his former position and assumes all of the powers and duties of the President which temporarily devolved upon the Vice President.

Section 4, as distinguished from section 3. This is a situation where the President is unwilling or unable to declare his inability. In that event the Vice President, plus the majority of the principal officers of the executive departments, act. We name them executive departments rather than Cabinet for safety's sake, because the word "Cabinet" is never used in the Constitution. In the event that the Vice President, plus a majority of the principal officers of the executive departments, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President immediately assumes the powers and duties of the office as Acting President.

Mr. WAGGONNER. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Louisiana.

Mr. WAGGONNER. I thank the chairman for yielding.

Although the term used in the amendment is "principal officers of the executive departments," it is intended that reference is made here specifically to the 10 Cabinet positions which presently exist as well as future Cabinet positions which might be created, is it not?

Mr. CELLER. That is correct.

Mr. WAGGONNER. I thank the gentleman.

Mr. CELLER. Again, I emphasize the words "Acting President." I should remark that this is action in concert—the Vice President plus a majority of the Cabinet. However, should such inability, though undeclared by the President, be of temporary nature, hospitalization, perhaps a sudden illness leading to temporary unconsciousness or temporary paralysis, leaving the President bereft of speech or sight—these are only two examples—and the President then recover in his judgment to the extent to where he can carry on the powers and duties of his office, the President sends a written declaration to the President pro tempore of the Senate and the Speaker of the House of Representatives that he is no longer unable to carry on. He then resumes the powers and duties of his office without further to do. So it remains, unless the Vice President, together with a majority of the Cabinet, transmits within 2 days to the President pro tempore of the Senate and the Speaker of the House their written declaration that the President is unable to discharge the duties and the powers of his office. Here, of course, we have the nature of a dispute. Such being the case, it is necessary for the Congress to act quickly so that stability of Government may be assured. Once the Vice President along with a majority of the Cabinet disputes the recovery of the President, Congress shall immediately assemble to decide that issue. Here unless the Congress within 10 days after receipt of such written designation determines by a two-thirds vote of both Houses that the Vice President is wrong, the Vice President continues in office as Acting President. The burden is on the Vice President to obtain concurrence of the Congress by a two-thirds vote that the President is still incapacitated. If no such determination is made, then the President resumes the powers and duties of his office. Throughout all these sections are thrown in that if there is any doubt the President is favored without doubt. The resolution shall always be in favor of the President because he is the elected representative of the people, the first officer of the land, and he shall be favored without doubt. In other words, if there is a dispute, as I stated, in the interest of continuity of executive power and stability, the Vice President takes over and remains in the office as Acting President until Congress acts. If Congress does not act and a two-thirds vote is not obtained in both Houses within 10 days, the President resumes the powers and duties of his office as President. Thus we escape the danger of a disabled President carrying on for even a short while.

Thus we would remove the danger of a disabled President carrying on even for a short while.

The time limit is necessary to resolve the question. It must be remembered that in this revolutionary and atomic age, time is always of the essence.

It is interesting to note that the other body passed this resolution, or this constitutional amendment by a vote of 72 to 0—not a single vote was registered in the other body against the amendment.

Finally—and I probably have spoken unduly long and I am sorry—I, therefore, urge the Members of this House to accept this proposal lest a catastrophe find us unprepared once again.

The responsibility to act in this area has always leaned heavily on the Congress, but until now we have had no consensus on that approach which would answer almost all of the questions. Now a consensus has been reached. Evasion would, indeed, be irresponsible.

The Senate and House versions are very close together except for the matter of the time limit. We of the committee believe that the time limitation is necessary for reasons which I have already stated. I, for one, would not want to be held accountable should the country face a period of crisis with no Executive firmly in charge.

I have every confidence that this Chamber will act as responsively as did the other body.

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. HALL. Mr. Chairman, I appreciate your statement. I am one of those who is anxious to see correct and proper legislation enacted in order to fill this void. I notice in the hearings and in the committee report that the distinguished committee which the gentleman chairs has had exhaustive hearings and has called on many people from many walks of life. I am addressing myself particularly to the question of Presidential inability or disability. I would say, sir, that in direct proportion to the complexity of life that you have so often and so well referred to today, there is also the difficulty of determining inability or disability of the human being to function. This strikes me as something, as a man who has practiced medicine, that is increasingly difficult in this complicated age to determine. I see no evidence in the hearings of any statement by either any White House physician, past or present, or any of Surgeons General of our civilian or uniformed branches, or civilian consultants available to the Government, such as the American Medical Association; some or all of whom are usually called on in such extremes for determination of these questions. I wonder, although fully realizing the need for a judicial determination—or a legislative determination—of the fact, if such opinion was sought. I am not able to find it here. I wonder if those who ordinarily determine inability or disability were consulted or called for hearings; or if they were excluded purposely, or if it is simply presumed by the chairman that this type of advice will be sought in time of such an exigency.

Mr. CELLER. For the very reason that the gentleman explained, which indicated the difficulty of definition, we did not specifically speak of medical experts or of a commission of those with expertise on subjects of this sort. But we did say the following: We said—"or such other body as Congress may by law provide." In other words, Congress may, by passing legislation implementing this, set up, if it wishes, some other body or some group of experts who would give advice and counsel instead of the members of the Cabinet. The members of the Cabinet, the members of the President's executive family, usually are the ones who are intimate with the President. They know his idiosyncrasies. They know a

good deal about his health and they probably could tell a great deal concerning his physical condition. But, if we in the Congress feel that more is desired, we could appoint another body.

Mr. HALL. I thank the chairman. I understand, and have no particular flaw to pick on the question of the President's Cabinet with the Vice President making the determination or seeking two-thirds of the votes of Congress in determining lack of ability. I am not quite sure that this Congress would ever, as a matter of practical procedure, set up, for example, the five Surgeons General to determine ability. At the same time, I am certainly not convinced that, wise as the members of the Cabinet may be about the President's personality traits and about deviation away from the norm thereof, that they could physically determine when association pathways of the human brain and mind, or even the emotions, were bereft of ordinary and expected continuity on the part of the President to the point of constituting disability.

This disability and inability as determined nowadays for even such simple things as employment or disability compensation and rights thereunto, has become a question which fills books.

I am not saying that we should write such a provision into this law. It is to be implemented further, I understand. It seems to me we might well, in the future implementing by law of the amended Constitution, provide such a procedure or a consultant to a Cabinet group or the Vice President—then acting or installed as the President.

Mr. POFF. Mr. Chairman, will my chairman yield so that I may respond to the gentleman's question?

Mr. CELLER. I yield to the gentleman from Virginia.

Mr. POFF. I appreciate the concern the gentleman expresses and I am in sympathy with the point he makes. I believe I can throw some light on his question by quoting from an opinion of Attorney General Kennedy, August 2, 1961, in which he undertakes to decribe what transpired when President Eisenhower suffered a disability:

> The problem of succession to the Presidency was considered immediately after former President Eisenhower's heart attack in September 1955. Congress was not in session, and there was no immediate international crisis. On the basis of medical opinions and a survey of the urgent problems demanding Presidential action immediately or in the near future, Attorney General Brownell orally advised the Cabinet and the Vice President that the existing situation did not require the Vice President to exercise the powers and duties of the President under article II of the Constitution.

I suggest that a similar thing could normally and reasonably be expected in the event this constitutional amendment is adopted, and ratified by the States. Surely, the decisionmakers, whoever they may be, would not undertake so critical a decision without first consulting the experts in the field, namely the gentlemen of the medical profession.

Mr. HALL. I thank the gentleman. I certainly believe it is important, not necessarily that it be spelled out in this resolution we are considering today, but that a legislative record be made here today with respect to such a complex and difficult-of-determination area. In the enabling legislation, which I understand will subsequently follow this amendment to the Constitution, we might indeed spell out what is to be involved.

I speak for no particular group—not for the White House physicians, not for the Surgeons General in convention assembled, and not for the highest medical organization which happens to be extant in the land at this or that time; but for someone skilled in the expertise in the determination of this very difficult area of inability and disability.

Mr. MACGREGOR. Mr. Chairman, will the chairman yield further for an additional comment in connection with the question of the distinguished gentleman from Missouri?

Mr. CELLER. I yield to the gentleman from Minnesota.

Mr. MACGREGOR. May I add to the very excellent answer given by the gentleman from Virginia, an historical note which may give further comfort to the gentleman from Missouri.

At the time of the severe stroke which occurred to Woodrow Wilson, the Secretary of State at the time suggested that the Vice President step in and exercise the powers and duties of the Presidency. This was not taken with good grace by the President, and when he recovered his ability, the Secretary of State soon found himself without a job. I believe with that historical precedent facing the Members of the Cabinet they would not take the step jointly with the Vice President to certify, in their judgment, the President's inability to the appropriate officers of the Congress without a consultation with the very finest medical brains which were available to them here in the Nation's Capital.

Mr. HALL. Mr. Chairman, will the gentleman yield further?

Mr. CELLER. I yield to the gentleman.

Mr. HALL. I appreciate that remark, and I think it is historically interesting. I would like to believe that the gentleman is adding to the legislative record which I am trying to establish to that ultimate end, but what we are trying to do here is to prevent historical incidents such as that from recurring. It is to that end that I rise and I think the point has been well made.

Mr. Chairman, I thank the gentleman from New York for yielding.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman.

Mr. DUNCAN of Oregon. I have asked the chairman to yield in order to direct your attention to page 4, section 4, and ask a question about what seems to me to be an ambiguity and, if it is one that ought to be cleared up, I think, in a colloquy here on the floor of the House. The second paragraph of section 4 provides that if the President shall recover and he sends to the Congress a written declaration that no inability exists, "he shall resume the powers and duties of his office unless the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, transmit within 2 days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office."

My question, sir, is, is there not a 2-day period when we may be in a state of ambiguity, not knowing whether the President, having recovered, has the powers and duties of the office or whether the Vice President is the Acting President of the United States?

Mr. CELLER. It is the Acting President, that is, the Vice President, who is Acting President. He is in control unless the President, and so forth, does something or something happens. So, it is the Vice President that is in the saddle, but to make assurance doubly sure I will read you a communication that I received from the Attorney General, dated April 13, 1965, which letter reads as follows:

> DEAR MR. CHAIRMAN: The question has been raised as to whether, under section 5 of House Joint Resolution 1, as amended by the House Judiciary Committee on March 16 and 17, 1965, the Acting President would continue to discharge the powers and duties of the Office of President during the 2-day period within which the Vice President and a majority of the principal officers of the executive departments may transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his Office.
>
> As I have previously indicated to you, it seems to me entirely clear that the Acting President would continue to exercise the powers and duties of the Office during this period. The same is true of the period of up to 10 days thereafter during which, under section 5 as it now reads, the Congress would be required to resolve the issue.

Mr. DUNCAN of Oregon. Mr. Chairman, will the gentleman yield for another question?

Mr. CELLER. Yes; I will.

Mr. DUNCAN of Oregon. In the event that the letter is not written by the Vice President and a majority of the principal officers of the executive departments, then who actually has the powers of the President during the 48-hour period following the transmittal by the President of his declaration to reassume the office?

Mr. CELLER. The Acting President would—and I use that term again—be in the saddle unless he agrees the President is fully restored.

Mr. DUNCAN of Oregon. So the intent of this section of this resolution is that the Acting President—and let us assume it is the Vice President—will continue to discharge the duties of that office until the expiration of all necessary time intervals or until the Congress shall take such action as may be necessary?

Mr. CELLER. The Vice President during that period could agree that the President is no longer disabled and the President will resume his powers.

Mr. DUNCAN of Oregon. He can then take affirmative action?

Mr. CELLER. Even within the period.

Mr. DUNCAN of Oregon. He could take affirmative action within the period and thereupon the President of the United States will reassume the duties and powers of his office?

Mr. CELLER. That is correct.

Mr. DUNCAN of Oregon. If he did not do that, he would continue as Acting President during all intervals of time necessary for the Cabinet and the President to transmit their letter and the Congress to take such action as may be necessary.

Mr. CELLER. It is interesting to note while the Senate did not do this, we put a time limit of 10 days on it. We insisted the Congress must act in 10 days. If it does not, the President goes back in.

Mr. DUNCAN of Oregon. I thank the gentleman. I think we have added to the merits of this bill by this colloquy.

Mr. Chairman, if the gentleman will yield further, I should like to say that the gentleman has performed a great service—both he and his committee—in bringing this bill to the floor of the House. I think it fills a very great need. I have a question in my own mind whether it goes far enough. Is the gentleman satisfied that the law is clear as to the situation that would prevail in this country were a President-elect were to become incapacitated or die between the time of his election and the time of his inauguration?

Mr. CELLER. No. As I said in my opening remarks we do not cover everything. We do not cover everything that can be conjured up by someone's imagination. The bill does not cover a case after election and before inauguration.

Mr. DUNCAN of Oregon. This, I would like to say, is I think, an area that still demands the attention of the Congress.

Mr. Chairman, I thank the gentleman for yielding.

Mr. McCULLOCH. Mr. Chairman, I yield 20 minutes to the gentleman from Virginia [Mr. POFF].

Mr. POFF. Mr. Chairman, the House is proceeding to the business the Nation has neglected for more than a century. Tribute is due many. None is more deserving than the American Bar Association. Through the untiring efforts of its officers and members, a consensus has been reached which heretofore has been thought impossible. This consensus, like all others, represents some degree of compromise. But it represents no compromise to expediency. It accommodates a variety of schools of legal thought, none of which can arbitrarily be called wrong or unworthy, and all of which unite in the conclusion that action is not only necessary but urgent.

Tribute is due, too, to the chairman of the Committee on the Judiciary. First, he has been an eloquent, effective advocate. Second, he has been an impartial, fair-minded arbiter. Always intellectually honest, he has stood firm when firmness was necessary but has yielded when logic dictated. The bill before us properly bears his name, but because he has been just, it contains many amendments which all together represent the composite judgment of the committee at large.

During the entire course of the hearings and deliberations, the committee itself has conducted its business in a manner which reflects great credit upon the American system of lawmaking. Not one partisan consideration was advanced. Not one word of bitterness was uttered. Debate was vigorous, but always constructive. The whole performance makes me proud to be a member of the Committee on the Judiciary.

We are considering a constitutional amendment. Why not a statute? Some consider a statute sufficient. In recent years, the great body of legal opinion has held that so far as the question of Presidential inability is concerned, a constitutional amendment is not only the proper legal course but the wise course. The difference of opinion arises from the language of article II, section 1, clause 5, which reads as follows:

> In case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

That language was first brought into sharp focus in 1841 when President William Henry Harrison died in office. Because it was uncertain whether the "powers and duties" would "devolve" or the "office" would devolve, the question immediately arose, "Will Vice President Tyler become Acting President or President of the United States?" Tyler answered the question by taking the oath of office of President. Since then, the "Tyler precedent" has been confirmed seven times.

But Tyler's answer concerning succession following death did nothing to clarify the question of succession following inability. Indeed, it complicated that question. Death and inability both are treated in the same clause of the Constitution. Thus, it was argued that whatever should "devolve on the Vice President" on account of the President's death would also devolve upon the Vice President on account of the President's inability; and if what devolves in one case is the office itself, then it must be the office in the other case. The conclusion of this argument was that if the Vice President should assume the Office of President on account of the President's inability, the displaced President could not thereafter, even if he recovered, reclaim his office. Such constitutional scholars as Daniel Webster so declared.

In the face of such an argument, it is little wonder that Vice Presidents have been reluctant to assume the mantle of the Presidency, even in the most urgent crises. When, in 1881, President Garfield lay incapacitated from an assassin's bullet some 80 days, Vice President Arthur would not act. The same was true in 1919 when President Wilson suffered a stroke which rendered him all but helpless.

In these two crises, surely Congress would have passed a statute on Presidential inability if Congress felt it had the constitutional authority to do so. There were those who felt that Congress had such authority. They pointed to the "necessary and proper" clause and to the language in article II which reads that "the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability." But the remainder of that clause gave the Congress pause; it gives the Congress power to act only in case of the inability of "both the President and Vice President." The implication is that Congress has no power to act by statute when only the President is disabled. This implication was tacitly acknowledged by the Congress in 1792 when it passed the first Presidential Succession Act. That Congress was peopled by contemporaries of the authors of the Constitution, and the statute significantly failed to provide for succession when only the President was disabled.

So far, I have dealt only with legal justification for a constitutional amendment. There is a pragmatic reason as well. So long as there is any question about the efficacy of a simple statute, such a statute would be subject to attack. Such an attack would come at a time when the Nation could least afford it—when the President becomes disabled or when the disabled President recovers and seeks to reclaim his office.

Yet, I have been asked, why could not we proceed by both routes? Why could we not have a brief constitutional amendment which simply empowers the Congress to pass a statute dealing with Presidential inability? The answer is that we could, but in my judgment, we should not. I have two reasons. First, in a matter as vital to our national interests as the continuity of Presidential powers, stability and durability are important; only a constitutional amendment can guarantee this. Second, the doctrine of separation of powers, which has served us so well for so long, would be blurred by the dual approach. Presidents and Vice Presidents are not always popular with Congress, and at a given time, one may be more popular than the other. Sometimes, the political party which controls the Congress is not the same political party which controls the White House. If a simple majority of the legislative branch is to have the power to make these rules one day and to change them the next, the executive branch will be subordinate instead of coequal and the head that wears the crown will indeed be uneasy.

Then there are those who ask why we cannot just forget about both constitutional amendments and statutes and deal with the problem as we have in the past by written agreement between the President and Vice President. There are several answers to that question. A private agreement does not have the same effect as law, and it is questionable whether the President can in such an informal, bilateral fashion lawfully delegate powers conferred upon him by the Constitution, by treaties and

by congressional statutes, to another person. The question is serious enough to invite legal challenges to every domestic act, and every function in the field of foreign relations would be under a cloud. Moreover, these bilateral agreements have never provided, and in the nature of things could never provide, for an enforceable settlement in event of a dispute about whether or not the President is disabled. The only real function these agreements have served is to dramatize the urgency of having a definitive mechanism built into the basic law of the land where it is visible to all and where it will remain constant from one administration to the next.

When we speak of the problem of Presidential inability, we are speaking of two categories of cases. The first is that in which the President recognizes his inability—or the imminence of his inability—and wishes voluntarily to vacate his office for a temporary period. The classic example is when the President expects to undergo an operation. The second category is that in which the President, by reason of physical or mental debility, is unable to perform his duties but is unable or unwilling to make a rational decision to relinquish the powers of his office, even for a temporary period.

Section 3 of the bill provides for the first category. Simply by sending a written declaration of inability to the heads of the two Houses of Congress, he makes it possible for the Vice President, as Acting President, to discharge his duties so long as the President feels that his inability has not terminated. When he chooses to do so, he may reclaim and reoccupy his office by sending another written declaration to Congress. Unlike the second category, his declaration of restoration is not subject to challenge by the Vice President and Cabinet. The reason for this distinction is obvious. A President would always hesitate to utilize the voluntary mechanism if he knew that a challenge could be lodged when he sought to recapture his office.

Section 4, which now includes what was originally section 5, provides for the second category of cases. There are two illustrative examples. One is the case when the President by reason of some physical ailment or some sudden accident is unconscious or paralyzed and therefore unable to make or to communicate the decision to relinquish the powers of his Office. The other is the case when the President, by reason of mental debility, is unable or unwilling to make any rational decision, including particularly the decision to stand aside.

It is the second category of cases which has given scholars so much concern. The problem is best defined by a series of questions. Who first raises the question and who makes the decision concerning inability? Should the word "inability" be defined? What procedure should be used in restoring the President to his office after he has recovered? These questions and questions subsidiary to each of them have been answered in section 4.

The original draft required the Vice President to initiate the action and required only the subsequent concurrence of the Cabinet that the President was disabled. The Vice President historically has been reluctant to take the first step for understandable reasons. The present version of section 4 is in the conjunctive and places the power and responsibility jointly upon the Vice President and a majority of the Cabinet or "such other body as Congress may by law provide." In the second step, these same people make the decision about inability and transmit that decision in writing to Congress, upon the receipt of which "the Vice President shall immediately assume the powers and duties of the office as Acting President." While others have been proposed, these are the people who should have this power and who should make the decision. The Vice President, a man of the same political party, a man originally chosen by the President, a man familiar with the President's health, a man who knows what great decisions of state are waiting to be made, and a man intended by the authors of the Constitution to be the President's heir at death or upon disability, surely should participate in a decision involving the transfer of presidential powers. The same is true of the Cabinet whose members were appointed by the President and are closest to him physically and most loyal to him politically.

While the Vice President and Cabinet seem to be the ideal people to be entrusted with the power of decision, section 4 recognizes that future experience may dictate the naming of "some other body" by the Congress to act with the Vice President. Presently, the Cabinet as defined in title 5, United States Code, section 1 consists of 10 members. It is possible that an even-numbered Cabinet might divide evenly, thus effectively stultifying the system erected in section 4. For this reason, or some other good reason, Congress may sometime find it necessary to name some "other body" which of course it could do simply by adding to the Cabinet as the decision-making body one non-Cabinet member.

The American Bar Association and your committee struggled with the question of defining the word "inability." It was decided that it would be unwise to attempt such a definition within the framework of the Constitution. To do so would give the definition adopted a rigidity which, in application, might sometimes be unrealistic. In my judgment, it would also be unwise to attempt such a definition by statute. The slightest imprecision in such a definition would be the target of legal attack if and when it should become necessary to exercise the procedures of section 4. It is highly unlikely that the responsible Government officials entrusted with this great power would abuse it by declaring a President elected by the people of this country disabled when in fact he was not, especially when the Congress is given the ultimate voice in this determination.

The procedures to be used in restoring a disabled President to his office following his recovery constitute one of the critical phases of the problem. The procedures specified in section 4 deal with the problem in a careful, deliberate manner. Herein lies the principal difference between the House bill and the bill passed by the other body. Under the Senate bill, the President could resume his office after his written declaration of restoration to the Congress unless within 2 days the Vice President and a majority of the Cabinet send a written declaration to the Congress challenging his restoration. If under the Senate bill the Congress by a two-thirds vote upholds the Vice President's challenge, the Vice President would continue to hold the office as Acting President; otherwise, the President would resume his office. The difficulty with the Senate version was that the Congress, which might not even be in session, could delay by filibuster or deliberate inaction for an indefinite period of time, during which the Vice President would remain in office. This difficulty is especially great if a majority of the Members of Congress—but less than two-thirds—are hostile to the President.

The House committee felt that any delay on the part of Congress should inure to the benefit of the President rather than the Vice President. Accordingly, the House committee adopted two consequential amendments. Under the first, the Congress, if not in session when it receives the Vice President's challenge, is required to assemble immediately. This mandate is self-executing, requiring no formal call by the Acting President. Under the second amendment, the Congress is required to act within 10 days after receipt of the Vice President's challenge. This, too, is self-executing; if the Congress fails to act, the President will resume his office after the lapse of 10 days. In effect, the procedure as outlined under the House version gives the Congress three options:

First. The Congress can act and by a two-thirds vote uphold the Vice President's challenge.

Second. The Congress can act and by one more than a one-third negative vote in either House, reject the Vice President's challenge.

Third. The Congress can allow the 10-day period to expire without acting at all.

The net effect of the second and third options is the same; the President is restored to his office. The chief merit of the House version is obvious. Circumstances may be such that the Congress by tacit agreement may want to uphold the President in some manner which will not amount to a public rebuke of the Vice President who is then Acting President. The third option furnishes the graceful vehicle. And this system renders impossible the awful stalemate which would result from a filibuster or deliberate inaction under the Senate version.

It will be observed that the procedure fixed in section 4 gives the Congress no voice in the decision for the initial involuntary removal of the disabled President. As soon as Congress receives the written declaration of inability from the Vice President and a majority of the members of the Cabinet, the President is

removed and the Vice President becomes Acting President. However, the President who regards himself capable and objects to the Vice President's action is not left without recourse. He has the right as soon as he is removed to send Congress his written declaration of restoration, and at that point, the procedure for congressional review becomes operative.

The committee makes no claims that this bill is foolproof or that it covers every hypothetical case which might present itself to the inventive mind. If one assumes that the Vice President and most of the members of the President's Cabinet are charlatans, revolutionaries and traitors, we are foolish to attempt any solution. Rationally, we make no such assumption. Rather, we assume that the American form of government with its system of checks and balances is so structured, that the freedom of the American press is so secure, and that the conscience of the American electorate is so sensitive and its power so effective that rogues in public office are foredoomed to exposure and swift retribution. Certainly, we want a government of laws and not of men, but somewhere in the process of administration of the laws, we must commit our fate to the basic honesty of the administrators. Somewhere, sometime, somehow, we must trust somebody.

Mr. HORTON. Mr. Chairman, I ask unanimous consent that the gentleman from Ohio [Mr. McCULLOCH] may extend his remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. McCULLOCH. Mr. Chairman, the House is now discharging one of its greatest responsibilities in proposing an amendment to our Constitution. The proposal before us, House Joint Resolution 1, is one of the most important and challenging issues of our time. An issue that we can no longer ignore or postpone.

One of the most important procedures in our Republic is the orderly transition of Executive power. With our country's global responsibility, with present world turmoil and upheaval, and with ever-pressing domestic problems, our country must always have continuity of capable, dynamic, and certain leadership. Our system of government could be susceptible to forces of disruption during a period of Executive transition; therefore we cannot afford a breakdown, or a slowdown, during such transition.

Despite this critical need for a swift, sure, orderly procedure to insure continuity in Executive leadership, the Constitution contains no provision for filling a vacancy in the office of Vice President.

The Constitution does not define presidential inability. It does not set forth the conditions under which an acting President shall assume the duties of the office, and it does not set forth the procedure for recovery of the office by the President upon termination of his disability.

Our country recently survived a tragedy of shocking proportions that resulted in an abrupt change in our Executive leadership. Thereupon, our country was without a Vice President for more than a year. At other times in our history, periods of temporary—yes, even permanent—presidential disability have raised serious questions as to the proper exercise of Executive power. In this space age we cannot afford the uncertainties, the risks of reliance upon pious hope and chance that things will work out all right. Now is the time to face the problem. Now is the time to act—before the next crisis is upon us.

To cope with the problems of presidential inability and vacancies in the office of Vice President. We must provide the means for an orderly transition of Executive power in a manner that respects the separation of powers doctrine, and maintains the safeguards of our traditional checks and balances. I believe that House Joint Resolution 1, as amended by the Judiciary Committee, answers these needs, and will undoubtedly correct the shortcomings of the Constitution with respect to presidential inability and succession.

The resolution has three basic purposes:

First. It provides that upon the occurrence of a vacancy in the Office of the President by death, resignation, or removal, the Vice President shall become President. This provision will settle once and for all the questions raised by the present language in the Constitution: When a President dies, does the Vice President become acting President or President? Does he assume the "powers and duties" but not the "Office" of the President?

Second. The resolution provides for the selection of a Vice President in the event of a vacancy in that office.

Third. It provides a method of determining when the Vice President shall serve as acting President in the event of the inability of the President, and also a method of determining when the President is able to resume the duties of his office following a period of disability.

In reference both to the question of Presidential inability and filling a vacancy in the Office of Vice President, one of the major considerations has been whether Congress could constitutionally proceed to resolve the problems by statute, or if an enabling constitutional amendment would be necessary. Through the years, this controversy has increased in intensity among Congressmen and constitutional scholars.

In recent years, there seems to have been a shift of opinion in favor of the proposition that a constitutional amendment is necessary and that a mere statute would be inadequate to solve the problem. The last three Attorneys General who have testified on the matter have agreed an amendment is necessary, as have the American Bar Association, the American Association of Law Schools, and many State bar associations.

The most persuasive argument in favor of amending the Constitution is that so many legal questions have been raised about the authority of the Congress to act on the subject of presidential inability without an amendment, that any statute on the subject would be open to criticism and challenge at the most critical time—that is, either when a President has become disabled, or when a President sought to recover his office. Similarly, the very division of authority concerning the power of Congress to act upon filling the office of Vice President is the most persuasive argument in favor of amending the Constitution. With this division in existence, it would seem that any statute would be open to criticism and challenge at a time when absolute legitimacy was most needed. It is for these reasons that I support the constitutional amendment approach as the best way to resolve the issues.

House Joint Resolution 1 provides that the President may, in his own behalf, issue a declaration announcing his disability. If he should fail to do so, or in the case where he is too ill to do so, then, the Vice President may do so if a majority of the Cabinet, or other such body as designated by the Congress, concur.

There is a belief among many people that, in the instance where the President fails to act, the Vice President and the Cabinet, or some other body, should be designated to make the choice. Some question the disinterest of the Vice President and the trust that the people may place in nonelected members of the Cabinet. Others believe that, for political and personal reasons, the Vice President and the Cabinet, having been selected by the President, may feel reluctant to act. In place thereof, the suggestion has been made that a commission be created which might be composed of Supreme Court jurists, elected leaders of Congress, and members of the Cabinet.

I believe that the Vice President must, of necessity, be granted a primary responsibility in such matters. I also believe that members of the Cabinet, because of their intimate contact with the President, must be made to share in this responsibility and duty. I further believe that such men in the past have been, and in the future will be, dedicated to the country's welfare and will act accordingly.

In order to provide a certain amount of leeway, however, the amendment provides that Congress shall have the authority, if it so chooses, to designate some other body than the Cabinet to pass upon a Vice President's declaration of the President's inability.

The proposed amendment also provides that after a declaration of the President's inability through whatever means, and the assumption of the Office of Acting President by the Vice President, the President may resume the powers and duties of his office by issuing a declaration that his disability has terminated.

