Lynchburg, Va.: two ½-hour shows for TV, two newspaper articles, several radio public service announcements broadcasted.

Indianapolis, Ind.: ½-hour taped TV show aired.

Chicago, Ill.: Press conference at Glessner House for John Costonis.

Prince Georges Co., Md.: editorial on preservation appeared in newspaper.

Dallas Texas: press conference with James Biddle covered by newspapers and area TV stations.

Demopolis, Ala.: ads from Preservation Week Kit used by Marengo Co. Historical Society; editorial also appeared in one paper.

Michigan: press coverage of possible preservation activities available to citizens, promoted by ZEAL.

Roanoke, Va.: Roanoke Historical Society sent representative to appear on local talk show and explain the National Register.

Allegany Co., Md.: spot announcement on radio, newspaper articles.

Historic Wilmington Foundation, N.C. released announcement to two TV and four radio stations.

Mobile, Ala.: radio, TV and newspaper coverage and publicity of all events, also thirty minute Public Service panel discussion by three well-known local preservation people on TV station.

Cherokee Historical Society, Tahlequah, Okla. used some of kit material as base for publicity.

San Fernando, Calif.: news release stressing Preservation Week put out by San Fernando Valley Historical Society.

San Diego Historical Society: sent out press releases.

New Bern, N.C.: Tryon Palace Restoration issued press releases, fillers and spot announcements to area radio and TV stations, newspapers.

Quapaw Quarter, Arkansas Territorial Restoration and Villa Marre: press coverage of tour and Crafts Fair.

Chicago, Ill.: Commission requested major TV and radio stations to publicize National Historic Preservation Week.

Historical Society of York Co. issued press releases.

Dept. of Cultural Resources, N.C. State Government issued press releases.

Sam Davis Memorial Association, Tenn. had TV and radio coverage of "Day on the Farm", also extensive write-ups in local newspapers.

Newport, R.I.: public service announcements on Rhode Island radio and TV.

Hattiesburg, Miss.: Bay Landmark Foundation had television and press coverage of activities.

By Mr. PASTORE (for himself, Mr. HASKELL and Mr. PELL):

S.J. Res. 26. A joint resolution proposing modification of the 25th amendment of the Constitution of the United States. Referred to the Committee on the Judiciary.

Mr. PASTORE. Mr. President, I introduce a joint resolution proposing an amendment to the Constitution of the United States providing for a special election for the office of President and Vice President when an individual who has been appointed Vice President under the 25th amendment succeeds to the Presidency. I am joined as cosponsors by Senators HASKELL and PELL.

Some have argued that since the 25th amendment has worked so well in filling these vacancies, we should leave well enough alone. "Do not tamper with it; it works," they say. But simply to say it works is insufficient justification to retain it in its present form for future occurrences. This is the weakest of justifications and I believe it ignores for the sake of expediency the erosion of a democratic principle.

That basic principle is embodied in article II, sec. 1, of the Constitution which declares that the President and Vice President "be elected." We now have, at best, an undemocratic method of choosing our Presidents and Vice Presidents, and it is clearly contrary to the intent of the men who framed the Constitution and to our first two centuries of experience as a constitutional democracy.

My proposal is not aimed at the present occupants. It is based on principle and not on personalities. It will not in any way affect Mr. Ford or Mr. ROCKEFELLER. The amendment is intended to correct an oversight or flaw, if you will, which I believe was inadvertently overlooked when the 25th amendment was being considered and debated.

Therefore, I believe that in the future should we again be confronted with the rare event of having an appointed President and Vice President beyond a year period before a general election, a special election should be called and the people should decide. If they vote to retain the present occupants, all well and good. If not, at least they should be given the right to say so.

Mr. President, I ask unanimous consent to have printed in the RECORD the joint resolution and a legal and historical memorandum prepared by my staff and the staff of the Library of Congress, which sets forth the arguments in support of this proposed amendment to our Constitution.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S.J. RES. 26

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 if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE—

"SECTION 1. If an individual takes the office of Vice President under section 2 of the XXVth article of amendment and subsequently becomes President under section 1 of that article at a time when more than twelve months remain in the term of the President, then—

"(a) there shall be a special election for the offices of President and Vice President.

"(b) section 2 of the XXVth article of amendment shall not apply to the vacancy in the office of the Vice President caused by such individual becoming President.

"(c) such individual shall serve as President only until a President elected in such special election takes the oath of office of President.

"(d) the Speaker of the House of Representatives, shall in addition to his duties as Speaker, act as Vice President, and perform the duties of that office, with one exception that the President pro tempore of the Senate shall serve as President of the Senate with voting privileges, until a Vice President elected in such special election takes the oath of office, and

"(e) in the event the Senate shall be equally divided, the Secretary of State may cast a vote to break the tie.

"SEC. 2. The provisions of this Constitution relating to the appointment of electors for President and Vice President shall apply in the case of special elections required by section 1(a). The Congress shall by law prescribe the date for such elections and such other matters relating to such elections as may be necessary to effectuate the purposes of this article.

"SEC. 3. The individuals elected as President and Vice President in a special election required by section 1(a) shall become President and Vice President upon taking their respective oaths of office. Nothing contained in this article shall affect the terms of the President and Vice President as prescribed by section 1 of the XXth article of amendment."

POPULAR ELECTIONS AND THE TWENTY-FIFTH AMENDMENT: AN HISTORICAL AND LEGAL ANALYSIS

I. INTRODUCTION TO THE PROBLEM

An examination of our election machinery and the portions of the United States Constitution dealing with the office of the President and Vice President reveals a serious condition which is diametrically opposed to the American concept of popular elections.

Under the Constitution, as it stands today, it is possible that the Office of the President and the Office of the Vice President be occupied by appointment rather than by electoral process. Conceivably this situation could continue for almost four years before a national election was held.

By operation of the Twenty-Fifth Amendment to the Constitution, if the office of the Vice President becomes vacant, the President shall appoint a new Vice President.

During the term, if the office of President becomes vacant the "appointed" Vice President will become the President.

Again, by operation of the Twenty-Fifth Amendment, this new President appoints a Vice President. We then have both offices filled by appointed individuals rather than by elected individuals. How many times this process could recur in the span of the original four-year term is left to conjecture.

The possibility of these events actually coming to pass was either overlooked by the framers of the Twenty-Fifth Amendment or considered too remote to warrant a separate clause in that Amendment. Perhaps the problem was not considered serious at that time. Times change.

As Richard P. Longaker, Professor of Political Science and Chairman of the Department, University of California, Los Angeles, concluded in his article "Presidential Continuity: The Twenty-Fifth Amendment":

"When the twenty-fifth amendment is first applied, flaws now hidden will no doubt appear. Some of the inevitable imperfections are already evident, though their seriousness will depend on factors extrinsic to the wording of the amendment." (See, "Selected Materials on the Twenty-Fifth Amendment, October 1973, Committee on the Judiciary, Pg. 211, at 236).

Professor Longaker was indeed prophetic in his remarks in February of 1966. Today we are facing the appearance of one of these flaws, no longer hidden, but patently obvious. While the idea of repealing the Twenty-Fifth Amendment need not be considered, some consideration must be given to an amendment which will improve the Twenty-Fifth Amendment. President Harry S. Truman, as indicated in the House documents of the last session of the 79th Congress (June 19, 1945 p. 6272), seemed genuinely concerned that it was undemocratic for a Vice President who had succeeded to the Presidency to be able to appoint his successor. He said in a letter to the Senate:

". . . it now lies within my power to nominate the person who would be my immediate successor in the event of his own death or inability to act.

"I do not believe that in a democracy this power should rest with the Chief Executive.

"Insofar as possible, the office of the President should be filled by an elective officer. There is no officer in our system of government, besides the President and Vice President, who has been elected by all the voters of the country."

How much more undemocratic would it be for the appointed successor to appoint his successor? This situation should not be tolerated in our democratic system.

At this juncture, the concept of electing the President, should be analyzed from historical and legal viewpoints to remove any question as to the intent of the framers of the Constitution and the courts.

II. HISTORICAL BACKGROUND

From the creation of the presidency to the present, that office has been one that has been dominantly characterized as elected as opposed to appointed. The Constitutional Convention in 1787 had as one of its main objectives the development of the office of the President. One of the first provisions discussed at that Convention was the manner of electing the chief executive of the States. The first proposal was made by James Wilson, a lawyer, a chief architect of the Supreme Court and one of Washington's initial appointments as Associate Justice. Wilson's proposal was that the President be named by direct "election by the people".

The proceedings of the Convention were secret, but according to James Madison's *Journal*, at least six delegates, including Madison himself and four other lawyers, endorsed Wilson's suggestion. No less than eight other methods of electing the President—among them the electoral college system—were proposed. Some of them were first adopted and then reconsidered and rejected. Not until the final weeks of the Convention was the electoral college method adopted. Thus, it was quite clear from the beginning of our constitutional form of government that the office of the presidency was to be an elected one and not an appointed one.

Moreover, at the Convention of 1787, Edmund Randolph submitted a plan of a national government in which he proposed "a national executive to be chosen by the national legislature for the term of — years . . . and to be ineligible a second time." Charles Pinckney, at the same time, proposed "that the executive power be vested in a President of the United States of America, which shall be his style; and his title shall be 'His Excellency.' He shall be elected for — years, and shall be reeligible." The first decision of the Convention was that the term of the Executive should be seven years. James Wilson proposed that there should be "certain districts in each State which should appoint electors to elect outside of their own body." In these three propositions were the essential elements of nearly all the features of the plan ultimately adopted. Again such propositions make it quite clear that the Convention's concept of the President was one that called for his election rather than appointment.

It should be noted that the Convention first adopted a resolution that the Executive should be chosen by Congress; it also adopted a resolution that the executive power should be vested in one person. Elbridge Gerry proposed that the Executive should be elected by the governors of the several States; this plan was defeated. Alexander Hamilton presented a draft of a constitution to the Convention according to which the choice of a single executive officer, a President, was to be made by electors chosen by the people similar to the way they are now actually chosen; and in case there was no choice by a majority of such electors, then an election from among the three candidates was to be made by a body of second electors two for each State, to be chosen by the first electors at the time of voting for a President who were to meet in one place and to be presided over by the Chief Justice.

The whole focus of the Convention of 1787 was in terms of electing the Chief Executive and not appointing him. It was not until the final weeks of the Convention that the electoral college method of electing the President was adopted. It was not an ideal way or even the best way of choosing a President; rather it was a compromise device. The Convention refused to give the election of the President to the people; it also rejected amendments to give each State one vote for President; and it defeated a proposition to give a casting vote to the President of the Senate.

Alexander Hamilton in the *Federalist* No. 68 (March 12, 1788) asserted the following in emphasizing the need for having the President elected:

"The mode of appointment of the chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit, that the election of the president is pretty well guarded. I venture somewhat further; and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages; the union of which was to be desired.

"It was desirable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men, chosen by the people for the special purpose, and at the particular conjuncture.

* * * * *

"All these advantages will be happily combined in the plan devised by the convention; which is, that the people of each state shall choose a number of persons as electors, equal to the number of senators and representatives of such state in the national government, who shall assemble within the state and vote for some fit person as president. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the president. But as a majority of the votes might not always happen to center on one man and as it might be unsafe to permit less than a majority to be conclusive, it is provided, that in such a contingency, the House of Representatives shall select out of the candidates, who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office."

III. LEGAL BACKGROUND

Article II, Section I of the Constitution explicitly states that the President and Vice President of the United States "be elected". The immediate source of Article II was the New York Constitution in which the governor was elected by the people and thus independent of the legislature. His term was three years and he was indefinitely eligible. However, the ultimate plan that was adopted by the Convention was not one that was based on the New York way of electing its governor. The adoption of the electoral college plan came late in the Convention which had previously adopted on four other occasions provisions for the election of the Executive by the Congress and had twice defeated proposals for the election by the people directly.

The electoral college, however, probably did not work as any member of the Convention could have foreseen because the development of political parties and nomination of presidential candidates through them and the designation of electors by the parties soon reduced the concept of the elector as an independent force to the vanishing point in practice if not in theory. But the college remains despite numerous efforts to adopt another method.

Article II, Section I, Clause 2 of the Constitution provides:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

Although Clause 2 seemingly vests complete discretion in the States, certain older cases recognized a federal interest in protecting the integrity of the process. The Supreme Court has upheld the power of Congress to protect the right of all citizens who are entitled to vote to lend aid and support in any legal manner to the election of any qualified person as a presidential elector, *Ex Parte Yarbrough*, 110 U.S. 651 (1884). The *Yarbrough* Court found that it is the duty of the Government to see that citizens may exercise the right to vote freely and to protect them from violence while so doing and that the votes by which its members of Congress and its President are elected shall be the free votes of the electors, *Id.*, 662. That Court also found that the right to vote is based upon the Constitution and not upon State law and that Congress has the power to pass laws for the pure, free, and safe exercise of this right, *Id.*, 663–664. Its power to protect the choice of electors from fraud or corruption was sustained in *Burroughs and Cannon* v. *United States*, 290 U.S. 534 (1934).

More recently, substantial curbs on state discretion in regulating the selection of electors have been instituted by both the Supreme Court and Congress. In *Williams* v. *Rhodes*, 393 U.S. 23 (1968), the Court struck down a complex state scheme which effectively limited access to the ballot to the electors of the two major political parties. In the Court's view, the system violated the equal protection clause of the Fourteenth Amendment because it favored some and disfavored others and burdened both the right of individuals to associate together to advance political beliefs and the right of qualified voters to cast ballots for electors of their choice. The Court denied that the language of Article II, Section I, Clause 2 immunized such state practices from judicial scrutiny, and the Court rejected the notion that Article II, Section I of the Constitution gives the States the power to impose burdens on the right to vote where such burdens are expressly prohibited in other constitutional provisions.

In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Court upheld the power of Congress to reduce the voting age in presidential elections and to set a thirty-day residency period as a qualification for voting in presidential elections; the rationale was that the Fourteenth Amendment limits state discretion in prescribing the manner of selecting electors and that Congress in enforcing the Fourteenth Amendment may override state practices which violate that Amendment and substitute standards of its own.

IV. SUMMARY AND ANALYSIS OF THE PROPOSED AMENDMENT

It seems quite clear, both from a historical analysis and a legal analysis, that the concept of the presidency was embodied with the understanding that the office was to be an elected one as opposed to being an appointed one. Moreover, the right to vote for the President has been upheld and safeguarded as the above cases have indicated. Congress has the power to protect that right to vote for the highest office of the land as well as the power to protect the election of

the President and the Vice President from corruption, *Burroughs and Cannon* v. *United States, supra.*

It is now time for reflection to see if we have not strayed somewhat from our basic goal of rule by the people. If we have we must take the necessary steps to return to our primal goals.

When the Twenty-Fifth Amendment was being considered, arguments were made as to whether or not we needed to have a Vice President appointed, should a vacancy in that office occur. Some felt that the Succession Act of 1947 was adequate assurance of continuity of leadership. However, at least two-thirds of the Senate, two-thirds of the House, and three-quarters of the States decided that we should always have a Vice President. It is believed that this office is the best grooming one can have in case he be called on to succeed to the Presidency.

All this precaution is admirable and, indeed, prudent. The one vital ingredient missing is the choice of the people. The established machinery is admirable, but it should apply only to provide a suitable interim president—one who would serve only until the people choose a new President and Vice President by election.

In addition, a limit must be placed on the term of a president who neither faced an election nor received the mandate of the people. He should not be permitted to appoint his own successor. These choices must be returned to the people at the earliest practical time. No alternative can suffice if we are to remain a democracy.

The American people are willing to forego immediate choice in return for the assurance of capable leadership in a time of crisis accompanying a vacancy in the presidency.

However, it is doubtful that the American people want to give up this choice covering an indeterminable number of possible presidents for possibly four years.

To restore this choice to the American people the Pastore amendment would provide for a special election for president and vice president when an individual who has been appointed Vice President by operation of the Twenty-Fifth Amendment succeeds to the office of the President.

A section by section analysis of the Pastore Amendment follows:

"Section 1. If an individual takes the office of Vice President under section 2 of the XXVth article of amendment and subsequently becomes President under section 1 of that article at a time when more than twelve months remain in the term of the President, then—

"(a) there shall be a special election for the offices of President and Vice President,

"(b) section 2 of the XXVth article of amendment shall not apply to the vacancy in the office of the Vice President caused by such individual's becoming President,

"(c) such individual shall serve as President only until a President elected in such special election takes oath of office of President,

"(d) the Speaker of the House of Representatives, shall in addition to his duties as Speaker, act as Vice President, and perform the duties of that office, with the one exception that the President pro tempore of the Senate shall serve as President of the Senate with voting privileges, until a Vice President elected in such special election takes the oath of office, and

"(e) in the event the Senate shall be equally divided, the Secretary of State may cast a vote to break the tie."

This section is designed to create a special election for the offices of President and Vice President when an appointed Vice President pursuant to section of Article 25 succeeds to the presidency pursuant to section 1 of that Amendment.

More than twelve months must remain in the term of the former president in order for the election process to be implemented. This was done to provide enough time for proper choice of candidates by all parties wishing to announce a candidate. Any time less than twelve months was not considered to constitute an abrogation of the electorate's constitutional right to choose the president by election.

The special election process was provided in order to avoid any possible unconstitutionality of a special election granted on an interpretation of the necessary and proper clause of Article 1.

Section 2 of the XXVth article of amendment shall not apply to the vacancy in the vice presidency because that vacancy will automatically be filled by an acting Vice President in the person of the Speaker of the House of Representatives. This avoids the necessity for repealing any portion of the Twenty-Fifth Amendment.

The Speaker of the House of Representatives would assume all duties of the Vice President but would not give up his duties as Speaker in order that there be as little change as possible in the status quo during the transition period after a vacancy. This is also in keeping with the spirit of the current laws of succession. The one exception to the Speaker assuming all of the vice president's duties is that the President pro tempore of the Senate became the President of the Senate assuming this natural function. This was done in order that the leadership of both legislative bodies remain separate.

The President pro tempore would retain his voting privileges in order that no state be deprived of its two votes. In the event of a tie in the Senate, the Secretary of State may cast the tie-breaking vote. This was done because the Secretary of State is the next in line of succession in the Executive Branch behind the Vice President who would normally have that right under the Constitution.

The appointed vice president who succeeded to the presidency would serve as president and not as "acting president." His term would end when the newly elected president (after the special election) took his oath of office. The Speaker and the President pro tempore would return to their normal functions when the Vice President elect took his oath of office.

"Section 2. The provisions of this Constitution relating to the appointment of electors for President and Vice President shall apply in the case of special elections required by section 1(a). The Congress shall by law prescribe the date for such elections and such other matters relating to such elections as may be necessary to effectuate the purposes of this article."

This section is designed to afford the special election the same treatment as a regular election and to utilize the existing system for elections. The only substantial change would be the date for such elections.

Under the Pastore Amendment, Congress is given the flexibility to establish the date of election as circumstances dictate.

"Section 3. The individuals elected as President and Vice President in a special election required by Section 1(a) shall become President and Vice President upon taking their respective oaths of office. Nothing contained in this article shall affect the terms of the President and Vice President as prescribed by section 1 of the XXVth article of amendment."

The intent of this article is to insure that the individuals elected in a special election would serve only the remainder of the established term. This also precludes the necessity of repeal of the 20th Amendment.

The Pastore Amendment strives to work within the framework established by the Constitution from its inception to the present day. It begins and ends with the proposition that the people should elect their President and Vice President and to preserve this right this constitutional amendment is required."

ADDITIONAL COSPONSORS OF BILLS AND RESOLUTIONS

S. 6

At the request of Mr. WILLIAMS, the Senator from Florida (Mr. CHILES) and the Senator from New Hampshire (Mr. MCINTYRE) were added as cosponsors of the bill (S. 6) to provide assistance to States for improved educational services for handicapped children.

S. 15

At the request of Mr. DOLE, the Senator from North Dakota (Mr. YOUNG), the Senator from Nebraska (Mr. CURTIS), the Senator from Utah (Mr. GARN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Nevada (Mr. LAXALT), the Senator from Oklahoma (Mr. BARTLETT), the Senator from North Carolina (Mr. HELMS), and the Senator from Wisconsin (Mr. PROXMIRE) were added as cosponsors of the bill (S. 15) to amend the Congressional Budget Act of 1974 to require the Congressional Budget Office to prepare inflationary impact statements in connection with legislation reported by Senate and House committees.

S. 18

At the request of Mr. DOLE, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of the bill (S. 18) to amend the act of August 31, 1922, to prevent the introduction and spread of diseases and parasites harmful to honeybees, and for other purposes.

S. 106

At the request of Mr. INOUYE, the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of the bill (S. 106) to provide credit against income tax for employer who employs older persons in his trade or business.

S. 107

At the request of Mr. INOUYE, the Senator from Massachusetts (Mr. BROOKE) was added as a cosponsor of the bill (S. 107) to allow an additional income exemption for a taxpayer or his spouse who is deaf or deaf-blind.

S. 108

At the request of Mr. INOUYE, the Senator from Texas (Mr. TOWER) was added as a cosponsor of the bill (S. 108) to amend the Internal Revenue Code of 1954 to allow a deduction from gross income for social agency, legal, and related expenses incurred in connection with the adoption of a child by the taxpayer.

S. 109

At the request of Mr. INOUYE, the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. JAVITS), the Senator from Minnesota (Mr. MONDALE), and the Senator from Pennsylvania (Mr. SCHWEIKER) were added as cosponsors of the bill (S. 109) to amend chapter 13 of title 38, United States Code, to require the Armed Forces to continue to provide certain special educational services to handicapped dependents.

S. 120

At the request of Mr. INOUYE, the Senator from South Dakota (Mr. ABOUREZK), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Ver-

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in huge campaign costs, but also in terms of the suspension of normal legislative and executive functioning, uncertainty among other nations as to our future policies, and the bitterness at home that becomes inevitable as charges and countercharges stretch out interminably.

No constitutional and no statutory barrier stands in the way of the realistic and forward step suggested by Mr. Paley 12 years ago. Given the repeal of section 315, to rid electronic communications of the equal-time straitjacket, all that is required—beyond a clear look at the facts—is action by the two major party's national committees, which have been fixing the dates of nominating conventions for over a hundred years. During that span of time presidential campaigns have varied in length from 25 to 10 weeks.

THE MANPOWER DEVELOPMENT AND TRAINING ACT DESIGNED TO RETRAIN UNEMPLOYED WORKERS IN AREAS OF SERIOUS UNEMPLOYMENT

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the gentleman from Kentucky [Mr. PERKINS] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. PERKINS. Mr. Speaker, the Manpower Development and Training Act of 1962 was designed to establish programs to retrain unemployed workers in areas of serious unemployment.

The requirement that the State and local government match these funds, while theoretically sound, all but nullifies this act in areas where it is most needed. These economically depressed areas are not only losing population but property values are dropping rapidly and in many cases large corporations, which paid a substantial portion of the taxes in the area, are disappearing either by a voluntary secession of operations or through bankruptcy.

The tax base loss from such economic developments is quite serious, and it is further decreased by the fact that a substantial number of the wage earners who, were they employed, would maintain normal income and property values for the business firms in the area, now contribute nothing to the economic health of the area.

If we are to make this program effective in areas where it is most needed, we must remove the requirement for State matching funds. The amendment to the act, which I have introduced today makes it possible to maintain a sound, well-rounded, manpower training act in those economically depressed areas which most need such a program.

LITHUANIAN INDEPENDENCE DAY, FEBRUARY 16

The SPEAKER. Under previous order of the House the gentleman from New York [Mr. ROONEY] is recognized for 15 minutes.

Mr. ROONEY of New York. Mr. Speaker, all of us need to be reminded that February 16 marks the 47th anniversary of Lithuanian Independence Day. We need to be reminded of this anniversary because it marks the day when a valiant people succeeded in proclaiming their independence after centuries of subjugation and of rule by external authorities.

All the liberty-loving people of the world rejoiced on that day in February 1918 because of this significant democratic victory. The free peoples of the world observed with appreciation and admiration the rapid strides which this small and new Lithuanian Republic made in its form of government and in the social, economic, and cultural fields.

Unfortunately, it was for only a brief span of a score of years that this progressive young nation could enjoy its achievements and its independence. All too soon, its self-determination and its sovereignty were lost and its people made vassals of a bigger and more powerful nation.

Although successfully fighting Russian maneuvers and attempts to engulf it for 3 years, Lithuania was illegally incorporated into the Soviet Union as its 14th republic.

Since this event, the plight of the people of Lithuania has been and is today tragic. Almost overnight the progress made and the institutions developed under the banner of equality and freedom were wiped out.

The Soviet Union stands before these people and their relatives who have fled to freedom elsewhere as a tyrant and a bullying oppressor. The United States and other freedom-loving nations have never recognized the legality of this Soviet steal. I trust that we never yield to any persuasions to recognize the infamous act of the U.S.S.R. in swallowing up a proud and free nation which gave such promise as did Lithuania.