If it is believed, however, that the President's disability continues, the amendment provides that the Vice President, with the concurrence of a majority of the Cabinet, or some other body designated by the Congress, shall, within 2 days, declare in writing that such disability continues. Thereafter, Congress has 10 additional days to determine

whether the President's disability does, in fact, continue.

If Congress fails to act within that period or if it does not make a determination of continuing disability by a two-thirds vote, the President shall resume his office. The burden, it will be seen, is placed upon the Vice President and the Cabinet to prove the continuance of the disability and not on the President who has the primary claim to the office. The Congress is designated as the ultimate arbiter because it is believed that, as the elected representative of the people, they share the greatest trust of the people.

Turning to the other basic problem of maintaining Executive leadership, the proposed constitutional amendment provides that when a vacancy occurs in the office of the Vice Presidency, the President shall nominate a Vice President, with the confirmation by a majority of both Houses of Congress.

Today, far more than in earlier times, the Vice President participates in the leadership of the Nation. He is made a part of the Cabinet. He has been designated a statutory member of the National Security Council. He is Chairman of the President's Committee on Equal Employment Opportunity. He has been designated as the Coordinator of civil rights enforcement in the executive branch of government. He is Chairman of the National Aeronautics and Space Council. He is frequently designated as the President's representative in foreign and domestic matters. He is assigned to other important tasks. And, perhaps, most important of all, he is but one heartbeat from becoming President. The importance of the Office of Vice President means, then, that the country must always have a Vice President who is well informed and well schooled in the important issues that face the Nation.

The age we live in and the great sorrows and near-sorrows that have befallen our Presidents in the past make it all too clear that our Nation can no longer afford the luxury of constitutional machinery which permits a vacancy in the Office of Vice President or which does not provide for the contingency of presidential inability.

Mr. Chairman, I urge the adoption of the resolution.

Mr. HORTON. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and include a letter.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. HORTON. Mr. Chairman, I rise in support of the pending resolution, House Joint Resolution 1, a proposed amendment to the Constitution dealing with presidential inability and vacancies in the office of the Vice President.

An important step in our national history will be marked here today by the passage of this measure, and I urge my colleagues to give this joint resolution the two-thirds passage required for such amendments to the Constitution.

Further, I want to express my pleasure at the outstanding work done by the Committee on the Judiciary in bringing this resolution before us. I am particularly pleased to note the committee amendments which now are part of the measure, as they parallel provisions I asked the committee to consider in my testimony on February 17.

Briefly, I would like to call attention to the two aspects of this legislation which have concerned me most and which I now feel have been corrected by the amendments reported with the resolution.

The first of these is making a clear distinction between disability of the President declared by himself and a disability involuntarily established as provided for in section 4 of House Joint Resolution 1. In the case of the President's own declaration, as provided in section 3, I firmly feel that he alone should judge when that disability is over. In other words, where the President has made the declaration of a disability by his own volition, there should not be the slightest question of his power to declare it at an end.

If such clear and precise language as this is not a part of the amendment, I fear we may foreclose the fullest possible use of the mechanism sought by the amendment. It is not likely that a President who felt he might encounter difficulty in regaining powers and duties he had voluntarily relinquished would be persuaded easily to make the voluntary declaration.

The other aspect is the committee amendment clarifying the necessity for convening an out-of-session Congress to decide a contradicting declaration of inability termination when that inability was established under the terms of section 4, that is, by the action of the Vice President with the concurrence of a Cabinet majority or such other body as Congress may have provided for this purpose. This 10-day rule, as it were, should satisfactorily answer any question that a recalcitrant Congress could withhold restoration of the President's powers by a kind of pocket veto.

Mr. Chairman, my general feelings on the need and desirability of amending our Constitution along the lines of the pending resolution grow from the gaps which I believe exist in present constitutional and statutory provisions.

In the case of a vice-presidential vacancy, no more time should elapse in filling that post than now prevails when it is necessary for the Vice President to assume the Presidency. Therefore, we need procedures that are immediate, uncomplicated, and self-implementing. In that regard, I find House Joint Resolution 1 does the job and, in fact, provides the same procedures which I introduced in House Joint Resolution 274 for this purpose.

On the question of inability, I believe the contents of House Joint Resolution 1, particularly as amended in the two respects I discussed earlier, will give the Nation a suitable system to protect and preserve the viability of its highest office.

Mr. Chairman, the Monroe County Bar Association, through its board of trustees and its legislative committee, has done a great deal of work in studying the many proposals advanced in this area and in recommending certain clarifications its members feel would strengthen the proposed amendment.

I believe my colleagues should have the benefit of this work, and I take pleasure in sharing with the House at this time, a letter from my constituent, Dennis J. Livadas, Esq., chairman of the Monroe County Bar Association's legislative committee:

MONROE COUNTY BAR ASSOCIATION,
Rochester, N.Y., March 30, 1965.

HON. FRANK HORTON,
Member of the Congress, House Office Building, Washington, D.C.

DEAR FRANK: I am pleased to report that the Monroe County Bar Association has approved a set of recommendations concerning the presidential succession. This action by the board of trustees is based on the work of our legislative committee over the past 2 years and has met with unanimous approval in both bodies.

We make the following suggestions concerning the provisions of the Senate and House Joint Resolution 1: Section 1 being the present law and section 3 allowing the President to declare his own inability are approved as proposed in the joint resolution.

Section 2 we believe would be strengthened if the succession to the Vice-Presidency were spelled out in advance rather than left to the choice of the President. As successors, we suggest the Secretaries of State, Defense, Treasury and Justice, the Speaker, and the President pro tempore, persons obviously of outstanding ability and already experienced in the problems and the policies of the current administration. We believe that so high a constitutional office as that of the Vice-Presidency of the United States should never be open to Presidential appointment as a matter of course.

In section 4, we differ with the joint resolution by eliminating a Cabinet cabal and preferring the alternative of a congressional body in order to guard against any possibility of a palace revolution. Furthermore, the Congress being the elected repository of the highest constitutional prerogatives of our Nation, and an appointed group of administrators should have the first intimate look-see in so delicate an area as the disputed ability of the President of the United States to discharge his duties. And, in addition, following the traditional concept of the Senate as a Council of the States to advise and consent to the appointment of high Federal officers, we believe that the Senate by a two-thirds vote should determine the issue of the President's disability to function.

Section 5 of the joint resolution we consider cumbrous, badly drawn, and difficult of application. In its place we suggest a simple set of alternatives that avoids the possibility of a conflict between the President and the Vice President by empowering the Senate for the same reasons and the same vote to resolve the issue of the President's ability to reassume his powers. We believe this would be a straightforward avoidance of any hiatus in power and confusion of prerogatives.

We assume, of course, that once this constitutional amendment is enacted that the Congress will pass a detailed statutory implementation. In this connection, we recommend that the congressional committee referred to in section 4 be composed of the Speaker, the President pro tempore and the majority and minority leaders in both Houses. This automatically will insure some bipartisan and a majority of top-level congressional leaders who are not at all personally involved in the line of succession.

Your interest and your favorable consideration of our recommendations are earnestly solicited and deeply appreciated. Thank you for your courtesy and cooperation.

Respectfully yours,

DENNIS J. LIVADAS,
Chairman, Legislative Committee.

Mr. CELLER. Mr. Chairman, I yield 10 minutes to the gentleman from North Carolina [Mr. WHITENER], who has promised not to use it all.

Mr. WHITENER. Mr. Chairman, this legislation is important to the Nation because it involves a writing of a constitutional amendment. For that reason I believe it was appropriate for the chairman of our committee to have the matter considered by the full Judiciary Committee, thus giving all of us on that committee an opportunity to hear the testimony and to participate in writing language which will remove as much doubt as possible as to what is meant by the authors of this proposed amendment.

As has been said by others, the chairman of the Judiciary Committee has been most diligent and capable in the consideration of this proposition. I believe that all of us would agree, by reason of the manner in which the hearings were conducted and the measure was written up, that we have a much better product than the one which came to us from the other body.

But there are some things upon which many of us disagree.

My good friend, the gentleman from Virginia [Mr. POFF], just stated with a great degree of positiveness that he felt there was no adequate authority vested in the Congress by the Constitution at present to deal with this proposition of presidential inability. I would not for one minute array myself against the distinguished gentleman from Virginia [Mr. POFF], but since I find that one of the great legal scholars, Thomas Cooley, felt differently from the gentleman from Virginia on this matter, I am going to aline myself with Mr. Cooley and say that I believe that with the exception of filling the vacancy of Vice President, the present provisions of the Constitution are completely adequate. The language of article II, section 1, clause 5, which appears on page 4 of the report is very clear to me when it says:

In case of the removal of the President from office, or at his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by Law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

I take the position which was taken by the distinguished Senator from Minnesota, Senator MCCARTHY, that we could accomplish the same purpose by statute which we seek to accomplish by this proposed constitutional amendment, with the exception of filling the office of Vice President when a vacancy occurs in that office by reason of death, disability, et cetera, of the Vice President or by reason of the succession of the Vice President to the office of President.

There is another matter in connection with this legislation that I think the gentleman from Kansas [Mr. HUTCHINSON], a member of the committee, has brought out which deserves consideration. That is the language which is used twice in the bill, once in section 2 where it is provided that the President nominates the Vice President and the Vice President shall take office upon confirmation by a majority vote of both Houses of Congress; and the same language, which is used in section 4, except that there it says where it is determined by a two-thirds vote of both Houses that the President is unable to discharge his duties, then he shall not be reinvested with his powers.

This language does not make it clear whether we are talking about a joint session of Congress or whether there shall be a majority vote of the total membership of both Houses under section 2 or whether under section 4 it will be two-thirds of the combined membership of the two bodies in joint session or, on the other hand, whether it relates to a separate vote being taken in the House of Representatives and a separate vote being taken in the Senate of the United States.

At this point I am wondering if the distinguished chairman of the committee the gentleman from New York [Mr. CELLER], could make it clear for the record what is contemplated, whether it is intended that confirmation be by a majority vote of both Houses in section 2 or a two-thirds vote of both Houses as mentioned in section 4. Does that contemplate, Mr. Chairman, that the two Houses, the Senate and the House, would meet in joint session, or does it mean that there would be a separate vote in the two bodies with a majority required if the provisions of section 2 were to apply with both Houses voting independently of each other?

Mr. CELLER. There is no joint session. It is a separate vote of each body, and when this terminology is found in House Joint Resolution 1, it has been interpreted by the Supreme Court to mean a separate body. I refer to the case of *Missouri Pacific Railway* v. *Kansas*, 248 U.S., page 276.

Mr. WHITENER. So I assume as far as the chairman of the committee is concerned, that we would expect in the event of a vote becoming necessary under either section 2 or section 4 of House Joint Resolution 1, that it would be done by the House of Representatives independently of any vote in the Senate and that the converse would be true?

Mr. CELLER. That is correct.

Mr. WHITENER. Mr. Chairman and Members of the Committee, another question which I raised in the hearings when we had Senator BAYH testifying was the use of the language in section 4 of the bill which reads, "the principal officers of the executive departments." The witness testified that the proponents contemplated that the members of the President's Cabinet would be the persons referred to as "principal officers of the executive departments." I believe that the Senate proposal used the words "heads of the executive departments." As I understand it from reading what Professor Corwin has to say about it, there is no provision anywhere in the law for what we call Cabinet; that is, the President's Cabinet. That was a practice which sprang up and there is no statutory or constitutional authority for what we refer to as a Cabinet. So this raised the question of what do we mean by "the principal officers of the executive departments of the Government."

From a casual check of the statutes at the time we were having these hearings, within 2 or 3 minutes' time it appeared to me, if you look on page 58 of the hearings, that in our present Federal statutes we find title V, section 1, of the United States Code refers to executive departments as State, Defense, Treasury, Justice, Post Office, Interior, Agriculture, Commerce, Labor, Health, Education, and Welfare. But when we look at title 10, section 101, relating to the Defense Department we find this in subsection (6):

"Executive part of the department" means the executive part of the Department of Defense, Department of the Army, Department of the Navy, or Department of the Air Force, as the case may be, at the seat of government.

And then in title 42, section 201, subsection (e) the Congress defined "Executive Department," as follows:

The term "Executive Department" means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States.

Mr. Chairman, I have mentioned this in order that we might make the record clear. Does the chairman of the committee and the ranking member, the gentleman from Ohio [Mr. MCCULLOCH], contemplate that if at any time in the future there should be any interpretation that would give weight to title 42, section 201, subsection (e), in deciding who are the principal officers of the executive departments it would be contrary to the intent of the author?

Mr. CELLER. Mr. Chairman, I refer the gentleman to the report which makes legislative history; and I refer to page 3 of the report which reads in part as follows:

The substituted language follows more closely article II, section 2, of the Constitution, which provides that the President may require the opinion in light "of the principal officers in each of the executive departments * * *." The intent of the committee is that the Presidential appointees who direct the 10 executive departments named in 5 United States Code 1, or any executive department established in the future, generally considered to comprise the President's Cabinet, would participate, with the Vice President, in determining inability.

Mr. WHITENER. Then we are to understand that it is the intent of the authors of this proposed constitutional amendment——

Mr. CELLER. Or any additional members of the Cabinet that might be appointed as heads of establishments in the future.

Mr. WHITENER. Then we are to understand that it is the intention of the framers of this proposed constitutional amendment, we are to make it

abundantly clear that it is the concept of the committee and of the authors of the proposed constitutional amendment, that the language "principal officers of executive departments" refers to those now or hereinafter named in title 5, section 1, of the United States Code?

Mr. CELLER. That is correct.

Mr. WHITENER. And not those named in any other statute?

Mr. CELLER. That is correct.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. WHITENER. I yield to the gentleman from Ohio.

Mr. McCULLOCH. Since our colleague brought me into the statement I would like to say to him that I join with the chairman of the committee in the definition of executive departments.

Mr. WHITENER. I thank the gentleman. My purpose in taking this time was to try to resolve for the record some of the doubts which I felt might arise from the language. I certainly commend not only the gentleman from New York [Mr. CELLER], but the gentleman from Ohio and the other members of the committee who have joined together in trying to work out language and a policy which will best serve the Nation in the future. While I may have some misgivings as to the use of certain language I am sure that were I given authority to write it there would be more misgivings on the part of others. And so I shall go along with them and thank them for the fine work they have done.

Mr. CELLER. Mr. Chairman, if the gentleman will yield, I want to say that the gentleman always, as he does now, shows rare wisdom.

Mr. WHITENER. I thank the gentleman from New York.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. CURTIN].

Mr. CURTIN. Mr. Chairman, I rise in support of House Joint Resolution 1, the bill presently being discussed by this honorable body and which proposes an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the duties and powers of his office.

Numerous authorities who have devoted a great deal of time to analyses of the processes under which our Government operates have been struck by the fact that our Constitution is silent on specific procedures to be followed in the event of a President's becoming gravely incapacitated during his term of office. This is a matter of longstanding interest to distinguished scholars who have undertaken studies of our unique kind of representative democracy. People in and out of Government, and notably Members of the Congress, over the years have questioned this apparent flaw in our Republic's structure.

Of course, the law does spell out the line of succession to a Chief Executive in the event of death. But it is mute with respect to a manner and method of determining the ability or inability of a President of the United States to discharge the powers and duties of his office in instances where a critical illness or a disability of possible long-term duration may arise. Indeed, a President confronted by such misfortune of circumstance has no clear-cut instructions to which he can look for guidance under the language of our Constitution or of existing laws.

Article II, section 1, of the Constitution provides that the Vice President shall exercise the powers and duties of the President in event of the death, resignation, or disability of the Chief Executive, or his removal from office. To take care of further contingencies, a series of so-called succession acts were enacted by the Congress. The act of 1886 established a line of succession starting with the Secretary of State and going through the order of executive departments. On July 18, 1947, a new law was enacted to bring the Speaker of the House and the President pro tempore of the Senate in line of succession ahead of the Cabinet members. The philosophy behind this action of 1947 changing the line of succession was that the spirit of the Constitution intended clearly that the Chief Executive should be an elected official rather than an appointive one. With this conclusion of reasoning, I fully concur.

But the knotty question remains—Who is vested with certain, sure authority to arrive at a determination of when is a President not able to discharge the powers and duties of his office? The answer is—No one, under existing processes.

I became interested in this problem soon after becoming a Member of Congress, and pursuant thereto, I introduced a resolution for a constitutional amendment in the 85th Congress, and I have reintroduced the measure, with certain modifications, in each succeeding Congress. The last resolution that I so introduced was on January 6, 1965, and is House Joint Resolution 129.

The resolution presently being considered differs from my resolution in its manner of approach as to the disability feature, and also provides for the filling of any possible vacancy in the office of Vice President, but I have no difficulty in supporting the present resolution, because it solves two problems, the solution of which are long overdue. In this day of challenge and stress, it is strongly advisable that the Congress clarify beyond any doubt or uncertainty the provision of the Constitution with respect to the execution of the duties of the President in the event of disability. This resolution should be passed.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentlemen from Vermont [Mr. STAFFORD].

Mr. STAFFORD. Mr. Chairman, I rise in support of House Joint Resolution 1. It is desirable and needed legislation. It initiates the process by which the Constitution can be amended with respect to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the power and duties of his office.

This resolution must have the votes of two-thirds of each House in Congress if it is to go to the people—it then must be ratified by three-fourths of the States within a period of 7 years if it is to become a part of our Constitution.

I hope it will. We have trifled with fate too long.

The bill provides that in case of the removal of the President, or of his death or resignation, the Vice President shall become President.

It makes provision for the nomination of a Vice President, by the President, when there is vacancy in that office; such nomination to be confirmed by a vote of a majority of both Houses of Congress.

It takes care of the situation when the President suffers disability, and is unable to conduct the affairs of his office and the procedure under which he may resume his powers.

Mr. Chairman, I have heard from many people in Vermont who support this legislation. Such support comes from people in every walk of life.

It is true that the Bar Association and the Junior Bar Association of Vermont support this resolution.

I was pleased in January of this year to introduce a bill—House Joint Resolution 248—identical was House Joint Resolution 1 prior to committee amendments. I compliment the distinguished members of the Committee on the Judiciary for the consideration afforded this bill and the constructive changes they have proposed for it.

I urge the adoption of the resolution.

Mr. McCULLOCH. Mr. Chairman, I now yield 10 minutes to the gentleman from Michigan [Mr. HUTCHINSON].

Mr. HUTCHINSON. Mr. Chairman, when we propose to amend the basic law of the land, the Constitution, this Congress exercises a much greater responsibility in my opinion than is the case when we simply write statutory law, because once this proposal passes this House and survives a conference with the other body, if such be necessary, and is then submitted to the States, it is thereafter impossible to make any changes in it. The States' function of ratification, important and essential as that function is, is limited to simply saying "yes" or "no" to what this Congress proposes.

So, Mr. Chairman, I have been greatly concerned about the wording and the effect of the language that this proposal might encompass.

I would like to observe, as the gentleman from North Carolina [Mr. WHITENER] observed, lawyers are not in agreement that a constitutional amendment is necessary to accomplish the purposes of succession in the office of the President, nor to determine the problem of disability.

Article II, section 1, clause 5 of the Constitution as it is worded, admittedly has caused some dispute through history. I believe that there is constitutional authority in Congress to deal with this problem through statute based upon the wording of the provisions of clause 5, section 1, article II of the Constitution.

Mr. Chairman, the gentleman from Virginia [Mr. POFF] makes a very persuasive argument that it would be a terrible thing to have to test in the courts this question of constitutional power of

Congress to deal with the subject of disability, because the test would come at a very inopportune and unfortunate time.

On the contrary, Mr. Chairman, I am convinced in my own mind—and I believe that other Members have a right to be convinced in their minds—that based upon the manner in which the Constitution is being interpreted these days—broad construction you understand—it certainly would follow that the courts would uphold a statute passed by this Congress and approved by the President of the United States providing for the procedures for determining disability.

All of the detail which this proposal before us will write into the Constitution would then be left in statutory form. If it did not work it could be much more easily remedied than will be the situation if the machinery provided under the Constitution for this proposal fails to work. If this Congress should write a statute which would be approved by the President of the United States, it is hard for me to believe that the Supreme Court of the United States would fail to find a constitutional power for that legislative act.

Now, with regard to some of the provisions of this proposal which disturb me, the gentleman from North Carolina [Mr. WHITENER] mentioned, and in my additional views opinion printed in the committee report I call attention to, the wording on line 23, page 3, where in connection with the action by the Congress in confirming the nominee for Vice President submitted by the President, a confirmation by a majority of both Houses of Congress would be required. The chairman of the committee has in the RECORD today clarified this language according to his understanding, that this is not intended to authorize action of the Congress in joint session. Nevertheless, Mr. Chairman, there are proponents of this measure, organizations, which have strongly advocated that any confirmation by the Congress in filling the Vice President vacancy should be by joint session of the Congress, thereby diluting the strength of the Senate. In my opinion, I think the language would be much clearer if that language "of both Houses" were stricken, and the words "in each House" were written in.

I would like to ask the chairman of the committee, if such an amendment were offered would he object to the change in wording in that respect?

Mr. CELLER. I may say to the gentleman such an amendment is not necessary. Attorney General Katzenbach covered that very point, and said the vote would have to be separate in each House. That would not involve any joint session whatever. He cites a case where the Supreme Court interprets the language we have concerning "each House," which means no joint session, but a separate vote in each separate House.

Mr. HUTCHINSON. I thank the gentleman. We are making legislative history, but I am reminded of the way the Supreme Court has been recently interpreting some sections of the Constitution completely disregarding the clear legislative history, some of which was written even a century ago.

It would seem to me it would be better to have clear language in the Constitution itself than to attempt to clarify it by legislative history.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Virginia.

Mr. POFF. I wholly agree with the gentleman that action should be taken separately in each House. I suggest such an intent is amply borne out in the hearings conducted by the committee. I refer first to the testimony of Senator BAYH appearing on page 45, second, to the testimony of Attorney General Katzenbach, which appears on page 95, and finally the testimony of former Attorney General Brownell which appears on page 243. All three agree that the action would be taken separately in each House. I also suggest to the gentleman the point he makes in reference to section 2 would be equally applicable to similar language in section 4.

Mr. CELLER. I want to refer the gentleman to the statement of Mr. Katzenbach appearing on page 106 of the record, as follows:

> First, I assume that in using the phrase "majority vote of both Houses of Congress" in section 2, and "two-thirds vote of both Houses" in section 5, what is meant is a majority and two-thirds vote, respectively, of those Members in each House present and voting, a quorum being present. This interpretation is consistent with longstanding precedent. (See, e.g., *Missouri Pac. Ry. Co.* v. *Kansas*, 248 U.S. 276 (1919).)

Mr. HUTCHINSON. I thank the Chairman.

I would like next to make an observation with which I am sure the majority of the committee does not agree. To my mind a better solution to the matter of filling the vacancy in the office of Vice President would be to provide for the automatic assumption of the office by some other officer of the Government to fill the vacancy, rather than calling on the new President of the United States, the Vice President so recently elevated because of the death of a President, in addition to everything else, to be put in the position of appointing the new Vice President of the United States. The new President will not be able to put this matter off. To delay would not relieve the pressure on him. It would probably build it up further. As soon as the new President enters the Presidential stage, he will see vice-presidential candidates and their supporters in the wings.

There is a good case for simply writing into the Constitution that the Speaker of the House of the Representatives should become Vice President and the House would then choose a new Speaker. I am aware of the argument that under certain circumstances the President and the Speaker of the House, who would then become Vice President, might be of different parties. I recognize that there might be some difficulty there. I go back to the constitutional principle that as far as the Constitution is concerned, the only constitutional function of a Vice President is to preside over the Senate. Every one of the additional duties the Vice President is performing today is cast upon him by statute. If there were a situation in which the Vice President and the President could not get along, perhaps even if they were of the same party, and this has been true in the past and it may be true in the future, I daresay that changes in the statutory functions of the Vice President would be made. The Vice President would be taken out of these functions and he might be relegated to simply presiding over the Senate.

But within the purview of the Constitution that is the only function he has anyway. I submit we would have a better proposal here if the Speaker were to become Vice President.

I am sorry that this proposal does not provide for such automatic, easy, and, I think, very logical method of filling the office of Vice President when that office is vacant.

I submit, too, that at the present time there are no constitutional powers in the members of the Cabinet. They are now advisory and always have been advisory. All of the constitutional executive power vests in the President. By this proposal we are for the first time writing into the Constitution powers vested in the members of the Cabinet.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may require to the gentleman from Illinois [Mr. McCLORY].

Mr. McCLORY. Mr. Chairman, the need for a constitutional amendment as embodied in House Joint Resolution 1 appears to be recognized generally by the American public. The need arises primarily because of two circumstances with which this Nation has had experiences of a most critical nature.

In the first place, whenever a vacancy in the office of the President occurs—such as has occurred on eight different occasions in our history—and the Vice President succeeds to the powers and duties of the President, a void results in the office of Vice President. Accordingly, constitutional provision is needed for authorizing the selection of a Vice President.

This need is met in a direct manner in section 2 of the constitutional proposal. Although there has been long debate and extensive testimony on this subject, there appears to be general agreement with section 2 of the proposed constitutional amendment that the President shall nominate a Vice President under such circumstances, who shall thereafter take office only upon confirmation by a majority vote of both Houses of Congress.

The second need is this: Authority for a President to be relieved temporarily, or even permanently, of his duties and responsibilities under circumstances where he is unable to continue in his capacity as Chief Executive of the Nation.

Again, this need may be satisfied by appropriate constitutional language in those instances where the President is without any mental or physical incapacity and where he wishes to be relieved of his duties and responsibilities on a tem-

porary basis. I am thinking, for instance, of a case where the President proposes to leave the country for a period of time or where he finds it necessary to voluntarily be relieved of his duties for any other reason.

In such cases the President may transmit a written declaration to that effect to the Presiding Officers of the Senate and House, in which event the Vice President may serve as Acting President during such period as the President may declare. In such cases, the President would resume his duties immediately upon transmitting a written declaration in the same manner indicating the resumption of his constitutional powers and duties.

The more difficult aspect of this problem is where the President, although physically or mentally disabled, is unwilling or unable to relieve himself of the powers and duties of the office to which he was elected. It was my original view that constitutional provisions spelling out the method by which a President might be deprived of his powers and duties, as well as the method by which these powers and duties might be regained—whenever the original disability should be ended—were too complex for delineation in a constitutional amendment. Originally, I favored a simple statement to the effect that a determination of the inability of the President to continue to act as well as any resumption of his powers and duties should be left to the Congress to provide by way of legislation.

However, the committee has adopted language designed to establish a method whereby the President may be relieved of his powers and duties involuntarily as well as a further method whereby these powers and duties may be regained when any such disability is removed. Section 4 of the proposed Constitutional amendment sets forth these methods in clear and unmistakable language vesting only in the Congress authority to establish by law such body—other than the principal officers of the executive department—who must concur with the Vice President in declaring the President's inability in the first instance, as well as the removal of such inability—where an involuntary removal has occurred.

I am satisfied that the mechanics of this section in which the Vice President, the members of the Cabinet and both Houses of the Congress act—as set forth in section 4 of House Joint Resolution 1—establish a workable and entirely satisfactory method for meeting this difficult and extremely critical problem.

Certainly, the authority for any person other than the President to assume the powers and duties of that office should be contained in the Constitution itself. In other words, whoever is serving in the office as chief executive or carrying out the powers and duties of that office should be acting under constitutional authority and not mere legislative authority. House Joint Resolution 1 adequately meets this need.

Officers and members of the American Bar Association as well as many individual lawyers specializing in constitutional law and the members of the House and Senate Judiciary Committees, all of whom are distinguished lawyers in their own right, have given full and careful consideration to this proposal. Undoubtedly, and quite understandably, there are some differences of opinion with regard to provisions of this proposal. However, I am satisfied that the overwhelming support which this measure has received from the full Judiciary Committee, as well as the great weight of the testimony in behalf of the proposal in substantially its present form, commends this proposed constitutional amendment to the Congress and to the people of the Nation and their respective State legislative bodies to which the proposal must be referred for ratification following favorable action by the Congress.

I am confident that the necessary three-fourths of those State legislative bodies will act favorably on the subject of ratification to the end that the needs which are met by this legislation will be fulfilled.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may desire to the gentleman from Montana [Mr. BATTIN].

Mr. BATTIN. Mr. Chairman, I take this opportunity to congratulate the committee on reporting out House Joint Resolution 1. I have listened to all of the debate because, as I read the bill originally, I had some serious misgivings about its operation. But I can say from the debate and from the answers that have been made both by the chairman of the committee and the ranking Members on the minority side, I feel this will do the job. I believe the members of the committee should be congratulated for the efforts they have made in bringing this legislation to the floor and to move it on to final adoption.

Mr. McCULLOCH. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY. Mr. Chairman, I wish to speak briefly on this question of disability. In so doing perhaps I can bring into clearer focus the need for a carefully written constitutional amendment. I do not suppose it has to be restated how pressing this problem has been in history and how much more pressing it is today when we live in the day of the hydrogen bomb, when we need quick decision and fast communication.

Members do not need reminding that President Garfield was in a coma for 80 days and during that period considerable business in both domestic and international affairs was impaired. We know further, as has been stated heretofore, that during the period of Garfield's incapacity there was deep division within the Cabinet, including the Attorney General, on the question of whether the Vice President had power to act. If Vice President Arthur proceeded to act, nobody would state with any degree of sureness whether his acts would be lawful and, as Members may know, Vice President Arthur under those circumstances refused to make any decisions at all.

President Wilson's disability was longer, over a year, and although the extent of his disability is a matter of debate, the fact of the matter was that his disability prevented his participation in the debates over the Versailles Treaty and the League of Nations.

This was a sensitive period in United States and world history, but nothing compared to the sensitivity of the modern day.

So the question is—and this bears on the ultimate question as to why we need a carefully worded constitutional amendment—who shall make the decision as to presidential inability? Is it a vice-presidential decision, or is it a general executive decision, or should it be a congressional decision, or a Court decision. There is a good deal of history on this. The question really first arose when President William Henry Harrison died of pneumonia in office. There were those who objected to Vice President Tyler's succession during the President's period of illness, and there were many more who objected to Tyler's succession to the Presidency even after President Harrison's death. The question was whether the Vice President really became President to fill out the unexpired term, or whether he just continued as Vice President and performed the duties of President.

Tyler first held the view that he would only act as President during the unexpired term. Then later, he apparently changed his mind and decided to assume the Presidency.

Seven other Vice Presidents have followed suit since then. In other words, all of them have decided that they were the President, they were not Acting President; they had not just the name, but the powers of office of President. They were Fillmore, Andrew Johnson, Arthur, Theodore Roosevelt, Coolidge, Harry Truman, and Lyndon Johnson. This has a bearing on the question of disability, it seemes to me. We are told that an examination of the original articles agreed upon by the Constitutional Convention showed that the delegates at that time agreed that upon the inability of the President to discharge the powers and duties of his office, the Vice President should exercise those powers and duties "until the inability of the President be removed."

The original thought of the framers of the Constitution was that the Vice President would act as the President in the case of the President's disability. This view finds support in the debates of the Constitutional Convention indicating that the Vice-Presidency was originally created to provide for an alternate Chief Executive who might function from time to time should the President be unable to exercise the powers and duties of his office. When this provision was stated in so many words and was submitted to the Committee of Style, it was revised and reduced to the simplified statement that we have now: "In the case of removal, death, resignation, or inability to discharge the powers and duties of the office, the same shall devolve upon the Vice President," and that is the way it has remained ever since.

What this really means is that we are talking about an Executive decision rather than a congressional or a court decision in the first instance. This interpretation, in fact, has been shared by several Attorneys General in the past. Before the Senate subcommittee, Attorney General William Rogers said that

in his opinion the Constitution invested in the Vice President initial determination as to the existence of an inability with respect to the President.

The same view was expressed earlier by Attorney General Herbert Brownell, who incidentally was the first governmental officer to draft and submit to the Congress legislation along these lines; indeed, the Bayh-Celler proposal is an almost exact restatement of the original Brownell proposal made to the Congress, the 85th Congress, I believe, on the occasion or shortly after the occasion of President Eisenhower's illness.

Attorney General Brownell at that time summed up what has been the legal opinion of all of his predecessors in this area in modern history. He said as follows:

> At the time of President Garfield's illness in 1881, the great weight of opinion favored the interpretation that Vice President Arthur, and he alone, could determine if the President was disabled. At that time most students of the Constitution said that the Vice President was obligated to exercise the powers of the Presidency during Garfield's illness, just as much as he was obligated to preside over the Senate or perform any other constitutional duty, and that no enabling action by the courts or Congress or the Cabinet was necessary.
>
> Since the Vice President had the duty of acting as President, it was argued, in certain contingencies his official discretion extends to the determination of whether such a contingency actually existed; in other words, they were applying a well-known rule that in contingent grants of power, the one to whom the power is granted is to decide when the emergency has arisen.

Thus, there is solid basis in law here to argue that the initial decision must be made by the person who is to succeed in power. In this instance it would be the Vice President. This power to so act is very great. Therefore, it must be guarded and very carefully written.

Mr. Chairman, the Eisenhower administration and its Attorneys General were the first to come to grips with this question of disability. They offered legislation to amend the Constitution to the U.S. Congress, and Attorney General Herbert Brownell, succeeded by Attorney General Rogers, repeatedly asked the Congress to enact it in order to come to grips with this most serious problem.

The Constitution, as we know, already provides, with respect to the Presidency, that "in the case of removal, death, resignation, or inability to discharge the powers and duties of the office the same shall devolve upon the Vice President." One would think that language reasonably clear. But the fact is that it has not been clear. It has not been sufficient to resolve the problem of deciding the terrible question of when does power pass from a crippled President to a Vice President and when can a President recapture power. There are questions so delicate and so difficult of resolution that it requires precise and exact language in a constitutional amendment. If we do not have it, then we may have the problem all over again at some future date. I hope we will not, but we must make provision for it, and it is high time we did.

Mr. Chairman, in our Committee on the Judiciary, in our discussions of this subject, and the real disagreement developed over the language of section 4 of the resolution. Here is the rub. We may see, when we get to amendments, that this difficulty was sufficiently deep to divide the committee.

Members will note that in section 4 it is provided in the event the Vice President, backed by a majority of the Cabinet, decides that the President is incapacitated, he may take over the powers of the Presidency. Stated more specifically, section 4 states that "whenever the Vice President and a majority of the principal officers of the executive departments transmit to the President pro tempore of the Senate and the Speaker of the House a communication declaring that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President."

So far so good. This takes care of the case of a President who is so incapacitated by a stroke or otherwise that he cannot communicate and voluntarily relinquishes power. Therefore, we have this provision. Then this section goes on to state:

> Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the power and duties of his office—

So far so good also. This takes care of the case of the President who disagrees with the Vice President about the State of his own health, or who has become restored to health, and believes he is in a position to conduct the powers of the Presidency. But, this section goes on to say—

> unless the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, transmit within 2 days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, immediately assembling for that purpose if not in session. If the Congress, within 10 days after the receipt of the written declaration of the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, determined by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise the President shall resume the powers and duties of his office.

Now, that word "unless" is the key. It is very significant. The difficulty that some of us had with it in the committee was that we thought it best to provide that the President of the United States, duly elected by the people, should retain power in the event there is a disagreement as to his disability between him and the Vice President, backed by a majority of the Cabinet, unless the Congress should decide otherwise. I have thought that in the case of a dispute the President should retain power unless Congress should reverse the President by a two-thirds vote.

The bill as reported out provides just the reverse, that the Vice President, on his declaration, backed by a majority of the Cabinet, retain power unless he is reversed by the Congress.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. McCULLOCH. Mr. Chairman, I yield the gentleman 2 additional minutes.

Mr. LINDSAY. I want to be very frank in stating that in the Judiciary Committee I offered an amendment to reverse this procedure and provide that the President would always retain power unless Congress should decide otherwise, rather than have the Vice President be able to retain power unless reversed by the Congress, and that amendment was defeated.

After the amendment was defeated, the gentleman from Virginia [Mr. POFF] cured my problem to a great extent by tightening the time period. By a new amendment a 10-day limitation was placed on the period in which Congress must act. This limitation removed a great deal of the doubt that I had about the wisdom of establishing a procedure.

In addition, the bill as it stands is vigorously supported by the American Bar Association and its special committee on this subject, the chairman of which was the former Attorney General of the United States, Mr. Herbert Brownell, who was also my former chief in the Department of Justice when the original bill on disability was drafted and submitted to the Congress. Many other leading bar associations including the association of the Bar of the City of New York, supported the bill.

Under these circumstances, Mr. Chairman, I think that Members may be satisfied in their minds that this bill is satisfactory, has the backing of the best legal minds in the country, and will at long last provide a necessary clarification of the charter under which we operate.

Therefore, Mr. Chairman, I urge that the bill be passed by this House, that we meet together in conference with the Senate to settle our differences and that this proposed constitutional amendment be submitted to the legislatures of the several States of the country with all possible speed.

Mr. COHELAN. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection?

Mr. COHELAN. Mr. Chairman, the problems of presidential succession and presidential disability have long needed constitutional clarification. I have joined in sponsoring this measure which we are considering today, and I rise in its support.

The facts themselves speak persuasively to the need for the soundly based but immediate action which this legislation provides.

Eight of our 35 Presidents have died in office. On 16 different occasions, totaling more than 38 years in the brief history of our country, we have been without a Vice President. Eight Vice Presidents succeeded to the Presidency, while

seven died during their terms of office, and one resigned.

Of the four Presidents who served the United States from 1932 through November 1963, two—Franklin D. Roosevelt and John F. Kennedy—did not live out their terms; one—Dwight D. Eisenhower—suffered a serious heart attack; and one Harry S. Truman—was the object of an attempted assassination.

In past years the office of Vice President has been subject to more ridicule than respect. But such is not the case today. The Vice President is not only the ever-possible successor to the Nation's highest office, he has become a highly important ambassador, traveling thousands of miles on behalf of the President. He is a member of the Cabinet and of the National Security Council. He is Chairman of the National Aeronautics and Space Council, and he has major responsibilities in our wars on poverty and discrimination.

There is ample evidence that the United States needs a Vice President at all times, that this person must be fully acquainted with both foreign and domestic policy and prepared to assume the Presidency on a moment's notice. Yet there is no provision in our Constitution for filling this office when there is a vacancy.

Mr. Chairman, the problem of presidential disability poses potentially greater and more difficult problems.

On two occasions, either as a result of tragic accident or illness, we have had Presidents unable to carry out their duties for prolonged periods of time.

President Garfield lingered between life and death for 80 days after he was shot by a disgruntled officeholder. During this period he performed only one official act—the signing of an extradition paper. There was a crisis in foreign affairs, but only routine business was transacted.

President Wilson's serious illness of nearly 2 years presented the country with an even more difficult situation. Following his stroke in 1919, some 28 bills became law without his signature. The Cabinet met unofficially from time to time on the call of Secretary of State Lansing, but when President Wilson learned of the meetings he forced Lansing to resign, believing that Lansing was plotting to oust him.

In both of these cases of disability, the Vice Presidents were urged to act as President. But both Arthur and Marshall declined, fearing they would deprive the President of his office should he recover.

Mr. Chairman, without clear authority, provided by law, it cannot be expected that future Vice Presidents will act differently if a President is disabled, yet clearly the leader of the free world must have a healthy, sure, and steady hand at the helm of state.

On at least two other occasions, we have had Presidents unable to carry out the full duties of their office for shorter periods of time. President McKinley lived for 8 days after he was shot, during which time the business of Government came to a standstill.

President Eisenhower's heart attack hospitalized him for 6 weeks, during the first week of which he was able to make few if any decision.

It is a strange irony indeed that we are prepared and amply so, for a President's death or impeachment, but that we are defenseless against his injury, illness, or physical incapacity. The events of the last two decades alone, however, show us all too clearly how quickly disability can strike.

Mr. Chairman, this constitutional amendment is both practical and effective. It recognizes that total protection against all conceivable situations is not possible but it guards against the most serious and striking omissions of our present system. It establishes a firm framework, grounded at it should be in the Constitution, but it leaves certain final decision which must be based on the facts of the time to the elected representatives of the people.

Most important, Mr. Chairman, it corrects the blind spots—the avoidable risks and hazards—that have impaired our Constitution for nearly 176 years and I urge that it be adopted so that presidential disability and vacancy in the office of Vice President will no longer threaten the orderly process of our democracy. I urge that this constitutional amendment be adopted to assure the orderly continuity in the Presidency that is imperative to the success and stability of our country and our form of government.

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from West Virginia [Mr. MOORE].

Mr. MOORE. Mr. Chairman, I believe the legislation we have before us in the form of House Joint Resolution 1 is one of the great challenges of this Congress. I agree generally with those who have spoken in favor of this proposed constitutional amendment. With rare exception do I disagree. However, I would like to call the Committee's attention to page 4 of House Joint Resolution 1, for I intend to offer language in the form of an amendment to section 4 of the proposed constitutional amendment.

As the gentleman from New York who preceded me made some observation with respect to the Presidency and the fact that he would like to see the elected President in that position at the time as the challenge is made to his ability to discharge the powers and duties of his office. I would say that it is in this area that I am in disagreement with the language in the resolution pending before us.

I believe that first and foremost we should protect the President. I believe that if the question of disability really exists it should be settled by the Congress at a time when the President, who has been elected by the people, is in that office.

Mr. Chairman, I believe that for us to permit the Vice President to succeed to the position of Acting President and then permit him by virtue of transmitting to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration, together with a majority of the members of the executive departments, that the President is not then capable of reassuming his office, that this puts the Vice President, then acting as President, in a position of holding tremendous power over the elected President of the United States. Sufficient power to perhaps prevent him from regaining his elected office. This should be of great concern to all of us.

Mr. Chairman, I believe that if we amend this resolution providing that once the President having been removed by the action of the Vice President and a majority of the principal officers of the executive departments, the right to the President to simply state he is capable of reassuming his office, that he shall then reassume the office of Presidency to which he was elected by the people of this country. Then if his inability still exists, we have within this proposed constitutional amendment I believe the language and mechanism which the Vice President and the principal officers of the executive departments can use to challenge the President with respect to whether or not he is actually capable of reassuming his office. But it gets us out of this gray area as to who is President of the United States for a period of 2 days or 10 days and it gets us out of the gray area certainly to the extent of placing the burden upon a man elected President of the United States having to fight for the office of President of the United States from some very high, lofty place here in the Nation's Capital rather than in the office of the Presidency itself.

Mr. Chairman, I believe that it is not too unreasonable to assume that if we do not permit the President to again succeed to his office and once having been ruled incapable or found incapable by the declaration of the Vice President and the principal officers of the executive departments, to reassume the office of Presidency, I believe we are encouraging some things to happen which perhaps are not in the minds of the individuals that are here listening to the debate in this Committee.

I believe we may very well put the President of the United States in a position of coming here to the Congress and trying to lobby himself back into the job to which the people have elected him.

I believe that the Congress should decide this matter of capability with the President and the Vice President in the positions to which the people of this country have elected them.

The CHAIRMAN. The time of the gentleman from West Virginia has expired.

Mr. McCULLOCH. Mr. Chairman, I yield 2 additional minutes to the gentleman from West Virginia.

Mr. MOORE. Mr. Chairman, may I say I believe it is the burden of the Congress looking into the eyes of the elected President of the United States, even though now removed, to declare him to be unfit to hold that office.

I believe we in this Congress must be jealous of the Presidency and that all presumptions should be in favor of the Presidency. All issues as to inability in my opinion should be resolved by the Congress with the elected President holding the office to which the people have elected him. Under the language of this

resolution this is not done. The elected President is out of office. Pressures to keep the elected President out of office can be exerted even on the Congress of the United States.

As I have said, this can be accomplished, in my opinion, Mr. Chairman, by a series of amendments. If I may draw the committee's attention to section 4 on page 4 of the proposed constitutional amendment, line 18. After inserting a period at the end of line 17, remove the word "unless" and have the language read then beginning on line 18:

In the event the Vice President and the majority of the principal officers of the executive departments or such other body as Congress may by law provide, transmit within 2 days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office—

And then, I go on to page 5, line 6, and at the end change the language which states:

The Vice President shall—

I omit the words "shall continue to"—that is, in the event the Congress determines by a two-thirds vote of both Houses that the President—

is then unable to discharge the powers and duties of his office, the Vice President shall immediately discharge the same as acting President.

It gets us out of the gray area as to who controls the mechanism of government in this country during the period of time that the Congress must decide the issue of capabilities of the President of the United States in the event they are again challenged by the Vice President.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I yield to the gentleman from Iowa.

Mr. GROSS. In the event of a disability of the President and the elevation of the Vice President, does he take an oath of office as President of the United States, and if so, what happens to the oath of office that he has taken? How is that rescinded?

Mr. MOORE. I would assume that there would be a provision that the individual would take an oath as Acting President of the United States and that the Vice President would wear two hats, so to speak, that of Acting President of the United States and that of Vice President of the United States.

Mr. Chairman, I certainly recognize that there are a number of men in this Chamber here today and in this Congress who perhaps can suggest language and perhaps can suggest changes that should take place in this legislation, but I sincerely suggest at this time that it is necessary for us here this afternoon to see to it that we protect the President of the United States against any sort of manipulation which might take place as a result of the adoption of this proposed constitutional amendment in its present form. I, at the appropriate time, intend to offer an amendment that will permit the President, who has been declared incapable of handling the duties of his office, by his written signature to reassume the powers and duties of his office. It shall then evolve upon the Vice President, not as Acting President, but upon the Vice President and the principal officers of the executive department, to bring the issue to the Congress, and then it shall be up to the Congress to decide whether or not the man who is President of the United States and elected to the office of President of the United States is incapable of handling the duties of that office. I think that amendment would once and for all settle a lot of the gray area that has been discussed here this afternoon.

Mr. McCULLOCH. Mr. Chairman, I yield 7 minutes to the gentleman from Maryland [Mr. MATHIAS].

Mr. MATHIAS. Mr. Chairman, I thank the gentleman from Ohio for yielding me this time to address myself to some of the constitutional questions which are raised by this proposal.

I have some serious reservations about this constitutional amendment, and they go to the heart of the proposals that are made with respect to presidential succession. I also share some of the reservations other Members of the House have expressed in regard to the disability section of this proposal, such as have been suggested by the gentleman from West Virginia [Mr. MOORE] and the gentleman from New York [Mr. LINDSAY] who have just spoken.

But primarily I should like to address myself to the constitutional provision here proposed that the President shall nominate a Vice President, who shall take office on confirmation by a majority of both Houses.

I question whether a proposal of this sort is in harmony with principles which have guided the Republic for almost two centuries. From its very inception, the presidency has been considered to be an elective office. If you go to the Journal of the Constitutional Convention, which was kept by James Madison, you will find a great deal of discussion as to how a President should be chosen. Various methods were proposed. They were all elective methods. If we go to a new procedure under which the Vice President will be appointed by the President, as an ambassador or a judge, then we shall have changed the nature of the presidency for the first time in the history of the Republic, and it will be no longer a purely elective office. Neither the people nor their direct representatives will be choosing the Vice President, the heir apparent to the most powerful office in all the world. I question very sincerely whether the American people want to make the change in principle and in policy which would be involved in this particular section of the proposed constitutional amendment.

Mr. LONG of Maryland. Mr. Chairman, will the gentleman yield?

Mr. MATHIAS. I yield to the gentleman.

Mr. LONG of Maryland. Has it not been true, in spite of what the gentleman says, however, that the Secretary of State and Cabinet members have been in line for succession to the presidency throughout our history?

Mr. MATHIAS. Yes, but they have never succeeded to the Presidency. The fact of the matter is, however, that many Vice Presidents have succeeded to the Presidency—unhappily as that might be, and the contingent succession beyond the Vice Presidency has been a remote thing.

Those who support this section will say that they do so on the basis of an analogy with the custom, the relatively modern political custom, whereby the wishes of a presidential nominee are consulted in a national convention as to his choice of a running mate. I consider this analogy to be false. It is false for several reasons. One is because a presidential nominee of one of our national parties who is temporarily in a convention city and who is looking for help and support from all sides will chose a man for his running mate who will help him to get elected and will choose a man who has the strength to complement his own candidacy. The same may not be true of the man who is permanently at 1600 Pennsylvania Avenue; and he may have other motivations and other thoughts in choosing the man who might not only be his Vice President but will be his heir apparent, and who under the provisions of this constitutional amendment will have certain powers to depose him.

I am very sure these arguments would have been considered very carefully in the constitutional convention. We have the duty of considering them very carefully here in this legislative body.

The fact is that a presidential nominee choosing his running mate is merely presenting a running mate to the people and the electability of the vice presidential candidate is a measure of the accountability of the presidential candidate.

There is, therefore, a very real check on his choice. While it can be replied, of course, that congressional confirmation is a sort of check on the appointment of the Vice President, I would suggest that in many cases it would be a formality only. Those of us who sat in this House in November of 1963 well know that in the emotion of that period which gripped the Congress as well as the country, we would have not questioned closely the confirmation of an appointed Vice President within a considerable period of time after November 22, 1963.

Mr. CORMAN. Mr. Chairman, will the gentleman yield for a question?

Mr. MATHIAS. Certainly, I yield to the gentleman.

Mr. CORMAN. Would the gentleman consider perhaps that it would be no less a formality than the selection of Mr. Miller and Mr. HUMPHREY in the summer of 1964?

Mr. MATHIAS. I thank the gentleman for his observation. Perhaps it merely proves what I have attempted to express to the House today. The gentleman will recall that the selection of Mr. Miller and Mr. HUMPHREY was merely for the purpose of presenting their names to the country.

Mr. RUMSFELD. Mr. Chairman, will the gentleman yield?

Mr. MATHIAS. I yield to the gentleman.

Mr. RUMSFELD. In this same connection, we look at page 3 of the resolution, line 23, and then again at page 5, line 5, where it points out that the House and Senate will by a vote approve these actions, in one case the selection of a Vice President and in the other the disability question.

It is obvious that under this constitutional amendment these decisions could be made by the Congress by a nonrecord vote.

Mr. MATHIAS. I believe that is clearly true. Certainly there is no provision for it in the amendment.

Mr. RUMSFELD. Not only could there be a nonelected Vice President, as the gentleman has pointed out, but the Vice President could conceivably be selected without the Members of the House and the Members of the Senate ever going on record as to whether they approved or disapproved the President's request.

I am personally concerned, because I believe a subject matter of this importance to the country should be decided on a record vote. In the past we have seen many important measures pass the House by a nonrecord vote. I believe the public's business should be conducted in public.

Mr. MATHIAS. Mr. Chairman, I should like to point out briefly that in addition to my reservations about section 2 providing for an appointive Vice President, my concern is increased by the fact that we would couple the appointive powers of the President with the power of the Vice President thus appointed to depose the President. This to me is a conflict in powers which I believe can create serious trouble for this country in the future.

On another question not touched upon, I should like to ask the gentleman from Virginia [Mr. POFF] to respond to a question. I point out to the gentlemen that nowhere in this proposed amendment and nowhere in the committee report is there any reference to the state of the law in the event of simultaneous death of the President and Vice President. Does the gentleman from Virginia consider that it would be the intent of this amendment that the existing language of the Constitution covering the death or otherwise the removal of both the President and Vice President would be in effect notwithstanding adoption of this amending language?

Mr. POFF. The answer is definitely in the affirmative. The gentleman has reference to the language in article II, section 1, clause 5. The amendment which we are considering, if it becomes a part of the Constitution, would simply be a supplement to rather than a substitute for that language.

I add that I am reliably informed that former Attorney General Brownell, to whom this proposition has been put, shares my feeling on this score.

Mr. MATHIAS. I thank the gentleman from Virginia. I believe it is very important that we should make it clear that while the language in this constitutional amendment, if adopted, would supplant the first part of the sentence dealing with vacancies and succession, it would not supplant the second part dealing with vacancies in both the offices of President and Vice President.

Mr. POFF. The gentleman is correct. Stated differently, the adoption of this constitutional amendment would not repeal in any sense the present law on succession.

Mr. MATHIAS. I thank the gentleman from Virginia.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey [Mr. CAHILL].

Mr. CAHILL. Mr. Chairman, I rise in support of House Joint Resolution 1. Recognizing the need for some legislation in this field, I sponsored House Joint Resolution 922, which was introduced on February 8, 1964, and which proposed an amendment to the Constitution relating to vacancies in the office of Vice President. The present legislation proposes to correct not only the situation that exists upon the death of a President and his succession by the Vice President, but likewise to correct that situation which results from presidential inability.

The history of our country is replete with examples of presidential disability which required some action in order to continue the every day life of the Republic. In this day and age with immediate decisions required on a myriad of subjects, it is inconceivable that this country should continue without the full service of a chief executive.

Because of the precedent, known as the Tyler precedent, it seems clear that when a Vice President succeeds to the office of President of the United States, he inherits all of the powers of the office and in the words of Daniel Webster:

> The powers * * * are inseparable from the office itself.

Thus, under present law, if a disabled President is displaced by a Vice President who assumes the prerogatives of the Presidency, he could not upon recovery, displace the Vice President who had assumed the office.

American history will disclose that when President Garfield was shot he lingered for almost 3 months unable to perform any official acts, except the signing of an extradition paper. President Wilson, likewise, suffered a severe stroke which came at a time when the struggle concerning the position of the United States in the League of Nations was at its height. Recently, we all recall the illness of President Eisenhower and his concern about the omission in the Constitution relative to presidential inability. Because of his concern, it will be recalled that he entered into a formal agreement with Vice President Nixon. President Kennedy likewise entered into a similar agreement with Vice President Johnson as did President Johnson with Speaker McCORMACK and Vice President HUMPHREY.

I am sure all of us in the House recognize that such agreements are not adequate and there is a definite need for a constitutional change.

Attorneys General of both Republican and Democratic administrations have agreed that the best method to settle the problem is by means of a constitutional amendment. It seems clear, therefore, that some changes must be made in the existing Constitution as it relates to presidential inability and presidential succession together with some provision for the appointment of a Vice President where the Vice President succeeds to the Presidency.

Historically there has been a dispute as to whether or not the changes which admittedly were needed could be accomplished by statute or whether a constitutional amendment was necessary. It now appears clear from overwhelming legal authorities that the proper and indeed the safest procedure is by amending the Constitution. Attorneys General Brownell, Rogers, and Katzenbach have agreed that an amendment is necessary. This view has the support of the American Bar Association and most of the State bar associations, It, therefore, seems to me that since the need is great and urgent and since the method is clear and direct, that we in the House should adopt the resolution presently being considered so that this important omission in the basic law of the land may be corrected at the very earliest opportunity.

Mr. Chairman, it is indeed urgent, it is indeed necessary; and we should act promptly. I urge the adoption of House Joint Resolution 1.

Mr. McCULLOCH. Mr. Chairman, I now yield 5 minutes to the gentleman from New York [Mr. HALPERN].

Mr. HALPERN. Mr. Chairman, I rise in support of the pending measure, believing that it represents a responsible answer to a difficult constitutional and political dilemma. I want to compliment the committee for its superb work on this legislation and for bringing before us a most commendable measure.

I was privileged to testify in behalf of House Joint Resolution 1 on February 10 before the committee. The amended version presently under debate is not materially different from the original proposal, and I believe the committee has contributed some valuable clarification and change.

The measure provides an unambiguous means of filling the office of the Vice-Presidency when this personage assumes the higher office upon death or resignation of the President. Second, House Joint Resolution 1 establishes a method for the determination of presidential inability and procedures open to assure a continuity of leadership when such disability occurs.

When the President disqualifies himself, or is otherwise disqualified by the chief executive officers and Congress, the powers and duties shall devolve upon the then Vice President who becomes Acting President. Provisions are set down whereby this period of inability can be terminated.

The committee believed that in a case where the President declares himself disabled, he should be able to resume discharge of his powers immediately through simple notification to Congress. The committee report notes:

> To permit the Vice President and Cabinet to challenge such an assertion of recovery might discourage a President from voluntarily relinquishing his powers in case of illness.

This is a wise and reasonable amendment.

We have two important clarifications to the original House Joint Resolution 1. The words "heads of the executive departments" are changed to "principal officers of the executive departments" to insure that only those of Cabinet rank can participate in a determination of presidential disability. The amendment to section 3 specifies that the President's written declaration of inability shall be transmitted to the President pro tempore of the Senate and to the Speaker of the House. It is additionally made clear that if Congress is not in session when the Vice President and a majority of the Cabinet contradict a presidential assertion that no inability exists, Congress shall immediately assemble to decide the issue, as provided.

It would be impossible, Mr. Chairman, to imagine all the varying cases which may arise touching upon presidential succession and inability. Historical experience is instructive, but it also indicates that similar predicaments will vary in important details. We should leave room for human judgment.

House Joint Resolution 1 provides a framework through which the Nation can legally assure itself of executive leadership when incapacity strikes. This assurance has become crucial in the 20th century.

While there exists no mathematical device to prescribe the detailed conduct of Government officers in every hypothetical situation, we must protect ourselves by establishing procedures for constitutional action. House Joint Resolution 1 represents a sufficiently flexible approach.

Mr. MONAGAN. Mr. Chairman, will the gentleman yield?

Mr. HALPERN. I will be happy to yield to the gentleman from Connecticut.

Mr. MONAGAN. Mr. Chairman, I compliment the gentleman from New York on the statement that he is making and I subscribe to the sentiments which he has expressed.

I strongly favor the passage of House Joint Resolution 1. This legislation is substantially in accord with House Joint Resolution 158, which I introduced in this Congress, and is similar to House Joint Resolution 990, which I introduced in the 88th Congress.

I am proud of the manner in which the Congress is meeting its responsibility in this important area of Presidential succession and Presidential inability. The history of the country is replete with instances where the Government of the United States has been hobbled by the absence of a provision such as we are considering today. If more evidence were required of the necessity of such a revision of our law, the situation attendant upon the tragic death of President Kennedy forcibly brought this need to our attention. Frequent mention has been made of the problems faced by President Andrew Johnson and President Truman because of the lack of succession and students of the Wilson era will be familiar with the hiatus of Government which occurred after Wilson was stricken because of the absence of any provision governing presidential inability.

The constitutional amendment which we consider today will fill the legal void that has too long existed. In taking the action which I am confident we will take today, the Congress is acting in the best tradition of this great body and in accordance with the highest standards of democratic government.