Today as never before we need to continue to maintain our guard to prevent similar illegal Communist moves being enforced against other nations of the world. This Lithuanian Independence Day anniversary should make us more determined to combat Communists and communism in all its evil intentions. This day should remind us not only of those great men and women again living under foreign domination in Lithuania but it should remind us of that fine segment of American citizens—the Lithuanian-born Americans and the Americans born of Lithuanian parents. We join them in celebrating this independence day and we congratulate them on the great and constant contribution which they continue to make to our country. On this anniversary we renew our pledge to do our utmost to hasten the day when once more Lithuania can truly celebrate its independence day.

HORTON AMENDMENT FOR PRESIDENTIAL INABILITY AND SUCCESSION

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

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

There was no objection.

Mr. HORTON. Mr. Speaker, in June of 1963, the late Senator Estes Kefauver opened an inquiry into presidential inability pleading for statesmanship. He said:

> We are very fortunate that this country now has a young, vigorous, and obviously healthy President. This will allow us to explore these problems in detail without any implication that the present holder of the office is not in good health.
>
> The essence of statesmanship is to act in advance to eliminate situations of potential danger. * * *

Before the year was out, both the Senator from Tennessee and the "young, vigorous, and obviously healthy President" to whom he had referred were dead. The lessons implicit in this ironic twist of circumstances are too apparent to require extended elaboration. No one, regardless of station, has anything more than a day-to-day lease on life. We are in all respects tenants at will or sufferance.

Despite universal awareness of this grim imperative and notwithstanding the classic examples of Presidents Garfield and Wilson, the Congress has comported itself as if the facts were otherwise. Under the impact of each succession or tragedy involving our Nation's highest officers, we have marched up the hill of legislative action firm in our resolve to find a solution. As the emergency subsided, we have marched down again bearing only unfulfilled promises.

In Dallas, as on seven previous occasions, a Vice President became President as a result of the incumbent's death. Although there was some little discussion about what he succeeded to—the office or the powers and duties—President Johnson took an oath to become President.

But what happens when a President is incapacitated for some reason and is unable to perform his duties? Can the Vice President act in his place? Who determines whether the President is incapable of acting? Who decides when he has recovered?

The Constitution's vagueness in these particulars has occasioned perplexity and discomfiture for more than a century. The circumstances surrounding the death of President Kennedy have taught us that we can no longer afford the uncertainty that presently exists.

I have today introduced a resolution proposing an amendment to the Constitution providing a solution to the problems of presidential inability and succession. Under the terms of my proposal, the inability of the President may be established by a declaration in writing of the President. Similarly, it would provide that the ability of the President to resume his powers and duties also shall be established by his declaration in writing. To insure that the President may regain his powers and duties as soon as he is able to discharge them after relinquishing them himself to the Vice President, I have included language providing that the President may resume his duties and powers immediately upon declaring his inability at an end.

In the event that the Vice President and a majority of the Cabinet or such other body as Congress shall provide do not concur in the decision of the President, the matter would be resolved by the veto of two-thirds of both Houses of Congress. Should the House and Senate fail to act promptly, the President would automatically resume his powers and duties 10 days after declaring the termination of his inability.

In the event the President fails or is unable to declare himself incapacitated, it may be established by the Vice President with the concurrence of a majority of the Cabinet or by such other body as the Congress may provide.

In order to still the recurrent controversy that accompanies each succession, the proposal would provide that in the event of death, resignation, or removal of the President, the Vice President shall succeed to the office for the unexpired term.

Because of the transformation of the Vice-Presidency from an office of obscurity to one of growing influence and national prominence, it is important that it be filled at all times. Under my proposal, when a vacancy occurs in the vice-presidential office, the President would be authorized to nominate a person who, upon confirmation by a majority of the Congress, would become Vice President for the unexpired term.

Mr. Speaker, divine providence has given us a renewed opportunity for statesmanship. To miss the opportunity again could amount to a mortal omission.

HORTON BILL FOR PROTECTION OF GOVERNMENT OFFICIALS

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

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

There was no objection.

Mr. HORTON. Mr. Speaker, one of the important recommendations made to Congress by the Warren Commission was that legislation be enacted making it a Federal crime to attack or assassinate the President, the Vice President, any officer next in the line of succession to the Presidency, and President-elect, or the Vice-President-elect. Similar provisions are needed to protect members of the President's Cabinet and Members of Congress as well.

Bills for this purpose, including my proposal of November 27, 1963, were submitted in the Second Session of the 88th Congress, but action was not taken. One of them passed in both the House and Senate as long ago as 1902, but failed of enactment by disagreement in conference between the House and Senate. Such a bill should be enacted now.

The Senate sponsor of the bill introduced in 1902, Senator George F. Hoar, of Massachusetts, spoke as follows on the reason for making such homicidal attacks punishable under Federal law:

> What this bill means to punish is the crime of interruption of the Government of the United States and the destruction of its security by striking down the life of the person who is actually in the exercise of the executive power, or of such persons as have been constitutionally and lawfully provided to succeed thereto in case of a vacancy. It is important for this country that the interruption shall not take place for an hour.

Congress long ago made it a Federal offense to attack or murder various categories of Federal employees, including Federal judges, U.S. attorneys, agents of the Federal Bureau of Investigation, customs agents, and postal inspectors. By this bill the full resources of the Federal Government would be brought into action in case of any future attack upon the President or those in the line of succession to him, just as they now may be brought to bear if those lesser officials I have named are subjected to murderous violence.

The Judiciary Committees of the House and Senate properly waited for the recommendations of the Warren Commission in this matter. The recommendation has now been made unequivocally. The case for making physical attack upon the President and those in the line of succession a Federal crime is so clear that there is no occasion for delay. Even if there had been no tragedy at Dallas and no failures on the part of State authorities in the custody of the alleged assassin, it would still be eminently desirable to extend the added protection of a Federal statute around the President and all those who would succeed him in the event of his death or disability.

If this bill is enacted, it will mean that Federal law-enforcement officers must investigate such crimes against our highest officials. The Warren Commission report has noted that, as it is now, such Federal agencies as the FBI participate in investigations of the heinous crime of presidential assassination "only upon the sufferance of the local authorities." Moreover, the Commission has pointed out that the enactment of this bill would "insure that any suspects who are arrested will be Federal prisoners, subject to Federal protection from vigilante justice and other threats."

We have a duty to the memory of the late President to enact this bill. We have a duty to the administration of criminal justice by our Federal Government to enact this bill. We have a duty to the preservation of our constitutional system of government to enact this bill.

AMENDMENT OF MANPOWER DEVELOPMENT AND TRAINING ACT

Mr. O'HARA of Michigan. Mr. Speaker, I ask unanimous consent that the gentleman from Pennsylvania [Mr. HOLLAND] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. HOLLAND. Mr. Speaker, I am today introducing legislation—recommended by the President—which will again amend the Manpower Development and Training Act of 1962.

You and the Members of this House will recall, I am sure, that when I asked your support for the original Manpower Development and Training Act program, in February 1962, I stated that "this is the first of many steps we must take if we hope to eventually eliminate our unemployment problem."

In December of 1963 I requested the support of the Members for amendments to this act as the first year's experience in administering the program had revealed the need for providing basic academic education—along with occupational training—if we hoped to reach the hard-core unemployed. Other changes were made at that time also, and all were directed toward eliminating roadblocks discovered in our attempt to retrain the unemployed. These were some of the "additional steps" I had said we would probably have to take.

Today I am introducing additional amendments which we have found to be necessary if we hope to enjoy full employment in this Nation.

The Manpower Development and Training Act has proved that it can get our unemployed workers back into the active labor market. The records show that between 70 and 80 percent of all those retrained under this program are gainfully employed. Not only have these people been made active participants in our economy but, above all, they have regained their self-respect, for they were all eager to return to the ranks of the taxpayers rather than remain on the public relief rolls.

Only last week the city of Pittsburgh—a part of which is in my congressional district—reported that retraining courses for jobless workers are saving the taxpayers of the city $35,000 a month in relief payments. I am sure that similar conditions exist in the districts of many other Members.

The continuation of this program is certainly necessary and, I am happy to say, it has gained the support of all segments of our Nation—industry, labor, education, government, and even the average citizens who belong to no specific group or organization.

Because of its noncontroversial nature, I anticipate early passage of this legislation.

The need for its uninterrupted continuation is mandatory and, for this reason, the Select Subcommittee on Labor, of which I am chairman, has scheduled public hearings on these amendments starting tomorrow, February 4. The Secretary of Labor, the Honorable Willard W. Wirtz, will be our opening witness; and the Secretary of Health, Education, and Welfare, the Honorable Anthony J. Celebrezze, will testify on February 5; with Mr. Andrew J. Biemiller, the legislative director for the AFL–CIO, scheduled to testify on February 10.

Additional hearings will be scheduled, and it is my hope that in the very near future, Mr. Speaker, this legislation will be reported to the House for final passage.

With the unanimous consent of the House, I am appending to my remarks a brief explanation of the amendments to

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mayor and his housing experts, the board of estimate last November refused to authorize the use of the site for public housing.

The report persisted that local leaders had been granted the middle-income project (to be sponsored by the San Gennaro Society) in exchange for their support on the Lower Manhattan Expressway.

This is where the controversy has stood until Monday, with the area's residents unable to find out exactly what was going to happen.

Mr. Tatum was only one of several hundred New Yorkers who have responded by phone and by mail to the first 2 days of "New York City in Crisis," which started Monday in the Herald Tribune.

Angry, disturbed or afraid, yet all convinced that the city had let them down, these New Yorkers have pointed out dozens of examples of city negligence and indecision in which the citizens of this city have been victimized by its government.

These charges are currently being investigated by members of the Tribune's "New York City in Crisis" staff.

The charges so far touch on almost every area of municipal service—from disgust over the city's urban renewal program (in Bellevue South, on the upper West Side, in Brooklyn Bridge South, and in several others) to unsubstantiated charges of municipal graft and police corruption and negligence.

"Narcotics and crime are just tearing this apart," said one Brooklyn detective. "Why don't we do something about it? They talk about 50,000 narcotics addicts in Manhattan. That's a joke. There are that many in my precinct."

Other areas of repeated criticism include:

Overcrowded subways, unpaved highways, unprosecuted slumlords, the unchecked sale of alcohol to minors, high salaries of the mayor's top aids coupled with the city's worsening financial condition, the low caliber of many of the city's longtime personnel, the low state of public schools, the shortage of middle-income housing, the lack of adequate protection in the streets, the loss of businesses, city hospitals, and the ugliness of the city.

BLAME

With only two exceptions, the callers placed most of the blame for the city's problems at the feet of the mayor.

"A citizen begins to wonder if he has a democratic government when he gets assurances about one thing from city hall only to find out the next day or week that the assurances mean absolutely nothing," says Frederick Smedley, a member of community planning board No. 3 in Manhattan. "The time has come for the people of this city to get angry and stop accepting promises that mean nothing."

STATEMENT IN SUPPORT OF H.R. 836, TO PROVIDE A REMEDY FOR PRESIDENTIAL DISABILITY

Mr. WOLFF. Mr. Speaker, I ask unanimous consent that the gentleman from New York [Mr. MULTER] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. MULTER. Mr. Speaker, I was privileged today to present to the Judiciary Committee the following statement supporting legislation to provide a remedy for what is a potentially disastrous situation. My remarks are directed toward a solution of the problem as suggested in my bill H.R. 836.

My statement follows:

STATEMENT OF HON. ABRAHAM J. MULTER, OF NEW YORK, BEFORE THE HOUSE JUDICIARY COMMITTEE IN SUPPORT OF H.R. 836, TO PROVIDE A METHOD FOR DETERMINING PRESIDENTIAL DISABILITY, AND FOR OTHER PURPOSES, FEBRUARY 10, 1965

Mr. Chairman, I am pleased to share with this distinguished committee my views on the formulation of legislation to secure continuity and stability of executive leadership in the event of presidential disability.

Mr. Chairman, ever since the Philadelphia Convention in 1787, many practitioners and students of government have been concerned about the ambiguity of one word in article II of our Constitution. Article II, section 1, clause 5 states, in part, that "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. * * *"

The central word of concern in this clause is the word, "inability." The earliest concern about the meaning of the word was expressed at the Constitutional Convention, when delegate John Dickinson, of Delaware, contending that the word was "too vague," appropriately asked, "What is the extent of the term 'disability' and who is to be the judge of it?" Today—almost 178 years later—this committee meets to raise the same question and to attempt to resolve the same fundamental problems which it implies. The only difference is that, today, the urgency for a sound solution is made more manifest by reason of critical events in the American experience.

Let us take a look at some of these events. There are two of an especially "classical" nature. The first event evolved out of the circumstances in the aftermath of the shooting of President James A. Garfield. Garfield was cut down by an assassin's bullet on July 2, 1881, and lay stricken for a period of 80 days before death finally came on September 19. Shortly after Garfield was wounded, many in Government—including some of Garfield's Cabinet—urged Vice President Chester A. Arthur to assume the powers and duties of the Presidency; but these urgings sparked a controversy which centered on the question of whether the assumption of these responsibilities implied also the assumption of the office itself. Some held that if Arthur assumed these powers, he would in fact become President; and that Garfield would be unable to regain office if he subsequently recovered. Because of the allegedly doubtful legality of taking over the functions of the Presidency when the President was alive, plus the fear of creating the impression of being a usurper, Arthur refused to act.

Another event, with somewhat parallel circumstances and implications, took place in 1919–21 with the disability of Woodrow Wilson. During the last 18 months of his second administration, Wilson suffered two strokes and was left generally unable, physically and mentally, to discharge the functions of his office. Vice President Thomas R. Marshall was urged to assume the powers and duties of the office, but troubled by the same doubts that assailed Chester Arthur nearly 40 years before, he refused to act. Once again, the question loomed large: "Is the assumption of the powers and duties of the office of President tantamount to the assumption of the office itself?"

This vexatious question was raised once more in the last decade when President Eisenhower suffered illnesses in 1955, 1956, and 1957. I need not document the circumstances of these occasions, for we can all recall the danger that can be sensed when a President is incapacitated, particularly in the nuclear age.

After his last ailment, President Eisenhower and Vice President Nixon made an agreement with respect to Presidential disability. This kind of understanding has been repeated in the two succeeding administrations. Such arrangements governing the transfer of power in the event of the unexpected raise serious questions of a constitutional nature which cry out for an answer in this matter of presidential disability. Article II of the Constitution is unmistakably clear in its intent: "* * * the Congress may by law provide for the case of * * * 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 should be elected." The Constitution does not tell us how to determine Presidential disability; nor does it tell us how to return the powers and duties of the office to the President after his disability. But this great document did make it incumbent upon future lawmakers to grapple with and solve this problem.

Let us therefore act with dispatch in this session of Congress. Let us act for two reasons: (1) So that there will be no question as to the exact nature of the transfer of power; and (2) so that the decision regarding this transfer will be judicious and circumspect.

I was delighted to see that the President, in a recent message to Congress, urged action in this matter of presidential disability by calling for a constitutional amendment. In this message, he stressed that, while "we are prepared for the possibility of a President's death, we are all but defenseless against the probability of a President's incapacity by injury, illness, senility or other affliction." I could not agree more with this observation. Reacting in the same way to this deficiency in our system of government, I introduced on January 4 of this session a bill—H.R. 836—to remedy this problem. I submit that this bill would give effect to the goals enunciated in the President's message, and I, therefore, urge its consideration.

Basically, H.R. 836 provides a method for determining presidential inability.

First, a simple majority of the House of Representatives would request the Senate, in the form of a resolution, to determine whether the President is unable to discharge his responsibilities. Upon adoption, the resolution would be forwarded to the Chief Justice of the Supreme Court, who would immediately convene the Senate in special session for the purpose of determining whether the President was disabled.

Second, if two-thirds of the Senators present and voting determine that the President is unable to discharge his responsibilities, the Senate would, by a resolution of two-thirds of those present and voting, direct the Vice President to serve as acting President for the duration of the period that the President is disabled.

Implicit in this method of determination is the idea that the Vice President would act as President during the disability period; he would not be President. We could thus eliminate the problem faced by Vice Presidents Chester Arthur and Thomas Marshall, who feared that discharging the powers and duties of the Presidency implied irrevocable assumption of the office.

This bill also provides a solution to another question that has long been asked: How does the President go about regaining his office once he has recovered from his disability?

First, a majority of those present and voting in either House of Congress would adopt a resolution directing the Chief Justice of the Supreme Court to convene a special session of the Senate. The purpose of this Senate session would be to consider revoking its previous determination of Presidential disability.

Second, if two-thirds of the Senators present and voting determine that the President is able to discharge his responsibilities, the Senate would declare, by a resolution adopted by two-thirds of those present and voting, that the powers and duties of the Office of the President are restored to the President.

Mr. Chairman, when an amendment to the Constitution is under discussion, utmost caution must be exercised with respect to its language and intent. This responsibility demands insight and foresight of a nature possessed by those who met in Philadelphia to draw up the law of the land many years ago.

I urge that the proposed amendment under consideration anticipate the needs of future generations. For this reason, I should like to point to another facet of H.R. 836, specifically that portion which deals with the disability of the Vice President, or any other individual acting as President.

Certainly, the Vice President is just as mortal a man as is the President. He is generally subject to the same illnesses which could afflict a President. Appropriate steps should therefore be taken to protect this Nation in the event of the disability of a Vice President, or any other individual who acts as President. In H.R. 836, I suggest that the methods of determining this disability and restoring the powers and duties of the Presidency be the same as those applying to the President.

Let us not be incomplete in our efforts to assure proper Presidential leadership. History warns us that since 1841 a total of eight Vice Presidents have had to assume the powers and duties of the Presidency after the death of the President. I strongly urge that we include in any constitutional amendment a provision governing the transfer of power to another who would act as President in the event that a Vice President becomes disabled while discharging the duties of the office.

The objective of H.R. 836 is unquestionably in accord with that enunciated in the President's recent message. Above all, however, I strongly recommend that pertinent and realistic improvements be made in this matter of disability. Without improvements we are a horse-and-buggy government in the jet age.

NATIONAL MARKETING QUOTA ON FLUE-CURED TOBACCO

Mr. WOLFF. Mr. Speaker, I ask unanimous consent that the gentleman from North Carolina [Mr. LENNON] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. LENNON. Mr. Speaker, as a native of one of the outstanding tobacco-producing areas of our country, I have taken great pride in the fact that our tobacco program has always operated at a very minimum cost and at the same time has provided the tobacco grower and his family a fair return for their labor and investment.

Under existing law since 1940, the Secretary of Agriculture has annually on or before December 1, proclaimed a national marketing quota in pounds of Flue-cured tobacco for the following growing season and allotted the number of acres for the production of such poundage.

It is interesting to note that for the 1940 crop, the marketing quota proclaimed in poundage was 618 million pounds and that 758,210 acres were allotted for such production. That year the Flue-cured States produced 760 million pounds for an average yield of 1,025 pounds per acre. This was 142 million pounds in excess of the marketing quota.

The marketing quota in poundage proclaimed for the 1964 crop was 1,124,997,830 pounds, and 638,240 acres were allotted for such production. On this acreage allotment, which was 119,970 acres less than in 1940, we produced 1,383 million pounds of Flue-cured tobacco for an average yield of 2,203 pounds per acre. The 1964 yield was more than double that of 1940.

The fallacy of attempting to relate annual marketing quotas in pounds to an acreage control program becomes crystal clear in the experience of the last 10 years of our program. The acreage allotment for 1954 was 1,053,135 acres; allotment for 1964 was 638,240 acres. In spite of this 40-percent reduction in acreage, the 1964 crop of Flue-cured tobacco, in pounds, was larger than that produced in 1954. Ten percent of this acreage cut was for the 1964 crop, yet we produced more pounds than in 1963. During the 1-year period, the yield per acre increased 11½ percent.

The growers cannot be blamed for increasing their yields as their acreage is cut. The fault is with the system itself, and I believe it is now the feeling of the majority of our growers that some basic adjustment must be made in the program, if it is to survive.

There are many opinions on how to solve best the problem facing our tobacco program. For that reason, I have today introduced a bill, as a starting point, in an effort to bring stability to the tobacco program and to assure a fair return to our growers.

It is my strong belief that our growers should have an opportunity to make their own decision—at the ballot box—with respect to the type of program they believe would best fit their long-range needs. Legislation must be passed by the Congress for our growers to have an opportunity to express themselves by their vote in this important matter.

It should be clearly understood that if legislation is enacted in sufficient time to apply to the 1965 growing season and our Flue-cured growers approve the acreage-poundage proposal, then around 14.5 percent of the 19½-percent acreage reduction for 1965 would be restored for their 1965 crop.

Very probably, other Members of Congress representing their tobacco-growing areas will introduce legislation approaching this problem from other directions. We need and solicit the views of all affected.

I am confident that my distinguished colleague and friend, the gentleman from North Carolina, Chairman COOLEY of the House Agriculture Committee, who over the years has been a champion for tobacco growers and all forms of our Nation's agriculture, will be anxious to have the views of our growers and all segments of our tobacco industry.

We must move, and move rapidly, for early hearings on tobacco legislation, if the growers themselves are to have an opportunity to make a choice before planting their 1965 crop.

THE PROBLEM OF AN INCREASE IN INTEREST RATES

Mr. WOLFF. Mr. Speaker, I ask unanimous consent that the gentleman from New Jersey [Mr. JOELSON] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. JOELSON. Mr. Speaker, I hope and believe that the problem of unfavorable balance of trade can be solved without increasing the rate of interest. This is admittedly a problem because some American investors utilize their capital abroad to obtain higher interest rates.

However, raising the domestic interest rate would be soaking the individual or businessman who must borrow. It would not only be unfair to borrowers, but it could also damage our economy by drying up purchasing and expansion.

Before such a drastic step is taken, other ways of solving the balance-of-payments problem must be tried.

CONGRESSMAN GILBERT'S VOTER REGISTRATION BILL

Mr. WOLFF. Mr. Speaker, I ask unanimous consent that the gentleman from New York [Mr. GILBERT] may extend his remarks at this point in the RECORD and include extraneous matter.

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

There was no objection.

Mr. GILBERT. Mr. Speaker, on February 4 I introduced H.R. 4427, to establish a Federal Voting, Registration, and Elections Commission. I am pleased to see that so many of my colleagues are sponsoring this or similar bills, which to me is very encouraging and indicates the chances for passage of meaningful legislation in this field.

The deplorable activities such as those currently practiced in Selma, Ala., to prevent Negro citizens from voting, sharply point up the need for legislative action. In spite of voting rights provisions of civil rights acts already passed by Congress, it is a well-known fact that discrimination on account of race exists in many parts of our country. Congress must take decisive, effective, and prompt action to remedy this situation.

I have asked the chairman of the Judiciary Committee to hold hearings on my bill as soon as possible.

My bill would establish a six-member, bipartisan Federal Voting, Registration, and Elections Commission, empowered to appoint its own registrars to supervise registration when a pattern of racial discrimination has been discovered. The Commission would thus be free to bypass the courts, where voting suits in the past have been tied up for long periods of time. My bill would give the Commission jurisdiction over State as well as Federal elections. The provision setting up voting registrars in the 1964 Civil Rights Act has proven ineffective largely because of long delays in the courts. My bill would provide adequate means of appealing bad decisions of the Commission, but would

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NO GOOD FROZEN

Our domestic gold reserve isn't doing any good for the dollar, or for the booming economy of the free world, frozen as it is in the icebox legislated in the mid-1930's. It certainly plays no part in the passing of money for hamburgers or houses; our business runs on paper [whether it's checks or greenbacks]. In the modern structure of finance, the only function left for gold is international, as a basis for settlement between central banks.

As long as the dollar remains frozen in the obsolete domestic gold reserve legislated a generation ago, it won't be free for this use, which is demanded by the new international role of the dollar.

We have $12 billion of financial muscle that isn't being used, and isn't needed at home. But it is needed to support the world's work that the dollar is being called on to do. Mobilizing it to create a new international liquidity base may well free the boom from the danger of a money squeeze, and give it a new lease on life.

Mr. MANSFIELD. Mr. President, I yield back the remainder of my time.

Mr. DIRKSEN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time for debate has expired. The bill having been read the third time the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Utah [Mr. MOSS], the Senator from Maine [Mr. MUSKIE], and the Senator from Oregon [Mrs. NEUBERGER] are absent on official business.

I also announce that the Senator from Georgia [Mr. RUSSELL] is absent because of illness.

I further announce that the Senator from Pennsylvania [Mr. CLARK], the Senator from North Carolina [Mr. ERVIN], the Senator from South Carolina [Mr. JOHNSTON], the Senator from North Carolina [Mr. JORDAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New York [Mr. KENNEDY], and the Senator from Rhode Island [Mr. PELL] are necessarily absent.

I further announce that, if present and voting, the Senator from Pennsylvania [Mr. CLARK], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New York [Mr. KENNEDY], the Senator from Utah [Mr. MOSS], the Senator from Maine [Mr. MUSKIE], the Senator from Oregon [Mrs. NEUBERGER], and the Senator from Rhode Island [Mr. PELL] would each vote "yea."

Mr. DIRKSEN. I announce that the Senators from Kentucky [Mr. COOPER and Mr. MORTON], the Senator from Idaho [Mr. JORDAN], and the Senator from Iowa [Mr. MILLER] are necessarily absent.

The Senator from California [Mr. KUCHEL] is absent on official business.

If present and voting, the Senator from California [Mr. KUCHEL], the Senator from Iowa [Mr. MILLER], and the Senator from Kentucky [Mr. MORTON], would each vote "yea."

On this vote, the Senator from Kentucky [Mr. COOPER], is paired with the Senator from Idaho [Mr. JORDAN]. If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Idaho would vote "nay."

The result was announced—yeas 74, nays 7, as follows:

[No. 22 Leg.]

YEAS—74

Aiken	Hill	Pastore
Bass	Holland	Pearson
Bayh	Hruska	Prouty
Bennett	Inouye	Proxmire
Boggs	Jackson	Randolph
Brewster	Javits	Ribicoff
Burdick	Lausche	Robertson
Byrd, Va.	Long, Mo.	Saltonstall
Byrd, W. Va.	Long, La.	Scott
Cannon	Magnuson	Simpson
Carlson	Mansfield	Smathers
Case	McCarthy	Smith
Curtis	McClellan	Sparkman
Dirksen	McGee	Stennis
Dodd	McGovern	Symington
Douglas	McIntyre	Talmadge
Ellender	McNamara	Thurmond
Fannin	Metcalf	Tower
Fong	Mondale	Tydings
Gore	Monroney	Williams, N.J.
Harris	Montoya	Williams, Del.
Hart	Morse	Yarborough
Hartke	Mundt	Young, N. Dak.
Hayden	Murphy	Young, Ohio
Hickenlooper	Nelson	

NAYS—7

Allott	Cotton	Eastland
Bartlett	Dominick	Gruening
Church		

NOT VOTING—19

Anderson	Jordan, N.C.	Moss
Bible	Jordan, Idaho	Muskie
Clark	Kennedy, Mass.	Neuberger
Cooper	Kennedy, N.Y.	Pell
Ervin	Kuchel	Russell
Fulbright	Miller	
Johnston	Morton	

So the bill (H.R. 3818) was passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SPARKMAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRESIDENTIAL AND VICE PRESIDENTIAL SUCCESSION—PRESIDENTIAL DISABILITY

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 62, Senate Joint Resolution 1.

The PRESIDING OFFICER. The Senate joint resolution will be stated by title.

The LEGISLATIVE CLERK. A 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.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to, and the Senate proceeded to consider the joint resolution, which had been reported from the Committee on the Judiciary with amendments.

Mr. SMATHERS. Mr. President, a proposal such as Senate Joint Resolution 1 may not have been needed when the Founding Fathers drafted the Constitution. It may not have been needed in 1877, when the Nation foundered in confusion over the question of whether Samuel J. Tilden had a just claim on the Presidency. It may not have been needed during the 80 days when President Garfield lay helpless and dying from an assassin's bullet. And perhaps it was not needed during the trying 16 months in which President Wilson was virtually unable to perform the functions of his office.

But today, Mr. President, we are living in a nuclear age—an age filled with promise, but fraught with danger. This generation of American people and our generations yet unborn cannot afford, for the safety of this Nation and the world, to be even for a moment without a Chief Executive of sound mind and body.

Senate Joint Resolution 1, by providing a means by which we shall always have a Vice President, and by giving us a formula by which the Vice President may act as President in certain circumstances, would provide for the smooth transition of executive authority, even if this Nation should have to undergo the terrible tragedy of losing a President and Vice President within the same 4-year term of office.

For the better part of the 176 years since the Constitution was adopted, Congress has been unable to agree to a proposal which would fill vacancies in the office of Vice President and which would provide a formula for determining Presidential inability. Throughout this period, we have been conscious of the need for something to be done. Now we are on the threshold of doing it, for now we have a proposal that is the work of many men who have labored for many months.

They developed a consensus—each one participating in legislative give-and-take, no one demanding pride of authorship. They developed a proposal which the Senate approved, in substance, by a vote of 65 to 0 in the 88th Congress. They developed a proposal to which 77 Senators have attached their names in this Congress. They developed a proposal which is reasonable, workable, and flexible. It does not pretend to meet all contingencies; but it is drawn with broad brush strokes, so as to enable future American leaders to deal with contingencies which we perhaps are unable to foresee.

Mr. President, I know that all Members of this body and the American people are deeply and seriously interested in this proposal.

I know that several 11th-hour proposals were submitted in the greatest of sincerity. Some have suggested that we not attempt to amend the Constitution, but simply pass a statute to deal with these grave problems. Yet the present Attorney General of the United States and the previous three Attorney Generals have all stated emphatically that a Constitutional amendment is required in order to solve these problems. All of us can well imagine how, at a time when the physical or mental ability of the President to perform his duties was in question, a simple statute, subjected to widespread and serious challenge, could well plunge the Nation into chaos. Even

if there is the slightest question, Mr. President, it would be well for us to take no chances. It would be well for us to amend the Constitution—not in an effort to revise it, but in order to remedy an obvious defect.

Others have suggested that we make no effort to specify a formula under which the President could be declared unable to perform his duties. They suggest an amendment which would simply allow Congress to pass laws on Presidential inability. There are several weaknesses to this proposal. First, I remind my colleagues that in 1933, a constitutional amendment was ratified. This 20th amendment, among other things, authorized Congress to pass laws to provide for the contingency that both the President-elect and Vice-President-elect might not qualify for office. Thirty-two years have gone by, Mr. President; and not only has Congress not passed such a law, but none has been given serious consideration.

More important, Mr. President, is the danger inherent in such a blank-check approach to the problems with which we are dealing today. Imagine, if you will, what President Andrew Johnson's hostile Congress might have done with the blank-check authority to pass laws on how the President would be declared disabled. Even if the President had vetoed such a bill, a two-thirds vote to override the veto could have been mustered on the subterfuge that Congress was not trying to get rid of the President, but merely was trying to provide for the contingency that he might be disabled at some time in the future.

Senate Joint Resolution 1 provides amply for the protection of the President from would-be usurpers. Even if the Vice President and the President's own Cabinet should conspire to unseat the Chief Executive, the conspirators would still need to win over two-thirds of both Houses of Congress.

The proposal before us leaves the decision on inability in the hands of the executive branch of Government. Only when the President, on the one hand, and the Vice President, with the support of a majority of the Cabinet, on the other, disputed the President's ability to perform, would Congress come into the picture, to settle the question. The blank-check approach could well open the door to clear infringement by the legislative branch on the prerogatives of the executive branch.

We must jealously guard our traditional separation of powers, for it has given this Nation checks and balances so effective as to enable it always to move forward, but with reason and moderation.

Finally, Mr. President, the blank-check approach, I am afraid, would meet with great disfavor among the several States that must ratify our action before it can become a part of the bedrock law of our land. In our form of government, certain rights are reserved to the States. I firmly believe that our States would object, and properly so, to any constitutional amendment which would hand over to Congress the right to change the law any time it chose, on a matter as grave as that of who is to lead our Nation in this perilous period. The States will demand, and properly so, constitutional language that makes clear the path which must be followed if there is a vacancy in the office of Vice President and if a President is temporarily struck down by severe illness or—and we must frankly face this terrible prospect—by the bullet of a would-be assassin.

We have traveled a long road toward the realization of a proposal such as the one before us. We are close to seeing it enacted. Let us not now shrink from meeting our responsibility.

LEGISLATIVE PROGRAM AND ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. DIRKSEN. Mr. President, I should like to query the distinguished majority leader about the program for tomorrow, the possibility of any voting, and the prospect of Senate Joint Resolution 1 going over until next week, if necessary, because of the intervention of Washington's Birthday on Monday.

Mr. MANSFIELD. Mr. President, first, I ask unanimous consent that when the Senate completes its business this evening, it stand in adjournment until 11 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. In response to the question raised by the distinguished minority leader, the leadership hopes, with the Senate concurring, that the Senate joint resolution will be disposed of tomorrow. If it is not, it will have to go over. I understand that at least two, possibly three, amendments will be offered to the joint resolution. I do not know how much time consideration of those amendments will take, but that is the best I can say at the moment. There has been a unanimous-consent agreement in relation to referral of a bill. In addition, some nominations will be considered.

Mr. DIRKSEN. The distinguished Senator from Michigan [Mr. HART] is present in the Chamber. I should like to inquire of him how long he will take to discuss the referral proposal.

Mr. HART. I anticipate that I shall need only a very few minutes.

Mr. DIRKSEN. Then there will be only limited discussion on our part. We might be able to dispose of that question in 30 minutes.

Mr. HART. I am sure that that is possible.

OPPOSITION TO PROPOSED CUTS IN SCS TECHNICAL ASSISTANCE PROGRAM AND LEGISLATION TO FINANCE COSTS BY A USER CHARGE

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to insert in the RECORD at this point the letter which I addressed on February 17 to the Honorable JAMES O. EASTLAND, chairman, Subcommittee on Soil Conservation and Forestry, Committee on Agriculture and Forestry, discussing my opposition to any reductions in appropriation of Federal funds for the technical assistance program provided by the U.S. Department of Agriculture Soil Conservation Service, and stating opposition, also, to the enactment of any legislation to finance part of the cost of this Service by a user charge. The enactment of such legislation was included in the recommendations submitted in the fiscal year 1966 Presidential budget.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEBRUARY 17, 1965.

HON. JAMES O. EASTLAND,
Chairman, Subcommittee on Soil Conservation and Forestry, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: Included in the recommendations submitted in the President's budget for fiscal year 1966, under the Soil Conservation Service program providing technical assistance to aid farmers in installing conservation practices on their farms, is the enactment of legislation to finance part of the cost of certain of these services by a user charge, with collections of $20 million estimated for 1966.

If the authorizing legislation is passed by the Congress, and if congressional committees, and subsequently the Congress, act to support this budgetary proposal, this will reduce Federal funds for SCS technical assistance by $20 million for 1966 with similar reductions to follow in fiscal years thereafter.

I wish to state my opposition to this recommended reduction in soil conservation funds and to express my belief that the savings to the Federal Government are totally disproportionate as compared to the damage to the country which will result from the emasculation of this valuable technical assistance program.

If a user charge system is inaugurated, I believe that needed improvements to land will be halted; that permanent land treatment practices will not be maintained; that the gradual slowing of demand for technical aid and assistance service from SCS technicians will result in a workload reduction that will in turn result in the exodus of valuable technicians from SCS.

In short, I feel that a technical assistance program based on fee for service, and the installation of a public enterprise revolving fund, will simply result in soil conservation districts and individual landowners not participating in conservation practices, because many of the present participants actually do not have the money to help defray the costs nor the means to raise such funds. Most probably those persons in areas most needing technical assistance in increasing productivity and fertility of the soil, in converting marginal and submarginal lands to grassland farming, reforestation, forest management, creation of wildlife habitat, and development of recreational facilities, are least able to afford to pay for such assistance.

In my own State of West Virginia, soil conservation methods are desperately needed and more particularly effective in application, partially because of the hilly terrain. Many of the people of the State, living in a depressed economy, need help in establishing conservation practices, and a loss of Federal support of the technical assistance program will have most deleterious consequences for them. Such results are certainly not consistent with the stated purposes of the President's program to raise the economic level of the Appalachian region and to conserve our Nation's resources.

Additionally, similar programs which are financed by our Federal Government in foreign countries, through foreign aid and agencies such as the Peace Corps, do not require reimbursement (to my knowledge) from the

dealing with today in Senate Joint Resolution 1.

This measure, of which I am honored to be a cosponsor, provides a workable means of assuring continuity of presidential leadership. It recognizes the very distinct nature of the two exigencies—death and inability—under which the Nation may lose the leadership of its President, and it provides suitable solutions for each of these peculiarly different situations.

The uncertainty concerning the legitimacy of our traditional method of providing for presidential succession, which is prompted by the existing vague constitutional language, would be removed. The addition of language providing for the filling of vacancies in the office of the Vice President, which occur upon the death, resignation, or removal of the President, would assure the Nation that it will always have a Vice President ready and able to assume the office of President or exercise the powers and duties of that office should the occasion arise.

Provision of continuity of presidential leadership is an urgent need that must be met now. There is widespread support for Senate Joint Resolution 1, and the climate for early ratification of this measure by the States seems to be favorable. Let us therefore promptly approve it.

Before closing, Mr. President, let me heartily commend the junior Senator from Indiana for his thorough study and diligent efforts in drafting Senate Joint Resolution 1, and for bringing it to the floor of the Senate. And I thank the Senator from Hawaii for giving me this opportunity to express my views.

Mr. FONG. I thank the Senator for his compliments. In answer to his questions, let me say that the Dirksen amendment would leave us almost in the same position as that from which we started. Many questions will still remain unanswered. If something should happen to the Vice President, we would not have the answer to that problem. It does not militate against Senate Joint Resolution 1. At present, no one succeeds to the position of Vice President if a Vice President succeeds to the office of President. I believe that if we take one step at a time, we shall accomplish what we are trying to accomplish. I believe that the present resolution is workable and practical.

THE CONSTITUTIONAL RIGHTS OF ALL AMERICANS

Mr. EASTLAND. Mr. President, in 1954, soon after the decision in Brown against Topeka, I made the statement that it was impossible to fulfill the implications of Brown against Topeka without destroying the constitutional rights of all other American citizens and all other rights embodied in the Constitution and guaranteed to the people.

Acting under the contemporary and current insanity in the country relating to so-called civil rights, various bureaus are issuing edicts and decrees without any justification in law which deprive the American people of their basic rights.

The Department of Defense under Secretary McNamara, together with certain underlings, has probably been the most zealous of these department heads in issuing decrees irrespective of the rights of the American citizens. I wish to read to the Senate a letter which I have just received from Hon. Perry S. Ransom, Jr., of Ocean Springs, Miss., to show to the Senate how far these Government bureaus have gone in surrendering basic rights to the current insanity of the country:

PERRY S. RANSOM, JR.,
CONSULTING ENGINEER,
Ocean Springs, Miss., February 16, 1965.

Senator JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SIR: Realizing full well the large volume of mail that you receive daily from the people you represent and the futility of individual correspondence, I nevertheless feel compelled to write. Under our system of democratic government we claim the right of the individual citizen to protest when we feel the Federal Government exceeds the limitations set forth by our Constitution.

For my explicit protest the following facts are herewith submitted:

The Jackson County Baptist Association is currently conducting in numerous Baptist Churches a school of missions, whereby missionaries come to our churches and relate to us the work that is being done for the Lord on local and foreign fields. Through this mission emphasis our Christian people are made aware of just what our denomination is doing to fulfill our Lord's great commission to "go and teach unto all nations." One of our scheduled missionary speakers was to be a Sergeant Fuller (first name, serial number, and specific assignment unknown to me), who is currently stationed at Keesler AFB in Biloxi, Miss. Our association has now been informed that said Sergeant Fuller has received orders from his superiors in the Air Force that he is not to speak in our church as the audience is segregated. How can the first amendment which guarantees the complete separation of church and state be ignored by the military in prohibiting this man from exercising his religious beliefs by speaking to a local Baptist Church group because there are no Negroes in the audience? To the best of my knowledge the Baptist Negroes of Ocean Springs are completely satisfied and happy in their own church and have no desire to attend our church. Can it be that the Government will attempt to compel the Negroes to integrate our churches, or can not the Great Society leave a soul's salvation to the individual and to the Lord?

To reiterate, I, as an individual citizen strongly protest the actions of the military at Keesler AFB to prevent any American citizen from exercising his religious beliefs just because he happens to be in the Air Force.

Any actions that you may be able to make to rectify this situation are endorsed and encouraged.

Yours very truly,
PERRY S. RANSOM, JR.,
One American Citizen.

In other words, a sergeant in the U.S. Air Force, who happens to be a religious person, was invited to address on a religious subject other Americans who belonged to his religious sect. Because the meeting of this sect was not integrated, Sergeant Fuller of the U.S. Air Force was deprived of his right of free speech. The religious association was deprived of their religious liberty. Freedom of assembly was likewise violated.

Mr. President, I bring this to the attention of the Congress in order that the Congress may know just how far the insanity of the country has progressed and the insanity of the bureaus which are administering the laws under the Constitution of the United States.

Mr. President, this brings me to ask the Secretary of Defense one question: If Sergeant Fuller can be prohibited from attending a Baptist church in Ocean Springs, Miss., to make a few remarks, then can the Secretary of Defense prohibit Sergeant Fuller from attending that Baptist church in Ocean Springs?

I do not expect that Sergeant Fuller's troubles or the troubles of the Baptist Church at Ocean Springs, Miss., will attract the wrath of either the National Council of Churches or the Civil Liberties Union, but I do think the country might be interested in the subject matter if they are apprised of it.

PRESIDENTIAL AND VICE PRESIDENTIAL DISABILITY

The Senate resumed the consideration of 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request.

I ask unanimous consent that 1 hour for debate be allowed on the Dirksen substitute, to be equally divided between the sponsors of the substitute and the Senator in charge of the joint resolution on the floor of the Senate, the Senator from Indiana [Mr. BAYH]; that an hour for debate be allowed on each amendment, the time to be divided between the sponsors of the amendment and the Senator from Indiana [Mr. BAYH]; and that 2 hours for debate be allowed on the joint resolution, to be equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The unanimous-consent agreement, subsequently reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That the further consideration of 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, debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the Senator from Indiana [Mr. BAYH]: *Provided,* That in the event the Senator from Indiana is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him.

Ordered further, That on the question of the final passage of the said joint resolution debate shall be limited to 2 hours, to be

equally divided and controlled, respectively, by the majority and minority leaders: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said joint resolution, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the Senator from Kansas.

Mr. CARLSON. Mr. President, in my opinion, one of the most important pieces of legislation to be considered by this session of Congress is the pending joint resolution regarding presidential succession and presidential disability.

I commend the distinguished Senator from Indiana [Mr. BAYH] and the members of the subcommittee of the Judiciary Committee and the Judiciary Committee for having devoted so much time to the hearings and the preparation of the joint resolution.

For the best part of two centuries, the Congress of the United States has not dealt effectively with the dual problems of vice-presidential vacancies and presidential disabilities. Sixteen times, over a period in excess of 37 years, this Nation has been without a Vice President. President Garfield lay for 80 days unable to perform the powers and duties of his office—President Wilson was disabled for 16 months—President Eisenhower had three serious disabilities. Fortunately, the country was not confronted by an international crisis during any of these periods. We must not take for granted that history will continue to treat us so kindly.

Over the years, Congress has studied these dual problems at great length. The main reasons for the lack of solution are the inability to arrive at a consensus and the unwillingness of individual Members of Congress to amend their own personal views in order to arrive at a workable plan which could receive two-thirds vote in each House of Congress. A great deal of effort has gone into the consensus embodied in Senate Joint Resolution 1—the American Bar Association, the Committee on Economic Development, legal scholars, constitutional lawyers and members of the executive and legislative branches of the Government have worked together to develop a workable solution.

The main problem confronting Congress is writing a constitutional provision which would assure no break in the exercise of the presidential power. More than that, no doubt should be permitted to arise as to who holds the office.

In addition to these two requirements, the procedure for transferring of power should be fast, efficient, and easily understood.

The Senate Judiciary Committee has spent days taking testimony of able and qualified individuals, discussing every phase of this subject.

From the beginning of our Nation, we have been without a Vice President in excess of 20 percent of the time.

The preponderance of testimony has declared that these problems must be solved by constitutional amendment. They are of sufficient importance to our country to be embedded in the bedrock law of the land—the Constitution. Some of those supporting this contention have been President Lyndon Johnson, Vice President HUBERT HUMPHREY, former President Dwight Eisenhower, Attorney General Nicholas Katzenbach, former Attorney General Herbert Brownell, former Attorney General William Rogers, the American Bar Association's House of Delegates by a unanimous vote, president of the American Bar Association, Lewis Powell, and immediate past president of the American Bar Association, Walter Craig.

Opinion is divided as to whether Congress has authority to deal with the problem of disability. Any statute dealing with this problem would be subjected to constitutional challenge in the courts at a time of grave national crisis when action and certainty, not inaction and doubt, were demanded by the national interest.

Sections 3 and 4 of this joint resolution deal with the very difficult problem of Presidential disability.

Section 3 enables the President to declare his own disability to perform the powers and duties of his office and the Vice President to assume these powers and duties as Acting President. This provides for the eventuality that the President may be undergoing a serious operation or he himself feels seriously ill and feels that the best interests of the country dictate that he voluntarily should turn over the powers and duties of the Presidency to the Vice President for the tenure of the President's disability.

Section 4 provides that, if the President is unable to declare his own disability, the Vice President and the majority of the Cabinet may do so, and the Vice President would assume the powers and duties as Acting President for the tenure of the President's disability. Thus, the country would be protected under such circumstances as a Presidential heart attack, which finds the Nation's Chief Executive under an oxygen tent when an effort is made to return missiles to Cuba.

The Vice President has the constitutional responsibility to act and the Cabinet, appointed by the President, serves as a sufficient protection against a power-hungry Vice President.

It is impossible for Congress to foresee every eventuality that could incapacitate the President or his successors. Congress can, however, and I believe should, make every effort to remove the anxiety and apprehension that arises out of the uncertainties of the present law.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. CARLSON. I yield.

Mr. BAYH. I compliment the Senator from Kansas on his statement, particularly the emphasis he placed on the fact that there has been much give and take, and that this is as close as we are likely to come to being able to nail down a final determination. The time for us to act has come. If we continue to postpone this issue, we shall get further and further away from the horrible sequence of events which awakened public interest in this subject and it will recede further and further into the past.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CARLSON. Mr. President, I stated at the beginning of my remarks that I felt the proposed legislation was one of the most important measures that would be considered by this session of the Congress. I sincerely hope that action can be taken on it at this session.

Mr. DIRKSEN. Mr. President, I yield myself 15 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 15 minutes.

Mr. DIRKSEN. I am sensible of the urgency that is involved in connection with the proposal to amend the Constitution. Events in history such as what happened on the 22d of November 1963, the assassination of President Garfield, who signed only a single extradition paper while he lay in a virtual coma for 90 days, and the difficulty that the country encountered at the time President Woodrow Wilson was stricken, have from time to time reenergized this issue. I am quite aware of the desire to have something done and to have it done as quickly as possible.

However, I am rather sensible of an old line in the Book of Exodus:

> Thou shalt not follow a multitude to do evil.

The word "evil" might mean "error," and it can be used in its broadest sense. I believe it has been pretty much of a rule in our constitutional history that we do not legislate in the Constitution. We try to keep the language simple. We try to keep it at a high level, and we offer some latitude for statutory implementation thereafter, depending upon the events and circumstances that might arise. For that reason I have submitted a substitute, which is extremely short—in fact, a single paragraph—which I believe would encompass the problem that confronts us, would meet virtually every exigency, and would leave in the hands of the Congress whatever legislation might be necessary.

Before I go further, I commend the distinguished Senator from Indiana [Mr. BAYH]. No one has been quite so diligent in pursuing this subject. The same statement can be made concerning the staff. The Senator has worked hard. He is anxious to obtain action in this body; and he hopes to obtain action in the other body so that the constitutional proposal can then go to the country.

The substitute which I have offered has been skeletonized so that there would be no ambiguities. There would be no holes of any kind. If there were, they could always be remedied by congressional enactment. The substitute provides merely that if the President is removed from office, if he dies, or for other reason leaves the office, the office of President shall devolve on the Vice President.

That subject has been controversial ever since Chester A. Arthur came into office, and, for that matter, even at the time William Henry Harrison died in office and was succeeded by a President who at the time was not sure whether or not he should accept the office or only

undertake the duties and the responsibilities. My substitute would make it pretty clear—and I believe it is true also of Senate Joint Resolution 1—that in the case of removal, death, or resignation, the office would devolve on the Vice President. That is very simple, and the language would nail it down.

But in the case of the inability of a President to discharge the powers and duties of the office, the powers and duties would devolve upon the Vice President. For example, the President might be alive. He might be incapacitated and unable to discharge his responsibilities as President. So the office would not devolve upon the Vice President, but merely the powers and duties.

The Vice President would be designated as Acting President, and no more. He would maintain that status until the inability had been removed.

My amendment would further provide that—

> The Congress may by law provide for other cases of removal, death, resignation, or inability, of either the President or Vice President—

There might be a situation in which both the President and the Vice President would be disabled. There might be a situation in which the Vice President would be disabled, but the President would be in possession of his faculties and could carry on. In that event the Congress, under the proposed substitute, could enact a law to meet the situation which would arise under those circumstances, and would also be able to declare what officer shall be President or Vice President, in the case of inability, to act as President; and such officer would be or act as President accordingly.

That is rather broad language, but it is designed to be broad. I believe it is in keeping with the language of the Constitution itself.

The amendment contains one other further provision:

> The commencement and termination of any inability shall be determined by such method as Congress may by law provide.

The distinction between the substitute and Senate Joint Resolution 1 is that section 4 and section 5 of the joint resolution provide in a little detail, at least, what shall be done when there is an inability, if the President is disabled and is not in a position to declare his inability. Then it would be up to the Vice President and a majority of the principal officers of the executive departments or such other body as Congress may by law provide to transmit to the Congress written declarations that the President was disabled; and the Vice President would immediately assume the powers and duties of the office as acting President.

Mr. President, there might not be a Vice President. How could he then join with the principal officers of the executive departments in transmitting a message to the Congress?

The language of the joint resolution is as follows:

> Whenever the Vice President and a majority of the principal officers transmit that message—

But if there is no Vice President, obviously we cannot fulfill the equations that are carried in Senate Joint Resolution 1.