Mr. ROGERS of Colorado. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of House Joint Resolution 1 and urge its adoption. The reason for this proposal arises from the fact that we have, throughout history, had instances of the President's inability to perform the functions of his office. That is the only reason why we are considering this legislation today. As has been pointed out heretofore, during the term of office of Woodrow Wilson and even under the past administration of President Eisenhower, the inability of the President to perform the functions assigned to him became highly important. We, as Members of Congress, and those who have preceded us here, have not exercised all of the authority that we could have exercised under article II, section 1, clause 5, which has been read here several times. The only step Congress took was to provide for succession in the event of a vacancy in the office. Prior to 1947 the succession was the Secretary of State and so on down the line in the Cabinet.

In 1947 Congress changed the line of succession so that in the event of a vacancy and there were not a Vice President, the Speaker of the House would become the President. In the event of a vacancy of President and Vice President, and even if this amendment were adopted by four-fifths of the States, then the succession would still continue. What we are trying to do here is to meet the problem of the inability of the President to fulfill the responsibilities of his Office.

This matter has been discussed by many Members of Congress and particularly in the Committee on the Judiciary for a number of years. Particularly was it highlighted at the time of the sickness of President Eisenhower. But no action was taken, and finally it was thought that some definite position should be taken by the Congress of the United States.

The resolution we have before us, after many years of thinking and study comes nearer to solving the problem than anything that has been suggested up to date.

We recognize that there are bound to be individuals who may disagree as to the proper method in meeting this problem. We also recognize that the members of the Cabinet who are appointed by the President, if they should arrive at a conclusion that he has not the ability to perform the functions of his Office, are going to be hesitant in making that determination. They, themselves are the ones who have had the opportunity to observe the President and his actions.

Therefore I suggest that we adopt this resolution and refer it to the respective States and at last fill the void that has existed from the founding of the Constitution down to date.

Mr. MORSE. Mr. Chairman, I rise in support of House Joint Resolution 1. The action that the House is considering today is long overdue and I commend the House Committee on the Judiciary Committee for developing what I believe to be a highly satisfactory solution to a problem that has plagued us since the beginning of our Nation.

Even during the debates at the Constitutional Convention, the lack of clarity of article II, section 1, clause 5 was apparent. No one had an answer for John Dickinson's question "What is the extent of the term 'disability' and who is to be the judge of it?"

In my judgment, House Joint Resolution 1 supplies the answer.

The problem of presidential disability and vice-presidential vacancy has come up several times in our history. By precedent we resolved the question of the Vice President succeeding to the office of President upon the death of a President, but we have not dealt with vice-presidential vacancy or with the delicate problems of disability.

It is regrettable that we have been moved to action by the tragic assassination of a President and the vacancy of the office of Vice President for more than a year. In this day and age we cannot be without all of our constitutional officers.

Just as these events have brought this proposal before us, I hope that they will also lead us to deal with the question of the crime of presidential or vice-presidential assassination. At the present time it is not a Federal crime to assassinate the President. I have introduced legislation in the 88th and 89th Congresses, as have a number of other Members to eliminate this gap in our laws.

I congratulate the members of the Judiciary Committee on their outstanding work on this proposal and urge their consideration of H.R. 7338 and related measures.

Mr. DONOHUE. Mr. Chairman, I most earnestly hope and urge that this House, after due deliberation and discussion, will overwhelmingly accept and approve this measure before us, House Joint Resolution No. 1, with amendment, providing for swift and orderly succession to the Presidency and Vice-Presidency and reasonably resolving those cases where the President is unable to discharge the powers and duties of his high and burdensome office.

It is hard to believe that this great and powerful Nation, predominently dependent upon almost moment-to-moment guidance of its complex affairs from the White House, has practically no systematic means, now, of meeting the profound emergency of presidential inability or prompt vice-presidential replacement.

It may well be considered among our greatest blessings that, as yet, no confounding catastrophe has erupted out of vacancies in the vice-presidency or presidential incapacity.

The resolution before us does offer, after the deepest committee study and

extended consultation with recognized experts, an equitable and practical mechanism by which the Vice President can be replaced in case of the vacancy of his office from any cause.

A section of this amended resolution also provides an orderly process of enabling the President to be temporarily relieved of his tremendous duties in case of a disabling sickness with no fear of being permanently displaced. This measure further seeks to recognize and meet even the most remote emergency of a President being unable himself to request needed relief by providing that the Vice President, on the initiative of himself and the Cabinet, could temporarily discharge the duties of the Presidency.

Mr. Chairman, by the resounding approval of this measure we will be rightfully acting to remove the causes of utmost anxiety and apprehension that inevitably would arise, here and throughout the world, if, may God forbid, this Nation should ever again endure the tragedy and sorrow of a fallen or disabled leader.

I hope the House will take this patriotic action, in the national interest, without undue delay.

Mr. BENNETT. Mr. Chairman, while the framers of the Constitution gave scant attention to the problem of presidential inability and succession, the fact remains that since the Presidency of George Washington the Nation has been without a Vice President 16 times, and has had 3 Presidents who were so disabled there was grave doubt of their ability to perform their duties as President. We are all familiar with the lengthy periods when Presidents Garfield and Wilson lay close to death, and aware that during the illness of President Wilson, Mrs. Wilson and members of the White House staff conducted affairs of state because Vice President Thomas Mitchell feared his acting as President would oust President Wilson from office.

Most recently the heart attacks of President Eisenhower, and the assassination of President Kennedy, again reminded us of the compelling and urgent need for Congress to provide for the orderly and prompt determination of a President's disability, and on the death or disability of the Vice President for the selection of an immediate successor.

Since 1953 I have in every Congress introduced legislation calling for a solution to the problem of Presidential disability and succession. It was in 1953 when I joined with the distinguished Senator from Rhode Island, the venerable Theodore Green, to establish a Commission to look into the problem of presidential inability and succession. Today we have an opportunity to enact legislation which would provide a solution to the problem. I have worked and supported my own legislation in this field, House Joint Resolution 33, and I am pleased to commend to the House of Representatives today, the Committee on the Judiciary's bill, House Joint Resolution 1, a much-needed and good bill for the future of our Nation.

Mr. GILBERT. Mr. Chairman, I rise in support of House Joint Resolution 1, which proposes an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office.

As a member of the Judiciary Committee, I have followed and participated in the hearings on this important proposal. We have been concerned with two problems: first, the lack of a constitutional provision assuring the orderly discharge of the powers and duties of the President in the event of disability or incapacity; second, the lack of constitutional provision assuring the continuity of the office of Vice President, and office which itself is provided for the primary purpose of assuring continuity.

Problems have existed in this country for almost two centuries so far as continuity of the executive branch of our Government is concerned. President Johnson said in his message to Congress:

> It is truly astonishing that over this span we have neither perfected the provisions for orderly continuity in the executive branch, nor have we had to pay the price our continuing inaction invites and risks.

Mr. Chairman, we have been without a Chief Executive during several periods of our history during which the President was unable to perform his duties. It could happen again, unless our Constitution is clarified and amended to define procedures for a successor to assume the powers and duties of the Presidency. The American people have not hesitated to amend their Constitution when commonsense has dictated it, and certainly commonsense and deep concern for the welfare of our country dictate it now. In such perilous times as these, there should be no doubt about whose hand is responsible for the running of our country. We are prepared for the possibility of a President's death, but we are not prepared for the probability of a President's incapacity by injury, illness, or other affliction.

House Joint Resolution 1 would amend the Constitution to provide a detailed and orderly procedure for the transfer of Executive power from the President to the Vice President in times of Presidential inability.

I would like to call the attention of my colleagues in the House to each section of the proposal.

Section 1 of House Joint Resolution 1 states:

> In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

This affirms the practice by which a Vice President becomes President upon the death of the President, and it extends the practice to resignation or removal from office. The provisions relative to inability are separated from those relating to death, resignation, or removal.

Section 2 provides that in the event of a vacancy in the office of Vice President, the President shall nominate a successor, subject to congressional approval by a majority vote of both Houses of Congress. This would virtually assure that the Nation will at all times have a Vice President.

I am of the opinion that the best way to fill the office of Vice President in the event of a vacancy is as proposed in this resolution. It is desirable that the President and Vice President enjoy harmonious relations and mutual confidences, and that the President be granted the generally accepted prerogative of choosing his Vice President. On the other hand, this amendment would recognize the right of the people to have a voice in the Vice President's selection through their elected Representatives in Congress.

The office of Vice President has become one of great importance. It is no longer simply an honorary position. It carries specific and far-reaching responsibilities in the executive branch of the Government. Vacancies in the office of Vice President have occurred on 16 different occasions for periods totaling more than 37 years. Seven Vice Presidents have died in office and one resigned; eight Vice Presidents have taken over the Office of President upon the death of the incumbent President since 1841. It is essential that there always be a presidential successor fully conversant with domestic and world affairs and prepared to step into this high office on short notice and work harmoniously with the President.

Sections 3 and 4 of House Joint Resolution 1 deal with procedures for determining when a presidential inability begins and ends. The principal purpose of the amendment is to distinguish between, first, inability voluntarily declared by the President himself—in which event House Joint Resolution 1 provides the President can resume his duties by making a simple declaration that the inability no longer exists; and second, inability declared without the President's consent—in which case, House Joint Resolution 1 provides procedures for promptly determining the presence or absence of inability.

Section 3 makes clear that the President may declare in writing his disability and that upon such an occurrence the Vice President becomes Acting President. He assumes "the powers and duties of the office" and not "the office." This section further clarifies the status of the Vice President during the period when he is discharging the powers and duties of a disabled President. It clarifies the procedure and the consequences when the President himself declares his inability to discharge the powers and duties of his office, as follows: First, the officials to whom the President's written declaration of inability shall be transmitted are the President pro tempore of the Senate and the Speaker of the House; second, in case of such voluntary self-disqualification by the President, the President's subsequent transmittal to the same officials of a written declaration to the contrary—that is, a written declaration that no inability exists—terminates the Vice President's exercise of the presidential powers and duties, and that the President shall thereupon resume them.

In cases in which a President himself declares his inability, the period of his disability would be terminated by a simple Presidential notice to both Houses of

Congress. To permit the Vice President and Cabinet to challenge such an assertion of recovery might discourage a President from voluntarily relinquishing his powers in case of illness. The right to challenge would be reserved for cases in which the Vice President and the Cabinet, without the President's consent, had found him unable to discharge his powers and duties.

Section 4 deals with the factual determination of whether or not the inability exists. It provides that whenever the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

The term "principal officers of the executive departments" has been substituted for the term "heads of the executive departments" as originally used in House Joint Resolution 1, to make it clearer that only officials of Cabinet rank shall participate in the decision as to whether presidential inability exists. The committee concluded that the combination of the judgment of the Vice President and a majority of the Cabinet members would be the most feasible formula. It would enable prompt action by the persons closest to the President, and it is assumed that such decision would be made only after adequate consultation with medical experts.

Another change made in former sections 4 and 5 is to specify the President pro tempore of the Senate and the Speaker of the House as the congressional officials to whom the declaration concerning presidential inability shall be transmitted, as is done in section 3.

Former section 5 of House Joint Resolution 1 was amended, first, to make clear that if Congress is not in session at the time of receipt by the President pro tempore of the Senate and the Speaker of the House of a written declaration by the Vice President and a majority of the principal officers of the executive departments contradicting a Presidential declaration that no inability exists, Congress shall immediately assemble for the purpose of deciding the issue; and second, to provide that in such event the President shall resume the powers and duties of his office unless the Congress within 10 days after receipt of such declaration of Presidential inability determines by two-thirds vote of both Houses that the President is in fact unable to discharge the powers and duties of his office, and the Vice President shall continue to discharge the duties of the office as Acting President.

To clarify this a little more, House Joint Resolution 1 provides that, following a Presidential declaration that a disability previously declared by others no longer exists, a challenge to such a declaration must be made within 2 days of its receipt by the heads of the House and Senate and must be finally determined within the following 10 days. Otherwise, the President having declared himself able, will resume his powers and duties.

Mr. Chairman, I urge prompt approval of House Joint Resolution 1 to amend the Constitution, so that the States might proceed with the long process of ratification. I am firmly of the opinion that a constitutional amendment as offered in this resolution is the most adequate way to fill a very dangerous void in our system of Government.

Mr. FUQUA. Mr. Chairman, the Constitution of the United States has left unsolved the problem of how the presidential duties and powers are transferred in the event a President become incapable of administering the duties of his office. This is particularly true in the event that the President does not understand and realize he has become incapacitated. Study of the problem indicates that there has long been an awareness of the lack of clarification by the Constitution, but, as of this time, it is a matter left unresolved. It is my hope that we can act upon this legislation and rectify the provisions with clearer language than originally written. The only satisfactory method of resolving the problem of presidential inability and the filling of the vacancies in the Office of Vice President is by the constitutional amendment as proposed in House Joint Resolution 1 before us today and in my identical resolution, House Joint Resolution 250.

Of course, in the event of the death of a President there is not the point in question as much as in the case of his being incapacitated since the Tyler precedent has been accepted and used in seven other instances. In this case, historical practice has been the answer to the present constitutional provisions in such an eventuality. On the other hand, there is no such practice which can be used as a criterion for presidential inability. The informal understandings which our Presidents and Vice Presidents of recent administrations have had were steps forward, but even these left unanswered situations which might arise in the event the President and Vice President disagreed on the question of inability.

The ambiguous language of the Constitution indicates there is clearly the need of a permanent and complete solution to the subject of thought. I find the committee report has the situation perfectly summarized into one sentence by stating:

> The language of the clause is unclear, its application uncertain.

More important than ever before is the continuity of the powers of the Executive Office and it is imperative that this continuity be maintained with the least possible disturbance at the time of a President's disability.

The urgency at the time of the death of a President is very great, but it could very well be just as pressing in the event of a President's incapacity to execute the powers and duties of his office. Our country has been most fortunate to never have experienced national chaos caused by the uncertainty and anxiety of the Nation being without responsible and capable leadership. Not that I would even anticipate there ever being such circumstances, I feel very strongly that there is a need for constitutional clarification which would act as a preventive to such apprehensiveness. I feel this is most apparent in our day when time is of essence to a degree greater than ever before since only the pressing of a mere button can result in hostile conflict that took days to come about in years gone by.

Our Nation has a unique concentration of powers and responsibilities in the Office of the President since in most nations these are shared by two or even three officials. The President's active leadership is most essential to the effective operation of the Government in every respect—domestic affairs, military leadership, foreign affairs and even a leadership for Congress to perform its own role properly. Therefore, in this light, every effort toward bringing about the smoothest type of transition with as little uninterrupted exercise as possible of presidential powers and duties is most desirable and needed.

In giving my support to such an amendment to our Constitution, I feel it is most important to emphasize my strong belief in that portion of the resolution requiring congressional approval to serve as a check and symbolize popular participation and for establishment of legitimacy where the Vice President would have to carry out the provisions of this legislation. This country has been blessed to not have the overzealous men we have seen in other nations who usurp the rightful leadership of their governments. However, it is always our desire to protect our Nation and its citizens from any actions which would result in a deterioration of the excellent and fine Government established by the forefathers of the Nation.

Of equal importance to Presidential inability, and sometimes related to it, is the matter of being faced with the critical problem of vacancies in the Office of Vice President. I believe it is actually little known that our Nation has been without a Vice President 16 times—in almost half of the 36 administrations in the history of the country. The gap which such a vacancy leaves in our executive branch badly needs remedial action at these times when the working relationship between the two offices has become increasingly important and desirable.

I support this resolution and feel its provisions are needed and will place the executive branch of our Government in a position to better cope with crises which could mar the effective operation, leadership, and administering of the Offices of President and Vice President.

Mr. RODINO. Mr. Chairman, the 89th Congress now has under consideration the best solution ever offered the American people to one of the oldest and most perplexing problems of our constitutional system.

In House Joint Resolution 1, a proposed amendment to the Constitution, we have before us a comprehensive, workable, and democratic plan to cover

the possibility of presidential inability and succession.

Approval of this resolution by Congress and the State legislatures will assure the people of this country uninterrupted leadership in our highest office. It will guarantee stability in the Government in vital areas that for almost two centuries have been a source of apprehension and uncertainty.

The fifth paragraph under section 1 of article II in the Constitution reads, in part:

> In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President.

This paragraph then goes on to give Congress the power to provide by law what officer shall act as President should both the President and Vice President be unavailable for any of the above reasons.

The term "inability" as used in this paragraph has resisted all efforts to give it precise definition from the time the Constitution was drafted in 1787 to this very day. Obviously, inasmuch as we have so far failed to define inability, we have also failed to establish procedures to be followed in the event of its occurrence.

As regards presidential succession, Congress has in the lifetime of this Republic enacted three different laws.

Under the first of these laws, the Succession Act of 1792, the Vice President was followed in the line of succession by the President pro tempore of the Senate and then the Speaker of the House. This law prevailed until 1886, when the members of the Cabinet, headed by the Secretary of State, were put in the line of succession after the Vice President. The law now in effect, passed in 1947, reverts to the basic idea of the 1792 act. After the Vice President, the line of succession goes first to the Speaker of the House, then to the President pro tempore, and, finally, to the Cabinet members.

None of these succession laws has ever been regarded as completely satisfactory by everybody, and indeed it is not difficult to direct strong arguments against, as well as in favor of, each of them.

The great virtue of House Joint Resolution 1 is that it will not only clarify the meaning of inability and establish methods for dealing with it, but will also provide an eminently sound and practical answer to the succession issue.

Let us examine in nontechnical language the substance of this proposed amendment.

Section 1 merely affirms what has always been true under the Constitution—that if the President is removed from office, dies, or resigns, he is succeeded by the Vice President.

The next section, however, constitutes a very marked departure from anything that we have heretofore known. It calls upon the President, whenever a vacancy exists in the Office of Vice President, to nominate a candidate to fill this very important national position. The nominee would take office as Vice President only after being confirmed by a majority vote of both Houses of Congress.

Thus, the Vice-Presidency would never again be left vacant until the next election, and orderly presidential succession would be assured. The requirement of congressional confirmation is an added safeguard that only fully qualified persons of the highest character and national stature would ever be nominated by the President.

Sections 3 and 4 deal with Presidential inability—what it is, when it exists, and what to do about it. The third section states quite simply that whenever the President, by written message to the President pro tempore of the Senate and the Speaker of the House, declares his own disability, the powers and the duties of the Presidential Office shall be discharged by the Vice President as Acting President. The President would then resume his powers and duties whenever he, again in writing, informed these same congressional officers that he was able to do so.

Section 4 is more difficult and complicated because it is concerned with the factual determination of the existence of inability and the possibility of a controversy over the issue involving the President and the Vice President.

This section permits the Vice President, when joined by a majority of the Cabinet members, to present a written declaration to the congressional officers already mentioned stating that the President is unable to perform the powers and duties of his office. Under these circumstances the Vice President immediately becomes Acting President. The President may declare in writing to these same leaders of Congress that this inability is at an end and resume his office.

If, however, this presidential statement of his capacity to serve is challenged within 2 days by the Vice President and a Cabinet majority, the issues goes before Congress which will immediately decide the issue. If out of session, Congress will immediately assemble for this purpose. If, within 10 days after receiving the written challenge from the Vice President and the Cabinet, Congress decides by a two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President will continue as Acting President. If Congress does not so decide, the President resumes his regular role.

We must be impressed by the many contingencies covered in this section. We must also be impressed by the way the Office of the President, with all its real and symbolic significance, is protected while at the same time the national welfare remains the foremost consideration.

The pressing need for incorporating this proposed amendment into our fundamental law with all possible speed seems to me to be overwhelming.

In our political history we have had Presidents disabled for long periods by assassins' bullets or illness. It is true that we have managed to weather these crises in one way or another, but if the Constitution is allowed to remain vague and ambiguous concerning inability as it now is, we may not always be so fortunate.

It is also a fact that because eight Presidents and seven Vice Presidents have died in office and one of the latter resigned, this Nation has on 16 occasions been without a Vice President. For more than 37 of our 176 years as a nation, our second highest office has been unoccupied.

We have relied too long on luck and wishful hopes that presidential inability and succession would never become critical or controversial issues that could disrupt our national life or governmental structure.

Let us act now to settle these matters wisely, prudently, and expeditiously.

Let us pass House Joint Resolution 1 now so that it may be sent on promptly to the States for their approval.

Mr. FASCELL. Mr. Chairman, the problem of presidential inability has remained an unresolved constitutional issue of greatest magnitude throughout all the one and three-quarters centuries of our life as a nation.

At the same time, none of the three presidential succession laws, enacted in 1792, 1886, and 1947, has provided a truly satisfactory answer to this related problem.

Now, this House has under consideration in House Joint Resolution 1 the most thoughtful, comprehensive, and democratic solution to both of these great issues that has ever been presented to the American people.

Under this plan a vacancy in the office of Vice President would always be filled by the President. This would be possible because the President would be authorized to appoint a Vice President when, for any reason, the second highest office in the land is unoccupied. The President's appointee would take office only after being confirmed by a majority vote of both Houses of Congress.

Thus, in a thoroughly logical and easily understandable way, this resolution solves two of our most difficult and enduring problems. It assures us that the Vice-Presidency will always be filled, and it provides for a smooth and untroubled succession to the Presidency.

The other sections of House Joint Resolution 1, as amended by the Judiciary Committee, are concerned with inability. Inability in its simplest form would be determined by the President himself through a written declaration to the President pro tempore of the Senate and the Speaker of the House. The President would also state when his inability is at an end by writing to these same congressional officers. In the interim, the Vice President would act as President.

If the President were unable to determine his own inability, or if there were doubt or controversy about it, the matter would then be settled by the Vice President, the Cabinet, and Congress. In this eventuality, there would be adequate, fully democratic procedures and safeguards to protect both the Presidential office and the welfare and best interests of the country.

I am proud of the fact that I was one of the sponsors of this resolution in its original form. I believe now that the amended version we are considering is an even better proposal.

I regard this proposed amendment as essential to the strengthening of constitutional principles and the structure of the Federal Government.

I urge its immediate passage so that it may be sent on to the States for their approval.

Mr. RANDALL. Mr. Chairman, there is no such thing as an indispensable man. But if ever there were an approximation to an indispensable man, it is the President of the United States. Over the past several decades we have witnessed an expansion in his office and its powers to unparalleled dimensions. We have come to expect the President to set the guidelines for conduct of domestic policy and to bear the standard of leadership for the entire free world. We know from experience that even a weak President must have strong advisers and associates to insure that the minimum functions of his office are carried out. And we have learned recently the lesson that continuity of purpose and direction are one of the greatest blessings a nation can receive when a great national leader has fallen.

The tragic death of John Fitzgerald Kennedy has forced those of us who would rather not dwell upon such contingencies to reflect upon questions of Presidential succession and disability. It has caused us to realize that this country cannot do without a President and that at all times the continuity of both his office and his powers must be preserved. The business of the Government is too important and too pressing to be postponed for weeks or months because of a vacuum at the center of the executive branch. For whatever reason, whether through death or because of physical or mental incapacity, the absence of a leader in the White House could mean virtual paralysis of the executive branch of Government with unpredictable consequences for the safety of the United States itself. Yet, our Constitution is not at present written to cope adequately with crises in presidential leadership.

Mr. Chairman, House Joint Resolution 1, the constitutional amendment proposed by the gentleman from New York and reported favorably by the Committee on the Judiciary, will resolve most of the constitutional ambiguities related to presidential succession and inability. It is a sound proposal which should be made part of the Constitution with deliberate speed and without further modification.

The provisions of this amendment are addressed to two basic problems of presidential continuity. I touched on these problems in my testimony before the Judiciary Committee, but it is appropriate to review them once again in the context of this historic debate.

The first problem dealt with by the amendment is vacancy in the office of President or Vice President arising from death, resignation, or removal from office. The second problem concerns situations in which the President holds office in a technical sense, but is incapacitated in such manner as to preclude the proper exercise of the duties, functions, and obligations of his position.

In 16 instances lasting a total of 37 years, this country has been without a Vice President. Only an accident of history and perhaps the intervention of divine providence have protected us from the severe crisis that could have resulted if a President had died in office or been otherwise incapacitated during such a period.

The first two sections of this amendment seek to minimize the likelihood of such a tragedy in the future. Henceforth, whenever there is no President the Vice President shall immediately assume the office and duties of President. Whenever a vacancy in the office of Vice President occurs, the President will nominate a new Vice President who will take office upon confirmation by a majority vote of both Houses of Congress.

We have listened very carefully to debate in which it is suggested that section 2, permitting the President to name his own Vice President subject only to confirmation of both Houses, would lead to "dynasty." Although our bill contained this section at the time of drafting, we had no such thing in mind, and we have no such thing in mind today. The only reluctance we have at all to this section is the fact that it changes the line of succession and might give the appearance—as some Members pointed out—that it downgrades the House of Representatives and was an affront to the Speaker. Certainly no one intended or does intend now that this section should have that connotation.

On the other side of the issue, however, is the possibility that under the present line of succession a President might find that the next in line of succession would be of a different political faith. Of course, that is one of the strong arguments in favor of section 2 as it stands. The section would permit the President to designate one whose views are similar to his own and who will be working toward the same objectives.

In addition to these provisions relating to succession to office, the proposed amendment provides two general methods to cope with presidential inability or incapacity to act. From the point of view of the President, one of these methods is voluntary and the other is involuntary.

First, section 3 of the amendment permits and encourages the President to declare himself unable to discharge his duties and to pass his powers over to the Vice President, temporarily acting in the capacity of Acting President. For instance, if the President were to become hospitalized for some reason, he might ask the Vice President to shoulder his burdens for the duration of the illness.

I am pleased to note that the committee concurred in an argument expressed in my testimony before them that if the President declares himself to be disabled, he should have an absolute right to terminate such an inability through a simple written declaration. Without such clarification, now embodied in the committee bill, it would have been unlikely that a President would have ever made use of the clause, no matter how incapacitated he believed himself to be.

The further idea that a President might actually be forced to step down involuntarily from office because of physical or mental incapacity is fraught with unpleasant associations. If not carefully drawn, such authority could be abused and could have the same dire results as the many foreign coups and putsches of this century.

Yet there are legitimate circumstances in which such actions might be necessary and proper. Surely it is better to establish regular and orderly procedures for the temporary transfer of presidential power than to suffer the consequences of constitutional chaos. Sections 4 and 5 of the proposed amendment establish procedures both for declaring and for terminating periods of presidential inability.

The precedures for declaring and terminating presidential inability are of necessity weighty and complex, yet the committee has succeeded in drafting language which is at once succinct and unambiguous. That they should have been able to improve upon the language and provisions of version of the resolution passed by the other body is a monument to the experience and wisdom of the chairman and his distinguished colleague, the ranking minority member of the committee.

Under provisions of section 4, the Vice President will immediately become Acting President upon transmittal to the House and the Senate of a written declaration that he and a majority of the Cabinet have determined the President to be unable to discharge the powers and duties of his office.

Section 4 further states that the President may declare his own inability terminated and that such determination shall be final unless the Vice President, a majority of the Cabinet, and two-thirds of the Members of both Houses of Congress determine within 10 days that the President is still unable to discharge the powers and duties of his office.

The section is worded in such a way that all procedures are crystal clear; the benefit of the doubt is given to the President; and time limits for action are firmly established. All procedures are deliberately avoided which might lead to circumstances in which two individuals simultaneously claim the authority of the Presidency.

Language avoiding these latter difficulties was initially proposed by the gentleman from Ohio [Mr. McCULLOCH] and was incorporated in my own presidential inability amendment, House Joint Resolution 265. If this language has not been adopted, it would have been possible for an uncooperative and hostile Congress to prolong inability proceedings indefinitely and through inaction to keep an otherwise fit and healthy President from resuming office.

In conclusion, I should like to make an observation on the mechanics used to prepare this resolution for final passage by the House. Too often critics of the Congress are prepared to cite the slightest delay in passage of a bill as evidence of the unworkability of current legislative institutions. They are quick to condemn the roadblocks and obstacles

which a bill or a resolution must overcome before being passed into law.

An examination of the legislative history of House Joint Resolution 1 will show that these cumbersome procedures actually serve a useful purpose. If it had not been for these archaic procedures, this body would today be voting on a considerably inferior constitutional amendment. Indeed, I am sure that some of my colleagues would have preferred the amendment to have been scrutinized even longer by the gentleman from New York and his judicious band of judicial scalpel-wielders.

If the Congress had acted hastily last session to pass the so-called Bayh amendment, it would never have had the benefit of the language changes made this session by the Senator from Indiana himself. These changes were not easily arrived at, and yet I think that both friends and foes of this amendment will agree that the technical language improvements alone make its provisions more acceptable and defensible.

If there were not a necessity for concurrence of both Houses of Congress, the changes in section 4 of the amendment might never have seen the light of day. Yet these changes have clarified some serious difficulties previously buried in the ambiguities of the amendment as passed by the other body. The easy course would have been to adopt the measure as sent across the Hill, but the Judiciary Committee was willing to take a fresh look at the entire proposal and as a result they came up with some concrete improvements.

Mr. Chairman, I commend the committee for its action, and I urge the House to adopt this constitutional amendment by the overwhelming vote it deserves.

Mr. TENZER. I rise in support of House Joint Resolution 1. I compliment the distinguished chairman of the Judiciary Committee and the ranking members of the minority who are managing this bill, for the excellence of the debate and clarity of the answers to the questions posed on this difficult and complex proposed amendment which fills a void left by the framers of our Constitution.

The problem has legal, political, and constitutional facets—all of which were considered by the House Judiciary Committee when hearings were held on the 32 separate proposals which were offered in the House during the opening days of this Congress.

Why is this day so important and why is this legislation so urgently needed?

Because 8 of our 35 Presidents have died in office. On 16 different occasions, for a total of more than 37 years, the office of Vice President has been vacant. Eight of our Vice Presidents succeeded to the Presidency, seven died during their terms of office, and one resigned. We have been singularly fortunate in that the offices of President and Vice President have never been vacant simultaneously during a single 4-year elective span.

Let us consider for a moment the four Presidents who preceded President Johnson. President Roosevelt and President Kennedy did not live out their terms; President Eisenhower suffered a serious heart attack; and President Truman was the object of an attempted assassination. These events show the importance of having a potential presidential successor available at all times—one who is fully acquainted with current policy in domestic and foreign affairs, and prepared to assume the Presidency on a moment's notice. Despite the urgent need for a solution—demonstrated dramatically and repeatedly in recent years—neither corrective legislation nor constitutional amendment have been adopted.

The office of President of the United States is the most difficult and most important job in the world. It has a unique concentration of powers and responsibilities that in most other nations are shared by several officials. The President's active leadership is so essential to the effective operation of the Government that his death or serious illness not only constitutes a personal tragedy but creates the risk of national disaster. For this reason vacancies, disabilities, and transitions in this office are matters of the gravest concern to our country and to the world.

The Constitution is not clear as to what actually constitutes inability to discharge the powers and duties of the presidential office; nor is it clear as to who determines that such inability exists, or whether in the event of presidential inability, it is only the powers and duties of the Presidency that devolve on the Vice President as distinguished from the office itself.

In May 1964, the American Bar Association held a national forum on the problem with representation from business, labor, agricultural, civic, patriotic, and welfare groups. The consensus favored submission to the States of a constitutional amendment. There appears to be a broad agreement at least in the following particulars:

First. That the need for prompt action is overwhelming, and failure to act would be recklessly gambling with the stability of our Government,

Second. That it was the intention of our Founding Fathers that in the event of presidential disability the Vice President should be only Acting President and only during the period of the disability;

Third. That there is a need for determining when or whether a President is disabled from performing the duties of his office; that the Vice President should be able to take over with unquestioned authority for a temporary period when the President's disability is not disputed; and that the President should be able to resume office once he has recovered.

Fourth. That a constitutional amendment is needed to solve the problem.

The proposed constitutional amendment, House Joint Resolution 1, as amended, answers the questions raised by the experience of history.

We are asked to adopt and the States will be asked to approve a constitutional amendment containing a specific method for determining when the President is unable to perform his duties, rather than a proposal merely giving the Congress the power to devise a method by statute, which in fact the Congress has failed to do in the past 10 years, since the first Eisenhower disability.

The inclusion of a specific procedure as provided would avoid the uncertainty and possible delay involved in leaving the problem for action by the Congress in the future. The time to agree on a method is now, while there is general interest in the subject of inability.

The Constitution is specific in its provisions dealing with removal of the President by impeachment, and it should also be specific with respect to his removal during periods of inability.

While the proposal under consideration provides a specific procedure which could be invoked promptly in the absence of congressional action, it would vest the Congress with the power to require concurrence by a body other than the Cabinet. In fact, the Congress could designate itself as the body to grant or withhold concurrence. Also, the Congress would have authority in the nature of a veto power in the event a President declares that he is able to resume his duties but the Vice President, with the concurrence of the Cabinet or such other body as may be designated by law, declares that he is not able to do so.

Proposals for a legislative solution without a constitutional amendment are not free from constitutional doubt. We cannot afford to risk having a period of indecision and delay while the constitutionality of such a solution is being tested.

Selection by the President of a nominee to fill vacancies in the Vice-Presidency would follow the traditional practice of nominating conventions. Confirmation by a majority of the Congress would tend to create public confidence in the selection.

There has been for too long a time a vital need for a solution of the grave problems of presidential inability and vice-presidential vacancy. There have been extended discussions of these problems whenever history has dramatized the need for solutions. Indeed, no subject relating to our constitutional structure has received more study. The time has now come for action.

It is not necessary, as most distinguished experts agreed, that we find a solution free from all reasonable objection. It is unlikely that such a solution will ever be found, as the problems are inherently complex and difficult.

I believe that the principles of House Joint Resolution 1, which are supported by a considerable body of the most knowledgeable scholars in the field, are sound and reasonable, and are consistent with the basic framework of our Government. In short, House Joint Resolution 1, is an acceptable solution to the grave problems of presidential inability and vice-presidential vacancy.

Our committee has studied the schedule of State legislatures and found that 47 of the 50 State legislatures meet in 1965. Thirty-eight States are required to ratify an amendment to the Constitution. Since the legislative sessions of many States are of limited duration, it is essential that an amendment be sent

to the States promptly if it is to be ratified this year or by early 1966. Each day's delay reduces the chances of early ratification. If the requisite number of States do not have an opportunity to act this year, it cannot be ratified until 1967.

A genuine service which the Members of the House can render to the Nation is to persuade the legislatures of their respective States to give approval to this proposed amendment to the Constitution and thus give reassurance of continuity in our Government.

Mr. WHITE of Texas. Mr. Chairman, in the fall of 1964 160 million Americans were represented at the polls by many millions voting for a new President. For at least 3 hard months millions of dollars were spent carrying their message of the candidates to the American public. And now in the presidential succession constitutional amendment as now drawn, with a few strokes of a pen and within a few hours, even without the public ever knowing of the transition, you are providing for 7 men to change our Presidency.

With this amendment let us project ourselves 50 years from now, to a time with people none of us now know. One of these 7 men would be the Vice President, who countless times probably had dreamed of being President, and on this occasion would sit in judgment of the man he would replace. The other 6 are probably Cabinet officers, none elected by the people. I only assume they are Cabinet officers, because the constitutional amendment does not say who are the principal officers of the executive department, and in that alone is imperfectly drawn.

The House assumes that all men who would occupy the respective positions of responsibility will act infallibly and in the best interests of the United States of America.

When we passed a proposed constitutional amendment to be sculptured immutably into our Constitution we are saying to the American public that we have considered every conceivable contingency and have found this measure safe.

In order to test its safety we are obliged to consider the worst than can happen in some future time, even beyond our own lines.

In this constitutional amendment in the name of good and with good motives we are perpetrating on some future generation a loophole that could allow a usurpation of power by seven men without the sanction of the American people.

Suppose we had a foreign enemy threatening our country. Suppose further the majority of the Cabinet believe the President of that time is too pusillanimous and that his policies endanger the survival of our country. With perfectly patriotic motives these six unelected Cabinet officers convince the Vice President than the removal of the President is imperative.

At a time when the Congress is not in session the determined Vice President and the six unelected officers then transmit to the Speaker and the President pro tempore of the Senate that the President is unable to act as President. There is no requirement that a reason be given other than that the President is "unable" to act, nor is there a definition of "unable," whether it means mental or physical incapacity, or by the judgment of several laymen, nonmedical men, that for some other reason the President is "unable" to act.

At that point the President can transmit his own message to the Speaker and President pro tempore of the Senate and retain the Presidency.

But let us assume the worst, and assume a conspiracy for a genuine takeover. If the President is kidnaped while traveling abroad or in this country before he can transmit a message that he is able to serve, the Vice President remains acting President with all the constitutional powers and duties, powers that include movement of armies, foreign policy, use of nuclear power, and force.

Again, let us assume that the President is not kidnaped, and does transmit his message of ability to serve. Then, a determined Vice President and six Cabinet officers again transmit this message of inability of the President.

The Vice President then is Acting President of the United States for a minimum of 48 hours and possibly several days more during which time he could issue any number of Executive orders, including the irreversible first steps toward a preventive war. Even today there are a number of misguided people who believe that our survival depends on a preventive war now.

If we must look to past history, I point out that President Lincoln's Cabinet at one point opposed his policies, and if this amendment had been existing then, and the Vice President had been convinced that the country was suffering by reason of the Presidential policies, President Lincoln might have been removed. I point out also that Vice President Aaron Burr was accused of treason and reportedly wanted to carve out an empire for himself.

I do not believe the scepter of power should ever be removed from the President until the Congress itself, after it convenes within 48 hours, should so remove this power. This is consistent with our present Constitution and the proper separation of officers.

Those who would take the mantle of authority from a President, even for 48 hours, argue that it would be dangerous to the country to have a disabled President even for 48 hours. I believe that the risks are far greater to chance a total change of government.

Our careful consideration on this vital issue is our heritage to our posterity. I favor a presidential succession amendment, but we must not, in the name of expediency, open the door to a greater future danger.

Mr. LOVE. Mr. Chairman, I rise in support of House Joint Resolution 1, as amended because I believe the U.S. Constitution is not only ambiguous, but defective, on the subject of presidential disability and that we, as a nation, have been extremely fortunate that our Presidents have been able to discharge their constitutional responsibilities. The office of Vice President was made vacant due to the tragic death of President Kennedy and there has been no procedure for filling it.

In support of the Senator from Indiana [Mr. BAYH], the gentleman from New York [Mr. CELLER], the American Bar Association and its affiliate, the National Forum, I submitted a bill of my own, House Joint Resolution 236, for not only does my bill support House Joint Resolution 1, it calls attention to the problem relating to the period of time before a disabled President should resume the powers and duties of his office.

I know the people of my district would want me to speak out in favor of such an amendment to the Constitution because they are very aware of the problems created by the tragic death of President Kennedy. I was encouraged by the fact that my remarks—made at the many meetings throughout my district prior to my election—on the Senate resolution passed during the 88th Congress engendered much public interest and support.

In my testimony before the House Judiciary Committee I made no references to history. This had been most carefully documented and repetition is unnecessary. I merely wanted to emphasize that prudence requires this representative body to act now to submit to the State legislatures an amendment to correct a defect known to us for many, many years.

In addition to supporting the overall effort, I wanted to point out to the committee what I considered to be a danger in the event a President would transmit to the Congress his written declaration that no inability exists. The aforementioned resolution originally provided that the President shall resume the powers and duties of his office unless the Vice President, with the written concurrence of a majority of the heads of the executive department, or such other body as Congress may by law provide, transmits within 2 days to the Congress his written declaration that the President is unable to discharge the powers and duties of his office.

My question was: What could happen within that 2-day period in the event an incompetent President resumed the duties of his office and issued orders affecting the security of the Nation? While I agreed that the President should be able to regain the powers and duties of his office easily when his inability ceases to exist, nevertheless, the Vice President should have time to file a written declaration with the Congress before the presumption in favor of the President's ability is restored.

To accomplish this, I provided in my resolution that the President shall resume the powers and duties of his office on the third day following the transmittal of such declaration to the Congress unless, prior to the end of the third day, the Vice President, with the appropriate consent of executive department heads, transmits to the Congress his written declaration that the President is unable to discharge the powers and duties of his office. I used 3 days on the theory that the President's written declaration

could be submitted on Friday and Congress might not be in session over the weekend.

However, during the committee deliberations the majority adopted language, as set forth in section 4 of House Joint Resolution 1, which I find to be satisfactory and will correct for the most part that which my resolution points out as needing clarification.

I support this resolution and urge its passage.

Mr. SCHMIDHAUSER. Mr. Chairman, I would like to add my voice in support of House Joint Resolution 1. In my opinion, this proposal is the soundest means for providing for the orderly and democratic succession to the Presidency and Vice-Presidency of the United States in case of the death or disability of the President of the United States.

Further, this proposal would define within the framework of the Constitution, the powers and the duties of the Vice President upon the death or disability of a President. I also feel that this proposal adequately safeguards the return of the powers and duties of the Presidency to the President who has seen in his wisdom to relinquish these powers and duties due to a disability.

Finally, Mr. Chairman, I feel that this proposal would maintain the fine and traditional concept of our American system of government by providing for the recommendation of the Vice President by the President, and the approval of both Houses of the Congress if a vacancy were to occur in the Vice-Presidency.

Mr. CELLER. Mr. Chairman, I yield back the balance of my time.

Mr. POFF. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"SEC. 3. If the President declares in writing that he is unable to discharge the powers and duties of his office, such powers and duties shall be discharged by the Vice President as Acting President.

"SEC. 4. If the President does not so declare, and the Vice President with the written concurrence of a majority of the heads of the executive departments or such other body as Congress may by law provide, transmits to the Congress his written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"SEC. 5. Whenever the President transmits to the Congress his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President, with the written concurrence of a majority of the heads of the executive departments or such other body as Congress may by law provide, transmits within two days to the Congress his written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall immediately decide the issue. If the Congress determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise the President shall resume the powers and duties of his office."

Mr. LENNON. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. [After counting.] Ninety Members are present, not a quorum. The Clerk will call the roll.

The Clerk called the roll and the following Members failed to answer to their names:

[Roll No. 73]

Ashley	Gubser	Pirnie
Baldwin	Hagen, Calif.	Powell
Belcher	Harvey, Ind.	Purcell
Bonner	Hollifield	Reifel
Clark	Jennings	Roosevelt
Colmer	Joelson	Rostenkowski
Dawson	Jones, Ala.	Scott
Derwinski	Kluczynski	Sisk
Evins, Tenn.	Leggett	Smith, Va.
Farnum	McFall	Stalbaum
Fino	Martin, Mass.	Toll
Fraser	Michel	Weltner
Fulton, Tenn.	Nix	Yates

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. FASCELL, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the resolution House Joint Resolution 1, and finding itself without a quorum, he had directed the roll to be called, when 397 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Clerk will read the committee amendment.

The Clerk read as follows:

Committee amendment: Strike out all after the enacting clause and insert:

"That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

" 'ARTICLE —

" 'SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

" 'SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

" 'SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

" 'SEC. 4. Whenever the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

" 'Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, transmit within two days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, immediately assembling for that purpose if not in session. If the Congress, within ten days after the receipt of the written declaration of the Vice President and a majority of the principal officers of the executive departments, or such other body as Congress may by law provide, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.' "

AMENDMENT OFFERED BY MR. PUCINSKI

Mr. PUCINSKI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. PUCINSKI to the committee amendment: On page 3, line 20, strike out section 2 on line 20 through line 23 and renumber the subsequent sections accordingly.

Mr. PUCINSKI. Mr. Chairman, I regret the need for offering this amendment, because of my profound respect and admiration for the committee that is reporting out this bill. I think the bill is a good one and is one which we need in this country very urgently. It is my fear that the presence of section 2 in this proposed constitutional amendment will make it very difficult to get the ratification of the 38 States which is necessary. Certainly there has been enough discussion here and the case has been made out as to how urgently we need the inability provisions of this proposal. Our history is replete with examples of the dilemma that the country finds itself in when a President is disabled. However, my amendment would strike from this proposed constitutional amendment that provision which would permit the Vice President, when he becomes President, to nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of the Congress. In the 6 years that I have been here I have never felt more keenly about any subject than about this particular provision. That is why I have taken the time to offer this amendment. It is my hope that the Congress is going to strike this language out of the bill.

This is a young country, as time goes. We are less than 200 years old. When we look at all of the other nations of the world and see the problems they have

had and the violent changes in their governments, the juntas and the overthrow of governments, we certainly have a right to reflect on this proposal. I have the highest confidence in the man who will occupy the Presidency, regardless of the party that he belongs to, in the future, but I think this proposal in this bill does open the door at some future time—perhaps 50 years from now or 100 years from now—to a phenomenon which has not bothered or plagued our country heretofore; namely, the problem of palace intrigue. The system we now have has the Speaker of the House succeeding to the Presidency. This succession is a good one.

It was recommended in 1947, supported in 1947 by President Truman. I know for many, many years, the next in succession was the Secretary of State. The Congress quite properly changed this in 1947. I think we ought to stay with this. The committee explains that this retains the principle of succession for the Speaker of the House. I do not see it that way. As I read this language if the Vice President becomes President, he will then send to the Congress his nomination for a Vice President and the Congress is going to vote it up or down.

As was mentioned here before by the gentleman from Maryland some day, in the days that follow a great tragedy when a President dies in office, there will not be very much discussion or debate. So it would appear to me that Congress would most probably, without too much debate, ratify the appointment made by the President.

It seems to me, as was mentioned earlier, that that invites all sorts of problems. I would strongly recommend that we proceed now with the inability provisions of this bill because this is extremely important and that we leave the succession as it has been up to now.

So far as I am concerned, I felt no great worry last year when the possibility arose that the Speaker might have to assume the Presidency. By his many years of experience, this House when it elects a Speaker, elects a man who is deeply rooted in the problems of our government. Certainly he knows the problems of the country. I think the system we now have gives this whole matter of succession stability. The people know what they are confronted with. It seems to me that we are inviting a great deal of trouble when we propose this change by way of a constitutional amendment.

For that reason, Mr. Chairman, I hope my amendment is voted up.

Mr. CELLER. Mr. Chairman, I rise to oppose the amendment.

One day during Abraham Lincoln's administration somebody breathlessly ran into the President's office and said:

> Mr. Lincoln, Mr. Lincoln—
> What is it?
> Senator Sumner on the floor of the Senate this morning said he does not believe in the Bible.

And President Lincoln said:

> Of course, he doesn't; he didn't write it.

I fear me that the gentleman who just spoke did not write this bill and is offering this amendment to a section which is one of the keystones thereof.

The coauthor of this bill with me in the Senate, Senator BAYH, said the following:

> Whatever tragedy may befall our national leaders, the Nation must continue in stability, functioning to preserve the society in which freedom may prosper. The best way to insure this is to make certain that the Nation always has a Vice President as well as a President.

The provision that would be stricken by the amendment would provide for the selection of a vice president if a vacancy occurred in that office. For more than 37 years, over 20 percent of its history, this Nation has been without a Vice President. Eight Vice Presidents have succeeded to the Presidency upon the death of the incumbent. Seven Vice Presidents have died in office and one has resigned. No procedure has ever been provided whereby a vacancy in the Vice Presidency could be filled when it occurred.

Now, Mr. Chairman, we seek to do just that. When the vacancy occurs in the Vice-Presidency, we want that vacancy filled. No longer is a Vice President a mere figurehead. He works in close harness with the President. He is a member of the National Security Council. He is Chairman of the National Aeronautics and Space Council. He is the Chairman of the President's Advisory Committee on Equal Opportunity in Employment. He represents the President abroad.

He has many other functions which are highly important and I am sure that you would all agree that we must and should always have a Vice President. We would not if the amendment which has been offered by the gentleman from Illinois [Mr. PUCINSKI] prevails, and God forbid something happening to a Vice President.

For that reason, Mr. Chairman, I do earnestly hope that the amendment will not prevail.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. CELLER. I yield to the gentleman from Virginia.

Mr. POFF. I am sure that the chairman of the full committee, the gentleman from New York [Mr. CELLER] would also want to call attention to the fact that the basic premise stated by the distinguished gentleman from Illinois [Mr. PUCINSKI] may be faulty. Apparently the gentleman assumes that the adoption of section 2 would be the equivalent of a repeal of the present succession statute. This is a faulty premise. The succession statute would not be repealed.

Mr. CELLER. It would not. The gentleman is correct in his conclusion.

Mr. PUCINSKI. Mr. Chairman, will the gentleman yield to me?

Mr. CELLER. I yield to the gentleman from Illinois.

Mr. PUCINSKI. Well, I would like to have the gentleman from Virginia [Mr. POFF] further explain this: If I understood what the gentleman just said and if what he said is correct, then why do we need this section 2? I do not understand how the gentleman arrives at the conclusion that the succession from the speakership will continue if you adopt section 2.

Mr. POFF. I would be glad to try to persuade the gentleman.

Mr. PUCINSKI. I would be glad to hear the gentleman's explanation.

Mr. POFF. Mr. Chairman, will the gentleman from New York yield to me at this point?

Mr. CELLER. I yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, the answer to the question is that the Constitution itself; namely, article II, section 1, clause 5, states that the Congress can——

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. POFF. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the language to which I refer makes it possible for the Congress to adopt a sucession statute only when there are vacancies in both the Presidency and the Vice-Presidency and this succession law enacted pursuant to that language would continue in full force and effect after the adoption of this constitutional amendment.

Mr. PUCINSKI. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Illinois.

Mr. PUCINSKI. I must say that the chairman of the Judiciary Committee, the gentleman from New York [Mr. CELLER], in his opening statement here in opposing this amendment said that the gentleman from Illinois did not write the bill and therefore he did not support it. I must say that with the explanation we have now been offered by the gentleman from Virginia, it clearly makes it apparent that if the gentleman is correct in what he is saying, then we do not need section 2 of this resolution at all.

Under what circumstances would the Speaker of the House of Representatives assume the Presidency under the gentleman's concept?

Mr. POFF. Under the same circumstances that prevail today, which is, namely, a vacancy in both the Presidency and the Vice-Presidency.

Mr. PUCINSKI. Simultaneously?

Mr. POFF. Yes. That is the law today and that would still be the law after the adoption of the constitutional amendment.

Mr. MATHIAS. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Maryland.

Mr. MATHIAS. I agree completely with what the gentleman from Virginia said about the constitutional effect of this amendment, if adopted. I think the rules on constitutional interpretation would make it clear. However, I am going to offer an amendment shortly which I think will spell it out so that the ordinary layman can understand it as well as the constitutional lawyer.

Mr. DINGELL. Mr. Chairman, I rise in support of the pending amendment.

Mr. Chairman, I had not intended to speak on this piece of legislation, but I rise to strongly support the amendment offered by the gentleman from Illinois.

For a number of years, Mr. Chairman, we have had legislation on the books which provided an orderly and effective succession to the high Office of the Presidency of the United States.

Let me point out that the legislation we have before us today in the form of a constitutional amendment is in real effect a slap at the Members of the House of Representatives, a slap at our elected leadership, and it in effect says that the Membership of the House of Representatives and our elected leadership are not capable to succeed to the high Office of the Presidency.

Let me rise to strongly point out to the Members of this body that this is not so.

From the House of Representatives has come the most effective and able leadership that this Nation has ever had, and from the House of Representatives have come the kind of men who are well capable of assuming the reins of government in time of crisis.

I want to say to all the members of the Committee on the Judiciary who have brought this legislation to the floor that they brought a good bill in all particulars except one, and that is section 2. Let me point out that men like Sam Rayburn, the gentleman from Indiana, CHARLIE HALLECK, the gentleman from Massachusetts, JOE MARTIN, the gentleman from Michigan, GERRY FORD, and men like our present beloved Speaker, the gentleman from Massachusetts, JOHN MCCORMACK, are far more able to assume the high Office of the Presidency than were many of the people who had been selected by the electors of this Nation. They are more able to assume the high Office of the Presidency and to give effective leadership to this Nation than are many who can be selected by the hurdy-gurdy processes, and the hurly-burly processes of a convention and compaign. These are men who have proven their worth by long service to our country, by their experience, by wise decisions in time of stress. These are the men who are most capable and most suited by training and temperament, and who have the respect of their peers, to give to the Government and to the Nation a good government.

Mr. PUCINSKI. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Illinois.

Mr. PUCINSKI. Would the gentleman agree if we permit a President to name his own Vice President you are in effect setting up a form of dynasty where your Vice President will run for President? Are you not going to run into that problem?

Mr. DINGELL. This is the second point I want to treat with.

The most precious qualification and test of democracy is the ability of the people to participate in the selection of their leaders. It is on this basis that we in the House of Representatives are shortly to have before us legislation which is intended to protect the rights of all our citizens to vote.

Let me point out to you that to permit anyone to have the right to appoint someone else to an elective office, particularly the high Office of the President of the United States, is to deny the country, deny the electors of this Nation the ability, the right and power to choose their public servants, the privilege to choose the highest officeholder in this land.

Let me tell you, this is the reason section 2 is bad legislation. This is a device to permit a President to begin an orderly chain of successors through an appointive device, and to effectively deny the citizens of the Nation to decide who will serve in the highest office in the land.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. The gentleman realizes that before the President can pick a Vice President he must be confirmed by the Congress of the United States. It says when they are given that authority he does not become Vice President until he is confirmed by the House and Senate. That is the authority that you as a Member of the Congress can exercise.

Mr. DINGELL. Let me tell the gentleman this: We now have this right, we now confirm the selection and the successor to the Vice President. This is done under a law which has existed in this Nation since the time of President Truman. It is one which has worked with the complete satisfaction of everyone. And, last of all, let me tell the gentleman not only has it worked well, but let me assure the gentleman it avoids the device of making the choice of President in times of stress under circumstances where all the tremendous pressures of politics and political pressures would come into play. We elect the Speaker in time of calm deliberation. He is the successor under present law. He and his successors are more than satisfactory to the needs of the Presidency.

Mr. O'HARA of Illinois. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I have such profound respect for the Judiciary Committee that I feel a bit abashed as well as reluctant to take issue. But in support of the amendment offered by my good friend, the gentleman from Illinois [Mr. PUCINSKI], I am moved by conscience and conviction to say that I did not run for Congress and go through eight campaigns to come down here and downgrade the Speaker of the House of Representatives.

That is all I have to say. That is my argument. Section 2 as it now stands downgrades the high and elated office of Speaker of the House, and I did not come down here to be a party to such an unjustified proceeding and as long as I am here I shall uphold the dignity, the power, and the prestige of the House of Representatives, the Speaker of which is now and I believe always shall be the best qualified person in all the land to meet the responsibilities of the Presidency should tragedy remove both the elected President and the elected Vice President.

Mr. ICHORD. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I rise to echo the words of the preceding speaker and the gentleman from Illinois. This is a constitutional amendment which the members of the Judiciary Committee have given much thought to and a lot of time. It is a good constitutional amendment if you are in favor of changing the line of succession to the Presidency of the United States, but I think it can be made a better constitutional amendment by adopting this amendment striking section 2.

It has been said, Mr. Chairman, that this joint resolution does not change the line of succession to the office of the Presidency, but as a practical matter it does change the line of succession. As a practical matter, the only times that the Speaker can succeed to the office of the President of the United States is when the President and the Vice President die simultaneously or the Vice President dies immediately after the President, before the machinery in this bill can go into operation, or if the President names the Speaker to be the next Vice President of the United States. I do not feel, Mr. Chairman, that we should change the line of succession. I feel that the holder of the office of Speaker, the principal officer of this House, should remain in the line of succession.

Mr. LINDSAY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I think it would be most unwise if this amendment were adopted. I do not think it is necessary for this great body to be so politically insular that we should adopt an amendment out of subjective considerations that have no bearing or relevance whatsoever, under the guise of the pride of the Congress.

Gentlemen who have been speaking in behalf of this amendment discuss this subject as though we were living in the 19th century instead of the 20th. Their statements and arguments do not recognize the demands and the pressures and the speed of the last third of the 20th century. Congressionally speaking, I think it is an isolationist proposition that has been offered here under the heading of congressional importance that has nothing to do with the question. The author of the amendment suggested that the status quo has worked perfectly in the past and that there has never been any question raised before. Again, I submit this is irrelevant; but beyond this I do not think it is correct. Every time you have had this problem in the country, the question has been raised and the country has asked why something is not done about it. The chairman of the committee reminded us that eight Presidents have died in office and the office of the Vice-Presidency has been vacated, either because of death, resignation or succession to the Presidency, 16 times. The odds show it is an even chance that a Vice-Presidential term will not be completed. Now when we are in a hydrogen age, when decisions have to be made within split seconds, when an executive branch person quite separate and apart from the Congress in terms of power and authority devotes full time to questions of international importance, that person ought to be prepared to take over the Presidency on a moment's notice.

The argument that has been made for this amendment misses the point. The

question is the creation of an orderly succession consistent with the dangers and speed of the 20th century. The bill recognizes the separation of powers. It understands that no person can assume the awful responsibilities of President of the United States and make decisions of life or death in a few moments time unless he has lived with those executive powers on a very intimate basis.

Everyone has applauded the fact that in modern times Presidents have been wise enough to bring their Vice Presidents into the business of executive decisions. A Vice President must be prepared.

Lastly, Mr. Chairman, it is apparent I think that the country is not content with the situation as it stands. People are quite aware of the danger of the gap in executive power in this modern day. Political scientists, universities and experts from all parts of the country have suggested to the Congress, certainly to the members of the Committee on the Judiciary, that this question should not lie around unanswered any longer.

I think it is to the great credit of the leadership of the Congress on both sides of the aisle that insular attitudes have been cast aside and this proposition brought before the House of Representatives today.

Mr. PUCINSKI. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman.

Mr. PUCINSKI. How does the gentleman intend to deal with this haste and speed in not losing a moment in this hydrogen age—how does the gentleman propose to deal with possible prolonged debates in the other body over the candidate who may be submitted by the President as his Vice President? There still remains the possibility for a prolonged filibuster.

Mr. LINDSAY. Obviously not—of course not. If the gentleman is so concerned about the shortcomings of the other body—which means the Congress as a whole—I wonder why he offered his amendment in the first place in the name of the pride of Congress. It seems to me it is very clear if that event should arise that then the monkey is on the back of the Congress to do its job.

The President does his job in the selection of a proper person to fill the office of the Vice-Presidency, and then Congress must answer to the country if it does not speedily perform its job.

Mr. JONAS. Mr. Chairman, I move to strike the last two words.

Mr. Chairman, I will not use 5 minutes, but I should like to have the attention of the chairman of the great Committee on the Judiciary and the ranking minority member.

I am opposed to this section as it is now written and am inclined to vote for the amendment of the gentleman from Illinois, because I do not believe a Vice President should be appointed, even if confirmed by both Houses of Congress, to serve until the next general election.

I wonder if the committee gave any consideration to a provision that in case of such appointment, it would be an interim one until a Vice President could be elected by the people of the country in a special election.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. JONAS. I yield to the gentleman from New York.

Mr. CELLER. Did the gentleman make reference to a special election for a Vice President?