I believe that one could point out some other defects that would give me some cause for concern. For that reason I believe that a measure of the kind proposed should be broadly sketched, and that ample latitude should be left for the Congress to act.

It is said that we must "nail it down" and dispose of the matter forthwith. But if and when the proposal—and I am hopeful that a proposal of some kind will go to the country—is disposed of by Congress, the committees can begin to work at once upon legislation to implement such a constitutional proposal. It could be ready, and all the hearings and details could be disposed of, as soon as the necessary number of States had ratified the amendment. Then it would not require more than a matter of days to enact the necessary implementing legislation, so that no time would be lost. We would always preserve the necessary latitude.

For that reason, I think we ought to proceed on a broader base than we presently contemplate. That must have been in the thinking of the President in connection with his message to Congress on January 28. The President said:

> II. VACANCY IN THE OFFICE OF THE VICE PRESIDENT
>
> Indelible personal experience has impressed upon me the indisputable logic and imperative necessity of assuring that the second office of our system shall, like the first office, be at all times occupied by an incumbent who is able and who is ready to assume the powers and duties of the Chief Executive and Commander in Chief.
>
> In our history, to this point, the office of the President has never devolved below the first clearly prescribed step of constitutional succession. In moments of need, there has always been a Vice President; yet, Vice Presidents are no less mortal than Presidents. Seven men have died in the office and one has resigned, in addition to the eight who left the office vacant to succeed to the Presidency.

It is a question whether in the case of succession it would be possible under Senate Joint Resolution 1 to fill that office or not. So it would be something of a departure from what the President said about the indispensable need of having the second office as well as the first office always occupied. With that general proposal, I fully agree.

There are other matters that I might present in connection with the amendment.

I shall submit at this point a general statement on the general subject, and also some questions that have been raised. I ask unanimous consent that they may be printed at this point in the RECORD, together with an article entitled "Bayh Amendment—Second Thoughts on Disability," written by Roscoe Drummond, and published in the Washington Post of recent date.

There being no objection, the statement, questions, and article were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR DIRKSEN

We have before us Senate Joint Resolution 1. It is a proposed amendment to the Constitution to meet the problem of presidential inability and of vacancies in the office of Vice President.

I commend the distinguished chairman of the Subcommittee on Constitutional Amendments. He has worked throughout his period of service on the committee on this problem. He has devoted a tremendous amount of time and energy to the issue and his work has helped to keep the issue before us.

It is a pressing domestic issue. It is not a new issue by any means. It has been before the Congress numerous times. It has been the subject of endless study by legislators, constitutional authorities, and others. All have sought to provide an answer, but no proposed solution has been found that met the problem. Nonetheless, a solution must be found. We must contrive language that will solve the problem.

There are those who contend that no constitutional amendment is required, that the entire matter can be disposed of by legislation. I do not hold to this view although many distinguished scholars support it. Rather I share with our distinguished subcommittee chairman, our subcommittee, and the full committee, the view that a constitutional amendment is required.

The problem however is this: How do we fashion the amendment? Do we follow the advice of the Attorney General who says:

"Apart from that, the wisdom of loading the Constitution down by writing detailed procedural and substantive provisions into it has been questioned by many scholars and statesmen. The framers of the Constitution saw the wisdom of using broad and expanding concepts and principles that could be adjusted to keep pace with current need."

And do we follow the advice of another noted constitutional scholar, Martin Taylor, chairman of the Committee on Constitutional Law, New York Bar Association, who has been most active in this field and who urged the subcommittee only last year that:

"In the first plan, you have a basic fundamental principle of constitutional law that any amendment should be simple. I am substantially quoting from John Marshall. It should not give detail. You see the error of that in a great many proposals because, as time goes by, there might be great disagreement as to the practicability of applying it under changed circumstances. So the fundamental [principle] that you give broad enabling powers in the Constitution is what you should rely on, changing, if you please, implementation with changing conditions."

That is the view I hold. Keep constitutional amendments simple. Leave the detail to implementing legislation which can be changed to reflect changing circumstances. Leave the Constitution as the basic document from which all authority flows, but do not attempt to detail the application to specific problems in the basic document itself.

And that is the difficulty with Senate Joint Resolution 1 as reported by the full committee with amendments. It was pointed out by the Attorney General when he was before the subcommittee. He said he had difficulty with the amendment. It was necessary for him to make a number of assumptions in regards to the operation of the amendment. This should not be—the amendment should be clear and understandable.

What were the problems that the Attorney General had with the amendment? This is what he said:

"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 would be consistent with long-

standing precedent (see, e.g., *Missouri Pac. Ry. Co.* v. *Kansas*, 248 U.S. 276 (1919)).

"Second, I assume that the procedure established by section 5 for restoring the President to the powers and duties of his office is applicable only to instances where the President has been declared disabled without his consent, as provided in section 4; and that, where the President has voluntarily declared himself unable to act, in accordance with the procedure established by section 3, he could restore himself immediately to the powers and duties of his office by declaring in writing that his inability has ended. The subcommittee may wish to consider whether language to insure this interpretation should be added to section 3.

"Third, I assume that even where disability was established originally pursuant to section 4, the President could resume the powers and duties of his Office immediately with the concurrence of the Acting President, and would not be obliged to await the expiration of the 2-day period mentioned in section 5.

"Fourth, I assume that transmission to the Congress of the written declarations referred to in section 5 would, if Congress were not then in session, operate to convene the Congress in special session so that the matter could be immediately resolved. In this regard, section 5 might be construed as impliedly requiring the Acting President to convene a special session in order to raise an issue as to the President's inability pursuant to section 5.

"Further in this connection, I assume that the language used in section 5 to the effect that Congress "will immediately decide" the issue means that if a decision were not reached by the Congress immediately, the powers and duties of the Office would revert to the President. This construction is sufficiently doubtful, however, and the term "immediately" is sufficiently vague, that the subcommittee may wish to consider adding certainty by including more precise language in section 5 or by taking action looking toward the making of appropriate provision in the rules of the House and Senate.

"In my testimony during the hearings of 1963, I expressed the view that the specific procedures for determining the commencement and termination of the President's inability should not be written into the Constitution, but instead should be left to Congress so that the Constitution would not be encumbered by detail."

Did the action of the full committee in amending Senate Joint Resolution 1 correct the deficiencies pointed out by the Attorney General? Let us consider what he said before the full Judiciary Committee of the other body. He began observing that:

"As the committee well knows, the factual situations with which House Joint Resolution 1 is designed to deal are numerous and complex. Inevitably, therefore, some aspects of the proposal will raise problems of ambiguity for some observers. In order to assist in resolving any such ambiguity, I propose to set forth the interpretations I would make in several difficult areas so that the committee may consider whether clarification is needed."

He then repeated the first observation that he made before our subcommittee regarding his assumption of the meaning of "majority vote." He then repeated his second observation regarding the procedure established by section 5 of Senate Joint Resolution 1, and then added:

"However, I note in this regard that the Senate Committee on the Judiciary has recently approved an amended version of Senate Joint Resolution 1, the counterpart of House Joint Resloution 1, under which the President may resume his powers and duties in this situation only by following a procedure comparable to that established by section 5. I would much prefer a provision which would clearly enable the President to terminate immediately any period of inability he has voluntarily declared."

He then repeated the third and fourth observations he made to our committee but then made this further observation:

"The Senate Committee on the Judiciary has revised Senate Joint Resolution 1 to provide that all declarations, including the declarations by the President under sections 3 and 5 and the declaration by the Vice President under section 4, shall be transmitted to the President of the Senate and Speaker of the House of Representatives. This change, the committee states, would provide a basis on which congressional leaders could convene Congress if it were not then in session. However, the Constitution expressly authorizes only the President to convene Congress in special session (art. II, sec. 3, clause 2), and in view of that provision it might be argued that Congress cannot be convened in special session by its own officers. Accordingly, I would think it preferable to provide that the Acting President must convene a special session in order to raise an issue under section 5 as to the President's inability. Although section 5 as it now stands could be construed in that way, the committee may wish to consider whether it would not be advisable to add express language which would make that intention unmistakable.

"Fifth, I assume that the language used in section 5—to the effect that Congress 'will immediately decide' the issue—means that if a decision were not reached by the Congress immediately, the powers and duties of the office would revert to the President. This construction is sufficiently doubtful however, and the term 'immediately' is sufficiently vague, even though used also in article I, section 3, clause 2 of the Constitution, that the committee may wish to consider adding certainty by including more precise language in section 5 or by taking action looking toward the making of approximate provision in the rules of the House and Senate.

"The Senate Judiciary Committee, in approving Senate Joint Resolution 1, has changed the language 'immediately decide the issue' to 'immediately proceed to decide the issue.' This change seems to have the effect of reversing the interpretation I have indicated, the result being that under Senate Joint Resolution 1, as approved by the Senate committee, the Acting President would continue to exercise the powers and duties of the Presidency while Congress considered the matter and until one of the Houses of Congress brought the issue to a vote and failed to support the Acting President by a two-thirds vote.

"I note that the committee has before it several proposals (H.J. Res. 3, H.J. Res. 119, and H.J. Res. 248) which would provide that once the issue of inability was referred to Congress, the President would be automatically restored to the powers and duties of his Office if Congress failed to act within 10 days. These proposals would add a measure of protection for the President against interminable consideration of the issue by Congress. However, it would still be possible under these proposals for the issue to be decided by delay rather than by a vote on the merits.

"In view of the difficulty of establishing in advance exactly what period of consideration would be appropriate, the most effective course might be to initiate promptly the adoption of rules for the consideration of questions of inability that would insure a reasonably prompt vote on the merits. I do feel that, if the issue of national leadership is to be importantly affected by delay, then delay should favor the President. Particularly is this so if the President may not, under section 3, unilaterally declare an immediate end to periods of inability which he has voluntarily declared."

But there is another course open to us. In the 88th Congress a simple and complete amendment was introduced by Senator Kefauver, then the chairman of the Constitutional Amendments Subcommittee, and cosponsored by Senator Keating. It was Senate Joint Resolution 35.

In his appearance before the subcommittee on June 18, 1963, Attorney General Katzenbach, then the Deputy Attorney General suggested two minor modifications to the amendment. As modified the amendment would read:

"In the case of the removal of the President from office or of his death or resignation, the said office shall devolve on the Vice President. In case of the inability of the President to discharge the powers and duties of the said office, the said powers and duties shall devolve on the Vice President as Acting President until the inability be removed. 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 be President, or in case of inability, act as President, and such officer shall be or act as President accordingly, until a President shall be elected or, in case of inability, until the inability shall be earlier removed. The commencement and termination of any inability shall be determined by such method as Congress may by law provide."

The Attorney General endorsed the amendment as changed, saying:

"In addition, crucial and urgent new situations may arise in the changing future—not covered by Senate Joint Resolution 28—where it may be of importance that Congress, with the President's approval, should be able to act promptly without being required to resort to still another amendment to the Constitution. Senate Joint Resolution 35 makes this possible; Senate Joint Resolution 28 does not.

"Since it is difficult to foresee all of the possible circumstances in which the Presidential inability problem could arise, we are opposed to any constitutional amendment which attempts to solve all these questions by a series of complex procedures. We think that the best solution to the basic problems that remain would be a simple constitutional amendment, such as Senate Joint Resolution 35, which treats the contingency of inability differently from situations such as death, removal, or resignation, which states that the Vice President in case of Presidential inability succeeds only to the powers and duties of the office as Acting President and not to the office itself, and which declares that the commencement and termination of any inability may be determined by such methods as Congress by law shall provide. Such an amendment would supply the flexibility which we think is indispensable and, at the same time, put to rest what legal problems may exist under the present provisions of the Constitution as supplemented by practice and understanding."

He reaffirmed his support for this amendment in 1964 by submitting his 1963 statement for the record, and, I might say his three predecessors, Attorneys General Brownell, Rogers, and KENNEDY, have also endorsed the amendment. The House of Delegates of the American Bar Association has endorsed that amendment on two separate occasions. The New York State Bar Association reaffirmed its support of such an amendment this very week and it has been supported by the Association of the Bar of the City of New York.

Let me point out that this amendment, as modified, would permit precisely what Senate Joint Resolution 1 attempts to do but it would reserve the detailed procedure in Senate Joint Resolution 1, which has proved the principal difficulty, for legislation where such details can more properly and easily be defined.

What is the practical difficulty with Senate Joint Resolution 1? It is the questions left unanswered. Must the President wait two days to regain his authority when he has voluntarily relinquished it? If the President is disabled and the Congress is not in session, who calls it into session? Under the Constitution only the President can. What happens if a Vice President, who is serving as Acting President, became disabled himself?

Then, too, if the method of filling a vacancy in the office of Vice President proves unworkable, would it not be preferable to change the procedure by legislation rather than by another constitutional amendment as Senate Joint Resolution 1 requires?

These are but a few of the questions that come to mind as I study this amendment. Consider the problems that the State legislatures will have. Who will be present to answer the questions of the members of the legislature concerning the mechanics of all of these details? Wouldn't the simpler amendment which merely clarifies the present Constitution and leaves the details to be legislated be far preferable and more easily understood?

I recite a number of questions that occur to me in connection with Senate Joint Resolution 1:

1. Where in section 5 is there any language limiting it to those instances where the Vice President and a majority of the heads of the executive department have declared the President unable to discharge the powers and duties of office?

2. If there is no such language, should there be?

3. Must the President wait 2 days to see if the Vice President files a declaration that the President is still under a disability before recovering his office even though he had voluntarily relinquished it?

4. One of the purposes of Senate Joint Resolution 1 is to permit the President to declare his own inability with the assurance that he can immediately regain it upon the termination of inability. Would the complicated procedure contained in Senate Joint Resolution 1 for regaining the office make it highly unlikely that a President would use it in most cases?

5. If a President were physically unable to write or even sign his name, how could he make a written declaration of his own inability?

6. Another purpose of Senate Joint Resolution 1 is to make certain that the offices of President and Vice President are filled at all times. Testimony before the committee indicated the urgency of this. The national security was involved, it was said. The President in his message to Congress on January 28, 1965, said:

"Indelible personal experience has impressed upon me the indisputable logic and imperative necessity of assuring that the second office of our system shall, like the first office, be at all times occupied by an incumbent who is able and who is ready to assume the powers and duties of the Chief Executive and Commander in Chief."

7. Does Senate Joint Resolution 1 make provision for having the offices filled at all times?

8. Suppose the President becomes disabled and the Vice President becomes Acting President. Where is the provision for filling the office of Vice President?

9. What happens if the Vice President is under a disability when the President becomes disabled?

10. The Constitution says that only the President can call Congress into special session. What happens if Congress is not in session when the Vice President and a majority of the heads of the executive departments declare the President unable to discharge the powers and duties of his office? How is Congress called into session to discharge its function under section 5?

11. If the method of filling a vacancy in the office of Vice President as provided in Senate Joint Resolution 1, proves unworkable or undesirable, wouldn't it be preferable to be able to change it by legislation rather than by another constitutional amendment as required by Senate Joint Resolution 1?

BAYH AMENDMENT—SECOND THOUGHTS ON DISABILITY

(By Roscoe Drummond)

Some influential Senators are having second thoughts on the wisdom of the Bayh amendment as a means of dealing with Presidential disability, not on the urgency of the action. And there is no acute dissent on what should be done, only on how it should be done.

The how is important. It could be crucially important.

The second thoughts, which are growing on the Hill, have to do with whether to write detailed procedures into the Constitution to try to cover all contingencies or to propose a simple amendment that would authorize Congress to deal with these matters.

Senator EVERETT M. DIRKSEN, of Illinois, the Democratic Senator EUGENE MCCARTHY, of Minnesota, have come out on the side of a simple enabling amendment. Other Senators, both Republican and Democratic, have indicated either their support or their open-mindedness.

There is a strong case to be made in favor of an authorizing amendment without attempting to write detailed law into the Constitution.

The role of the Constitution is to distribute authority between the three branches of the Government and between the Federal Government and the States. Its function is not to prescribe in detail how that authority shall be used. Since Congress does not have the power to deal with Presidential disability and Vice Presidential vacancies, the only need is to give Congress that power.

Amendment to the Constitution should not legislate. Good precedent: The 16th amendment, which gave Congress authority to "lay and collect taxes on incomes." It did not attempt to write a tax code. Bad precedent: The 18th amendment, which wrote the prohibition law into the Constitution and made repeal of the amendment the only redress when it did not work.

Can't we profit from the experience of the 18th amendment, or must we repeat it all over again? It seems to me once is enough.

What if we write into an amendment all the precise procedures for filling Vice Presidential vacancies, and coping with Presidential disability? And then later we find contingencies nobody foresaw? Or what if some major provision proves inadequate? Then the amending process would have to start all over again.

These are practical questions. For example, one proposal to go into a possible amendment would leave it wholly with the President to affirm that he has recovered from a disability. But what if he insists upon exercising his powers when he is unable to do so It has happened twice. President Garfield lingered for 80 days between life and death, disabled but unwilling to accept his disability at any time. The same with President Wilson for 17 months.

The voluntary arrangements established by Presidents Eisenhower, Kennedy, and Johnson with their Vice Presidents suggest that this fearful hoarding of power might not be repeated. But we cannot be sure that some future President, after being disabled, would not seek to recapture his authority before he was ready. One proposed amendment would leave this matter unresolved.

Congress cannot possibly foresee every contingency. That is why it seems to me that Senator DIRKSEN and Senator MCCARTHY are wise in urging that detailed methods not be embedded into the Constitution and that instead, the necessary authority be granted to Congress to act.

Mr. DIRKSEN. Mr. President, where, for instance, in section 5 is there any language limiting that section to instances in which the Vice President and a majority of the heads of the executive departments have declared the President to be unable to discharge the powers and duties of his office? If there is no such language, should there be?

Must the President wait 2 days to see if the Vice President files a declaration that the President is still under a disability before recovering his office, even though he had voluntarily relinquished it?

One of the purposes of Senate Joint Resolution 1 is to permit the President to declare his own inability, with the assurance that he can immediately regain it upon the termination of such inability. Would the complicated procedure contained in Senate Joint Resolution 1 for regaining the office make it highly unlikely that a President would use it in most cases?

If a President were physically unable to write or even sign his name, how could he make a written declaration of his own inability?

Another purpose of Senate Joint Resolution 1 is to make certain that the Offices of President and Vice President are filled at all times. Testimony before the committee indicated the urgency of this matter, and that is the reason why I recited the extended paragraph from the President's message to Congress.

Does Senate Joint Resolution 1 make provision for having the offices filled at all times?

The PRESIDING OFFICER (Mr. TYDINGS in the chair). The 15 minutes yielded to himself by the Senator from Illinois have expired.

Mr. DIRKSEN. I yield myself 2 additional minutes.

Suppose the President becomes disabled and the Vice President becomes Acting President. Where is the provision for filling the office of Vice President?

What happens if the Vice President is under a disability when the President becomes disabled?

The Constitution provides that only the President may call Congress into special session. What happens if Congress is not in session when the Vice President and a majority of the heads of the executive departments declare the President unable to discharge the powers and duties of his office? How would Congress be called into session to discharge its function under section 5?

If the method of filling a vacancy in the office of Vice President, as provided in Senate Joint Resolution 1, proves unworkable or undesirable, would it not be preferable to be able to change it by legislation rather than by another constitutional amendment, as required by Senate Joint Resolution 1?

Mr. President, those are some of the questions that arise. My interest is that there be no ambiguities and no rigidities

written into the Constitution that could be modified only by another constitutional amendment.

My preference is for flexibility and for adequate powers in the hands of Congress to deal with the problem. I am sensible of the fact that something must be done. I am glad that the distinguished Senator from Indiana [Mr. BAYH] has carried the proposal to this point. For aught I know, my name may be on the joint resolution. Certain it is that I voted for the proposal in the previous Congress, but always with the reservation that proposals that might be made after the measure had left the committee could without prejudice be submitted on the floor of the Senate. So I exercise only the reservation that I kept unto myself both in the subcommittee and in the full committee, because I wanted to see some measure come to the floor of the Senate upon which the Senate could work its will and get it to the other body, and finally to the country.

The PRESIDING OFFICER. The additional time yielded to himself by the Senator from Illinois has expired.

Mr. DIRKSEN. Mr. President, I yield 5 minutes to the distinguished Senator from Nebraska.

Mr. HRUSKA. Mr. President, in the discussion and consideration of the joint resolution, both in the present session of Congress and earlier, there were two principles that I felt were most important. One of those points was just emphasized by the Senator from Illinois, when he spoke in favor of his substitute measure, namely, the inadvisability placing too many detailed procedural provisions in the Constitution.

This makes the Constitution very inflexible. Flexibility is a principle which has been inherent in our Constitution. It has been followed quite consistently. Exceptions to it are very few indeed.

I fear that with the great number of procedural provisions found in the Senate joint resolution, as reported by the committee, we shall very likely, if we are ever called upon to exercise it, run into something that will prove unworkable. For that reason, it would be better to couch the proposed amendment in general terms and then provide that Congress shall be empowered to implement, by the legislative process, the amendment.

There are two ways of doing it. One would be the substitute resolution of the Senator from Illinois. The other is proposed in the amendment offered by the Senator from Vermont on behalf of the Senator from Kentucky [Mr. COOPER].

The latter method would grant to Congress the power to prescribe any other plan for dealing with disability, in the choice of a Vice President and the filling of a vacancy in addition to that detailed in Senate Joint Resolution 1.

That is one of the principles. The other principle is the matter of separation of power. We have had testimony, throughout the past 6 or 8 years, that it is desirable for an amendment dealing with this subject to respect the doctrine of separation of powers. It has been my view that that doctrine is violated in the resolution as approved by the Committee on the Judiciary, since the decision as to whether or not disability has terminated is left for Congress.

When we ask another branch of the Government for the decision, the doctrine of separation of powers is violated. That was debated thoroughly. The Senator from Indiana has developed a fine body of testimony which is contrary to that viewpoint.

It is, however, a viewpoint that was at one time the judgment of our present Attorney General, three of his predecessors, as nearly as I remember.

As I have indicated in my individual views of the committee report, it is my view we should abide by these two principles. The substitute amendment of the Senator from Illinois complies with those two principles.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. Mr. President, I yield 5 minutes to the Senator from North Carolina, or as much time as he may care to use in the opposition to the Dirksen amendment.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. ERVIN. Mr. President, I rise in opposition to the Dirksen amendment. The Dirksen amendment totally ignores one of the crucial questions which has brought this matter to the floor of the Senate. That is the fact that vacancies occur in the office of Vice President.

The Dirksen amendment makes no attempt to provide for the election of a Vice President in case a Vice President succeeds to the office of President, or is removed from office by impeachment. It ignores one of the things which has made this question so crucial. It ignores the necessity of having someone continue in the office of Vice President.

There is another fatal flaw in the Dirksen amendment. That is the provision that "the commencement and termination of any inability shall be determined by such method as Congress may by law provide."

I thank God that was not placed in the Constitution when the Constitution was adopted. If it had been placed in the Constitution, we would have seen, in the most tragic period of our history, the total blackout of government of the people, by the people, and for the people in this Nation. I refer to the tragic days when a congressional group was trying to take complete power in this Nation. The group was led by the then Senator Ben Wade, who was President pro tempore of the Senate and who wanted to be President. At that time there was no Vice President. Lincoln had been assassinated and had been succeeded in the office of President by Vice President Andrew Johnson.

This group in Congress had intimidated the Supreme Court of the United States after that Court had handed down one or two courageous decisions. The group scared the Supreme Court so that it did not dare to decide cases as they should have been decided.

The group then decided that they would impeach Andrew Johnson. The only thing that saved Andrew Johnson from impeachment, and saves us from behaving as a "banana republic" often behaves on the seizure of power by ambitious men, was the provision of the Constitution that required a two-thirds vote before the President could be removed from office. Power-hungry men, headed by a man who aspired above everything else to become President of the United States, and who was in line for the Presidency if Andrew Johnson had been removed from office, were prevented from taking control by a provision of our Constitution which required a two-thirds vote for impeachment, and then by only one vote short of the two-thirds majority.

If the provision referred to had been in the Constitution at that time—"The commencement and termination of any inability shall be determined by such method as Congress may by law provide"—Andrew Johnson would have been removed from office. The group would have set up a medical commission and had President Johnson declared mentally disabled. But they did not have the power under the Constitution. The only way that they could have removed him would have been by impeachment, and only by impeachment by a two-thirds majority.

With this substitute amendment incorporated in the Constitution, any time that power-hungry men in Congress were willing to go to the extremes that men were willing to go to in those days, they could take charge of the Presidency. Under the Dirksen proposal, they could provide that one of their favorite Members should succeed to the office of President if there were no Vice President at the time. That is a dangerous thing.

Mr. President, someone has very wisely said that a nation which does not remember the history of the past is doomed to repeat its mistakes.

So this amendment should be rejected for at least two reasons. It does not deal adequately with the question of vacancies in the Vice Presidency, and it would place dangerous power in the hands of Congress.

I am not disturbed about the doctrine of the separation of powers here, because the powers of government are not always separated. The Constitution provides, for example, that a President can be impeached, and be removed from office by the Senate. The Constitution provides a good many things that must be done by the President and the Congress. The Constitution provides that the President may make treaties, but they must be ratified by the Senate. It provides that the President shall appoint heads of departments of the Federal Government, judges, ambassadors, and other officers of the United States; but the nominations are subject to confirmation by the Senate, under the Constitution.