Mr. JONAS. I asked if the committee gave any consideration to permitting a Vice President who was appointed to serve on an interim basis until there could be an election.

Mr. CELLER. We considered a special election along the lines the gentleman suggested, and it was turned down by the committee.

Mr. JONAS. Was it turned down on its merits, or because of difficulty in spelling out the time, place, and procedures for the election?

Mr. CELLER. Yes. I wonder if the gentleman realizes, following along the line of the suggestion, that there are other provisions of the Constitution which likewise would have to be amended? This would not apply only to the amendment, but would affect other parts of the Constitution concerning the election of a President and a Vice President. For example, the 12th amendment and many other amendments of the Constitution concern the election of the Executive.

Mr. JONAS. I assume, from what the Chairman says, that the difficulties involved in amending several sections of the Constitution caused the rejection of the suggestion.

I believe it would be meritorious if we could do that. I should like for the people to have the right to elect the President and Vice President, instead of having either one of them appointed, even if confirmed by both Houses of Congress. If the gentleman says that was considered and rejected because of the practical difficulties, I have nothing more to say. I will consider the merits of the amendment of the gentleman from Illinois in comparison with my objections to the language of the section as it is now written.

I yield back the remainder of my time.

Mr. GROSS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in part to take the onus off the three gentlemen—Mr. PUCINSKI from Illinois, Mr. O'HARA from Illinois, and Mr. DINGELL from Michigan—whom the gentleman from New York inappropriately referred to as isolationists. The gentleman might call me an isolationist, I do not know; but I do not believe he should call those three gentlemen isolationists.

I agree with those gentlemen completely that we now have a clear line of succession, and I see no reason whatever for downgrading the Speaker of the House of Representatives.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I yield to the gentleman.

Mr. CELLER. I believe the gentleman is mistaken. I did not use the word "isolationist." My very distinguished colleague from New York, Mr. LINDSAY, used it.

Mr. GROSS. I am well aware of the fact that the gentleman from New York [Mr. CELLER] did not so describe his colleagues.

Mr. Chairman, as I have said, I see no reason for section 2 in the resolution, and I agree wholeheartedly with those who have spoken in behalf of the amendment to strike it out.

Mr. LINDSAY. Mr. Chairman, will the gentleman yield?

Mr. GROSS. I referred to the gentleman. I am glad to yield.

Mr. LINDSAY. The burden of my comments was that the line of approach taken by the distinguished gentlemen was politically insular.

Mr. GROSS. You also used the word "isolationists."

Mr. Chairman, I yield back my time.

Mr. McCULLOCH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have have not spoken before in order to save the time of the committee. I rise in opposition to the amendment. I should like to comment upon the proposal that an election be held to select a new Vice President. Such an election in the United States, in accordance with a quick computation which I just made, would cost somewhere between $25 million and $35 million. Mr. Chairman, if there were an election for a new Vice President, a member of the opposition party might be elected. We have had some strange and rapid changes in political opinion in America in my time.

I would like to comment on the statement that was made that we might be providing for a presidential dynasty. History does not indicate such danger.

Now, Mr. Chairman, I took the floor not to downgrade my beloved Speaker, the great JOHN McCORMACK. Back where I come from he would be described as "the like of which there is no whicher."

Mr. Chairman, it was my good fortune to serve as speaker of the House in Ohio longer than any man who ever served, until the time of the present speaker. My friend, Speaker McCORMACK, I would rather be speaker of the House of Representatives in Ohio than Lieutenant Governor of that State, and I would rather be Speaker of the House of Representatives of the United States than Vice President of the United States.

Mr. Chairman, I hope that the amendment will be defeated.

Mr. EDWARDS of Alabama. Mr. Chairman, I move to strike out the requisite number of words.

I would like to have the attention of the chairman of the committee and the distinguished ranking minority member in order to ask a question. Assuming this amendment is agreed to and assuming that the President then dies, moving the Vice President up to the Presidency, what effect then would sections 3 and 4 of his bill have? Would the disability provisions then be out of the window insofar as the new President was concerned?

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman from New York.

Mr. CELLER. I do not think it would make any difference, but I want to say if, for example, we have no Vice President and the President would die, then the succession law would come into play. The succession law applies when both the President and the Vice President no longer are in office. There is no Vice President.

Mr. EDWARDS of Alabama. I think the distinguished chairman misses my point. Assuming that the Vice President becomes the President. Then we have no Vice President to initiate any proceedings to point out the disability of the President.

Mr. CELLER. Sections 3 and 4 would be inapplicable. It would have no force and effect because there would be no Vice President to operate under the terms of 3 and 4.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield to the gentleman.

Mr. POFF. Mr. Chairman, I may say that I agree with my distinguished chairman. I may suggest also that under the Constitution as it is today it is possible for the Congress to deal with that situation by statute, because in that situation, if I understood the question the gentleman posed, both the President and the Vice President would be in a state of inability.

Mr. EDWARDS of Alabama. Who would bring into play the provisions of sections 3 and 4?

Mr. POFF. I say that I agree with what the chairman said. In such a case as the gentleman proposes it would be possible for the Congress to deal with it by way of statute and sections 3 and 4 of this constitutional amendment would not be applicable.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS of Alabama. I yield.

Mr. CELLER. In my opinion, if the amendment of the gentleman from Illinois prevails and we strike out section 2, we would destroy the whole bill.

Mr. EDWARDS of Alabama. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

The question was taken; and on a division (demanded by Mr. PUCINSKI) there were—ayes 44, noes 140.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. MATHIAS

Mr. MATHIAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MATHIAS, of Maryland: Strike out section 2 and substitute a new section:

"SEC. 2. The Congress may by law provide for the case of a vacancy in the office of Vice President and for the case of removal, death, resignation or inability both of the President and the Vice President, declare what official would then act as President and such official would act accordingly until disability be removed or a President would be elected."

Mr. MATHIAS. Mr. Chairman, this amendment would do three things. It would do all that the amendment of the gentleman from Illinois would do in removing the possibility of an appointive Vice President; and I am opposed to an appointive Vice President. The Presidency since the history of this Republic began has been an elective office and I think it should continue to be an elective office. I believe that we should not have an appointive Vice President who would become the heir apparent of the Presidency and potentially the President.

Second, this amendment would have one advantage over the amendment just disposed of by the House. It would not allow a vacancy in the office of the Vice-Presidency.

Mr. Chairman, I feel that in the 20th century there should not be a vacancy in that office. I believe it is highly desirable in order to carry out the many functions of the Government today we should always have a Vice President. Under the provisions of my amendment the Congress could, by law, provide for the method of selecting a Vice President in anticipation of the possibility that the office ever become vacant.

Third, this proposed amendment restates the existing language of the Constitution with respect to the situation when both the President or the Vice President have died or have been removed from office or are disabled. It gives to the Congress the power to provide a continuing succession, by specifically readopting the existing language on this subject.

Mr. Chairman, I agree completely with the distinguished gentleman from Virginia [Mr. POFF], who is an able constitutional lawyer, in his interpretation of the situation if this amendment should be adopted as originally proposed, that the present succession laws would probably still obtain. But that is a matter of interpretation which constitutional lawyers reached after long years of study in reading the Constitution in the light of judicial rulings and precedents.

Mr. Chairman, I feel that the Constitution of this country belongs to the people. I believe what we have to say about the succession to the Presidency should be stated in one place where every American can read it and understand it. I feel that although there is some danger that under the strict rules of interpretation this may be redundant, we should readopt the section granting the powers of the Congress in the case of the simultaneous death of both the President and the Vice President. All Americans can then be clear in their own minds with reference to the course of Presidential succession by a simple reading of this basic document. Every citizen can then know exactly what is meant and intended and what will happen.

Mr. Chairman, I urge the adoption of this amendment because it does away with the appointed Vice President. It provides against a vacancy in the Office of the Vice-Presidency and it makes clear in one section of the Constitution exactly what our laws of succession and disability will be.

Mr. CELLER. Mr. Chairman, it is very difficult to oppose or even espouse amendments on the floor to a constitutional amendment because of the serious import of amendments.

It is very difficult to envisage what the repercussions of the amendment offered by the gentleman from Maryland would be.

Apparently, he would want the Congress, probably at some future time, to provide for the election of a Vice President in the event there is a vacancy. But the gentleman does not tell us how.

Now, under the Constitution, presently a Vice President is elected as a companion to the President. They are elected together.

Now, Mr. Chairman, it strikes me that if we want to split them and elect the Vice President separately from the President, we have to again amend the Constitution. I do not see how we could do it otherwise.

The gentleman from Maryland does not tell us exactly how it shall be done. In some far-distant future he is going to do it by Congress.

Mr. Chairman, it is like a blind man looking for a black hat in a dark room. I do not know how a blind man will find that black hat.

It is very difficult to envisage what the gentleman is trying to do.

Now, Mr. Chairman, there has been complaint offered here to the effect that we should do this by statute. We have taken years and years to get to the point where we are going to provide for some constitutional amendment concerning this entire important matter.

How long is it going to take before we reach what the gentleman wants with reference to the election of a Vice President? Beyond that, are we going to have the election of a Vice President by a special election? We answered that matter before when the interrogation was addressed to me about a special election. The gentleman from Ohio [Mr. MCCULLOCH] spoke of the enormous cost of a general election. I take it, therefore, because of the utter uncertainties involved in this amendment that we should vote it down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland [Mr. MATHIAS].

The amendment was rejected.

AMENDMENT OFFERED BY MR. MOORE

Mr. MOORE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment to the committee amendment offered by Mr. MOORE:

Page 4, line 17 after the word "shall" insert the word "immediately" and place a period after the word "office".

Line 18 strike out the word "unless" and insert the words "In the event".

Line 24 change period to a comma so as to read "of his office, thereupon".

Page 5, line 6, strike out "continue to" and place a period after the word "President" on line 7.

Strike the remainder of lines 7 and 8 on page 5.

Mr. MOORE. Mr. Chairman, I ask unanimous consent to proceed for an additional 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. MOORE. Mr. Chairman, I have asked for the additional time for the reason I believe this to be an extremely important amendment and there were not so many Members on the floor during discussion of this particular amendment during general debate.

The proposed constitutional amendment would in section 4, in my opinion, completely isolate a man who has been elected to the Office of President of the United States.

My amendment would provide simply that once the President of the United States has been removed from office by virtue of the written declaration of the Vice President and a majority of the principal officers in the executive department he cannot again get into the office to which he has been elected unless the Congress makes a decision that he is capable of reassuming his duties.

My amendment seeks to place in this proposed constitutional amendment language which simply says that when the President transmits—that is, the one who has been removed from office—to the President pro tempore of the Senate and the Speaker of the House his written declaration that no inability exists, he shall immediately resume the powers and duties of his office. And I repeat the office to which he was elected by the people.

We have placed in section 4 of this proposed constitutional amendment the mechanism that the written declaration of a Vice President, which is concurred in by a majority of the principal officers of the executive departments shall be sufficient to remove the elected President of the United States from office on the alleged grounds that he is incapable.

My amendment seeks to give him the opportunity by written declaration to declare that he is capable of assuming the duties and responsibilities of his office. He then is again the President of the United States. My amendment preserves the right of the Vice President and the majority of the principal officers of the executive departments to challenge his declaration of ability. In other words, after the President has transmitted to the Congress—to the Speaker and the President pro tempore—that he is capable of assuming his duties, the Vice President can challenge that, but the individual who has been elected to the Office of President is in the Office of President.

I suggest that if we permit this particular constitutional amendment to remain as it is presently written, this is what will happen: The individual that has been elected President of the United States can lose the protection of that office.

I believe also that if a Presidential disability exists it should be immediately decided by the Congress of the United States. I can imagine that there could come a time when a man who has been declared incapable by virtue of the written declaration of the Vice President and the principal members of the executive department, will have no office from which to even plead his case that he is again capable of handling the duties of his elected office. It would not be an uncommon event to see a man who is President of the United States lobbying here in the Congress of the United States to get back the position to which the people elected him.

My amendment is very clear. It says if you have taken the job away from him by written declaration he shall have the right by written declaration to get it back, and then the Vice President could bring the issue to the Congress, if he feels the President is still incapable, by using the provisions that are within the framework of section 4 of this proposed constitutional amendment.

I happen to believe we should be very jealous of the Office of the President. I suggest the Acting President can bring about a complete transition of government at a time when the President of the United States has been declared to be incapable. It is not difficult to imagine that the Acting President could change the complete complexion of the executive branch and the President never could get his foot back into the office to which he was elected.

So I suggest that since we have taken this job away from him by virtue of this written declaration, I believe the President of the United States, once he feels he is capable of taking care of the duties of that office, should have the office by simply making a written declaration that he is capable of taking care of the duties of that office. It seems to me all presumptions should be in favor of the President of the United States, that all doubts about his capability to serve should be resolved by the Congress, with the elected President of the United States holding his office. I believe it is the duty of the Congress looking into the eyes of the man who has been elected as President of the United States, to declare that, for one reason or another, he is incapable of holding the office. In other words, I conceive that once the Vice President is made the Acting President, there is a possibility he could resort to many manipulations that would never permit the President of the United States, the one elected by the people of this country, to present his case to the Congress of the United States. So I want it built in—I want the provision for putting the President back in his job in the constitutional amendment. If we in the Congress want to throw him out or declare that he is incapable, then I think it is our responsibility to do it here in the Congress when the elected President and Vice President are in their respective positions in the executive branch of the Government, positions to which each was elected by the people

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. MOORE. I am happy to yield to the gentleman from California.

Mr. HOLIFIELD. The gentleman has stated that he could imagine certain conditions. Can the gentleman carry his imagination just a little further and imagine a President who had had a nervous breakdown and who had been declared under the provisions in section 4 mentally incapable of performing the duties of the office, writing a letter nevertheless saying, "I am well, I am cured, I am sane." And immediately under the gentleman's amendment, as I understand it, he would, regardless of his mental condition, resume his office immediately? Would you have his own uncontested opinion of his mental condition to be the only controlling factor as to his resuming the duties of President?

Mr. MOORE. I agree with the gentleman that this could happen. I do not see any more danger, if I may respond to the gentleman, than that which we have at the present in case a President becomes incapable while in office. I have stretched my imagination—not to an extreme, because I do not think the gentleman's suggestion is extreme; it could very well happen. I just happen to think that this Congress can act expeditiously if that were the case. If the President under his signature says he is capable, at noon on a given day, the Vice President with a majority of the principal members of the executive branch of the Government can transmit that declaration to the respective bodies and that issue can be decided by the Congress of the United States immediately. I think the balance in such a situation—the presumption—should remain with the man who was elected President of the United States. It could very well happen today that any man elected could at some future time be mentally incapable. Today we live with this prospect and realize the matter is locked. That is why we are here today. As presented, the language before us lets the Acting President become mentally incapable and no one can get him out of the office. An incapable Acting President is locked in the office. So I cannot see the great concern as expressed by the gentleman from California.

I do not think the gentleman's suggestion is at all an extreme suggestion. I think it could happen, but I do not find myself too frightened by the fact. What we do here, we could immediately put to the congressional test.

I respectfully say, Mr. Chairman, that to do otherwise is to invite the suggestion of perhaps—and I hesitate to use the word—a coup among individuals in the executive branch of the Government to remove a President of the United States. This could be a very indirect way to impeach a President of the United States if you did not want to try him here in the Congress of the United States. I say this again, if we in the Congress are going to have to say "No" to a man who has been elected as President of the United States, I think that we should do it when he occupies that office and does have some measure of protection in the event that there should be some unexplained reason for the suggestion of his incapacity. I urge the adoption of my amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CORMAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first of all, let us clarify what the committee proposal does. We are talking about the constitutional amendment which is proposed. The gentleman suggested that once the Vice President and a majority of the Cabinet

removed a President from office that only the Congress could put him back into office. That is not correct. The President would be restored without congressional action, 2 days after his own declaration of renewed ability, unless his declaration was challenged by the Vice President and Cabinet.

Beyond that the gentleman suggested that this might be a scheme for the Vice President to remove the President and then never bring this issue to the Congress. That is not correct. The President returns to power in 10 days, over the objection of the Vice President and Cabinet, unless the Congress by a two-thirds vote sustains the validity of their challenge.

Now the committee considered very carefully what we do in this very sensitive area when there is a dispute between the President, on one hand, and the Vice President and his Cabinet on the other, as to the inability of a President to perform his duties.

It seems to me what we are really asking ourselves is, which is more fragile—a single human being or our system itself?

We talk about coups or the possibility of a Vice President and a Cabinet seizing power. I would point out to you the Presidency itself is very much protected by the committee's proposed amendment.

First, when we get into a dispute between the President on the one hand and the Vice President and the Cabinet on the other, the Vice President will retain power for 2 days. If the dispute continues beyond 2 days, Congress must act within 10 days. Unless two-thirds of the Congress agrees with the Vice President, at that point the President himself will resume his authority.

What would be the condition if we adopted the gentleman's amendment? There is no question that one of the things we are concerned about is mental incapacity of a President. It is generally accepted that when a man is mentally incapable, he is the last one to realize it. I do not believe, under any stretch of the imagination, the Vice President and the Cabinet will use this mechanism capriciously. When they make the very hard decision that the President is, for mental reasons, no longer able to act, that very great power of the Presidency will pass.

If we are to provide that he can get the power back by the simple writing of a letter, and then to start the process over again to remove that power, it seems to me there is a real hazard for a long period of time. It may be a long period of time, when we consider the possibilities of rather substantial actions by the President without there being any check on those actions. In this instance it seems to me to be very hazardous.

Then we get to the next question. Assuming he can come back by the simple writing of a letter, again the Vice President and the Cabinet may decide that he is not capable. Then we would have uncertainty.

One of the things the committee was most concerned about was that there never be any question at any moment about who the President is and whom we ought to obey within the realm of Presidential orders.

Mr. RODINO. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from New Jersey.

Mr. RODINO. Is it not entirely possible, under the gentleman's proposed amendment, that a President who had been declared unable to continue the duties of his office might then make such a declaration and assume the powers of the office and fire the heads of the departments; and, therefore, there would be no majority with which the issue might ever come to a test in the Congress of the United States?

Mr. CORMAN. Yes. It would seem to me that would be the result.

Mr. MOORE. Mr. Chairman, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from West Virginia.

Mr. MOORE. The gentleman used the term, I might suggest, that we are going to start this process over and over and over again.

The language of the proposed constitutional amendment is very clear in that respect. It would be necessary to make the determination under the language of the proposed constitutional amendment.

I am just proposing to put in the hands of the elected President a means to get his job back during the period of the trial. There is no gap or abyss at all. This issue would be immediately resolved by the Congress of the United States.

Mr. CORMAN. I would ask the gentleman what period of time would have to transpire before the Vice President might start over again?

Mr. MOORE. There is not a starting over again. That is where I would suggest the gentleman is misleading the committee.

Mr. CORMAN. A day later? A year later? At some time the Vice President and Cabinet could initiate a new challenge.

Mr. MOORE. No. If we adopt the proposed resolution as it is, without my amendment, and the President makes a written declaration that he is capable, the Vice President would have to come forward with another written declaration that he was incapable. That is in this resolution as it is before the House today.

All I say is that with the transition of power involved, it should be upon a written declaration of the President for a reinvestment of the office. The Vice President would do exactly as he does in this proposal, if he says the President is incapable. The issue would be decided by the Congress.

Mr. CELLER. Mr. Chairman, I rise in opposition to the amendment and move to strike the requisite number of words.

We have a very anomalous situation here, or will have if the amendment of the gentleman from West Virginia prevails.

After the Congress by two-thirds vote—that is a sizeable majority vote—plus a vote of the majority of the Cabinet, whose members know intimately well the President and know a good deal about his mental and physical condition, usually, and after a judgment that the President is still disabled, after that verdict of disability by that very high authority, the President would simply come in and make a simple declaration, "I am not disabled," and he would resume all the powers of his office and the duties of his office.

Now, I cannot conceive how we could put the imprimatur of our approval on that. The President may be as nutty as a fruitcake. He may be utterly insane. He may have had a paralytic stroke, such as Wilson did, and the Congress would say by a two-thirds vote then, "You are not able," and the Cabinet would say by a majority vote, "You are not able." Yet the President in that condition, as was President Wilson, for example, could say, "Yes, I am able." You may remember that President Wilson caused the resignation of his very able Secretary of State Lansing, not on good grounds but probably on coffee grounds. This same President could dismiss, insane as he is, every member of the Cabinet. If the gentleman's amendment would prevail, he could dismiss every member of the Cabinet. Over and beyond that we have a safety valve here also. We provide that the Congress can consult such other body as the Congress may by law provide. That might be a body of experts or men with expertise to determine whether or not the President is abled or disabled.

In addition thereto, the gentleman has indicated that there may be a coup d'etat by some usurping Vice President. I doubt whether in this day and age we could have any such thing as a coup d'etat with our mass media of communication, with our public knowing instantly what happens inside and outside of Washington. There is not a secret here. As the woman said with reference to the situation in Washington, "I can keep a secret, but the people I tell it to cannot." That is the situation in Washington. There is nothing secret here and there would be no secrets. The public would know. However, even over and beyond that, if we would have some rogue, some devilish person, who would be there, then we have the power to take care of it. We have the power of impeachment. We can impeach for high crimes and misdemeanors, and these high crimes and misdemeanors can mean anything that this Congress wants it to mean. It is like Alice in Wonderland. When Alice asked the queen, "How can you make words mean so many different things?" the answer was "It all depends on who is in power." We are in power and we can make the words "high crimes and misdemeanors" mean anything we wish and apply it to some roguish, usurping Vice President.

I am not afraid of a coup d'etat in that regard, but I am fearful if we give the President the power of the sort envisioned in the amendment of the gentleman from West Virginia.

I hope that the amendment will be voted down.

Mr. MOORE. Mr. Chairman, will the gentleman yield?

Mr. CELLER. Now I yield to my distinguished colleague.

Mr. MOORE. May I ask my chairman, for whom I have great affection, if it is not possible under this proposed constitutional amendment for the Acting President to fire everybody in the executive branch of the Government that is friendly to the deposed President.

Mr. CELLER. Yes. That is possible, but the contrariwise is also possible.

Mr. FLYNT. Mr. Chairman, I move to strike out the requisite number of words.

Mr. Chairman, I support the amendment offered by the gentleman from West Virginia and I do so because, among other reasons, I feel that it gives to the elected President of the United States the presumption, whereas the language of the committee amendment would give to the Vice President who may be serving as President during the disability of the President the presumption that he is better qualified to determine the disability or the ability of the President than the President himself.

The situation might not be cause for concern except for the possibility that under conditions where the President were still in life, the Vice President might successfully remove every member of the Cabinet who was not friendly to him. That, Mr. Chairman, would provide an open invitation to an ambitious, certainly to an overly ambitious Vice President, to strive for the coup d'etat to which the chairman of the Committee on the Judiciary referred just a few minutes ago.

As between vesting the presumption of discretion and judgment in either the elected President or the elected Vice President it occurs to me, Mr. Chairman, that the presumption ought to be in favor of the President of the United States as long as he is in life.

I support the amendment.

Mr. McCLORY. Mr. Chairman, I move to strike out the requisite number of words.

Mr. Chairman, I think there is a great appeal which can be made for the amendment propsed by the gentleman from West Virginia, but I think if we consider this subject logically we will see that it would be extremely unwise to adopt the amendment.

In the first place the opportunity is afforded already in section 3 for the President voluntarily to give up the office of the President and let the Vice President serve as Acting President and then for the President voluntarily to resume his duties. The situation which is involved here in section 4 is simply where the President is involuntarily removed. It seems to me that we want to sustain the continuity of the office of President and the stability of government which is going to follow once there is an involuntary removal of the President from office. And if that does occur then the Vice President will remain until the Congress acts contrariwise. That is exactly what the proposed amendment does now.

If we adopt this amendment we would have instability which would come with the presumption which follows the resumption in office of the the President without the Congress having acted. Since the Congress would be acting later, instability would follow from a temporary restoration of the President in office and his subsequent removal by action of the Congress.

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia.

The question was taken; and on a division (demanded by Mr. MOORE) there were—ayes 58, noes 122.

So the amendement was rejected.

AMENDMENT OFFERED BY MR. GROSS

Mr. GROSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GROSS to the committee amendment: On page 3, line 23, after the word "Congress" strike the period, insert a comma, and add the following: "and the votes of both Houses shall be determined by the yeas and nays and the names of the persons voting for and against shall be entered on the Journal of each House respectively."

Mr. GROSS. Mr. Chairman, the adoption of my amendment would make section 2 read as follows:

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress, and the votes of both Houses shall be determined by the yeas and nays and the names of the persons voting for and against shall be entered on the Journal of each House respectively.

Mr. Chairman, I have taken the language which is added to the bill from page 37 of Jefferson's Manual and Rules of the House. It is the language which requires a rollcall vote upon bills or resolutions which may be vetoed by the President of the United States.

Mr. Chairman, it seems to me that if it is mandatory to have a rollcall vote upon a vetoed bill, certainly there ought to be the requirement for a rollcall vote in Congress when it is called upon to confirm or reject a President's selection of a Vice President of the United States. I can think of scarcely nothing more vital.

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. GROSS. Yes, I yield to the gentleman from Missouri.

Mr. HALL. Would the gentleman suggest the same wording after the two words "both Houses" in line 5 of page 5?

Mr. GROSS. Yes. The gentleman from Iowa is prepared, if this amendment is adopted, to offer the same amendment to page 5, line 5.

Mr. HALL. I thank the gentleman. I believe his amendment is worthy of support.

Mr. CELLER. Mr. Chairman, I rise in opposition to the pending amendment.

The gentleman seeks to do something rather extraordinary in a constitutional amendment, or a portion of a constitutional amendment. I suggest that the gentleman from Iowa seeks to amend the rules of the House. In any event, when a proposition is presented to this House or to the Senate the House or Senate can demand a record vote. That right is always present, the right to demand a record vote, and certainly there is no need to place such a provision in a constitutional amendment. There is no need to break down this amendment with details of that sort, particularly since the right already exists to demand a record vote.

Mr. RUMSFELD. Mr. Chairman, I rise in support of the pending amendment.

Mr. Chairman, the distinguished chairman of the Committee on the Judiciary has indicated this amendment is clutter and excess freight. However, I strongly disagree. The Constitution includes these same words where it says "in all such cases"—referring to a veto—"the vote of both Houses shall be determined by the yeas and nays," and so forth, as the amendment reads. The text of this amendment is already in the Constitution. I would suggest it is not clutter, and I would further suggest it is not clutter to demand that the public business be conducted publicly. The Committee on Government Operations' Subcommittee on Government Information has been meeting to consider legislation to require the executive branch of the Federal Government to make public more of the public business. How can the Congress justify conducting its business in private. Certainly, a vote on a matter as important as a Vice President or on this difficult question of presidential disability should be by record vote in both Houses of the U.S. Congress.

I think we can all recall instances where important pieces of legislation, such as the railroad arbitration legislation have passed this body by something other than a record vote. I would strongly urge that the amendment offered by the gentleman from Iowa be agreed to, so that the people of this country have the opportunity to know definitely who voted yea on an issue as important to our nation as this.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa [Mr. GROSS].

The question was taken; and on a division (demanded by Mr. GROSS) there were—ayes 92, noes 102.

Mr. GROSS. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. GROSS and Mr. ROGERS of Colorado.

The Committee again divided, and the tellers reported that there were—ayes 115, noes 130.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. POFF

Mr. POFF. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. POFF to the committee amendment: On page 4, line 25, strike out the word "immediately" and after the word "assembling," insert the words "within forty-eight hours".

The CHAIRMAN. The Chair recognizes the gentleman from Virginia [Mr. POFF].

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. POFF. I am glad to yield to the distinguished chairman of the committee, the gentleman from New York.

Mr. CELLER. I would accept that amendment. It is a very good amendment.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Ohio.

Mr. McCULLOCH. Mr. Chairman, we are pleased to accept the amendment. It has been thoroughly discussed and it is agreeable to us.

Mr. POFF. Mr. Chairman, I have been asked to make a brief explanation of the amendment, after which I will yield to the distinguished minority leader.

Mr. Chairman, the amendment simply requires that the Congress as an automatic proposition will, if not in session, when it receives the Vice President's challenge of the President's declaration of restoration, assemble within a 48-hour period.

Now I would assume, and I will yield to the chairman of the Committee on the Judiciary in order to make legislative history on this point, that the Vice President who is then Acting President would as a matter of procedural necessity by proclamation, directive, or otherwise indicate a time certain and a place certain where and when the Congress would assemble. Is that the understanding of the gentleman from New York?

Mr. CELLER. That is exactly the understanding, that the Vice President would issue a proclamation and fix a time certain within 48 hours as to when the Congress must assemble.

Mr. POFF. May I ask the gentleman further, if for any reason the Vice President as Acting President should not do so, then the Speaker of the House would have the apparent power, as the Congress automatically assembled, to fix the time certain when the Congress would assemble?

Mr. CELLER. That is correct. In other words, if he does not summon the Congress, the Congress automatically gathers and assembles—and must assemble. But I take it in the ordinary course, the Speaker would issue a summons to the Members of the House to assemble and the President pro tempore would issue a summons to the Senators to assemble in the other body.

Mr. POFF. I thank the gentleman.

Mr. GERALD R. FORD. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the distinguished minority leader.

Mr. GERALD R. FORD. Mr. Chairman, during the history of our country, the Nation has been without a Vice President 16 times, totaling 37 years, creating a vacuum in the executive branch of Government in particularly important and crucial times.