So there are many cases in which the powers of government are jointly reposed in both the executive and the legislative branch.

This amendment should be rejected for those two reasons. The joint resolution

presented by the committee contains full protection against any group of men thirsting for power taking over the office of the Presidency, as could be done by the Dirksen proposal, because it requires a two-thirds vote. It requires action of the Vice President and members of the Cabinet and action by Congress to remove the President or Vice President.

I agree with my good friend from Nebraska, in that I do not like to have too many specific things written into the Constitution, but when we try to protect somebody, we had better write specifics into the Constitution if we do not want to run the risk of converting the United States into what I would call a banana republic. We had better provide for a two-thirds vote by the Congress, such as the joint resolution reported by the committee provides, to remove the President from office, where he risks the charge of disability.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. BAYH. I am glad the Senator from North Carolina has pointed out the time when our forefathers determined that there should be a commingling of the various branches which in most cases we keep separate. I am also glad he pointed out the need for specifics under certain circumstances.

It seems to me that a close analysis of our Constitution discloses that it is a wonderful, broad, general plan for a wonderful society, but at the same time certain basic specifics to protect certain inalienable rights are necessary, such as the basic features provided in article 2, section 1, which has since been replaced by the 12th amendment. It specifically provides, in great detail, how elections shall be conducted, because we do not want Congress to take away from the people the right to decide for themselves.

As the Senator knows, the Constitution contains many specific qualifications—for example, to be President, and to be Members of this great body.

I commend the Senator for what he has said about the qualifications provided.

Mr. ERVIN. As the Senator knows, in the Bill of Rights specifics are provided for the protection of the individual against governmental tyranny. There are specifics protecting the individual against unreasonable searches and seizures of his papers, effects, and home. The Constitution contains specifics to protect many rights.

That is the reason why the amendment proposed by the committee was prepared in the form it is in. It was necessary to protect a President against a power-hungry Congress, on the one hand, and also to see to it that there was proper protection before such drastic steps should be taken.

Mr. SALTONSTALL. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I am glad to yield to the Senator from Massachusetts, who has been an ardent ally from an early date.

Mr. SALTONSTALL. This may be a small, immaterial matter, but I would like to clarify it in my mind and for the RECORD.

Turning to section 3 of the Senator's proposed constitutional amendment, it reads:

> 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.

Under the Constitution, the Vice President is President of the Senate, but if he became Acting President under this amendment, he would no longer be President of the Senate, but the President pro tempore would become the President of the Senate. Is that correct?

Mr. BAYH. That is correct.

Mr. SALTONSTALL. The Vice President would become Acting President and thereby lose his title as President of the Senate. Is that correct?

Mr. BAYH. That is correct. I point out for the RECORD, with respect to the wording of the amendment, that, as originally introduced and as reported by the committee, it was suggested that the message would be transmitted to Congress. We were determined to think of all eventualities that could possibly happen. We determined that such an eventuality might happen when Congress was not in session. Therefore we changed the wording so that it would read that the transmission should be to the President of the Senate and the Speaker of the House of Representatives. By that wording, the normal, legal procedure of delivery would take place in the manner set out. Delivery to the President of the Senate and the Speaker of the House would be sufficient for the intention of the resolution.

Mr. SALTONSTALL. May I ask the Senator from Indiana, who has worked so hard in this matter, a question? Perhaps he has answered it in his speech when I was not present in the Chamber. If Congress were not in session, would the fact that the transmission is to be to the President of the Senate and the Speaker of the House automatically call Congress into session?

Mr. BAYH. It is specifically provided in section 5, when it is necessary for Congress to convene, that it shall immediately proceed to decide. We think that is sufficient to enable the President of the Senate or the Speaker of the House to call a special session.

Mr. ERVIN. Mr. President, will the Senator from Indiana yield to me for the purpose of clarifying the question asked by the Senator from Massachusetts?

Mr. BAYH. I yield.

Mr. ERVIN. The amendment originally provided for the report to be made to Congress. The question was raised whether a report could be made to Congress when Congress was in adjournment. So we adopted the language that the report should be made to the President of the Senate and the Speaker of the House of Representatives to make certain that the Vice President could take over, immediately, in case of the President's disability, without waiting for Congress to meet. But it is implied that Congress shall meet, because section 5 contains the language, "Congress shall immediately proceed."

Mr. SALTONSTALL. Therefore, either the President of the Senate or the Speaker of the House, or both, would call Congress into session, and they would have the power to do it?

Mr. ERVIN. Yes; that would be implied from the fact that Congress would meet immediately.

Mr. SALTONSTALL. But if Congress adjourned sine die, there would not have to be any provision in the sine die adjournment to permit those officers to call it back into session.

Mr. ERVIN. No.

Mr. SALTONSTALL. We sometimes include such a provision.

Mr. ERVIN. Yes.

Mr. SALTONSTALL. It would be automatic?

Mr. ERVIN. Yes.

Mr. President, my good friend from Nebraska referred to the testimony of the present Attorney General in 1963. I invite the Senator's attention to the hearings, at pages 10 and 11. I read from the bottom of page 10:

> In my testimony during the hearings of 1963, I expressed the view that the specific procedures for determining the commencement and termination of the President's inability should not be written into the Constitution, but instead should be left to Congress so that the Constitution would not be encumbered by detail. There is, however, overwhelming support for Senate Joint Resolution 1, and widespread sentiment that these procedures should be written into the Constitution. The debate has already gone on much too long. Above all, we should be concerned with substance, not form. It is to the credit of Senate Joint Resolution 1 that it provides for immediate self-implementing procedures that are not dependent on further congressional or Presidential action. In addition, it has the advantage that the States, when called upon to ratify the proposed amendment to the Constitution, will know precisely what is intended. In view of these reasons supporting the method adopted by Senate Joint Resolution 1, I see no reason to insist upon the preference I expressed in 1963 and assert no objection on that ground.

Mr. BAYH. Mr. President——

The PRESIDING OFFICER (Mr. TYDINGS in the chair). The Senator from Indiana.

Mr. BAYH. I should like to suggest that this might be the appropriate time to ask unanimous consent to have printed in the RECORD a letter which I received yesterday from the Attorney General, Nicholas Katzenbach, in an effort to clarify and point out specifically that his opinion does away with some of the rumors to the contrary.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

> OFFICE OF THE ATTORNEY GENERAL,
> *Washington, D.C., February 18, 1965.*
>
> Hon. BIRCH BAYH,
> *U.S. Senate, Washington, D.C.*
>
> DEAR SENATOR BAYH: I understand that recent newspaper reports have raised some question as to whether I favor the solution for the problem of presidential inability embodied in Senate Joint Resolution 1, or whether I prefer a constitutional amendment which would empower Congress to enact appropriate legislation for determining when inability commences and when it terminates.
>
> Obviously, more than one acceptable solution to the problem of presidential inability

is possible. As the President said in his message of January 28, 1965, Senate Joint Resolution 1 represents a carefully considered solution that would responsibly meet the urgent need for action in this area. In addition, it represents a formidable consensus of considered opinion. I have, accordingly, testified twice in recent weeks in support of the solution embodied in Senate Joint Resolution 1 and House Joint Resolution 1.

My views on the particular question here involved were stated on January 29, 1965, before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, as follows:

"In my testimony during the hearings of 1963, I expressed the view that the specific procedures for determining the commencement and termination of the President's inability should not be written into the Constitution, but instead should be left to Congress so that the Constitution would not be encumbered by detail. There is, however, overwhelming support for Senate Joint Resolution 1, and widespread sentiment that these procedures should be written into the Constitution. The debate has already gone on much too long. Above all, we should be concerned with substance, not form. It is to the credit of Senate Joint Resolution 1 that it provides for immediate, self-implementing procedures that are not dependent on further congressional or Presidential action. In addition, it has the advantage that the States, when called upon to ratify the proposed amendment to the Constitution, will know precisely what is intended. In view of these reasons supporting the method adopted by Senate Joint Resolution 1, I see no reason to insist upon the preference I expressed in 1963 and assert no objection on that ground."

I reaffirmed these views with the same explicit language in my prepared statement delivered on February 9, 1965, before the House Judiciary Committee. In view of the above, there should be no question that I support Senate Joint Resolution 1.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

Mr. ERVIN. Mr. President, my opinion is that the present Attorney General can now claim something which all of us would like to be able to claim; namely, that we are wiser today than we were yesterday.

Mr. BAYH. I wish to thank my good friend the Senator from North Carolina [Mr. ERVIN], and the distinguished Senator from Massachusetts [Mr. SALTONSTALL]. Both Senators have been of great help in trying to forge the final content of our arguments.

There are one or two additional points which were raised by the minority leader, on which I should like to comment.

First, I should like to point out that in the quotation which he read from the Presidential message, the President was at that particular time addressing himself to the need for a Vice President at all times, to elect a Vice President by Congress and Presidential appointment, a matter which is not even contained in the Dirksen amendment.

As I said in my statement, the President unequivocally, on all fours, endorsed both disability and Vice-Presidential replacement provisions in the joint resolution.

Second, I refer to my earlier remarks, that under the provisions of section 3 where the President voluntarily gives up his powers, it is the understanding—reinforced by the testimony of the Attorney General—that he could assume it merely by declaration, and would not have to invoke the provisions of section 5 and bring in the Vice President, the Cabinet, and Congress.

Next, I should like to point out that if we had a President unable to write his name, the matter would not be considered under section 3, as the distinguished minority leader has suggested, but rather it would be considered under section 4, which is specifically provided for in the resolution in a case in which a President of the United States might have a heart attack and be in an oxygen tent at a time when missiles might be moving to Cuba or some other area of the world. The health and welfare of the country would demand immediate action; and thus the Vice President and a majority of the Cabinet would act, when the President might be unable to do so.

The issue of calling a special session has been well covered in previous colloquy and I shall not repeat what has been stated; but it is our understanding that sufficient authority has been indicated in the report to adequately point out that the intention of the amendment is to give this power to the President of the Senate and the Speaker of the House.

I close by saying that it seems to me we are making a general policy determination which was articulated so well by my colleague, the Senator from North Carolina [Mr. ERVIN], as to whether we are going to open Pandora's box to permit a blanket check provision to be given to Congress to provide laws in these vital areas at some later date.

Let me reemphasize that if we give Congress the power by law to decide later, we shall not be able to prevent a majority of Congress from passing any laws it may wish to pass, and then we immediately negate the two-thirds protection residing in the impeachment provisions of the Constitution since its inception, and which is also provded in Senate Joint Resolution 1, as so vividly pointed out by the Senator from North Carolina [Mr. ERVIN].

There has been a trend of thinking that if we have a loosely drawn, nonspecific constitutional amendment, the legislative bodies might be more inclined to adopt it. I am satisfied that several Members of this body who have had legislative experience at the State level can speak with more authority than I. But my 8 years in the Indiana General Assembly have led me to believe that this was a false assumption. With this in mind, we sent copies of Joint Resolution 35, which was merely an enabling act giving Congress power to act, and Joint Resolution 139 of the previous year, which is almost identical with Senate Joint Resolution 1, to the president of the senate and the speaker of the house of all the States.

The preponderance of evidence—I believe we received only three letters to the contrary—was that State legislative bodies would prefer to enact the ratification resolution, that State legislatures should deal with a specific proposal and not give Congress a blank check to take away the safeguards to which the Senator from North Carolina [Mr. ERVIN] has so adequately directed our attention.

Mr. SALTONSTALL. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. SALTONSTALL. Is it not true, following up what the Senator has said, that in this instance this subject had been discussed for many years, and that if we send it back in a general form and say that Congress will do something if the amendment should be adopted, the average legislator, the average citizen will say, "Pshaw. Congress is putting the thing off further, and this is not definite."

Mr. BAYH. The Senator is absolutely correct. The effect would be very much the same, I am sure, as that contained in the 20th amendment, which provides for that eventuality. Thirty-two years ago that provision was specified, and Congress has done nothing since that time. If an enabling constitutional amendment were passed by the two Houses of Congress and sent to and subsequently ratified by the House, we still would have to enact a law, which we have not done in 170 years.

Now that we are close to solving the problem, why put it off to some day in the future when interest may have waned, and Congress may be dilatory about it, as it has been in the past?

Mr. SALTONSTALL. That is an appealing argument. That is the fundamental argument with the average member of a State legislature.

Mr. BAYH. I thank the Senator from Massachusetts for pointing this out.

Mr. President, one last point and then I shall have concluded my arguments, which have ably reenforced by many Senators. I believe that the most important ingredient in a constitutional amendment such as this is general public acceptance of a formula which we provide. As I pointed out in my earlier remarks, the horrible tragedy in Dallas, Tex., would have been much worse—if that is possible to imagine—if we had not had a definite procedure which was accepted by the people of America so that Lyndon Johnson could assume the office of President, succeeding to the office from that of Vice President.

It is my judgment that a constitutional amendment—passed by a two-thirds vote of the Senate, passed by a two-thirds vote of the House of Representatives, and subsequently ratified by three-fourths of the State legislatures, with all of the attendant publicity—would be much better accepted by the people of America, and they would be more aware of its provisions, than a law which passed both Houses of Congress by majority vote.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President——

Mr. BAYH. Mr. President, I yield back the remainder of my time.

Mr. HRUSKA. Mr. President, if there is any time left on the substitute amendment, I yield back the remainder of that time.

The PRESIDING OFFICER. All time is yielded back.

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. I ask for the yeas and nays on the Dirksen substitute.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Illinois [Mr. DIRKSEN]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from North Dakota [Mr. BURDICK], the Senator from Pennsylvania [Mr. CLARK], the Senator from Tennessee [Mr. GORE], the Senator from Alaska [Mr. GRUENING], the Senator from Oregon [Mr. MORSE], the Senator from Utah [Mr. MOSS], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Florida [Mr. SMATHERS], the Senator from New Jersey [Mr. WILLIAMS], are absent on official business.

I also announce that the Senator from Georgia [Mr. RUSSELL] is absent because of illness.

I further announce that the Senator from South Carolina [Mr. JOHNSTON], the Senator from North Carolina [Mr. JORDAN], the Senator from Massachusetts [Mr. KENNEDY], the senior Senator from Minnesota [Mr. MCCARTHY], the junior Senator from Minnesota [Mr. MONDALE], the Senator from Maine [Mr. MUSKIE], the Senator from Wisconsin [Mr. NELSON], the Senator from Connecticut [Mr. RIBICOFF], and the Senator from Missouri [Mr. SYMINGTON] are absent on official business.

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Pennsylvania [Mr. CLARK], the Senator from Tennessee [Mr. GORE], the Senator from Maine [Mr. MUSKIE], the Senator from Wisconsin [Mr. NELSON], the Senator from Oregon [Mrs. NEUBERGER], and the Senator from Florida [Mr. SMATHERS] would each vote "nay."

On this vote, the Senator from Massachusetts [Mr. KENNEDY] is paired with the Senator from Colorado [Mr. DOMINICK]. If present and voting, the Senator from Massachusetts would vote "nay," and the Senator from Colorado would vote "yea."

On this vote, the senior Senator from Minnesota [Mr. MCCARTHY] is paired with the junior Senator from Minnesota [Mr. MONDALE]. If present and voting, the senior Senator from Minnesota would vote "yea," and the junior Senator from Minnesota would vote "nay."

In this vote, the Senator from Iowa [Mr. MILLER] is paired with the Senator from Oregon [Mr. MORSE]. If present and voting, the Senator from Iowa would vote "yea," and the Senator from Oregon would vote "nay."

On this vote, the Senator from Kentucky [Mr. MORTON] is paired with the Senator from Utah [Mr. Moss]. If present and voting, the Senator from Kentucky would vote "yea," and the Senator from Utah would vote "nay."

On this vote, the Senator from Idaho [Mr. JORDAN] is paired with the Senator from Connecticut [Mr. RIBICOFF]. If present and voting, the Senator from Idaho would vote "yea," and the Senator from Connecticut would vote "nay."

On this vote, the Senator from California [Mr. KUCHEL] is paired with the Senator from Missouri [Mr. SYMINGTON]. If present and voting, the Senator from California would vote "yea," and the Senator from Missouri would vote "nay."

On this vote, the Senator from North Dakota [Mr. BURDICK] is paired with the Senator from Alaska [Mr. GRUENING]. If present and voting, the Senator from North Dakota would vote "yea," and the Senator from Alaska would vote "nay."

Mr. DIRKSEN. I announce that the Senators from Kentucky [Mr. COOPER and Mr. MORTON], the Senator from New York [Mr. JAVITS], the Senator from Idaho [Mr. JORDAN] and the Senator from Iowa [Mr. MILLER] are necessarily absent.

The Senator from California [Mr. KUCHEL] is absent on official business.

The Senator from Colorado [Mr. DOMINICK] is detained on official business.

On this vote, the Senator from Colorado [Mr. DOMINICK] is paired with the Senator from Massachusetts [Mr. KENNEDY]. If present and voting, the Senator from Colorado would vote "yea" and the Senator from Massachusetts would vote "nay."

On this vote, the Senator from Idaho [Mr. JORDAN] is paired with the Senator from Connecticut [Mr. RIBICOFF]. If present and voting, the Senator from Idaho would vote "yea" and the Senator from Connecticut would vote "nay."

On this vote, the Senator from California [Mr. KUCHEL] is paired with the Senator from Missouri [Mr. SYMINGTON]. If present and voting, the Senator from California would vote "yea" and the Senator from Missouri would vote "nay."

On this vote, the Senator from Iowa [Mr. MILLER] is paired with the Senator from Oregon [Mr. MORSE]. If present and voting, the Senator from Iowa would vote "yea" and the Senator from Oregon would vote "nay."

On this vote, the Senator from Kentucky [Mr. MORTON] is paired with the Senator from Utah [Mr. Moss]. If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Utah would vote "nay."

If present and noting, the Senator from New York [Mr. JAVITS] would vote "nay."

The result was announced—yeas 12, nays 60, as follows:

[No. 23 Leg.]

YEAS—12

Bennett	Dirksen	Smith
Boggs	Hickenlooper	Thurmond
Case	Prouty	Tower
Cotton	Scott	Williams, Del.

NAYS—60

Aiken	Harris	Metcalf
Allott	Hart	Monroney
Bartlett	Hartke	Montoya
Bass	Hayden	Mundt
Bayh	Hill	Murphy
Brewster	Holland	Pastore
Byrd, Va.	Hruska	Pearson
Byrd, W. Va.	Inouye	Pell
Cannon	Jackson	Proxmire
Carlson	Kennedy, N.Y.	Randolph
Church	Lausche	Robertson
Curtis	Long, Mo.	Saltonstall
Dodd	Long, La.	Simpson
Douglas	Magnuson	Sparkman
Eastland	Mansfield	Stennis
Ellender	McClellan	Talmadge
Ervin	McGee	Tydings
Fannin	McGovern	Yarborough
Fong	McIntyre	Young, N. Dak.
Fulbright	McNamara	Young, Ohio

NOT VOTING—28

Anderson	Jordan, N.C.	Muskie
Bible	Jordan, Idaho	Nelson
Burdick	Kennedy, Mass.	Neuberger
Clark	Kuchel	Ribicoff
Cooper	McCarthy	Russell
Dominick	Miller	Smathers
Gore	Mondale	Symington
Gruening	Morse	Williams, N.J.
Javits	Morton	
Johnston	Moss	

So Mr. DIRKSEN's amendment was rejected.

AMENDMENT NO. 29

Mr. THURMOND. Mr. President, I call up my amendment No. 29 and ask unanimous consent that its reading be dispensed with, but that it be printed at this point in my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. Amendment No. 29 is as follows:

On page 2, beginning with line 10, delete all down through and including line 16, and insert in lieu thereof the following, to wit:

"SECTION 1. If the office of President becomes vacant because of the death, removal from office, or resignation of the President, the Vice President shall become President. If the office of Vice President becomes vacant because of the death, removal from office, or resignation of the Vice President or the death of a Vice-President-elect before the time fixed for the beginning of his term, or because the Vice President or a Vice-President-elect has assumed the office of President by reason of the death, removal from office, or resignation of the President or the death of a President-elect before the time fixed for the beginning of his term, the electors who were chosen to cast ballots in the most recent election of President and Vice President shall meet in their respective States on the Monday of the third week beginning after the date on which the office of Vice President became vacant, and shall then vote by ballot for a new Vice President. They shall name in their ballots the person so voted for as Vice President, and shall make a list of all persons voted for as Vice President and the number of votes for each, which list they shall sign and certify, and transmit to the President pro tempore of the Senate. The votes so cast shall then be counted, and a new Vice President shall be selected, in the manner prescribed by the twelfth article of amendment to this Constitution for the selection of a Vice President.

"SEC. 2. Electors for President and Vice President chosen in any State under this Constitution shall serve as such until the date on which electors are chosen for the next regular election of a President and a Vice President. Vacancies which may occur before that date in the membership of electors of any State because of death, removal from office, or resignation shall be filled by the selection of successors in the next regular election of that State in which members

of the House of Representatives are chosen. In the event that a vacancy in the membership of electors of any State exists and a vote for a new Vice President occurs at a time prior to the next regular election of that State in which members of the House of Representatives are chosen, the remaining electors of such State shall choose a successor to serve until such next regular election.

"SEC. 3. If the Congress is not in session at a time at which a new Vice President is to be selected under this article, the person discharging the powers and duties of President shall convene the Senate and the House of Representatives in joint session for that purpose.

"SEC. 4. A Vice President chosen under this article shall serve as such until the end of the term for which the Vice President or Vice-President-elect whom he succeeds was elected."

Renumber succeeding sections accordingly.

Mr. THURMOND. Mr. President, the amendment proposes to delete sections 1 and 2 of Senate Joint Resolution 1. The substance of section 1 of Senate Joint Resolution 1 which clearly states that the Vice President shall become President upon the death, resignation, or removal from office of the President is contained in the amendment which I propose. In addition, the present sections 3, 4, and 5 of Senate Joint Resolution 1, dealing with presidential inability, would remain unchanged if my amendment were adopted.

This amendment, Mr. President, contains the substance of Senate Joint Resolution 25, which I introduced in the Senate on January 15, 1965. There is one change, which I shall mention later. This amendment was referred to the Judiciary Committee of the Senate and subsequently to the Constitutional Amendments Subcommittee, and it was available for consideration by that subcommittee during the hearings and executive sessions held in connection with this overall problem. I wrote a letter to the chairman of the Constitutional Amendments Subcommittee, the junior Senator from Indiana [Mr. BAYH], recommending the electoral college approach for the selection of a new Vice President in the case of a vacancy in that office. This letter stated my general reasons for preferring the electoral college approach to the method contained in Senate Joint Resolution 1, which calls for the nomination of a new Vice President by the President and confirmation by a majority vote of both Houses of Congress.

At the outset, I would like to outline exactly what my amendment calls for. A vacancy in the office of Vice President may occur for any of the following reasons: death, removal from office, resignation, death of the Vice-President-elect before his term begins, or his assumption of the office of the President or President-elect for any reason. All of these contingencies are provided for in my amendment.

If for any of these reasons, a vacancy occurs in the office of the Vice President, the electors who were chosen in the most recent presidential election would meet in their respective States on the Monday of the third week beginning after the date on which the vacancy occurred. The electors would cast their ballot for a new Vice President, certify the result of their election, and transmit this certified list to the President pro tempore of the Senate. The President of the Senate then would proceed in accordance with the provisions of the 12th amendment to the Constitution to count the ballots and certify the election of a new Vice President. In the event that no candidate received a majority of all the electoral votes, then the Senate would choose a new Vice President in accord with the provisions of the 12th amendment to the Constitution.

Section 2 of this amendment provides for filling any vacancy among the electors of any State by election at the next regular election of that State in which Members of the House of Representatives are chosen. In the event that a vacancy exists among the electors of any State when it is necessary to elect a new Vice President, the vacancy would be filled by the remaining electors. This is to insure that the full vote to which any State is entitled would be cast. This latter provision is the only modification of Senate Joint Resolution 25 as I originally introduced it.

Section 3 of my amendment provides for the calling of a special joint session of Congress by the person discharging the powers and duties of the President in the event that Congress is not in session at the time a new Vice President is to be selected. Section 4 merely provides that the Vice President elected under the procedure provided for in that amendment would serve only during the term for which the Vice President or Vice-President-elect whom he succeeds was elected.

Mr. President, I believe that the method of selecting a new Vice President provided for in my amendment is preferable to that provided in Senate Joint Resolution 1, for several reasons. First, it has the advantage of retaining the general election process which we all recognize as so necessary in a republican form of government. Second, the popularly elected body of the people, the electoral college, is the proper body to fill vacancies in the office of Vice President. Third, election by the electoral college would generate a greater degree of public confidence and a broader base of support for the individual chosen.

The only objections to this proposal which have come to my attention are that the electoral college is too cumbersome and time consuming to act quickly in emergencies, and that it is not equipped to conduct hearings on the qualifications of a candidate for the position. I do not believe that either of these objections has enough merit to outweigh the obvious advantages of the electoral college plan as compared with the presidential nomination plan. The election of a new Vice President would, under the terms of my amendment, take place on the Monday of the third week beginning after the vacancy occurred in the office of the Vice President. This would mean that the electoral college would have acted within a month after the vacancy occurred. This would provide a sufficient amount of time for all serious candidates for the office to make their positions clear, and yet it would be timely enough to avoid any crippling gap due to a longlasting vacancy in the office of Vice President. As to the contention that the electoral college is not equipped to hold hearings, I do not believe that formal hearings are necessary to the election of a new Vice President. After all, the views of any serious candidate will be well known, and everyone will have the opportunity of expressing their opinion and preferences.

As a practical matter, the individual chosen by either the method contained in my amendment, or the method contained in Senate Joint Resolution 1, would probably be the same. Undoubtedly, the President will make known his wishes as to the choice of a new Vice President. The electors in the individual States, having elected the President, would presumably elect his choice for a new Vice President. Therefore, I do not feel that the objections voiced to the electoral college method are sufficient to overcome its distinct advantages.

Section 2 of Senate Joint Resolution 1 raises some very pertinent questions which are not answered in the Judiciary Committee's report; for example, the amendment states:

> The President shall nominate a Vice President who is to take office upon confirmation by a majority vote of both Houses of Congress.

Under this wording, it is not clear whether the Senate and House of Representatives are to meet in joint session and confirm the nominee of the President by a majority of the 535 of both Houses taken together, or whether they are to meet independently and have a majority of each House voting separately. This is a detail which easily could, and should, be clarified. However, no clarifying language on this point is contained in the committee's report.

One reason advanced in support of the presidential nomination procedure contained in Senate Joint Resolution 1 is that, in practice, it conforms with what occurs in the nominating conventions of the two major parties at the present time. It is true that the presidential nominee of both parties is given great latitude in choosing his vice-presidential running mate in the convention. However, I feel that there is a great deal of difference between choosing the man who is to run on the same ticket with the presidential candidate, subject to the vote of the people, and naming the man who would almost automatically become the new Vice President. This distinction may seem minor to some; however, to my mind, the proposal contained in my amendment is preferable.

Mr. STENNIS. Mr. President, will the Senator yield me 2 minutes?

Mr. DIRKSEN. I yield 2 minutes to the Senator from Mississippi.

Mr. STENNIS. Mr. President, the Senate is now exercising one of its greatest responsibilities, that of considering a proposal to amend the Constitution of this great Nation. And the specific proposal now before us, Senate Joint Resolution 1, is clearly one of the most important matters before the Congress. It is my privilege to cosponsor this resolution and to speak in its support today.

As all Members of the Senate know, Senate Joint Resolution 1 has three basic purposes: First, to provide that upon the occurrence of a vacancy in the office of the Presidency, the Vice President shall become President; second, to provide for the selection of a new Vice President in event of a vacancy in that office; and, third, to provide a method of determining when the Vice President shall serve as Acting President in the event of the inability of the President, and also to provide a method of determining when the President is able to resume the duties of his office. While there may be disagreement as to the specific proposals to resolve these issues, I believe that the provisions of Senate Joint Resolution 1 represents the best possible solution.

I do not believe it necessary to discuss each of these provisions in detail, because the Senator from Indiana [Mr. BAYH] has done an outstanding job of presenting to the Senate both the need for this resolution and an explanation of its terms. He is to be highly commended for his diligent study of this problem and for his perseverance in mobilizing a national sentiment for immediate action.

Although the Senator from Indiana has performed such an excellent service in presenting this issue to the Senate, I do want to comment briefly on the major provisions of Senate Joint Resolution 1. The question has been raised, for example, that this proposal is too detailed, and that it would be best to leave the determination of specific provisions up to the Congress. It is the consensus of legal authorities, however, that Congress does not have the constitutional authority to provide by legislation that the Vice President shall actually become President upon the occurrence of a vacancy in that office. Section 1 of Senate Joint Resolution 1 resolves this issue by simply providing that the Vice President shall become President in such an event.

Surely no one can question the fact that a constitutional amendment is necessary in order to provide for the selection of a new Vice President whenever there is a vacancy in that office. Congress would clearly be assuming authority not granted by the Constitution if it were to attempt to provide for such a contingency by legislation. And yet, who can question the necessity of insuring that this Nation will never be without both a President and a Vice President?

It has also been argued that sections 4 and 5 of Senate Joint Resolution 1 treat in too great detail the method of determining the factual questions of both the inability of the President and the removal of that inability. I submit, however, that a close consideration of these sections reveals that it is imperative that the method of resolving these issues be spelled out in the Constitution in the manner prescribed by Senate Joint Resolution 1. To provide any broader standards, such as simply giving Congress the authority to determine these questions by statute, would encroach on the authority of the executive branch and would constitute a violation of the separation of powers doctrine. In my opinion, sections 4 and 5 handle these problems effectively without writing into the Constitution such great detail as to destroy the necessary flexibility.

Mr. President, in this modern age it is imperative that we not leave to chance any possible question of who shall exercise the powers and responsibilities of the most powerful office in the world. Congress, if it fails to act on this crucial national issue, will have refused to accept its responsibility. I believe that Senate Joint Resolution 1 presents the best possible answer to the problems of Presidential inability and succession. It represents a consensus of legal and constitutional authorities. It provides a solution to an issue of such urgency, not only for our Nation, but also indeed for the whole world, that it is incumbent on the Congress to take immediate action. I strongly support this resolution and hope that the Senate will pass it by an overwhelming vote.

I yield back any additional time that I have.

Mr. BAYH. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 1 minute.

Mr. BAYH. Mr. President, I have said repeatedly in the Chamber that one of the main criteria, if not the main criterion, for the orderly transition of executive authority is acceptance by the people. With all due respect to the Senator from South Carolina, since we have been involved in this discussion, I have repeatedly consulted people in my State and other States that I have visited, who were the members of the electoral college from their State. To date, I have found one person who knew one member of the electoral college.

I believe that the people of the United States would accept a judgment made by this body and our colleagues in the House. I think they would wonder what in the world was being perpetrated upon them if we brought in members of the electoral college whom they did not know from Adam.

The PRESIDING OFFICER. Do the Senators yield back the remainder of their time?

Mr. BAYH. I yield back the remainder of my time.

Mr. THURMOND. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from South Carolina.

The amendment was rejected.

The PRESIDING OFFICER. The joint resolution is open to further amendment. The Chair recognizes the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I call up my amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 3, line 20, strike out the word "two" and insert in lieu thereof the word "seven."

Mr. HRUSKA. Mr. President, my amendment pertains to section 5, which involves a situation in which a President has been disabled and a Vice President is performing the duties and assuming the powers of President as Acting President.

When the President declares in writing and sends to Congress his declaration that he has become restored to competence and ability once again, the bill as reported by the committee, provides a period of 2 days in which the Vice President, with the concurrence of a majority of the Cabinet members, can take issue with the President on the question of his ability.

Thereupon Congress shall immediately proceed to make a decision. The language of section 5 provides that "Thereupon Congress shall immediately proceed to decide the issue."

It is my contention that the 2-day period is insufficient for the Vice President and members of the Cabinet to decide whether they want to raise the issue of the President's ability. In these days when much traveling is done by members of our Cabinet, and when on occasion the Vice President also travels frequently, if there would be such a declaration by the President in the absence of these parties the 48-hour period would obviously prove to be much too small.

Originally I had intended to make the period 10 days. However, I feel that 7 days would be an appropriate and adequate time for the members of the Cabinet to discuss the matter. They could inform themselves of the actual condition of the President, perhaps visit with him, perhaps visit with his personal physician. Then they could decide for themselves, on the basis of intelligent and full information, whether they should uphold the President's statement that he was again restored to capacity. For that reason my amendment provides that there shall be an increase in the permissible period of time from 2 to 7 days.

Mr. BAYH. Mr. President, I yield time to the Senator from Arkansas [Mr. MCCLELLAN].

Mr. MCCLELLAN. Mr. President, I shall vote for Senate Joint Resolution 1. I commend the Senator from Indiana [Mr. BAYH], the principal sponsor and architect of this proposed constitutional amendment, for the dedicated work he has done in this vitally important field.

One of the most important procedures in our democracy is the orderly transition of our Executive power, especially in time of crisis. Our system of government is perhaps most susceptible to forces of disruption during a period of Executive transition, and therefore we cannot afford a breakdown, or even a slowdown in such a changeover phase. While we may hope for the best, we must always be prepared for the worst. This was never more true than in today's nuclear age, when this morning's crisis is often relegated to the back pages of the afternoon newspapers headlining still another crisis.

This Nation recently survived a tragedy of the worst proportions that led to the ascendancy of our President, Lyndon Johnson. But then we were fortunate in having a Vice President, particularly one who had served in the forefront of our Government at its highest levels.

At some future time we might not be so fortunate.

Now is the time to face the problem, and now is the time to act, before the next crisis, so that we will be prepared should the need again arise. And we must act with extreme care, for we are dealing with a constitutional amendment, which by its nature bespeaks of permanency.

To cope with the problems of Presidential inability and vacancies in the Office of the Vice President, we must provide means for orderly transition of Executive power in a manner that respects the separation of powers concept, and maintains the safeguards of our traditional checks and balances system. Finally, any such provision must have the confidence and support of our people if it is to accomplish the desired results.

I believe that the pending measure meets these tests.

So, Mr. President, I salute our able young colleague, Senator BIRCH BAYH, for meeting the challenge. He saw the need, and while others talked about it, he took the lead in working out a solution and then worked steadfastly for its adoption. I was privileged to join Senator BAYH as a cosponsor of this resolution and take this opportunity to commend the junior Senator from Indiana for his fine contribution in filling this gap in our Constitution that has plagued our Nation since its establishment.

Mr. BAYH. I thank the Senator from Arkansas, not only for his kind remarks, but for the significant contribution he has made, not only in his cosponsorship of the proposal, but in the enlightening debate which was had in the subcommittee.

Mr. President, I yield 5 minutes now to the Senator from Tennessee [Mr. BASS].

Mr. BASS. Mr. President, first of all, I commend the Senator from Indiana for the outstanding contribution he has made and the diligent effort he has put forth in bringing this proposed constitutional amendment to the Senate.

I had planned to offer an amendment to the proposed legislation, but I work under no misapprehension that my amendment would be accepted.

I would call to the attention of the Senate, however, some of the hazards involved in the legislation now pending. In section 2 it is provided:

> 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.

During our recent history I can recall two occasions, one when we had a situation of a President of one party having gone to that Office from the Vice-Presidency, and another when there was a vacancy in the Vice-Presidency of one party with both Houses of Congress under the control of the other party. I refer to former President Harry Truman.

It would be naive for us to argue that a Congress controlled by one party having in the Speaker's chair the No. 2 man who would succeed to the Presidency in case of the death of the President, would immediately act on the recommendation for a new Vice President by the President then in power and in the opposite party.

We all remember another recent occasion in which, during 6 years of the term of President Eisenhower, Congress was controlled by the opposite party. Should the occasion have arisen at that time when Congress would be called upon to confirm the nomination of a Vice President nominated by the President of one party with an overwhelming majority of the Congress being composed of the opposite party, I could foresee the attempt to delay and stall the confirmation, because, after all, the prize of 1600 Pennsylvania Avenue is seldom given up without some fight or some desire to maintain its possession by any party. We all understand that.

Mr. LONG of Louisiana. Mr. President, will the Senator yield?

Mr. BASS. I yield.

Mr. LONG of Louisiana. To put the matter in context, if Richard Nixon had become President and had sent to Congress the nomination to make EVERETT DIRKSEN Vice President, the Democrats in Congress would have been in a position to say, "After all, EVERETT is a wonderful fellow. I suppose if we have to have a Republican Vice President, we could not find a better man. But, if we can take our time, perhaps Sam Rayburn can become President."

Mr. BASS. The Senator is correct.

Mr. LONG of Louisiana. While the Senate would be cooperative, it would be reluctant to give up such a great advocate of free speech, and Senators in the majority party might say, "We might take our time about this matter. We have been working with Sam Rayburn, and if in the course of time something should happen to the new President, we would not be unhappy to have Sam Rayburn as our President."

Mr. BASS. The Senator is correct. This situation occurred a few short years ago, when Sam Rayburn was Speaker of the House. At that time there was a majority in the Democratic Party of 70 in the House of Representatives, with a Republican President. If Vice President Nixon had succeeded to the Office of the Presidency, his nomination, from my own experience in the House, would have been delayed and stalled, because Members of the House had a deep respect for Sam Rayburn. They felt at that time that he was as qualified to succeed to the Presidency of the United States as any man in America. They would have considered it a slap in the face to take up any recommendation to displace Mr. Rayburn as the next possible President.

The PRESIDING OFFICER. The 5 minutes of the Senator from Tennessee have expired.

Mr. BAYH. Mr. President, I yield 1 additional minute to the Senator from Tennessee.

Mr. BASS. I expect to vote for the Senate joint resolution. The Senator from Indiana is to be commended for bringing it up. I hope it will be passed, but I hope it will be changed so that members of the President's party in the Congress would vote for the confirmation. If that is not possible, I think we should definitely impose a time limit so that Congress would be forced to act immediately on such a recommendation, and not have the situation that we have had in the past few years. We have had this situation on three different occasions.

So, Mr. President, I make these remarks only to point out some of the hazards we are facing in adopting the amendment. I hope that the Senator from Indiana will give consideration to adopting some of the recommendations which I have made.

Mr. PASTORE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am glad to yield.

Mr. PASTORE. I do not mean to be facetious in asking this question, but does not the Senator from Tennessee [Mr. BASS] feel that we should also take into account rule XXII of the Senate Rules, that a band of Senators could actually conduct a filibuster without any limitation as to time for debate and could defeat the very purpose of this constitutional amendment?

Mr. BASS. The Senator is correct. I did not point to the specific ways it might be stalled or delayed, but that is one of the methods by which it could become one of the hazards involved in adopting such an amendment.

Mr. BAYH. Mr. President, let me point out, in studying this situation carefully, that the Senator from Tennessee and the Senator from Rhode Island hit upon only two of the many possibilities, if we are to expand our wildest dreams.

The specific point to which the Senator from Tennessee refers, I should like to point out, is very little different from the customary constitutional requirements of advise and consent which the Senate has had over Executive appointments; and that during the period to which the Senator referred, the President was of one party and the Congress was of another, there was very little discussion and refusal on the part of the legislative branch to accept the appointments of the President.

Mr. BASS. I believe that we would have much more of a problem in confirming the recommendations of the President if we knew—or if we refused to confirm one of his recommendations—that one of our own people would go to the job next. That question is involved.

Mr. BAYH. I have more faith in the Congress acting in an emergency in the white heat of publicity, with the American people looking on. The last thing Congress would dare to do would be to become involved in a purely political move.

Mr. BASS. The election of the President is just as political as anything can be, under our American system. With the next man in line sitting in the Speaker's chair, this becomes a political bomb. We are very political in choosing our President. I hope that situation will always remain. I believe that it should be that way. Under our system, it must be that way.

Mr. PASTORE. Mr. President, will the Senator from Indiana yield for a question and an observation?

Mr. BAYH. I yield.

Mr. PASTORE. I was looking at lines 22 to 24 on page 3 of the resolution, which read:

Thereupon Congress shall immediately proceed to describe the issue.

It shall transact no other business until this issue is decided. If we are talking about restoring the Presidency, it would occur to me that there should be a mandate upon Congress that once such an issue came before it involving the chief elective office of the United States, the man who has the trigger on the atomic bomb, Congress should not indulge in any other business until it has decided that issue. That should be a part of the section.

Mr. BAYH. This situation was discussed at great length in the committee, where two diametrically opposed points of view were developed, one of which was that a time limit was needed, as the Senator from Tennessee specifies, and as the Senator from Rhode Island urges immediacy; the other thought being that we did not wish to be pushed to a close limitation, that Members of this body and Members of the House of Representatives would not have sufficient time to call the doctors, or members of the Cabinet. If it is the wisdom of the Senator from Rhode Island, the Senator from Tennessee, and the majority of this body that they shall not discuss or——

Mr. PASTORE. Transact any other business.

Mr. BAYH. Transact any other business until this matter has been decided, if this ties us down, I shall be very happy to accept it, if the Senator will write it up.

Mr. BASS. I would agree with the Senator from Rhode Island. I believe that Congress should meet in joint session and conduct no other business until this particular issue is satisfied. That is only a thought on my part, but I believe that the suggestion of the Senator from Rhode Island is very good, but some limit should be put on it in some way, to make sure that stalling and delaying tactics cannot be carried out.

Mr. ERVIN. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. ERVIN. Does not the Senator from Indiana agree with me that the word "immediately" does exactly that? The words "immediately proceed" mean that we are going to do that and nothing will occur in between.

Mr. BAYH. That is exactly my feeling, as the Senator from North Carolina knows.

Does the Senator from North Carolina object, if it clarifies the point to some Senators, to including the reference that was made by the Senator from Rhode Island? The reason this was not tied down more specifically——

Mr. ERVIN. I do not see the necessity for it, because that is what the word "immediately" means to me.

Mr. PASTORE. It does not mean that to me.

Mr. BAYH. Mr. President, do I still have the floor?

The PRESIDING OFFICER. The Senator from Indiana still has the floor.

Mr. BAYH. Let me suggest that the Senator from Rhode Island and the Senator from North Carolina might discuss this for a moment while I discuss the pending amendment, which is a different amendment, if I may return to it.

The amendment suggested by the able Senator from Nebraska [Mr. HRUSKA], raising the number of days from 2 to 7 in which the Vice President and the Cabinet would have to deliberate on this important decision, would make it a better resolution, give time in which to study and review the evidence, and perhaps discuss it with the President. I shall be glad to accept the amendment.

Mr. President, I yield back the remainder of my time on the amendment.

Mr. HRUSKA. Mr. President, I yield back the remainder of my time on the amendment.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Nebraska [Mr. HRUSKA].

The amendment was agreed to.

Mr. PASTORE. Mr. President——

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island [Mr. PASTORE].

Mr. PASTORE. Mr. President, I move to amend Senate Joint Resolution 1 by adding on page 3, line 24, after the word "issue," the following words: "and no other business shall be transacted until such issue is decided."

Mr. BASS. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. BASS. My point has been that the amendment in section 2 should be on the election of a new Vice President. The Senator from Rhode Island is proceeding on the issue of Presidential inability. I am talking about the election of a new Vice President.

Mr. PASTORE. I am talking about Presidential inability.

Mr. BASS. What about the election of a new Vice President?

Mr. PASTORE. The Senator can submit that amendment for himself.

Mr. BASS. Mr. President, I offer an amendment to section 2——

Mr. PASTORE. Mr. President, will the Senator wait until my amendment has been considered?

Mr. MANSFIELD. Put them both in together in line 16.

The PRESIDING OFFICER. The Senator from Rhode Island still has the floor.

Mr. PASTORE. Mr. President, I ask that my amendment be read.

Mr. BAYH. Mr. President, let me ask Senators to think about this issue for a moment. As has just been pointed out to me by the Senator from Nebraska, the difficulty of getting specific, precise language "immediately proceed to decide" means, to me, just what we are trying to accomplish, with one exception, that if it is necessary, as the Senator points out, to declare war or some other great national emergency should come upon us, there can be little question in the minds of anyone that it is mandatory and that we must discuss and decide. This, however, takes a little time. Does this proposal not preclude us from doing that?

Mr. PASTORE. The Senator from Indiana just finished saying that we must act as reasonable people. We are talking about restoring a President who is the rightful occupant of 1600 Pennsylvania Avenue. In the meantime, suppose we have a serious crisis on our hands. We may have to go to war. Do we not believe that Congress should act immediately and decide no other business until we find out who the President is going to be—that is, the man who will have his finger on the trigger of the atomic bomb? That is precisely the question that I am raising. Naturally, we are talking about the President of the United States, the one man who, above all others, is the only person who can decide whether a hydrogen or an atomic bomb will be dropped.

We are living in a sensitive and perilous world. All I am saying is that if this serious question ever comes before Congress—and God forbid that it ever will—but if for some reason we have a President who becomes incompetent and has been declared incompetent and the Vice President has taken over, and later the President comes forward and says, "I am restored to competency and health. I wish my powers back, the powers that were given to me by the people of the United States," I do not wish to witness a filibuster. We could be in a filibuster. That is what is wrong with the proposed legislation. We are not getting to the root of the issue—the root of it being the rules of the Senate. The Senate is still subject to the rules of the Senate. Here we are. We are met with a crisis.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield himself some time?

Mr. PASTORE. I do.

Mr. HARRIS. Mr. President, will the Senator yield to me?

Mr. PASTORE. May I finish, please?

All that I am saying at this time is, if the words "immediately proceed to decide" mean exactly what I say they mean, then, of course, we are really arguing in a paper bag. I do not think the language is that explicit. I believe it should be clarified. What the Senator from Indiana has brought to the floor is a masterful piece of work. However, once this issue comes before Congress, these doors ought to be closed, and we ought to stay here until we decide that question, even if we must sit around the clock, or around the calendar, because this problem involves the Presidency of the United States.

I would hope that we would not get ourselves "snafued" in a filibuster, in which two people could say, "We want the Speaker of the House to be President." We do not want them to be able to say, "We do not want the man whose name has been submitted to be President." I would hope that we would think too much of the country and the welfare of the country and the peace of the world to indulge in that kind of antic.

However, we ought to write this provision into law, because it is a fundamental question, and we should decide nothing until that question is decided.

If the present language means that, I am satisfied. I have no pride of authorship. If it does not mean that, it ought to be corrected.

The PRESIDING OFFICER. The difficulty is that the Senator's amendment is not at the desk.

Mr. PASTORE. I cannot write quite that fast. If I may have a moment, I shall be glad to write it out.

Mr. HARRIS. If the Senator will yield to me, he will have time to write it out.

Mr. PASTORE. I yield.

Mr. HARRIS. Mr. President——

Mr. BAYH. Mr. President, I should like to suggest that this is time which is being consumed on the amendment to be offered by the Senator from Rhode Island, which he is in process of inscribing in his fine hand.

Mr. PASTORE. I agree that it will be in a fine hand.

The PRESIDING OFFICER. The Chair so understands.

Mr. HARRIS. The Senator from Rhode Island has yielded to me.

Mr. PASTORE. I yield to the Senator from Oklahoma.

Mr. HARRIS. I should like to ask the distinguished Senator from Indiana a question. I have been discussing this matter with a certain Senator, and he tells me that the word "immediately" deals with inability. He also tells me that if the amendment were adopted and the Vice President should become the President of the United States, the Speaker of the House would no longer be next in line. Is that correct?

Mr. BAYH. The Senator is correct.

Mr. HARRIS. What happens, and who becomes President if no nomination has been confirmed?

Mr. BAYH. The Speaker of the House.

Mr. HARRIS. I have just asked that question of the Senator.

Mr. BAYH. No; the Senator did not ask me that question. He has asked if the nominee whose name is before Congress becomes Vice President, then who becomes President?

Mr. HARRIS. No. If Congress does not confirm, if no nomination is before Congress, is the Speaker of the House still in line for the Presidency?

Mr. BAYH. Yes.

Mr. HARRIS. Therefore, in section 2 of the joint resolution there is no time limit.

Mr. BAYH. Is the Senator addressing me? Does the Senator wish me to give an answer to that question, if it is a question?

Mr. HARRIS. Yes.

Mr. BAYH. I would be glad to tell the Senator the difference between the word "immediately" in section 5 and the word "immediately" in section 2.

Mr. HARRIS. There is no word "immediately" in section 2.

Mr. BAYH. I should like to explain it to the Senator.

Mr. HARRIS. I should like to have an explanation.

Mr. BAYH. In section 5, which is being considered by the Senator from Rhode Island [Mr. PASTORE], we deal with the question: "Who is the President of the United States?" That can be only one man.

In section 2 we are dealing with the selection of a Presidential replacement when a vacancy exists.

Mr. HARRIS. I understand.

Mr. BAYH. There is a President who is able to conduct business and to carry on the affairs of our country. I should dislike to see everything that must be decided by Congress come to a stop in the event Congress becomes logjammed on this question. It is conceivable that the example the Senator from Tennessee cites could come to pass. However, I believe there is very little likelihood that it would.

However, we would have a President, if Congress should become involved in a dispute which could not be solved; and by adding the word "immediately" we are saying that Congress cannot discharge its duties while it is deciding on the Vice President. I do not attach the same importance to the decision with respect to the Vice President as I do with respect to the President.

Mr. HARRIS. The Senator may not attach the same importance to it, but we would have the situation that was described before if we did not impose a time limit within which action must be taken. If we had a President of one party and a Congress of another party, we would still encourage stalling and delay, and we could wind up for a period of 6 or 8 months or even 2 years in which Congress would not have to act in this situation, and we would still be in the same position of having the Speaker of the House the next man in line.

That situation should be changed. I agree with the Senator that Congress should elect the Vice President. I had hoped that it would be only by members of the President's own party. However, I will accept his amendment. At the same time, I wish to warn him that if he does not put some time limit in the amendment as to when Congress shall act on it, we shall find ourselves in the same situation; and if we do nothing, the Speaker of the House will be the next man in line. If the majority party in Congress is not the same as the party of the President, no action will be taken.

Mr. BAYH. Mr. President, I yield myself sufficient time to address myself to the amendment offered by the Senator from Rhode Island.