The Constitutional Convention wisely looked into the future to see the need for a qualified Vice President in the event of the Chief Executive's death or inability. However, the precise method of activating the line of succession has been clouded with legal and political uncertainties, controversy, and debate.

This resolution being considered by the House will amend the Constitution to clarify this vitally important issue, assuring a clear-cut method of action to result in proper succession.

A large number of bar associations in the country and some of the best legal minds in our Nation support this resolution, which is the result of long, indepth study by the Committee on the Judiciary. In the past, Attorneys General Herbert Brownell, William P. Rogers, and Nicholas deB. Katzenbach agreed that an amendment is necessary. The tragic death of John Fitzgerald Kennedy and the physical health of former President Dwight D. Eisenhower in our most recent history brought quick and urgent congressional and public attention to the need for an amendment.

Presidents Eisenhower, Kennedy, and Johnson made informal agreements with the Vice Presidents to fill the Chief Executive's position in event of inability. I stress that these were informal agreements, without constitutional definition.

The resolution before the House at this time, in my opinion, fulfills a vital need, especially at a vital and turbulent time in our Nation's history.

I support the resolution and urge my colleagues to do likewise in the national interest.

Mr. POFF. I thank the gentleman. I yield back the remainder of my time.

Mr. McCORMACK. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I feel that I should make a few observations on this occasion because what we do here is not only a matter of importance but also could have a marked and tremendous effect in the future life of our Nation.

What we have said here today will be referred to by some future House of Representatives, particularly if the situation under section 4 of the pending resolution should arise.

We all know that a constitutional amendment is a very important matter involving a very sensitive question—sensitive not only to draft, but sensitive to consider, and sensitive to picture or contemplate all the human considerations which might arise in the future.

I agree with the statement made in that respect by the distinguished minority leader.

I favor strongly this resolution. I favor section 2 because we must be practical. We must realize, whether we like to or not, that great changes are taking place, have taken place within the past 30 years, and changes of a greater nature are going to take place in the years which lie ahead.

I have lived for 14 months in the position of the man who, in the event of an unfortunate event happening to the occupant of the White House, under the law then would have assumed the Office of Chief Executive of our country. I can assure you, my friends and colleagues, that a matter of great concern to me was the vacuum which existed in the subject of determining inability of the occupant of the White House, if and when that should arise.

I have in my safe in my office a written agreement. As has been well said, it is outside the law. It is an agreement between individuals. But it was the only thing that could be done under the circumstances, when we do not have a disability law in relation to the President in existence.

We have made a marked contribution by this resolution, and particularly by section 3 and section 4.

Section 3 will enable the President of the United States or an acting President or one who is in the office of the Chief Executive, when he is ill without being totally incapaciated, to declare his inability for a limited period of time. For example, a man might have a heart attack. He is mentally equipped and there is no impairment of his mental facilities, but there is a marked impairment of his physical facilities. If he has the knowledge that he can declare himself to be disabled or unable to perform the duties of his office in a broad sense and if he has the knowledge that on a statement by himself or a declaration by himself he can resume the office, and the duties of the office, then this could play a very important part, in my opinion, in the future life of our country.

Section 4 is a matter of vital concern, as I see it. I will not say this is the only vacuum but a great vacuum which has existed since the institution of our Government is the fact that there has been nothing on the statute books or in the Constitutional law whereby there could be a legal determination made of the inability or the disability of the President of the United States and of the restoration of his ability. I can assure you, as the one who for 14 months was next in line for the Presidency, that I know I could never have made the decision. There are so many human considerations involved. For example, my motives might well be impugned. Also there could be the feeling that I might be involved in a quest for personal power. As a result of those considerations, and others, I would have great difficulty in making the decision myself, because I could appreciate the fact and picture the fact that the whole legitimacy of government, if I were in the White House, would be clouded and could be affected very seriously. Therefore, I am very happy with the provisions of this resolution and particularly, as I say, with section 4 thereof. We cannot legislate for every human consideration that might occur in the future. All we can do is the best that we can under the circumstances. The considerations of the committee and the deliberations of the members of both parties have resolved the problem confronting us in the best manner possible, having in mind the fact that with all our strengths we have weaknesses as human beings.

I am glad that the gentleman from Virginia [Mr. POFF] offered his amendment because I recognize that we could establish in our minds or we could create there hypothetical cases in the future which no resolution and no law could avoid and the resolution did contain a weakness in the language which states: "Thereupon Congress shall decide the issue, immediately assembling for that purpose if not in session." Now, first of all, I would assume that a Vice President, as Acting President, if the provisions of section 4 should develop and a Vice President who assumes the Presidency and

the majority of the heads of the executive departments or the members of the Cabinet should disagree with the declaration or the proclamation of the President that his ability to function had been restored and thereby he could resume his office—I would assume in that case that the Acting President at that time would immediately call Congress into session within a reasonable period thereafter, by proclamation, as implied by this resolution, and as expressly provided for in other parts of the Constitution. But something might happen. The resolution provided and Congress intended that we should assemble immediately. But who is going to do the assembling? The Speaker will speak for the House of Representatives, whoever the Speaker may be at that time. The President pro tempore of the U.S. Senate will speak for that body.

One man may construe the word "immediately" differently from another. There may be a great deal of difficulty and confusion at that time. Who knows what human emotions might exist 10, 20, 30, or 40 years from now when some emotional situation has enveloped the people of our country?

I am anxious about this. In case there were no proclamation by the then Vice President as Acting President calling Congress into session, I was anxious that there be specific language in the resolution to bring Congress into session. The amendment of the gentleman from Virginia fills that vacuum and makes it specific; that is, that if a Vice President as Acting President does not by proclamation call Congress into session, Congress shall come into session automatically, without any call, not later than 48 hours.

For whatever benefit my opinion may be at some future time to some future Speaker, if this situation should arise, may I say for the record that if this were part of the Constitution today, and this situation arose, and if the Congress were faced with a situation today where a Vice President as Acting President had disagreed with the President on the question of his ability to assume office, and the President pro tempore of the Senate and the Speaker of the House had been notified, as provided by this resolution, and the 48-hour time limit in the amendment of the gentleman from Virginia were a part of the Constitution, if I were Speaker I would then consider calling the House into session within the 48-hour limit, but in any event, if the Speaker or President pro tempore failed to act Congress would have to come into session within 48 hours. If that did not happen the very purpose of this amendment to the Constitution, if adopted, could be defeated.

I wanted to make these few remarks to compliment the Members of the House who have participated in this debate which has been consistently on the highest possible level, in the consideration of any legislation, particularly that having to do with the Constitution. This debate will be of invaluable assistance some day in the future. The debate has occurred today but it will live for the future. If such a situation arises and this becomes part of the Constitution, Members of Congress at that time and others will look back to this debate, and they will see a high level debate to show what the intent of Congress was and certainly what the intent was of the House of Representatives in consideration of this resolution.

So I congratulate the committee and the House of Representatives. As Speaker I am proud of the debate that took place today.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia [Mr. POFF].

The amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment as amended.

The committee amendment, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. FASCELL, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration House Joint Resolution 1 proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office, pursuant to House Resolution 314, he reported the joint resolution back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

Mr. MATHIAS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the joint resolution?

Mr. MATHIAS. I am, Mr. Speaker.

The SPEAKER. The gentleman qualifies. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. MATHIAS moves to recommit House Joint Resolution 1 to the Committee on the Judiciary.

The SPEAKER. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the joint resolution.

Mr. ASHBROOK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 368, nays 29, not voting 36, as follows:

[Roll No. 74]

YEAS—368

Abbitt	Anderson, Ill.	Arends
Abernethy	Anderson, Tenn.	Ashbrook
Adair	Andrews, Glenn	Ashley
Adams	Annunzio	Ashmore
Addabbo	Ashbrook	Aspinall
Albert	Ashley	Ayres
Bandstra	Fuqua	Mink
Barrett	Garmatz	Minshall
Bates	Gathings	Mize
Battin	Gettys	Moeller
Beckworth	Giaimo	Monagan
Bell	Gibbons	Moore
Bennett	Gilbert	Moorhead
Berry	Gilligan	Morgan
Betts	Goodell	Morris
Bingham	Grabowski	Morrison
Blatnik	Gray	Morse
Boggs	Green, Oreg.	Morton
Boland	Green, Pa.	Mosher
Bolton	Greigg	Moss
Bow	Grider	Multer
Brademas	Griffin	Murphy, Ill.
Bray	Griffiths	Murphy, N.Y.
Brock	Grover	Murray
Brooks	Gurney	Natcher
Broomfield	Hagan, Ga.	Nedzi
Brown, Calif.	Hagen, Calif.	O'Brien
Broyhill, N.C.	Haley	O'Hara, Ill.
Broyhill, Va.	Hall	O'Hara, Mich.
Burke	Halleck	O'Konski
Burleson	Halpern	Olsen, Mont.
Burton, Calif.	Hamilton	Olson, Minn.
Burton, Utah	Hanley	O'Neill, Mass.
Byrne, Pa.	Hanna	Ottinger
Byrnes, Wis.	Hansen, Idaho	Patten
Cabell	Hansen, Iowa	Pelly
Cahill	Hansen, Wash.	Pepper
Callan	Hardy	Perkins
Cameron	Harris	Philbin
Carter	Harsha	Pickle
Casey	Harvey, Mich.	Pike
Cederberg	Hathaway	Poage
Celler	Hawkins	Poff
Chamberlain	Hechler	Pool
Chelf	Helstoski	Powell
Clancy	Herlong	Price
Clark	Hicks	Pucinski
Clausen, Don H.	Holifield	Quie
Clawson, Del	Holland	Quillen
Cleveland	Horton	Race
Clevenger	Hosmer	Randall
Cohelan	Howard	Redlin
Collier	Hungate	Reid, Ill.
Conable	Huot	Reid, N.Y.
Conte	Irwin	Reifel
Conyers	Jacobs	Reinecke
Cooley	Jarman	Resnick
Corbett	Johnson, Calif.	Reuss
Corman	Johnson, Okla.	Rhodes, Ariz.
Craley	Johnson, Pa.	Rhodes, Pa.
Cramer	Jonas	Rivers, Alaska
Culver	Jones, Mo.	Rivers, S.C.
Cunningham	Karsten	Roberts
Curtin	Karth	Robison
Curtis	Kastenmeier	Rodino
Daddario	Kee	Rogers, Colo.
Dague	Keith	Rogers, Fla.
Daniels	Kelly	Ronan
Davis, Ga.	Keogh	Roncalio
Davis, Wis.	King, Calif.	Rooney, N.Y.
de la Garza	King, N.Y.	Rooney, Pa.
Delaney	King, Utah	Rosenthal
Denton	Kornegay	Roudebush
Derwinski	Krebs	Roush
Devine	Kunkel	Roybal
Dickinson	Laird	Rumsfeld
Diggs	Landrum	Ryan
Dingell	Langen	Satterfield
Dole	Latta	St Germain
Donohue	Leggett	St. Onge
Dow	Lennon	Saylor
Dowdy	Lindsay	Scheuer
Downing	Lipscomb	Schisler
Dulski	Long, La.	Schmidhauser
Duncan, Oreg.	Long, Md.	Schneebeli
Duncan, Tenn.	Love	Schweiker
Dwyer	McCarthy	Secrest
Dyal	McClory	Selden
Edmondson	McCulloch	Senner
Edwards, Ala.	McDade	Shriver
Edwards, Calif.	McDowell	Sickles
Ellsworth	McEwen	Sikes
Erlenborn	McFall	Sisk
Evans, Colo.	McGrath	Skubitz
Everett	McVicker	Slack
Fallon	Macdonald	Smith, Calif.
Farbstein	MacGregor	Smith, Iowa
Farnsley	Machen	Smith, N.Y.
Fascell	Mackay	Springer
Feighan	Mackie	Stafford
Findley	Madden	Staggers
Fisher	Mahon	Stanton
Flood	Mailliard	Steed
Fogarty	Marsh	Stephens
Foley	Martin, Nebr.	Stratton
Ford, Gerald R.	Matsunaga	Stubblefield
Ford, William D.	Matthews	Sullivan
Frelinghuysen	May	Sweeney
Friedel	Meeds	Talcott
Fulton, Pa.	Miller	Taylor
	Mills	Teague, Calif.
	Minish	Tenzer

Thomas	Utt	Willis
Thompson, La.	Van Deerlin	Wilson, Bob
Thompson, N.J.	Vanik	Wilson, Charles H.
Thompson, Tex.	Vigorito	Wolff
Thomson, Wis.	Vivian	Wright
Todd	Waggonner	Wyatt
Trimble	Walker, N. Mex.	Wydler
Tuck	Watkins	Young
Tunney	Watts	Younger
Tupper	Whalley	Zablocki
Tuten	White, Idaho	
Udall	Whitener	
Ullman	Widnall	

NAYS—29

Andrews, George W.	Gallagher	Mathias
Baring	Gonzalez	O'Neal, Ga.
Brown, Ohio	Gross	Passman
Buchanan	Hays	Patman
Callaway	Henderson	Rogers, Tex.
Dent	Hull	Teague, Tex.
Dorn	Hutchinson	Walker, Miss.
Flynt	Ichord	White, Tex.
Fountain	McMillan	Whitten
	Martin, Ala.	Williams

NOT VOTING—36

Andrews, N. Dak.	Fulton, Tenn.	Pirnie
Baldwin	Gubser	Purcell
Belcher	Harvey, Ind.	Roosevelt
Bolling	Hébert	Rostenkowski
Bonner	Jennings	Scott
Carey	Joelson	Shipley
Colmer	Jones, Ala.	Smith, Va.
Dawson	Kirwan	Stalbaum
Evins, Tenn.	Kluczynski	Toll
Farnum	Martin, Mass.	Weltner
Fino	Michel	Yates
Fraser	Nelsen	
	Nix	

So (two-thirds having voted in favor thereof) the joint resolution was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Hébert with Mr. Michel.
Mr. Carey with Mr. Belcher.
Mr. Nix with Mr. Gubser.
Mr. Smith of Virginia with Mr. Martin of Massachusetts.
Mr. Toll with Mr. Andrews of North Dakota.
Mr. Roosevelt with Mr. Pirnie.
Mr. Rostenkowski with Mr. Nelsen.
Mr. Jennings with Mr. Harvey of Indiana.
Mr. Kirwan with Mr. Fino.
Mr. Joelson with Mr. Shipley.
Mr. Yates with Mr. Colmer.
Mr. Fulton of Tennessee with Mr. Weltner.
Mr. Scott with Mr. Stalbaum.
Mr. Frazer with Mr. Dawson.
Mr. Purcell with Mr. Bonner.

The result of the vote was announced as above recorded.

Mr. CELLER. Mr. Speaker, pursuant to House Resolution 314, I call up from the Speaker's table for immediate consideration Senate Joint Resolution 1.

The Clerk read the title of the Senate joint resolution.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 1

Joint resolution proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

"SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

"SEC. 3. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, such powers and duties shall be discharged by the Vice President as Acting President.

"SEC. 4. Whenever the Vice President, and a majority of the principal officers of the executive departments or such other body as Congress may by law provide, transmit to the President of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

"SEC. 5. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President, and a majority of the principal officers of the executive departments or such other body as Congress may by law provide, transmit within seven days to the President of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall immediately proceed to decide the issue. If the Congress determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise the President shall resume the powers and duties of his office."

Mr. CELLER. Mr. Speaker, I offer an amendment to strike out all after the resolving clause and insert in lieu thereof the provisions of House Joint Resolution 1, proposing an amendment to the Constitution of the United States relating to succession of the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office, as passed.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CELLER: "Strike out all after the resolving clause of Senate Joint Resolution 1 and insert the provisions of House Joint Resolution 1, as passed by the House."

The SPEAKER. The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the third reading of the Senate joint resolution.

The Senate joint resolution was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the Senate joint resolution.

The question was taken; and (two-thirds having voted in favor thereof) the Senate Joint Resolution was passed.

A motion to reconsider was laid on the table.

A similar joint resolution (H.J. Res. 1) was laid on the table.

GENERAL LEAVE

Mr. CELLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the joint resolution just passed.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT

Mr. CELLER. Mr. Speaker, I ask unanimous consent to insert in the RECORD certain documents from the Association of American Law Schools, the Pennsylvania Bar Association, the Chamber of Commerce of the United States, the Law School of Harvard Univerity, and the U.S. Junior Chamber of Commerce.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The documents are as follows:

ASSOCIATION OF AMERICAN LAW SCHOOLS,
April 8, 1965.

HON. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: I am writing in connection with the proposed constitutional amendment pertaining to presidential inability and the filling of the office of the Vice President, which is at present pending before the House of Representatives.

At a meeting of the executive committee of the Association of American Law Schools last February, that committee, which is charged with the conduct of the affairs of the association, voted to lend its support to the sponsorship by the American Bar Association of the consensus of the conference on presidential inability and succession that had met in Washington on January 20 and 21, 1964. The consensus of that conference was in support of the amendment that is now pending before the House.

It will be appreciated if this expression of support for the proposed amendment could be appropriately brought to the attention of the Members of the House of Representatives.

Sincerely,

MICHAEL H. CARDOZO.

PENNSYLVANIA BAR ASSOCIATION,
April 9, 1965.

HON. EMANUEL CELLER,
Congress of the United States,
Washington, D.C.

DEAR CONGRESSMAN CELLER: It is my understanding that House Joint Resolution 1, the proposed constitutional amendment pertaining to Presidential inability and filling the office of Vice President will be considered by the House of Representatives within a few days. This amendment would provide urgently needed procedures to assure uninterrupted continuity in the Executive leadership of our country.

House Joint Resolution 1 has received the most thorough attention by many of the outstanding constitutional lawyers and legal scholars in the country. It is the result of long study and debate by recognized students of the Presidency.

For many years, action to solve the problem of Presidential inability has been frustrated because of disagreement over how to best meet the need. House Joint Resolution 1 is the product of a national consensus

which has developed over the past several months.

The Pennsylvania Bar Association has taken a leading role in seeking, at long last, a sound solution to this serious constitutional void. We enthusiastically support the principles of House Joint Resolution 1. We are joined in this by a majority of State bar associations.

We hope that you will actively support House Joint Resolution 1.

Sincerely,

WILLIAM W. LITKE.

CHAMBER OF COMMERCE
OF THE UNITED STATES,
April 9, 1965.

Hon. EMANUEL CELLER,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CELLER: The Chamber of Commerce of the United States supports adoption of a constitutional amendment setting up procedures for handling cases of presidential inability and for keeping the office of the Vice President filled.

This view was submitted to members of the House and Senate Judiciary Committees in a letter dated March 1, 1965. A copy of the letter is attached.

The bill (H. J. Res. 1) as reported by the House Judiciary Committee is an improvement over the original version, in particular the language now incorporated in section 4 of the reported bill.

It is important to have procedures delineated precisely and that settlement of questions arising from presidential inability be resolved in the shortest practicable time interval to prevent an extended period of uncertainty. This also would enhance prospects of ratification by the States.

We recognize that no such amendment to the Constitution will cover all contingencies, but adoption of the present proposal would be a marked improvement over the existing situation which is so fraught with danger to the welfare of the Nation.

We urge favorable action by the House of Representatives on the proposed constitutional amendment.

Sincerely yours,

THERON J. RICE.

CHAMBER OF COMMERCE
OF THE UNITED STATES,
March 1, 1965.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CELLER: The Chamber of Commerce of the United States supports adoption of a constitutional amendment setting up procedures for handling cases of Presidential inability and for keeping the office of Vice President filled.

The national chamber approves the method embodied in Senate Joint Resolution 1 and House Joint Resolution 1 and believes that any proposed constitutional amendment dealing with the above matters should clearly specify, as the aforementioned bills do, the precise method by which cases of Presidential inability should be handled.

One improvement should be made in section 5 of the measure passed by the Senate. Instead of allowing 7 days for the transmittal of a communication from the Vice President and the Cabinet to the Congress disputing a Presidential declaration that no disability exists, a shorter length of time would appear preferable in order to minimize the period of uncertainty.

The interval of time should be kept to an absolute minimum to permit the speedy clarification, if challenged, of a President's assertion that his disability has terminated.

We urge prompt action by the House Judiciary Committee so that adoption of a constitutional amendment on Presidential inability and Vice-Presidential vacancy may be ratified by the States in this calendar year.

Sincerely yours,

THERON J. RICE.

U.S. CHAMBER OF COMMERCE,
Tulsa, Okla., April 8, 1965.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

MY DEAR MR. CELLER: The board of directors of the U.S. Jaycees feel quite strongly that the subject of presidential disability and vice-presidential vacancy is a critical national issue.

The enclosed resolution was overwhelmingly endorsed by our board. The Jaycees of America urge you to take positive action on the current pending legislation in this regard.

Very truly yours,

STAN LADLEY,
President.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 9, 1965.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: May I express my support of House Joint Resolution 1, the proposed constitutional amendment pertaining to presidential inability and vice-presidential vacancy.

Having served as a member of the American Bar Association group which arrived at a consensus on the principles to be followed, I can testify to the full and careful thought that has gone into the measure.

In view of questions that have been raised, two points of clarification may be useful. The first is that the amendment does not in any way alter the present law of succession. Instead it reduces the likelihood that the law may come into operation, by providing for filling a vacancy in the office of Vice President.

Secondly, the amendment does not impose a rigid method for the determination of presidential inability. Instead it provides a specific method, centering on the Vice President and a majority of the Cabinet, but authorizes Congress at any time to substitute another body for this purpose. Thus the amendment combines concreteness with flexibility, assuring that a method will be in force as soon as the amendment is ratified but not depriving Congress of authority to make alterations in the light of further experience and consideration.

I hope that you will find it possible to lend your support to House Joint Resolution 1.

With all good wishes.

Sincerely yours,

PAUL A. FREUND.

RESOLUTION BY U.S. JUNIOR CHAMBER OF COMMERCE

Whereas the subject of presidential disability and vice-presidential vacancy is national in character, timely in importance to all Americans, including young men between the ages of 21 and 35 years inclusive, and general in application to the welfare of the people of the United States and to the members of the U.S. Junior Chamber of Commerce; and

Whereas the Constitution and laws of the United States do not clearly define procedures to be followed in the event of the inability of the President of the United States; and

Whereas the Constitution of the United States does not provide a means for filling the office of the Vice President when a vacancy occurs; and

Whereas these problems pose the greatest potential danger to our national welfare and effective government; and

Whereas these problems can only be resolved with certainty by means of an amendment to the Constitution of the United States: Therefore be it

Resolved, That the U.S. Junior Chamber of Commerce recommends that the Constitution of the United States be amended in accordance with the following principles:

1. In the event of the inability of the President, the powers, and duties, but not the office, shall devolve upon the Vice President or person next in line of succession for the duration of the inability of the President or until expiration of his term of office;

2. The inability of the President may be established by declaration in writing of the President. In the event that the President does not make known his inability, it may be established by action of the Vice President or person next in line of succession with the concurrence of a majority of the Cabinet or by action of such other body as the Congress may by law provide;

3. The ability of the President to resume the powers and duties of his office shall be established by his declaration in writing. In the event that the Vice President and a majority of the Cabinet or such other body as Congress may by law provide shall not concur in the declaration of the President, the continuing disability of the President may then be determined by the vote of two-thirds of the elected Members of each House of the Congress;

4. In the event of the death, resignation or removal of the President, the Vice President or the person next in line of succession shall succeed to the office for the unexpired term; and

5. When a vacancy occurs in the office of the Vice President, the President shall nominate a person who, upon approval by a majority of the elected Members of Congress meeting in joint session, shall then become Vice President for the unexpired term; be it further

Resolved, That the U.S. Junior Chamber of Commerce urges the Congress of the United States to initiate an amendment to the Constitution of the United States in accordance with the foregoing provisions of this resolution.

LEGISLATIVE PROGRAM

Mr. GERALD R. FORD. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. GERALD R. FORD. Mr. Speaker, I have asked for this time for the purpose of asking the distinguished majority leader the program for tomorrow.

Mr. ALBERT. Mr. Speaker, will the distinguished minority leader yield?

Mr. GERALD R. FORD. I yield to the majority leader.

Mr. ALBERT. In response to the inquiry of the gentleman, as previously announced, tomorrow is Pan American Day.

We expect to consider two resolutions tomorrow, from the Committee on House Administration; one dealing with investigating funds for the Committee on Un-American Activities and the other dealing with funds for the Committee on Post Office and Civil Service. The committee will meet in the morning and it is expected that the committee will report these two resolutions.

I might advise Members that we do expect a rollcall vote on at least one of these resolutions.

DEATH OF A PRESIDENTIAL CANDIDATE OR PRESIDENT ELECT

VINCENT A. DOYLE
Legislative Attorney
American Law Division

February 7, 1964

Updated by

RITA ANN REIMER
Legislative Attorney
American Law Division

November 5, 1976

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DEATH OF A PRESIDENTIAL CANDIDATE

OR PRESIDENT ELECT

Interest in presidential succession 1/ has also given rise to questions about what happens when a presidential candidate or a President elect dies. The Constitution does not deal at all with the consequences of death of a presidential candidate. It did not even deal specifically with the consequences of death of a President elect or Vice President elect until the adoption of the 20th Amendment in 1933. 2/

Death of a Presidential Candidate

Because the President and Vice President are not really elected until the Electoral College meets, the death of a candidate before that time is of no constitutional consequence. 3/ This is true even if the person apparently elected President or Vice President in November should thereafter die.

1/ See Celada, Presidential Succession: A Recurrent Problem, CRS multilith 464/229, updated December 9, 1968.

2/ Section 3 of the 20th Amendment provides as follows:

> Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

3/ The 12th Amendment provides as follows:

> The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons

Although the Constitution takes no account of the death of a candidate, the rules of the major political parties do. 4/ If a candidate dies, either before the November election or before the December meeting of the Electors, the party's national committee is authorized to fill the

FOOTNOTE 3/ cont'd

voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; --The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; --The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. --The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

4/ The Charter of the Democratic Party specifically provides that the Democratic National Committee shall fill such vacancies:

ARTICLE THREE

Democratic National Committee

Section 1. The Democratic National Committee shall have general responsibility for the affairs of the Democratic Party between National Conventions, subject to the provisions of this Charter and to the resolutions or other actions of the National Convention. This responsibility

vacancy. 5/ The practical, although not the necessary or legal, effect

FOOTNOTE 4/ cont'd

shall include: (i) issuing the Call to the National Convention; (ii) conducting the Party's Presidential campaign; (iii) filling vacancies in the nominations for the offices of President and Vice President; (iv) formulating and disseminating statements of Party policy; (v) providing for the election or appointment of a Chairperson, an Executive Vice Chairperson of the opposite sex, a Second Executive Vice Chairperson, a Treasurer, a Secretary and other appropriate officers of the National Committee and for the filling of vacancies; and (vi) all other actions necessary or appropriate in order to carry out the provisions of this Charter and the objectives of the Democratic Party.

[emphasis added]

The reference in the Republican Party Rules is made only in passing, in Rule 28:

RULE NO. 28

The first meeting of the National Committee shall take place within fifteen (15) days after the convening of the National Convention electing such Committee, upon the call of the member senior in time of service upon the previous National Committee; and thereafter upon call of the Chairman, or, in case of vacancy in the Chairmanship, upon call of the Vice Chairman, senior in time of service on the National Committee, but such call shall be issued at least ten (10) days in advance of the date of the proposed meeting. Provided, however, that if one of the purposes of a meeting of the Republican National Committee is to fill a vacancy in the office of Republican candidate for President or Republican candidate for Vice President, then only five (5) days notice of the purpose, date, and place of said meeting shall be required. Upon written petition of sixteen (16) or more members of the National Committee, representing not less than sixteen (16) States, filed jointly or separately with the Chairman, asking for a meeting of the National Committee, it shall be the duty of the Chairman within ten (10) days from receipt of said petition to issue a call for a meeting of the National Committee, to be held in a city to be designated by the Chairman, the date of such called meeting to be not later than twenty (20) days or earlier than ten (10) days from the date of the call.

(Emphasis added)

5/ In 1912,, the Republican candidate for Vice President, James S. Sherman, died on October 30, before election day. It was not until after election day, however, that the Republican National Committee determined that the

of these rules as to permit a political party to choose the President if its apparently successful candidate dies between the November election and the December meeting of the Electoral College.

This is not the necessary or legal result because the Electors chosen in November are, from the Federal constitutional viewpoint, free to vote for anyone they please as President and Vice President. Neither the names nor the parties of the persons they elect need have appeared on ballots in any State in the nation. This is the practical effect, however, because it is the custom for Electors to vote for the candidates chosen by their own political party. Nineteen States and the District of Columbia have legislation that attempts to give that custom the force of law by requiring the Electors to pledge their votes for particular party candidates or in some other way, 6/ and most others have party rules to that effect. The courts have indicated, however, that the States cannot specifically enforce such

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FOOTNOTE 5/ cont'd

Republican Electors should vote for Nicholas Murray Butler. See Wilmerding, Jr., The Electoral College, 182 (Rutgers University Press, 1958). In 1860, Benjamin Fitzpatrick, nominated for Vice President on the Democratic ticket, declined the nomination and the national committee nominated Herschel V. Johnson. See David, Goldman and Bain, The Politics of National Party Conventions, 389 (Brookings, 1960).