I should like to say one word of explanation as to the intent of the word "immediately" on page 3 of the report. I quote:

> Precedence for the use of the word "immediately" and the interpretation thereof may be found in the use of this same word "immediately" in the 12th amendment to the Constitution.

In the 12th amendment, as the Senator knows, in the event no candidate for President receives a majority of the electoral votes, it is the responsibility of the House to decide who the President shall be; in the case of the Vice President, it is the responsibility of the Senate.

We should have some sense of urgency in this situation and put all other things aside.

Mr. PASTORE. Does not the Senator believe that it would take care of any ambiguity if we wrote that language into this provision? All that my amendment provides is, "No other business shall be transacted until such issue is decided."

That is very clear. It is not inimical to any other provision of the Constitution. It should be written in as a safeguard, so that there will be no question about it. If the Senator agrees with me that that is what we mean, we should put such language in the provision. We should not have the issue come up and have someone say, "Let us refer it to committee," because the committee could hold hearings, and we would accept that as immediate consideration.

I want to keep Congress in continuous session on this point. I want 100 Senators on the floor and 435 Representatives on the floor in the House until they have decided this important question, because it is vitally important. I say we must not transact any other business until we have decided this question.

Mr. BAYH. I believe the record of the debate will make it abundantly clear that the Senator from Indiana agrees with the Senator from Rhode Island as to the urgency that is involved.

I would prefer not to use additional language. I do not believe there is any more urgency in deciding this problem than there is when the House and the Senate must decide the question of who the President and Vice President shall be under the terms of the 12th amendment.

Mr. PASTORE. Will the Senator agree to take the amendment to conference? If it is necessary that it be eliminated in conference, I shall feel no offense. What harm can it do if we recodify it?

Mr. HART. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the Senator from Michigan, who has the answer.

Mr. HART. The Senator from Michigan believes that the answer of the Senator from Indiana to what he has just said would be "no."

Mr. BAYH. I am sorry; I did not hear what the Senator said.

Mr. HART. The Senator from Rhode Island read language which would require us to conduct no other business until we resolved the question, which in the case of sections 4 and 5 would be: "Who is the President of the United States?"

I agree that we would all be pretty responsible in attempting to answer the question as promptly as we could.

What we are talking about is a situation in which the Senate, in the event of a cruel national crisis might find two men contending that each is the President of the United States.

Pray God that it never happens. If the Senate should adopt the amendment offered by the Senator from Rhode Island, under the pressure and heavy sense of responsibility that would be present, we would conduct no other business until we have answered the question as to who the President is. I know the ingrained traditions of the Senate with respect to unlimited debate. But why

could we not add additionally the language—and I think a constitutional amendment would override the rules of the Senate—that we shall vote not later than 3 calendar days thereafter? If in 72 hours we cannot determine who is the President of the United States, the world will have passed us by, anyway. Why do we not pin down precisely when we shall vote on the question?

Mr. BAYH. Mr. President, I invite the Senator from North Carolina [Mr. ERVIN] to speak to the specific point now being discussed, because it was debated at great length in the committee.

Mr. ERVIN. I think the answer to the question is that we are attempting to deal with the question of the disability of the President. The problem may be one of mental disability, and evidence would have to be adduced. I presume Congress could appoint a committee to take care of that question. The testimony might not be completed in 3, 4, or 5 days. I believe that is the answer.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the Senator from Nebraska.

Mr. HRUSKA. If we get into the process of amending a proposed constitutional amendment on the floor of the Senate, we shall be treading on dangerous ground. I say that the proposed amendment is difficult, and probably unnecessary, although I shall not oppose the amendment for the purpose of taking it to conference so that the conferees may consider it.

However, the subject was considered in the committee, as the chairman knows.

Let us remember, that the issue is very serious. It could not be raised unless at least six members of the Cabinet, who would have been appointed by the President, should assert his inability, together with the transmittal of a message by the Vice President, to the Congress.

We considered the idea of a filibuster in the committee. But the difficulty is in respect to the period of time that would be allowed. Should we provide for a period of 10 days, 3 days, or 60 days?

Suppose the question should relate to the mental ability of the President. An examination would be necessary. Psychiatrists would not be able to go into the President's office, look him over, and say, "The man is insane," or, "the man is not insane." They would need time in which to observe and conduct tests. Congress would need time to hear the reasons why the members of the Cabinet had said, "Mr. President, you are not able to resume the duties and powers of your office." That process would take time. It was felt, in the committee, that the Congress would rise to the importance and urgency of the task at hand. How silly it would be of us to insert restricting language to the effect that while we might be waiting for the report of psychiatrists, we could transact no other business. I believe that such action would reflect upon the intelligence and the good faith of the Congress and would not be advisable in a constitutional amendment.

All of those points were taken into consideration before we agreed to leave the provision as it is.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. BAYH. I am happy to yield to the Senator from Rhode Island.

Mr. PASTORE. Is the Senator from Nebraska actually saying that the word "immediately" means that other business could be transacted in the meantime?

Mr. HRUSKA. No.

Mr. PASTORE. That is what I thought the Senator was saying.

Mr. HRUSKA. It means that the Congress should address itself immediately to the question which we are discussing. Meanwhile collateral questions might arise; and while hearings were being conducted on that question, why should we tie our hands? An urgent situation of national import might arise.

Mr. PASTORE. Why should we tie our hands? As I have said many times before, we are living in a very sensitive world. The only man in the United States under our law who has the power to drop the atom bomb is the President. It is absolutely important to decide who that President shall be. God forbid that we should ever be placed in such a position. But I can conceive of nothing more important to the people of our country and the peace of the world than to determine the question as to who is the President of the United States. We ought to do nothing until we determine the answer to that question even if it should mean that we would be required to remain in the Senate Chamber around the clock.

I do not agree that the measure ought to be limited as to time because, after all, I do not know what the situation would be. All I am saying is that while such an important question—the most important question that could beset the people of our country—as determining who is the President, in a moment of crisis, is pending, we ought to determine that and nothing else.

We should include a restriction in the joint resolution that we would do nothing else but determine that question, and we would do so expeditiously. But if we should permit Senators to talk about what color the rose in the State of Rhode Island should be, or what flower we should adopt as our national flower, and have a morning hour to talk about pansies in the spring while we are trying to determine who the President of the United States should be—and there is sometimes a tendency to indulge in such things in moments of capriciousness—we might face serious consequences. I say let us avoid that. Let us act correctly. We desire to amend the Constitution. I say that when there is a question as to who should be the President of the United States, we should do nothing else until we make a decision on that question. Such a provision ought to be in the law.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. BAYH. I yield to the Senator from Montana.

Mr. MANSFIELD. It is my understanding that both the Senator in charge of the joint resolution and the ranking minority member of the committee have stated that they will accept the amendment offered by the Senator from Rhode Island and take it to conference.

Mr. PASTORE. Oh, no. They have not said that yet. I am waiting for them to say it.

Mr. HRUSKA. I have so indicated.

Mr. PASTORE. But the Senator in charge of the bill has not said that he would accept it.

Mr. HRUSKA. I would not join in writing in such an amendment, but I have said that I would not object to the amendment being accepted and taken to conference. I do say that the sense of urgency and importance which has been described so eloquently by the Senator from Rhode Island would seem to make it the type of problem to which the Congress will react in a proper fashion. That was the considered judgment of the committee after lengthy discussion. I make that statement now because the subject will be considered in conference, and the conferees should have the reasons for the committee's action.

Mr. BAYH. Mr. President, it seems to me that we are unanimous in our intention. Our dispute is with respect to what words would adequately express our intention.

Mr. PASTORE. That is correct.

Mr. BAYH. I should like to ask the Senator from Rhode Island a question. Does the Senator feel that we would decide a different question in relation to section 5 of Senate Joint Resolution 1 than would be decided under the provisions of the 12th amendment of the Constitution, in the event this body were required to decide who the Vice President would be, and the House were required to decide who the President would be, where the use of the word "immediately" is present? We have precedent for that. It means "immediately," "get going," "dispense with everything else."

Mr. PASTORE. I agreed with everything that the Senator from Indiana said until the Senator from Nebraska asked, "Do you mean to say that while this matter is being considered we would not be able to transact any business?"

That question would imply, under the proposed language, that we could transact other business.

Mr. HRUSKA. We certainly could and we might want to.

Mr. PASTORE. The Senator from Rhode Island is trying to avoid that—and I am being very explicit about it—by saying, "Write a provision in the joint resolution to the effect that we could not transact any other business until the question discussed had been decided."

If that is what the Senator desires, what would be the harm?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana has the floor.

Mr. BAYH. Mr. President, I should like to yield to the Senator from North Carolina.

Mr. BASS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Indiana yield for that purpose?

Mr. BAYH. I yield for a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Tennessee will state his parliamentary inquiry.

Mr. BASS. Does the amendment now pending, offered by the distinguished Senator from Rhode Island, include language that mentions section 2 of the bill, which relates to the election of a new Vice President?

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISATIVE CLERK. On page 2, line 16, after "Congress," it is proposed to add: "and no other business shall be transacted until such issue is decided."

Mr. BASS. The Chair, then, would have to answer my inquiry in the affirmative; is that correct?

The PRESIDING OFFICER. The Senator is correct. The Senator from North Carolina has the floor. Has he yielded the floor?

Mr. ERVIN. Yes.

Mr. HART. Mr. President, on the Pastore amendment, may I have a moment?

Mr. PASTORE. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator from Rhode Island has 20 minutes remaining.

Mr. PASTORE. I yield to the Senator from Michigan as much time as he requires.

Mr. HART. It was I who inquired why there ought not, in effect, be a time certain. I suggested that the action be taken within 3 days. I heard the Senator from Rhode Island reply that he would not go that far; that he could not see a capricious person holding the floor and talking about the color of the rose in Rhode Island, and so on. What concerns me——

Mr. PASTORE. No; I said I could see such a person.

Mr. HART. If the Senator could see one, I should think it would be desirable that some time limit be set. But even if he could not see such a person, I can see—and I ask Senators if they might not see—35 sincere men in a time of intense danger and high emotional crisis saying that a Vice President who would not put missiles somewhere was a better man than a President, who wanted to come back and would put missiles somewhere. Such a debate could continue for a long time. Would we be better off leaving the question unresolved? Basically, that is the problem.

Mr. ERVIN. If we cannot trust Members of the Senate and House to exercise intelligence and patriotism in a time of national crisis, we might as well not do anything. We might as well not try to improve the situation. I think we should pass a constitutional amendment and leave the action to be taken under that constitutional amendment to those who are in office at the time such action must be taken. I think we shall have to indulge the assumption that those persons will love their country as much as we do; that they will not jeopardize their country by holding up the consideration of matters of that kind.

This is essentially a subject, as I said before, which will require the taking of testimony. We cannot put a time limit on the search for truth, especially when it concerns the intelligence of the President.

The amendment offered by the Senator from Rhode Island would not jeopardize the situation in that way. I see no objection to his amendment. But to try to set a time limit because it is feared that the action of those who would be controlled by this condition would be delaying, requires us to assume that they would not be patriotic and intelligent and would not act reasonably.

Mr. HART. The patriotism of the 35 Senators who would not wish to put missiles down is not in question.

The PRESIDING OFFICER. Who yields time to the Senator from Michigan?

Mr. BAYH. I will yield time.

Mr. HART. I presume that the patriotism of the 35 Senators who would have at heart the interests of their children is not in question. I presume that 35 Senators who would not be under a cloud would also be patriotically motivated, and thus the debate could go on forever.

Mr. ERVIN. Has not the Senator's own language overcome the conclusion that the 35 Senators would not perform their duties but would determine the physical state or mental state of the President, instead of concerning themselves with where the missiles shall be placed?

Mr. HART. I would hope that each of us would attempt to be objective in his review of the medical testimony. But I greatly fear that if there were a deep conviction harbored by 35, there would be tragedy compounded, and the result would be the bringing back of a man whose policy would be to bring back missiles that would create havoc, and we would confuse medical testimony with our obligation.

I think the roll should be called at some precise time, and I suggest 3 days.

Mr. BAYH. The situation to which the Senator from Michigan refers is one that has not gone unnoticed by the Senator from Indiana. Before this circumstance arose, the Vice President, a majority of the President's Cabinet, and two-thirds of the House of Representatives, which does not have unlimited debate, would have to support the contention of the Vice President. As soon as one less than two-thirds of the House cast their votes, the issue would become moot, and the question would be "out of court."

Mr. HART. Would not the Senate have a voice in that decision?

Mr. BAYH. It would take two-thirds of the Senate and two-thirds of the House to sustain the position of the Vice President.

I think the record is abundantly clear that the Senator from Rhode Island and the Senator from Indiana see eye to eye. The record is written.

Mr. PASTORE. Do I correctly understand that the Senator from Indiana will accept my amendment?

Mr. BAYH. I was under the impression that the Senator from Rhode Island did not think it was necessary.

Mr. PASTORE. I did not say that at all. I never said that.

Mr. BAYH. I see no objection to taking the amendment with one proviso. I should like to drop the last word; I do not think it is necessary.

Mr. PASTORE. Very well; if the Senator does not believe it is necessary, I shall drop it.

Mr. BASS. Mr. President, what is the situation now?

Mr. BAYH. The amendment of the Senator from Rhode Island would then read as follows: "and no other business shall be transacted until such issue is decided."

Mr. PASTORE. That is correct.

Mr. BASS. Does that also apply to section 2 of the joint resolution?

Mr. BAYH. No, it does not apply to section 2. I thought I had made it abundantly clear that we were dealing with two different provisions. It is imperative that the Senate immediately proceed to decide who the President is. It will be necessary to have an able bodied President. I do not believe we need to grind everything to a halt to decide who the Vice President is. Two different issues are involved.

Mr. PASTORE. That is correct.

Mr. BAYH. I ask the Senator from Tennessee: What is the worst thing that could possibly happen if we did not include the word "immediately" in section 2?

Mr. BASS. The worst thing that could happen would be that Congress would stall, delay, and use dilatory tactics. We would end exactly where we are. If we do not accept this conclusion, we might as well strike out everything in the amendment and deal only with the disability phase. If we are to deal with succession, we shall have to include some sort of requirement.

Why does not the Senator include the word "immediately" in this section, as he did with respect to disability?

Mr. BAYH. Because I do not attach the same importance to the choosing of a Vice President as I do the choosing of a President. If the Senator from Tennessee desires to propose such an amendment, I suggest that he offer it separately.

Mr. BASS. I shall offer a separate amendment.

Mr. BAYH. I suggest that he do so.

Mr. SALTONSTALL. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. SALTONSTALL. I hope we shall not adopt this amendment or any additional amendments of this character. We are trying to amend the Constitution with respect to an important question. If an amendment is to be offered on the floor of the Senate, I believe the bill should be returned to committee for a limited time, to make possible a careful discussion of what the amendments are.

Both the Senate and the House are governed by rules. If there were to be a declaration of war, or if some other matter of grave importance should arise, we have rules, and we can limit debate. If we have any confidence in the great

majority of the Members of the Senate, we can count upon two-thirds of the Senate to impose cloture and thus close debate.

I hope that we can have confidence that future Members of Congress will exercise commonsense on a question of this character. I hope sincerely that the amendment of the Senator from Rhode Island—and I have great respect for the Senator from Rhode Island—will not be adopted. I hope that the proposed constitutional amendment will be passed as the committee has recommended it.

If there is any question of the proposed constitutional amendment not being agreed to, I shall use whatever parliamentary procedure I can to send the proposed constitutional amendment back to committee for 1 or 2 weeks to try to improve this measure.

I hope that the amendment of the Senator from Rhode Island will be rejected.

Mr. PASTORE. Mr. President, if the Senator from Massachusetts will make a motion to send the measure back to committee, I shall second the motion.

We are amending the Constitution of the United States. I hope that no frivolous arguments were made by the Senator from Rhode Island. All I say is that if it is important enough to determine who the President of the United States shall be in a time of crisis—and I repeat that he is the man who, under our law, has the sole authority to drop an atomic bomb—I think it is incumbent upon this body to transact no other business until that issue is determined. That is all the Senator from Rhode Island is doing. What is wrong with it, I ask the Senator from Massachusetts?

The argument is made that there might be involved an issue that means a declaration of war. Does not the Senator think we ought to find out first who the President of the United States is before we declare war? That is the man who can drop the bomb.

Mr. SALTONSTALL. Mr. President, will the Senator yield? He has asked a question. Will he yield so that I may give my answer?

Mr. PASTORE. I yield.

Mr. SALTONSTALL. My answer is simple. This is a very important section of our fundamental law. We cannot decide on this proposed amendment in the Senate Chamber pursuant to an amendment written in long hand. I do not think the amendment is necessary. We can depend upon the commonsense of our successors in this body if the question arises. But if the majority of this body feels that we should have something of this kind, the proposed constitutional amendment should go back to the committee and be carefully worded and worked out.

Mr. PASTORE. I do not object to that. But we have a perfect right to debate these questions. That is all we are doing. We have a perfect right to set forth our arguments. That is all we are doing.

If the Senator from Massachusetts is so sensitive that, because this is a proposed constitutional amendment, we cannot even make a logical argument, no matter how logical it is, what are we doing here? We might as well take what the committee produces, close our eyes, put on blindfolds, or wear blinkers, and say, "That is it."

We are seeking to improve the joint resolution. The Senator in charge of the joint resolution has already admitted that there is some substance to the argument that is being made. His only argument is that the joint resolution with the present language does exactly what I am proposing to do. The only trouble is that the minority leader disagrees with him. All I am trying to do is to straighten it out by inserting certain language.

Mr. McCLELLAN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLELLAN. Mr. President, assuming that the proposed constitutional amendment were adopted, may I inquire whether the swearing in of a Senator to fill a vacancy would constitute the transaction of other business?

The PRESIDING OFFICER. The Chair informs the Senator that that is not a parliamentary inquiry. That is an inquiry of substance.

Mr. McCLELLAN. Mr. President, is the swearing in of a Senator a transaction of business by the Senate?

The PRESIDING OFFICER. It is.

Mr. McCLELLAN. Then I point out, Mr. President, that if there were a vacancy in the Senate when this issue arose, and a State had only one Senator at the time, but a second Senator had been appointed and was ready to be sworn, that State would be denied its constitutional representation in this body during that time.

So there is one situation, and there may be other situations, in which the Senate ought to transact some other business.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. HRUSKA. Mr. President, would not another situation be in the event a situation arose between the time of the election of Congress and the time that Congress were to meet? It would be necessary for the House to organize, and that is the transaction of business. There would not be anyone qualified to consider this business until other business was transacted.

Mr. McCLELLAN. Mr. President, if the amendment is accepted, I hope it will be referred back to the committee for further study.

Mr. BAYH. Mr. President, I yield to the Senator from Maryland.

Mr. TYDINGS. Mr. President, my remarks are addressed to the amendment proposed by the Senator from Rhode Island. I have listened with interest to the eloquence of the Senator. I point out that the Subcommittee on Constitution and Bylaws of the Committee on the Judiciary, and, in fact, the entire Committee on the Judiciary, considered the very point which the Senator from Rhode Island raises.

We felt that the language "immediately," already in article XII of the Constitution—which has to do with the selection of the President and the Vice President—is good language.

We also considered a considerable number of amendments similar to those proposed by the Senator from Michigan. They related to a time of 2, 3, 10, 15, or 60 days. But we considered the entire context of section 5. Section 5 establishes that procedure which would be followed after two circumstances take place.

In the first place, the President, or Vice President, and a majority of the members of the President's own Cabinet would have to place their career, reputation, and their sacred honor at stake, and publicly write and declare that the President was not fit or able to serve as President.

Mr. HART. Mr. President, will the Senator yield at that point?

Mr. TYDINGS. I would prefer to finish before yielding.

Secondly, the President would then assert himself and send a declaration to Congress. Then his Vice President and a majority of the members of his Cabinet would again, in a sense, have to place their sacred honor and reputations at stake that they felt that the President, the man who had selected them, was not able to hold down the office of President.

Then the question would go to the Congress of the United States. We felt that the language "immediately" used in the article XII of the Constitution would be the best language. If we put in language such as that used by the Senator from Rhode Island, which would restrict, tie up, and stop the Government, in effect, from operating, it might compound an already difficult situation.

I oppose the amendment of the Senator from Rhode Island for the reason that I think his amendment, rather than doing what he would want to do; namely, improve the situation, might actually compound a bad situation and tie up the Government worse than it already was. If such a situation were to occur, it would be difficult enough.

The word "immediately," already in the Constitution, is sufficient, and it ought to be retained.

The PRESIDING OFFICER. The Chair would like to have the amendment restated for clarification of the RECORD.

The LEGISLATIVE CLERK. On page 3, line 24, after the word "issue," add the following: "and no other business shall be transacted until such issue is decided."

On page 2, line 16, after the word "Congress," add the following: "and no other business shall be transacted until such issue is decided."

The PRESIDING OFFICER. Will the Senator from Indiana yield to the Senator from Michigan?

Mr. BAYH. If I have time. My own time is running very short. I yield to the Senator from Michigan.

Mr. HART. I wish simply to express a concern that with the remarks of the Senator from Maryland, I now entertain. I confess, as a member of the Judiciary Committee, I recall the discussion, but this point never occurred to me until tonight. The Senator speaks of the safeguard by reason of the fact that

a majority of the President's Cabinet, on their honor, must take their position. A Cabinet appointed by whom? Do we do anything to safeguard the situation when the President is disabled and the Vice President acts, and then fires the Cabinet, and then puts his own Cabinet in? How do we respond to that problem?

Mr. BAYH. Mr. President, this is another problem, if the Senator from Michigan cares to discuss it. It is a good question. We have thought about it. We are dealing with this one amendment. May we dispose of it, and then discuss another question?

Mr. HART. Reluctantly, I have indicated that there are unanswered questions. Perhaps the night is not going to be long enough.

Mr. BAYH. Mr. President, a moment ago, hoping we could accomplish what we wanted to accomplish, I said I was willing to accept the Senator's amendment. I acted hastily.

I feel wisdom requires us to proceed on the measure presented by the committee, as the committee carefully studied the measure. I cannot see a more firm determination made by the Congress than the determination which it makes under the 12th amendment, in which it is provided that in the event neither candidate for the Presidency receives a majority of the electoral votes, Congress shall immediately decide the issue. We say, in the event that it cannot be determined whether the President is able to carry on his duties, Congress shall immediately decide the issue.

Frankly, this question has been discussed in committee. It has been discussed on the public platform. I do not think we can come closer to resolving this question than by using the terminology in the joint resolution before us.

If the Senator from Rhode Island wishes to proceed, wisdom would cause me, with great reluctance, to vote against his amendment. I think it is wrong. I think the wording in the joint resolution is tight. The urgency is clear. The record is written. No Member of this body does not share the feeling that this is a matter which the U.S. Senate should not decide immediately.

Mr. BASS. Mr. President, will the Senator yield?

Mr. BAYH. Mr. President, is the Senator from Tennessee going to pose a question?

Mr. BASS. Yes.

Mr. BAYH. I yield.

Mr. BASS. Let us assume that the Senator believes the word "immediately" is adequate in the section so far as disability is concerned. Would the Senator be willing to accept one single word, "immediately" in section 2, so the Congress would act forthwith on the selection of the new Vice President?

Mr. BAYH. No, I would not.

Mr. BASS. Would the Senator explain what his objection would be?

Mr. BAYH. I have explained it. I will try again. In section 5 we are questioning the disability of the President, the man who has his "finger on the button." This issue needs to be decided immediately. But in section 2 we are trying to decide who the Vice President shall be.

The Senator from Tennessee has concocted a situation that he thinks might foreseeably exist. I asked him to state a while ago the worst possible thing that could happen, and the worst possible thing is to leave it where it is now. Why tie up Congress to correct a system that has worked for 176 years? We are not looking for delays.

Mr. BASS. It has not worked for 176 years. This amendment passed only 16 years ago. The amendment providing that the Speaker of the House of Representatives shall succeed to the Presidency was adopted only 16 years ago.

Mr. BAYH. That is a provision which goes into effect only when there is a dual tragedy, when both the President and Vice President have dropped out of the picture.

Mr. BASS. But not at the same time. The Vice President can die 3 years later.

Mr. BAYH. During the same term of office.

Mr. BASS. The Senator does not admit that a matter of time is involved, in that case, but he insists that Congress shall act without delaying tactics in the other matter. I see absolutely nothing wrong in providing that Congress shall act upon the nomination without delay. If there is anything wrong in that, I do not see where it is. I do not see anything wrong in providing that the Congress shall act with dispatch on the recommendation of the President, belonging to one party, when the Congress may oppose the recommendation because it is of the opposite party. All the amendment does is add one word—"immediately."

Mr. BAYH. No, that is not all there is to it. The Senator wants section 2 to read as the Senator from Rhode Island wants section 5 to read.

The PRESIDING OFFICER. All the time of the Senator from Indiana has expired.

Mr. BAYH. Mr. President, I yield 2 minutes on the bill to the Senator from North Carolina [Mr. ERVIN].

Mr. ERVIN. Mr. President, I wish to reply to the Senator from Tennessee. Section 2 of the resolution does not deal with a vacancy in the office of the President; it deals only with a vacancy in the office of the Vice President:

> 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.