6/ Alaska Statutes, §§15.30.040, 15.30.090; California Election Code, §25105; Colorado Revised Statutes, §1-17-101; Connecticut General Statutes, §9-176; District of Columbia Code, §1-1108(g); Florida Statutes, §§103.011, 103.021; Hawaii Revised Statutes, §14-28; Maine Revised Statutes, Title 21, §1184 (1)(A); Maryland Code, Title 33, §20-4; Massachusetts General Laws, Chap. 53, §8; Nevada Revised Statutes, §298.030; New Mexico Statutes, §3-15-9; North Carolina General Statutes, §163-212; Ohio Revised Code, §3505.40; Oklahoma Statutes, Title 26, §10-102; Oregon Revised Statutes, §248.355; South Carolina Code, §23-577.1; Tennessee Code, §2-1504; Virginia Code, §24.1-162; Wyoming Statutes, §22.1-274.

pledges and votes cast in violation of them are valid. 7/

Death of a President Elect

Once the Electors have marked their ballots and transmitted their certified lists of votes cast to the President of the United States Senate, the persons for whom they have voted are no longer candidates to be replaced, should anything happen to them, by party committees or conventions. If they have received a majority of the electoral votes they are the President elect and Vice President elect, to be replaced in accordance with the provisions of section 3 of the 20th Amendment.

When a President elect dies before inauguration day, the Vice President elect becomes President, and the resulting vacancy is filled following inauguration day under procedures established by section 2 of the 25th Amendment, adopted in 1967. 8/ If no President is elected, or if the President elect fails to qualify, the Vice President elect acts as President until a President qualifies. If the Vice President elect dies prior to inauguration day, a vacancy exists, which is likewise filled following the

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7/ Although there has been no judicial holding on this point, see the comment in Ray v. Blair, 343 U.S. 214, 230 (1952). In 1796 a Federalist Elector from Pennsylvania voted for Jefferson, the Republican candidate. In 1820, a New Hampshire elector who was expected to vote for James Monroe cast his vote instead for John Quincy Adams. In 1968, one elector pledged to Richard Nixon cast his vote instead for George Wallace. In each case the vote cast was considered a valid one and was counted, although not without much debate in the instance following the 1968 election [see 115 Cong. Rec. 197-246, Jan. 6, 1969].

8/ Section 2 of the 25th Amendment provides as follows:

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

inauguration of the President in accordance with the 25th Amendment. If both the President elect and Vice President elect die or fail to qualify, then the Speaker of the House of Representatives acts as President in accordance with the provisions of the Presidential Succession Act of 1947, 3 U.S.C. §19. 9/

The result is the same whether the death of a President elect or Vice President elect occurs before or after the date on which the electoral votes are opened and counted in the presence of Congress. In discussing the death of a winning candidate between the meeting of the Electoral College and the meeting of Congress to count the votes, a House Committee, reporting on the resolution which became the 20th Amendment, said:

> An analysis of the functions of Congress indicates that no discretion is given and that Congress must declare the actual vote. The votes at the time they were cast were valid . . . Consequently, Congress would declare that the deceased candidate had received a majority of the votes. H.Rept. 72-345, p. 5 (1932).

Death Between Candidacy and Election

A meeting of the Electoral College does not necessarily result in the naming of a President elect and Vice President elect. None of the candidates for one or both of those offices may have received a majority of electoral votes. If this should happen in the balloting for President, the House of Representatives is to choose a President from among the three persons having

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9/ An interesting situation would exist if the President elect and Vice President elect were also the incumbent President and Vice President and both of them died before the new Congress convened on January 3. Under the provisions of the Presidential Succession Act of 1947, 3 U.S.C. §19, the Speaker of the old Congress would act as President until noon on January 20 when he would be replaced by the Speaker elected by the new Congress.

the highest numbers of electoral votes. If it happens in the balloting for Vice President, the Senate is to choose a Vice President from the two persons having the highest numbers of votes.

The death of any of the persons from whom either the House and Senate is to make its selection presents problems different from those caused by the death of a candidate or a President elect. Prior to the adoption of the 20th Amendment, Congress could do no more than make its selection from among the survivors. Rep. Lozier described the constitutional situation, during the debate on the proposed 20th Amendment:

> In 1924 suppose there had been a deadlock in the Electoral College, no candidate having a majority. Then the election would have been thrown in to the House . . . Also, suppose that between the time of the meeting of the Electoral College and the time the House met to elect a President, President Coolidge had died. Under the Constitution, you Republicans, voting by States when your names were called, would have been in a very serious predicament. Mr. Coolidge being dead, you would not have had the privilege of voting for some other Republican for President, although the Republicans might have had, as they did have, a tremendous popular majority in the November 1924, Presidential election. You would have been bound by the straight-jacket provisions of the Constitution and been compelled to vote for either John W. Davis, or Robert M. LaFollette, . . . 75 Cong. Rec. 3833 (1932).

Although section 4 of the 20th Amendment 10/ authorizes Congress to

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10/ Section 4 of the 20th Amendment provides as follows:

> Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

change this situation by law, Congress has not yet done so and the situation remains as Mr. Lozier described it in 1932. If the House is in a strait-jacket, it is difficult to describe the predicament of the Senate. Since it must choose from among only two candidates, if one of them dies, the survivor is the only person eligible to be chosen.

Summary

If a candidate dies at any time before the Electoral College meets, his party may name his successor and the electors of his party are likely to vote for that successor although the Federal Constitution does not require them to.

If the President elect dies before inauguration day, the Vice President elect becomes President. The resulting vacancy in the office of Vice President is filled in accordance with the 25th Amendment.

If the Vice President elect dies before inauguration, a vacancy exists in the office, and is likewise filled following inauguration day under procedures established by the 25th Amendment.

If both the President elect and Vice President elect die before inauguration day, the Speaker of the House acts as President under the provisions of the Presidential Succession Act of 1947, 3 U.S.C. §19.

Congress is authorized to provide by law for the situation in which one of the persons from whom the House is to choose a President or the Senate is to choose a Vice President has died, but it has not yet done so.

T-5 Albert J. Fenicle, Kunkle, killed on Luzon, January 10, 1945.

Pvt. Lester Zeigler, Blakeslee, killed on Luzon, March 17, 1945.

Pvt. (1st cl.) Arthur Hemenway, Edgerton route two, killed in Belgium, December 7, 1944.

Clyde Ridenour, Jr., Bryan, at Pearl Harbor, December 7, 1941.

Lemuel Johnson, Edgerton, off Java, February 19, 1942.

Capt. Richard Miller, Montpelier, off Newfoundland, April 1, 1942.

Joe Atis 3d, Bryan, down off Gibraltar, July 1942.

Sgt. Lavere Sharp, Northwest township, New Guinea, December 28, 1942.

Lt. Laverne Tingle, Montpelier, plane crash in New Mexico, January 29, 1943.

Lt. Ervil Eyster, Edon, over Europe, April 4, 1943.

Corp. Maurice Kosier, Kunkle, crashed in India, September 1943.

Carl Welly, Edgerton, died in camp, June 18, 1943.

Sgt. Frank Myers, Bryan, died in Africa, September 9, 1943.

Pvt. (1st Cl.) Raymond Calvin, Bryan Route 3, Tarawa, November 20, 1943.

Technician (5th Gr.) Clinton Wheeler, Pioneer Route I, Italy, February 4, 1944.

Lt. Doyle Zimmerman, Montpelier, crashed in Yugoslavia, March 24, 1944.

Lt. Jack Laws Buda, Edgerton, Hollandia, New Guinea, April 28, 1944.

Pvt. (1st Cl.) Gerald Weber, Melbourn, Italy, May 17, 1944.

Ensign Robert Munk, Pioneer, airplane crash in South Carolina, May 1944.

Lt. James Sanders, Bryan, shot down over Germany May 25, 1944.

Sgt. Orland Mixter, Bryan, Marshall Island campaign, 1944.

Staff Sgt. James Boucher, Bryan, shot down over Germany, April 29, 1944.

Sgt. Richard Gabriel, Montpelier, unreported on flight to Latin America, March 24, 1943.

Master Sgt. Paul D. Zigler, Montpelier, France, June 6, 1944.

Pvt. (1st cl.) Maurice Lovejoy, Bryan, Saipan, July 1944.

Pvt. Paul E. Johnson, Montpelier, France, July 4, 1944.

Lt. Richard Breininger, Montpelier, France, July 20, 1944.

Lt. Richard Wilhelm, Bryan, France, July 12, 1944.

Pvt. (1st cl.) Kenneth Cunningham, Montpelier, route 3, Saipan, July 12, 1944.

Corp. Jack Phillips, Bryan, Italy, February 11, 1944.

Pvt. Carmon Thorp, North Bridgewater, France, July 1944.

Pvt. (1st cl.) Richard Moore, Montpelier, France, July 12, 1944.

Pvt. (1st cl.) Carl Burkhart, Bryan, France, August 13, 1944.

Pvt. Raymond Coon, Bridgewater Township, France, August 1944.

Hillard Rogers, Pioneer, died at Great Lakes Naval Station, September 1944.

Corp. Burl Knapp, Jr., Edon, France, August 25, 1944.

Lt. Harold McFann, Jr., Montpelier, crashed in California, September 29, 1944.

Pvt. (1st cl.) Warren U. Mills, Montpelier, Holland, September 18, 1944.

Lt. Walter Shambarger, Montpelier, shot down over Germany, July 7, 1944.

Pvt. (1st cl.) Perry D. Hopkins, Edon, France, September 8, 1944.

Pvt. (1st cl.) John King, Alvordton, Pacific theater, 1944.

Sgt. Daniel Kuszmaul, Bryan, Holland, September 19, 1944.

Sgt. Chares W. Buda, Bryan, route 3, shot down over Germany, October 7, 1944.

Richard Henry Johnston, Bryan, route 3, gunners' mate, third class, November 1944.

Presidential Succession

EXTENSION OF REMARKS

OF

HON. JOSEPH C. O'MAHONEY

OF WYOMING

IN THE SENATE OF THE UNITED STATES

Tuesday, May 15 (legislative day of Monday, April 16), 1945

Mr. O'MAHONEY. Mr. President, the delicate and important problem of Presidential succession was discussed on May 9 at the annual meeting of the Hazleton, (Pa.) Chamber of Commerce by the Honorable James A. Farley. I ask unanimous consent that his address may be printed in the Appendix of the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

I need hardly say how glad I am to have an opportunity to see and talk with my friends in Hazleton and in this part of your great State. Every time I visit with you Pennsylvanians I learn more than I impart. Tonight's experience will be the same, I am sure, as I raise with you one or two questions for your consideration.

At the outset we would all want to refer to the fact that we are meeting in the shadow of a great tragedy—in the personal sense, the national sense, and the international sense. Yet the passing of our President and Commander in Chief, deeply as it shook us, gave opportunity for a demonstration of the strength of character of our people and of the solidity of our institutions. The passage of the enormous powers of the Presidency was accomplished without panic, without the issuance of emergency orders, without any of the incidents that such a transition would cause in a less stable nation. We already think of President Truman as our leader who is entitled to call upon us for our utmost in the desperate phases of war still before us. We will give him our best.

And the manner of his coming to office is a sober reminder of the fact that though we may choose a President we cannot know that under the will of divine providence he will be allowed to complete his term. Seven times in our short history the Vice President has succeeded to the highest office because of the death of the man the people had selected as President. It is interesting to note that of six previous successor Presidents four did not at the expiration of the interim term offer themselves for election for a regular term. Two were later elected for a regular term when they ran for President after having served an interim period.

Here is the record, known to all of us:

John Tyler succeeded William Henry Harrison in 1841. He did not become President.

Eight years later Millard Fillmore, of New York, succeeded Zachary Taylor. He did not go on.

Then came the immortal Lincoln, who left his chair to Andrew Johnson. Johnson fought the Congress and was lucky to serve out Lincoln's term.

Now we move to James A. Garfield, who was succeeded by another New Yorker, Chester A. Arthur, after Garfield was assassinated in 1881. Arthur's political career stopped at the end of Garfield's original term.

Thus, we have completed the record of four Vice Presidents who did not go on under their own power.

The third Presidential assassination and fifth succession occurred in 1901. McKinley was shot at Buffalo. Theodore Roosevelt succeeded him and then went on to be elected in his own right in 1904—the first time a Vice President who had succeeded by death had been elected for a regular term.

We come to 1923, when President Harding died and Vice President Coolidge succeeded him. President Coolidge had touched the public imagination, and he was elected, traveling under his own steam, in 1924.

Now what of the history of our Vice Presidents?

Thirty-four times the people have filled the second highest office in the land by election and 15 times that office has become vacant. In addition to the gap left by the 7 Vice Presidential successions to the Presidency, at 8 other times the country has been without a Vice President because 7 Vice Presidents have died in office and 1—John C. Calhoun—resigned to become a Senator from his native State, South Carolina.

This may be an appropriate time to review the grave problems involved in the ever-present possibility that death may strike down a President or a nominee before his election; and my thinking has led me to submit to you a suggestion in which I deeply believe and which I bring forward for your most serious consideration.

Under the Constitution, of course, the Vice President succeeds in the event of removal, death, resignation, or inability to perform Presidential duties. And under the same paragraph of the Constitution the Congress may by law provide for the situation that would be presented if a succeeding Vice President likewise were to be removed, to die, to resign, or become incapacitated. The present statute in this respect was enacted in 1886 and provides that the Secretary of State is next in succession, and after him in series the Secretary of the Treasury, the Secretary of War, the Attorney General, the Postmaster General, the Secretary of the Navy and finally the Secretary of the Interior—in short, for a Cabinet succession based on seniority among the departments.

But this raises a question. Under our present method, a Vice President who succeeds to the Presidency is in the unique position of being able to choose his own successor without reference to the electorate. In his case, a vacancy caused by his death, resignation, or removal, is filled, as I have stated, by the Secretary of State whom he appoints, subject only to Senate confirmation. This possible short-circuiting of the electorate is a gap in our democratic procedure that we have not yet solved.

There are other aspects to the problem of succession which have never been worked out by law. Under the twentieth amendment to the Constitution, commonly known as the Norris amendment, the choosing of a President in the case of the death of both a President-elect and a Vice President-elect before they take office apparently devolves upon the House of Representatives. The same amendment provides that the House meet on January 3 and that the Presidential inauguration occur on January 20, or 17 days later. In this instance we are faced with a real possibility of confusion. If the President-elect and the Vice President-elect should both die before January 20, there is now no provision, either in the Constitution or in the Federal Statutes, which would provide for a successor to the highest office in the land. Presumably the House-elect meeting on January 3 could pass some kind of a law of succession to meet the emergency, but here once more another real possibility arises. If the House-elect should be closely divided in its membership—so closely divided that a deadlock might result—then conceivably the date of January 20 might arrive and pass while the House fought over the question of control. The appalling result would be that from January 20 until such time as the deadlock was broken this country would be with-

out a Chief Executive. There are Members of Congress who are aware of this situation and they have considered a bill in the past which would provide that the Speaker of the House would become President. But, as has been pointed out, this would not remove the possibility—in fact, it might increase it—that a paralyzing deadlock in the organization of the House would occur for such a period as to leave this Nation for a time without a President.

I, therefore, think that a special commission should now be set up, composed of Members of the Senate and of the House and with one or more members appointed by the President and perhaps one Supreme Court Justice selected by the Chief Justice. There might be other groups which should be associated with the work of such a commission. This commission should study and recommend with respect to the whole problem of the succession to the Presidency, including the succession after the Vice President, which now is in the Secretary of State. If a constitutional amendment is called for, it should be initiated. If legislation alone is called for, this body should suggest such legislation. It seems to me common sense and governmental wisdom to study this question now and to act as soon as we wisely can.

I now turn to a topic always of interest in a State with Pennsylvania's vast manufactures and trade. I want to discuss with you for a few minutes what our postwar interests are in this respect. It seems to me that it will be upon the margin represented by foreign trade after the war that national prosperity or depression will depend. And considering the vast necessities that will be present in this country for employment, for goods and for the use of a great industrial plant, our margin of foreign trade, while relatively small, will be the critical balance on which our well-being may well depend.

I am not going to indulge in prophecies about the amount of our foreign trade after the war. There are many such estimates—some modest, some utterly too hopeful. But what we know is that in the business that will follow this war, foreign trade is certain to play a very large part. The important thing is not to indulge ourselves in estimates, but to set to work now to develop the changed national viewpoint which will make a large increase in foreign trade possible. That is a task to which business, labor, and Government can well devote their united strength.

It is a hopeful sign that in both political parties there is developing an increasing interest in foreign trade and, in consequence, a recognition that the modern position of the United States in the world makes it necessary that we reconsider many of the tariff policies of the past. Under the great leadership of Secretary Cordell Hull, this change of attitude has taken form in our reciprocal trade policy. That policy was sound, but in its beginning it was experimental, tentative, and modest. But now that American prejudices in favor of higher tariffs are subsiding before the great facts of American efficiency and necessities, we may more resolutely proceed in the direction of enlarging our imports. A test of opinion on this subject will come within a few weeks when the reciprocal trade agreements are submitted for congressional action. If the above is close, it may mean that the administration will hesitate to move resolutely toward a larger exchange of goods. If the vote is by a wide margin, we may expect sentiment in both parties to move progressively toward a real reconsideration of our tariff policies.

We hear a good deal about increasing our exports, but not so much about the necessity of imports. It is time for a considerable change in this emphasis, if we are to take steps in the direction of making it possible to liquidate our prospective postwar loans.

But in our preparations for postwar responsibilities, we must break off the habit of delay. Too much of our financial machinery consists of an apparatus for putting things off. A great part of our credit system consists of means of postponing payments through notes, mortgages, and the like. The financing of foreign trade seems to be arranged in the same spirit of delay. And in that trade the parties are farther apart. Decisions are postponed, procrastination governs our actions, and all too often we postpone settlements until they can no longer be made without defaults. These delays in the past, which were largely due to the complicated machinery of international finance, resulted in some very serious international problems. The weight of our trade balances became so heavy that collapse finally resulted. Depression swept the world, and war came in its wake. There is nothing new in this deadly cycle. Philip II of Spain long ago decided to have done with all of the financial machinery involved in his foreign borrowings and he simply repudiated, throwing weaker countries into chaos and ruin.

The danger of postponing settlements in foreign trade is similar to the old habit of long delayed reparations after a war. The fact is that the longer actual payments of reparations are deferred the greater the danger is that no reparations will be paid.

We must, as Americans, resolve to walk squarely up to these questions of how we are going to be paid for our exports and face them honestly. Republican Senator WHERRY, of Nebraska, gave some sound advice to his party in a speech in January. He said, "If we are going to sell abroad, we must buy abroad." And I would add to this statement of Senator WHERRY that if we are going to lend abroad, we must accept goods from abroad.

We are going to need more from the rest of the world than we have ever needed before. We have scraped to the bottom of the barrel in many of our resources. Some of our resources of which we still have considerable quantities, such as our forests, might well be given a rest in order that they may grow again. We shall have to import more zinc and lead, more iron, petroleum, and timber. The development of our new industries which will follow the war will require much more of materials than we have, in the past, imported in small quantities, such as manganese, nickel, wool, vegetable oils and oil seeds, pulp and paper. The list is extensive and impressive.

There are a few items, such as rubber, of course, in which the process will be reversed, but the trend will be toward large import of raw materials.

We will have to do some importing of things that we shall need for essential defense, such as the elements necessary for steel alloys. Our stock piles should be here and not in Arabia or Central Africa.

There are other offsets to trade—things which have traditionally helped us to balance our accounts. There is foreign travel, for example. There will be more of that. There will be foreign investments which leave money abroad. All these factors will still leave room for greater imports of luxuries and goods of general utility, and our tariffs always must be adjusted to take account of them.

But the greatest necessary adjustment must be in our thinking. The great argument for high tariffs in the past has rested on the fallacious belief that there is just so much work to go around. Our thinking on this subject has looked upon work as a constant and sterile substance which, having been measured and weighed, need not be measured and weighed again. But the amount of work in the world is not a sterile and unchangeable commodity; it is a vital organism capable of growth. We shall have to revise the thinking on the basis of which we have sought shortcuts to limited employment, such as shorter workweeks and other share-the-work plans. We shall have to revise the belief, so widely prevalent in this country, that if somebody else makes any kind of goods which can be made here, then somebody here loses his job.

It is time that we realize that there is no limit to the quantity of the many things we could import and consume in this country, and, on the other hand, that there is no limit to the amount of goods in the production of which we unquestionably excell—goods that are made in accordance with the highest standards of efficiency the world has ever seen.

If we are going to bring about this readjustment of trade, of our laws governing trade and of our past and obsolete thinking which lies behind those laws, the time to do it is when European production is being slowly and gradually resumed. If we take time by the forelock and prepare now for this new era in our economic policies and thought, the amount that we will have to accept will be small at first and increase only gradually. That is because European production must, of necessity, be slow in moving back to its normal capacity. In dealing with our tariff laws we might well learn a lesson from the philosophy of Secretary Hull, which viewed tariff adjustments as a matter for progressive action. The Tariff Act of 1933 provided for five biennial reductions. Such a progressive plan makes it possible for business to anticipate changes, plan ahead and meet slowly increasing imports with new programs of essential production.

Our adjustments to reductions in tariffs may not be as great as we think. Our merchandise imports came pretty close to balancing our merchandise exports from 1922–29. Indeed, if the growth of our foreign trade had continued from 1929 at a steady rate, we would not now be viewing the trebling of our peacetime trade as a distant goal. We would already have attained something like that proportion.

A good deal has been said for the view that a prosperous America is the best single guarantee for a prosperous world. But this statement, however true, needs to be spelled out in terms of what it takes to make a prosperous America. A prosperous America is an America going forward, with investment at home and investment abroad, with confidence in the essential friendliness of its government, with confidence that there may be profit in trade and in international finance, with confidence that obligations, public and private, will be honored.

We talk of how a prosperous America can carry the benefits of its prosperity to other countries. How can we do this best? Should we merely tell them that they ought to raise their wages, or should we enable them to engage in a trade so profitable, through buying their goods, that their wages will increase as a natural consequence?

The grim handwriting is on the wall for everyone to see. Unless we do arrange in some way to obtain payment for our goods, and now is the time to start arranging for that—then we risk having to go through the experience of another great series of defaults. Once more we may have the bitter experience of unpaid debts, of hard feelings between nations, of a paralyzed trade and of the unpredictable results beyond. I have spoken of the danger of another series of defaults. Three of these have already come within the memory of most of us.

The first consisted of those debts to American private investors contracted abroad in the 1920's. Not all of these failed by any

means, but a lot of good American money went down the drain.

The second series of defaults took place in the early 1930's. They were the debts to our Government by other governments, contracted during and after the First World War. This series of defaults led to the passage of the Johnson Act, which was the expression of a country which was sick and tired of all dealings with foreign nations. It was a gesture of isolationism, but to be perfectly frank it was a gesture which rose out of despair, anger, and disillusionment.

The third series consists of lend-lease obligations which we are probably going to forgive in large part, as a portion of the cost of winning the war.

Let us not go beyond this and permit defaults to occur in a fourth series of loans—loans which are proposed in such institutions as those suggested by Bretton Woods. Let me make it clear that I am not objecting to these loans. I am trying to make the point that when we make them we must adjust our economic thinking to a proper means of permitting those loans to be repaid.

Let us face these problems squarely. Let us admit that if we are going to lend abroad, we must buy abroad. Let us put our traffic in such order that we can accept payment in the only way in which payment can be made. Let us make loans to Europe, not necessarily out of our generosity but out of our business sense, because Europe will need loans for her reconstruction. The impoverished countries over there will need, on the physical side, industrial and transportation equipment, building materials, and tools of every kind. A Europe rising from her ruins will be a good customer, and a good supplier of valuable products to us, if we are willing to accept them in payment for what we sell.

In our attitude toward countries which, in the past, have been, in the main, merely suppliers of raw materials, let us encourage them in their efforts to develop an industrial system. Always remember that our greatest volume of trade has always been with nations industrially developed—not with poor and backward countries. The great economic paradox in international affairs is that our greatest benefits come from countries which are our natural competitors.

Once our thinking is adjusted to these principles, we need not spend our time and energy talking of employment first. Employment is a result and not a cause. Employment will come from increased confidence among nations, from a sound maintenance of international credit and, above all, from the promises of a lasting peace.

That, of course, is the theme to which all thoughts return—a lasting peace. We are seeing now at San Francisco the laying of the ground work of an international organization to implement our hopes of a lasting peace. Even as thousands of American men and women pass through the Golden Gate to the battle zones of the Pacific we and the other peace-loving nations are trying to insure that our ports shall not again be clogged with the traffic of war. We Americans have grown experienced in our appraisal of efforts like those being made at San Francisco. We did not expect when San Francisco convened that a perfect system would emerge which would never need to be altered in even a detail. We did expect—and we have seen our hopes justified—that a good start would be made. Having seen the degree of cooperativeness manifested by the United Nations at those great deliberations, we now face the future with hope and we can plan for an international political and economic life that will give mankind some of the things denied it for so long.

Postwar Era Big Challenge to Daily Press

EXTENSION OF REMARKS

OF

HON. ARTHUR CAPPER

OF KANSAS

IN THE SENATE OF THE UNITED STATES

Tuesday, May 15 (legislative day of Monday, April 16), 1945

Mr. CAPPER. Mr. President, I ask unanimous consent to have printed in the Appendix of the RECORD an able article on the subject Postwar Era Big Challenge to Daily Press, written by Mrs. Agnes E. Meyer for the Washington Post.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POSTWAR ERA BIG CHALLENGE TO DAILY PRESS

(By Agnes E. Meyer)

To be invited to address the students of this eminent school of journalism is the highest professional recognition my work on the Washington Post has received. I value it the more because my entry into journalism has been unorthodox. I did not become a newspaperwoman because I wanted to, but because time and circumstances compelled me to do so. The social impact of the war effort with its tremendous repercussions on future development of our Nation, was and still is inadequately reported by the daily press.

When the war came, I tried to carry out the admonition of the Missouri School of Journalism "to make righteousness readable." I had no training for this task. Three years ago my experience did not entitle me to be called a reporter. That is why the honor your dean and the faculty are doing me by inviting me to speak here today will always give me an encouragement and a stimulus that I need. I have never filed a story without suffering agonies of doubt, self-distrust, and a sense of inadequacy. Perhaps those inner conflicts will always reappear, but henceforth, in moments of despair, I shall think back to the kind words Dean Mott has spoken with profound gratitude and go about my work with renewed courage and determination.

PEOPLE COUNT

To any loyal American, especially any reporter, life today is a perpetual battle for the survival of the good and for the extension of the good life to all human beings. As President Truman admonished us, in his inspiring proclamation on VE-day, it is work, work, work in the public interest. It became daily more clear to me as I journeyed through our war centers, that we are in the grip of a revolution which I had already seen in Great Britain, a movement of the hitherto inarticulate mass of the people for a new place in the democratic structure.

The gist of that Nation-wide movement lies in the fact that our millions of neglected citizens are beginning to feel that they count. They are determined to escape from the horrible anonymity, the spiritual poverty of slums and neglected rural areas. The education which war workers derived from their migrations, from the training they received and the money they earned in the factories, from working side by side with all sorts of other people, has set a ferment in motion that will not come to rest until the new hopes aroused in many breasts are recognized as legitimate and given the satisfaction which they deserve.

The ultimate question is whether democracy is better fitted than authoritarianism to create broader social patterns that satisfy these yearnings. The victory in Europe is only the first step in that debate. When the war is concluded we shall still have to win the social battle against authoritarianism, and in that struggle no single weapon of democracy is more powerful than the daily press.

For this reason I cannot make you any of those light-hearted speeches considered appropriate for the neophyte about to enter his profession. But surely it is more encouraging to welcome you to hard and unremitting toil whose rewards are greater than they have ever been before, especially to women, if you see the new opportunities that lie before you.

When men return from the front lines to the city room, as they must and will, the newspaper woman's usual ambition to be "as good as a man" won't be good enough. The world being what it is, women reporters will have to let the men have first call on routine work and make themselves a place in new and experimental fields of observation. Now that we are about to enter a crisis in our national history even more hazardous than that of war, there is no greater public service any reported can render than to fight for social justice and human dignity; not dignity in the abstract, but the personal, individual dignity of our neighbors in the social setting of our own environment.

CAN SERVE ANYWHERE

Wherever you may be living and working, you can serve that cause. Have no doubts about the results of work done in that spirit. To study practical social situations and report faithfully your findings always meets with response from honest people and affects their thinking in the most immediate way. The influence of such work, however small it may see to you, will reverberate slowly but surely throughout the whole Nation and travel to the ends of the earth.

There, it seems to me, is the great new field of reporting, especially for women. Surely we women can claim a greater awareness of the terrible threat total war has been to the family and greater sensitiveness to the destruction that war has wrought in the whole fabric of social relations which is the basis of a decent life. At the same time we women have a more immediate interest in social justice and order because they are essential to the well-being of our children and our children's children.

Since I was untrained as a reporter, you may wonder, as many people have, why I undertook such a career late in life. While my children were growing up, I tried to do my duty as a citizen and filled for 18 years a public voluntary job as chairman of my county's recreation commission. There I learned how the wheels of Government go around in a local community, county and State. I learned practically how and why things are done or not done in our democratic structure. I found out, especially during the depression, how remote Washington is from the grass roots and how vitally important to our Nation's progress and welfare are the local independence, initiative, and courage of our people as a whole.

Our institutions and forms of government differ somewhat in different sections of the country, but if you learn your way about thoroughly in your own home town and county, you can walk into any other American community and feel yourself equally at home with its people and problems.

I have been on many stories, in widely different parts of the country, with reporters whose skill is infinitely greater than mine, but I have frequently been able to get a better picture of such trouble spots as Willow