There is a President involved in the language which the Senator from Rhode Island wishes to amend. The Senator from Tennessee wants to amend the provision relating to the nomination of the Vice President. He says he is afraid that, when the Vice President's office is vacant, Members of the House who are anxious to get their Speaker in the Presidency will "sit still" on the nomination until the President dies.

God help this Nation if we ever get a House of Representatives, or a Senate, which will wait for a President to die so someone whom they love more than their country will succeed to the Presidency. That does not apply to this section. It is based on the idea that either the House or the Senate, when there is a vacancy in the Vice-Presidency, is going to pray for the President to die so somebody they love more than they love their country will succeed to the Presidency.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BASS. Mr. President, I have an amendment at the desk. I offer the amendment.

Mr. BAYH. Mr. President, a point of parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his point of parliamentary inquiry.

Mr. BAYH. There is an amendment pending, which has been thoroughly debated, by the Senator from Rhode Island. I wish to inquire as to what disposition we can make of that.

The PRESIDING OFFICER. The Senator from Tennessee has offered an amendment to the amendment offered by the Senator from Rhode Island.

Mr. BAYH. Mr. President, may I yield myself 30 seconds to ask a question of the Senator from Tennessee? Because of the complexity of the issue, will the Senator from Tennessee permit us to get one question voted on, and then he can offer his amendment, or as many amendments as he wants to?

Mr. BASS. I am going to resolve the question by offering a substitute amendment.

Mr. BAYH. Very well.

The PRESIDING OFFICER (Mr. MONTOYA in the chair). The clerk will report the amendment.

The LEGISLATIVE CLERK. In lieu of the language on page 2, line 16, as offered by the Senator from Rhode Island [Mr. PASTORE], insert the word "immediately."

Mr. BASS. Mr. President——

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. BASS. Mr. President, the only change in the joint resolution would be one word. Only one word would be added to the joint resolution. If the Senator from Indiana will check section 2, only one word, the word "immediately," which is the word he used in his own section—in section 5—would be added to section 2. This would merely mean that if we had a situation in which there was a vacancy in the office of the Vice President and the President submitted a nomination, Congress would be required to act with some dispatch. There would be no time limit, no given number of days, but we are using the same language as the language in section 2, which the committee itself wrote into section 5.

This would mean that Congress would have to act with some dispatch.

The only thing it does is add one word to the resolution, which means that Congress would act immediately on the recommendation of the President to confirm a new Vice President.

I can see nothing wrong with asking Congress to act immediately upon recommendation of the President, because if we were in a situation in which one party in power would be stalling and delaying the recommendations of the party in

power in the White House, we would be in the same situation in which we are now.

Mr. HRUSKA. Mr. President, will the Senator from Indiana yield me 2 minutes?

Mr. BAYH. Mr. President, I am glad to yield 2 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 2 minutes.

Mr. HRUSKA. Mr. President, let me make a brief observation. We did consider the word "immediately" in section 5 in that same context.

What does the word "immediately" mean?

Does it mean that there will be no hearings? Does it mean that there will be no debate? Does it mean that there will be no consideration of any kind to determine what kind of person the nominee is?

Those are questions which have already been considered; and I earnestly recommend that the amendment be defeated.

Mr. BAYH. Mr. President, I thank the Senator from Nebraska and the Senator from North Carolina who have adequately expressed my views. I have tried earlier to do so. I suggest that the Senate now vote.

Mr. BASS. Mr. President, I yield back the remainder of my time. I am ready to vote.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment of the Senator from Tennessee [Mr. BASS].

The amendment in the nature of a substitute was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

Mr. HOLLAND. Mr. President, I ask that the amendment be read.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 2, line 16, and on page 3, line 24, after the word "issue," insert the following: "and no other business shall be transacted until such issue is decided."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment was rejected.

The PRESIDING OFFICER. The joint resolution is open to further amendment.

Mr. BAYH. Mr. President——

The PRESIDING OFFICER. If there are no further amendments, the question is on the engrossment of the amendments and the third reading of the joint resolution.

The amendments were ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read the third time.

Mr. HART. Mr. President——

The PRESIDING OFFICER. Who yields time to the Senator from Michigan?

Mr. BAYH. Mr. President——

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana.

Mr. BAYH. I yield myself such time as I may require from the time on the bill.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. I wish to explain and clarify something which has been brought to my attention by the Senator from New York, which has been discussed at some length previously with the Senator from Michigan and the Senator from Rhode Island.

Let the RECORD show that as the Senator in charge of the bill, I am fully aware of the complexity of the terms with which we are dealing, and feel that the word "inability" and the word "unable," as used in sections 4 and 5 of this article, which refer to an impairment of the President's faculties, mean that he is unable either to make or communicate his decisions as to his own competency to execute the powers and duties of his office. I should like for the RECORD to include that as my definition of the words "inability" and "unable."

Mr. PASTORE. Mr. President, will the Senator from Indiana yield at that point?

Mr. BAYH. I yield.

Mr. PASTORE. The statement was made by the Senator from Indiana, on page 20 of the hearings:

> Let me intervene momentarily. I am certain the Senator from Nebraska remembers that the record shows that the intention of this legislation is to deal with any type of inability, whether it is from traveling from one nation to another, a breakdown of communications, capture by the enemy, or anything that is imaginable. The inability to perform the powers and duties of the office, for any reason is inability under the terms that we are discussing.

In other words, what the Senator from Indiana has just stated is a clarification of that statement?

Mr. BAYH. The Senator is correct.

Mr. MANSFIELD. Also an indication of the intention of the Senate in consideration of the joint resolution.

Mr. BAYH. Either unable to make or communicate his decisions as to his own competency to execute the powers and duties of his office.

Mr. HOLLAND. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I yield.

Mr. HOLLAND. I am in thorough accord with what is intended by the proposed constitutional amendment. There is one thing about the debate which has disturbed me. The proposed amendment does not specifically replace or specifically amend any part of the present Constitution. It does by implication, it seems to me, amend certain portions of article II, section 1, clause 5.

I have been disturbed by what seems to be the assumption by some Senators that the present statute providing for the succession to the Presidency would still be in force.

Looking at these two matters hurriedly, that is the present provision of the Constitution. What is proposed would be a new section of the Constitution, and would only by implication change the present provision. It would seem to me that that part of the present Constitution which allows the Congress by statute to declare what officer shall then act as President in the case of the removal, death, resignation, or inability both of the President and the Vice President, could apply only in two cases.

One would be a situation in which the President and Vice President were both killed in a common disaster. The second would be where the death of one should come so quickly following the death of another that there would have been no time permitted for the functioning of Congress under the proposed amendment, if it should become a part of the Constitution.

I am asking the Senator in charge of the joint resolution if that is also his understanding as to the only fields in which Congress would be left with statutory authority to provide for the succession.

Mr. BAYH. The Senator is correct; that is the way I would interpret it.

Mr. HOLLAND. The proposed amendment, if it became a part of the Constitution, would reduce the present power of Congress to the two situations which I have outlined in my question.

Mr. BAYH. As the Senator from Florida well knows, there is a considerable amount of debate as to whether Congress has power to legislate by statute in this field at the present time. The original succession statute was passed in 1792; and the Congress which passed that statute contained several members of the Constitutional Convention. Their interpretation of article II, section 1, should be considered in light of the succession statute which they passed, which dealt only with succession. The law would apply only when there were two deaths, as the Senator from Florida [Mr. HOLLAND] has described.

In other words, they must surely have interpreted clause 5, to which the Senator refers, reading "Congress may by law provide for the case of the removal, death, resignation, or inability both of the President and of the Vice President," to mean that that was a limitation on the Congress and that both of those contingencies had to come to pass before it could enact legislation.

Mr. HOLLAND. But, if I may restate my question, in the event the proposed amendment should be adopted and become a part of the Constitution, would it not confine the statutory authority of Congress to the two cases which I have outlined?

Mr. BAYH. Yes. This does not alter it. The Senator is correct.

Mr. HOLLAND. I beg the Senator's pardon.

Mr. BAYH. The Senator is correct.

Mr. HOLLAND. I thank the Senator.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. HART. Mr. President, may I ask a few questions, which may help all of us in understanding this subject?

Mr. BAYH. I yield.

Mr. HART. The Senator has just stated a definition of inability, dealing with the impairment of the President so as not to be able to make or communicate a decision as to his own competency. Is it clear that this means far more than disagreement with respect to a judgment he may make, a decision he may

make with respect to incapacity and inability, or must it not be based upon a judgment that is very far reaching?

Mr. BAYH. The Senator from Indiana agrees with the Senator from Michigan that we are not dealing with an unpopular decision that must be made in time of trial and which might render the President unpopular. We are talking about a President who is unable to perform the powers and duties of his office.

Mr. HART. This may have been clarified in the report, and I plead guilty to not having read it very carefully.

With reference to the heads of the executive departments, is it clear that we are talking about those whom we regard as comprising the Cabinet, as referred to in 5 U.S.C. 1 and 2?

Mr. BAYH. The Senator is correct.

I ask unanimous consent that there may be included in the RECORD at this point, to further describe the contents of 5 U.S.C. 2, a report that was given to the junior Senator from Indiana by the Library of Congress, which sets this matter out specifically.

Mr. HART. That would be helpful.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., February 18, 1965.

To: Hon. BIRCH BAYH, Chairman, Senate Subcommittee on Constitutional Amendments.

From: American Law Division.

Subject: Executive departments.

Reference is made to your inquiry of February 17, 1965, requesting, among other things, some precedents regarding definition of "executive department."

As we informed you during our telephone conversation of above date, the phrase is defined in 5 U.S.C. 2 which provides: "The word 'department' when used alone in this chapter, and chapters 2–11 of this title, means one of the executive departments enumerated in section 1 of this title."

Section 1 referred to above reads as follows:

"The provisions of this title shall apply to the following executive departments:

"First, the Department of State.

"Second, the Department of Defense.

"Third, the Department of the Treasury.

"Fourth, the Department of Justice.

"Fifth, the Post Office Department.

"Sixth, the Department of the Interior.

"Seventh, the Department of Agriculture.

"Eighth, the Department of Commerce.

"Ninth, the Department of Labor.

"Tenth, the Department of Health, Education, and Welfare."

The phrase also makes an appearance in the Constitution. Article 2, section 2, clause 1 reads, in relevant part, as follows: "He [President] may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices."

No relevant annotations appear to the foregoing section.

In *Brooks* v. *United States*, 33 F. Supp. 68 (1939) an action brought by an enlisted man in the U.S. Navy to recover reenlistment allowances—the District Court for the Eastern District of New York examined petitioner's status for purposes of determining whether it was without jurisdiction under the Tucker Act, 28 U.S.C. § 41 (20) (1939). The court stated that the expression "heads of departments" comprehended the members of the President's Cabinet, and did not include a mere bureau head:

"Admittedly, the plaintiff was not appointed by the President or by a court of law and it remains only to consider whether he was appointed by a head of a department. A long line of cases establishes that the term 'Head of a Department' as used in this clause of the Constitution means one of the members of the President's Cabinet. It does not include a mere bureau head. *United States* v. *Germaine*, 99 U.S. 508, 25 L. Ed. 482; *Burnap* v. *United States*, 252 U.S. 512, 40 S. Ct. 374, 64 L. Ed. 692; *Steele* v. *United States* No. 2, 267 U.S. 505, 45 S. Ct. 417, 69 L. Ed. 761. Thus in *Morrison* v. *United States*, 40 F. 2d 286, D.C.S.D.N.Y., a petty officer not appointed by the President or a cabinet officer was held not to be an officer of the United States and therefore capable of suing in this court, whereas in *Foshay* v. *United States*, 54 F. 2d 668, D.C.S.D.N.Y., a clerk appointed by the Postmaster General, the head of an executive department, was held to be an officer of the United States and incapable of suing for pay in this court. *Oswald* v. *United States*, 9 Cir., 96 F. 2d 10, similarly held a court reporter, appointed by the court, under a disability to sue for salary in the district court under the provisions of the Tucker Act. Numerous other cases such as *Scully* v. *United States*, 193 F. 185, 187, C.C.D. Nev., have defined 'officer of the United States' in terms of the constitutional meaning of the records. See, also, *United States* v. *Van Wert*, D.C. Iowa, 195 F. 974; *United States* v. *Brent*, D.C. Iowa, 195 F. 980; *McGrath* v. *United States*, 2 Cir., 275 F. 294."

The holding was reaffirmed in *Surowitz* v. *United States*, 80 F. Supp. 716, 718–719 (1948) wherein the court declared:

"This does not mean that the courts have always applied one test of an officer under the criminal law and another under the civil law. The difference resides in the application. The test itself has been fairly uniform; only he is an officer who is an officer in the constitutional sense, that is (so far as is here involved), a person appointed under authority of law by the head of a department to a post created by law. The head of a department has been authoritatively defined to mean a member of the President's Cabinet. *United States* v. *Smith, supra; United States* v. *Germaine, supra;* see *Burnap* v. *United States*, 190, 252 U.S. 512, 515, 40 S. Ct. 374, 64 L. Ed. 692."

In *United States* v. *Germaine*, 99 U.S. 508 (1879), the Supreme Court was called upon to determine whether a surgeon appointed by the Commissioner of Pensions was an officer and therefore amenable to prosecution under a criminal statute punishing extortion by an "officer of the United States." The Court held that defendant was not an officer and the Commissioner of Pensions was not the head of a department within the meaning of the Constitution. Portions of the opinion dealing with the later consideration follow:

"As the defendant here was not appointed by the President or by a court of law, it remains to inquire if the Commissioner of Pensions, by whom he was appointed, is the head of a department, within the meaning of the Constitution, as is argued by the counsel for plaintiffs.

"The instrument was intended to inaugurate a new system of government, and the departments to which it referred were not then in existence. The clause we have cited is to be found in the article relating to the executive, and the word as there used has reference to the subdivision of the power of the executive into departments, for the more convenient exercise of that power. One of the definitions of the word given by Worcester is, 'a part or division of the executive government, as the Department of State, or of the Treasury.' Congress recognized this in the act creating these subdivisions of the executive branch by giving to each of them the name of a department. Here we have the Secretary of State, who is by law the head of the Department of State, the Departments of War, Interior, Treasury, and so forth. And by one of the latest of these statutes reorganizing the Attorney General's office and placing it on the basis of the others, it is called the Department of Justice. The association of the words 'heads of departments' with the President and the courts of law strongly implies that something different is meant from the inferior commissioners and bureau officers, who are themselves the mere aids and subordinates of the heads of the departments. Such, also, has been the practice, for it is very well understood that the appointments of the thousands of clerks in the Departments of the Treasury, Interior, and the others, are made by the heads of those departments, and not by the heads of the bureaus in those departments.

"So in this same section of the Constitution it is said that the President may require the opinion in writing of the principal officer in each of the executive departments, relating to the duties of their respective offices.

"The word 'department,' in both these instances, clearly means the same thing, and the principal officer in the one case is the equivalent of the head of department in the other.

"While it has been the custom of the President to require these opinions from the Secretaries of State, the Treasury, of War, Navy, and so forth, and his consultation with them as members of his Cabinet has been habitual, we are not aware of any instance in which such written opinion has been officially required of the head of any of the bureaus, or of any commissioner or auditor in these departments."

In *United States* v. *Hartwell*, 73 U.S. [6 Wall.] 393 (1868), the Supreme Court held that one appointed under an act of Congress authorizing an assistant treasurer, with the approbation of the Secretary of the Treasury, to appoint a specified number of clerks, is appointed by the head of a department within the meaning of article II, § 2. Germaine, supra, the Court held that it was being consistent with the Hartwell since "it is clearly stated and relied on that Hartwell's appointment was approved by the Assistant Secretary of the Treasury as acting head of that Department, and he was therefore, an officer of the United States."

In *Price* v. *Abbott*, 17 F. 506 (1883) the Court held that appointments made by the Comptroller of the Currency, or receivers of national banks, as provided by acts of Congress, are to be presumed to be made with the concurrence or approval of the Secretary of the Treasury, and are made by the head of the department within the meaning of the Constitution.

In *Freilinghuysen* v. *Baldwin*, 12 F. 395 (1882) it was held that a receiver of a national bank appointed by the Comptroller of the Currency, who was the chief officer of a bureau of the Treasury Department charged with the execution of all laws passed by Congress relating to the regulation and the issue of a national currency secured by U.S. bonds, was appointed by the head of a department within the meaning of the Constitution, as the Comptroller performed this, as well as all other duties, under the general direction of the Secretary of the Treasury.

We are sending herewith duplicate copies of the material delivered to you last evening, material requested this morning, and loan copies of the United States Code. See in particular 5 U.S.C. 1, 2, 133z–3, 133z–5; the Executive order (No. 10495) following 5 U.S.C. 6.

RAYMOND J. CELADA,
Legislative Attorney.

Mr. HART. Mr. President, we are talking now, not about the usual situation, but one which we hope will never occur. The language is clear, but I am afraid that there is no conversation, in terms of an exchange, even with the manager of the bill, to show that we can avoid what all of us want to avoid; namely, a usurping Vice President who consolidates his position by firing the Cabinet.

Is there any way in which we can, in this exchange on the floor, help to avoid that situation, or make very clear that this is not the grant that we make?

Mr. BAYH. The Senator from Michigan knows full well the advice and consent authority of the Senate so far as any Cabinet members are concerned.

Mr. HART. Yes; I do.

Mr. BAYH. He also knows of the two-thirds provision, which would be required to sustain the position of the Vice President and his new Cabinet if he were to take this most unfortunate step.

The committee in its hearings discussed this subject at some length, because we must tread a very narrow line, on one side of which we do not want a usurping Vice President to fire the Cabinet, while on the other side we do not want a Vice President who is acting in good cause, say, for example, in a 3-year term of office, being unable to reappoint Cabinet members who may have died or resigned.

Mr. HART. What about interim appointments to the Cabinet? Is there not some place short of tying the hands of a 3-year incumbent Vice President as President and leaving wide open this possibility? Is it not our responsibility at least to establish the check that a Vice President who becomes President temporarily at least should not be able to appoint a Cabinet majority through interim appointments?

Mr. BAYH. I reiterate what I said before. Before the position of the Vice President could be sustained even in an interim position, the President would have the opportunity, under the provision of section 5, to take this to Congress. Unless the Vice President could be sustained by a two-thirds vote, he would be "out."

Mr. HART. I believe I have voiced the apprehension, which perhaps now more broadly is established than when we were discussing the subject in committee. I believe it is essentially our responsibility in this situation, where we talk about Cabinet appointees over whom we have some authority to suggest against interim appointees. Ought we not at least to go that far?

Mr. HRUSKA. I yield myself 3 minutes.

That question was considered in committee. We discussed the possibility of the Vice President dispensing with the members of the Cabinet and appointing a Cabinet of his own choosing. Does not the real protection against that kind of situation lie in the good judgment of Congress? If there were an overreaching by him which would be that transparent, the good judgment of the House and of the Senate would assert itself. Congress would say, "We will have no part with that kind of usurpation and grasping for power."

On the contrary, if by a two-thirds vote Congress agreed with him, that would be the democratic process in action. That is the fashion in which it should be done. The real, ultimate protection is in the good judgment of the Members of Congress, by a two-thirds majority.

Mr. HART. I should like to make one further comment on that.

The PRESIDING OFFICER. Does the Senator from Indiana yield to the Senator from Michigan?

Mr. BAYH. I yield.

Mr. HART. Is it the understanding of the Senate, in taking this action, that the Under Secretary, in the event of a vacancy in the office of Secretary, shall be empowered as would the Secretary himself, in participating in the decision with respect to ability or disability?

Mr. BAYH. It is the opinion of the junior Senator from Indiana that it is not.

Mr. HART. This would reduce it by as many Under Secretaries as may be involved in the situation with respect to those who would participate in the Cabinet decision. Is that correct?

Mr. BAYH. I ask the Senator from Michigan—and I know he is asking penetrating questions which are very valuable in making this record clear, and I also know that a scintilla of doubt will remain—but I ask the Senator to look at the history, in which the role of the Vice President has been quite to the contrary.

He has been reluctant to move, although urged to do so, particularly in the case of the Garfield situation, when all of his Cabinet urged him. He is a human being, with a conscience and a heart and a soul, and, as the Senator from North Carolina has said, his political future would be ruined if he attempted to usurp the office.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the passage of the joint resolution.

The yeas and nays were ordered.

Mr. LAUSCHE. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. LAUSCHE. Am I correct in my understanding that there are two situations in which there would be a change in the Executive Office of the Nation: First, whenever the President on his own transmits to the Speaker of the House and the President of the Senate his written declaration that he is unable to discharge his office. Is that correct?

Mr. BAYH. That is one.

Mr. LAUSCHE. The second is whenever the Vice President and a majority of the principal officers of the executive departments 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 his duties.

Mr. BAYH. The Senator is correct.

Mr. LAUSCHE. That must be confirmed by a two-thirds vote in the Senate?

Mr. BAYH. The President would bring the issue and Congress would decide it. The President would have to say "You are wrong."

Mr. LAUSCHE. I have a final question, and I ask it to elucidate what the Senator from Michigan has been asking.

In an instance in which the incapacity of the President would be announced by the Cabinet and the Vice President, is it or is it not a fact that the President would continue in office with full power to veto until such time as the Cabinet, the Vice President, and a two-thirds vote of the Congress had established that the President was incapable of performing his job?

Mr. BAYH. No, that is not correct. That question got us into the very touchy question as to who should act during the questionable period, the President or the Vice President. It was the judgment of the committee—and I concur in that judgment—that whenever the Vice President and a majority of the Cabinet, which would have been appointed by the President himself, should become sufficiently concerned that, in the glare of the publicity which would be attendant upon something of the nature that we are discussing, they would make the declaration that there was sufficient doubt, the Vice President would assume the powers and duties of the office while the issue was being tried.

Another reason for the proposal was that we desired to try to prevent a back-and-forth ping-pong sort of situation in which the Vice President and the Cabinet would make a declaration. The President might be out and the Vice President would be in. Then the issue would go to Congress and Congress might make a declaration that the Vice President should be out and the President in. Under the proposal there would be fewer transfers of power and more continuity, which I feel should be basic.

Mr. LAUSCHE. I should like to ask another question. Suppose that the Vice President should declare that the President is incapacitated, a minority of the members of the Cabinet should say that he is incapacitated, and a majority should say that he is not. Under the joint resolution Congress would proceed to establish its views and would either confirm or reject the findings of the Cabinet and the Vice President. Would the President whose incapacity had been charged have the right to a veto?

Mr. BAYH. Yes, the other body, as Congress may by law prescribe.

Mr. LAUSCHE. That is, if and when Congress should feel that it should step in under the language which provides that such other body as Congress by law may provide, the Vice President would not act, but the President would continue to act, although he had been charged by the Congress and charged by the Vice President with being incapacitated.

Mr. BAYH. That is correct; and the number of votes prescribed would override the veto, or the same number that would support the Vice President.

Mr. ALLOTT. Mr. President, I am fully aware of the lateness of the hour, but I do not believe the questions asked by the distinguished Senator from Ohio included one that I would like to ask.

Section 4 contains a provision that the Vice President shall assume the

powers and duties of the office as Acting President under certain conditions.

Section 5 states:

> 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, with the written concurrence of a majority of the principal officers 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.

There would be a legal acting President.

Mr. BAYH. That is correct.

Mr. ALLOTT. The President would then send to Congress his written declaration. Who would be President during the 7 days?

Mr. BAYH. The Vice President, the Acting President. I thank the Senator from Nebraska for his suggestion. It makes a considerable difference. As I explained, we wrote in that language for two basic reasons. First, whenever the Vice President and a majority of the Cabinet of the President who is about to be deposed feel that there is sufficient cause that, in the great heat attendant publicitywise, they would make such a declaration, there would be a serious enough doubt about the mental capacity—and usually it would be the mental capacity of the President—that the decision would be made, the Vice President would assume the powers and duties as Acting President while the decision was being made by Congress.

Such a provision would cut down the number of times the power of the Presidency would change. We desire to keep it to a minimum. The President would leave the office and the Vice President would take over, and then the Vice President would leave and the President might resume his office, and that would go on down the line.

Mr. ALLOTT. To get to the question in another way, so the issue will be clear, if a Vice President had assumed the duties of acting President, and the elected President then decided that he wished to state that there is no inability any longer, it would be 7 days before he could possibly resume the office of President.

Mr. BAYH. That is correct.

Mr. ALLOTT. There is no question about that. That is the intent.

Mr. BAYH. That is the intent. I should like to clarify the record on one point. The question which the Senator from Colorado has posed about requiring a mandatory 7 days would only apply if there should be a contest under section 5. The provision would not prevent the Vice President and the President agreeing to a lesser period of time.

Mr. HRUSKA. Mr. President, agreements devised by the President and his Vice President in past administrations to cope with an inability crisis are not satisfactory solutions. Recent history has also made us very much aware of the need for filling the office of Vice President when a vacancy arises.

It is abundantly clear that, rather than continue these informal agreements, the only sound approach is the adoption of a constitutional amendment.

The hearings, which have been held on this important subject in recent years and in which this Senator has had the opportunity to participate, have led me to prefer a different approach than the present one. As in other legislative matters, the finished product requires the refinement of individual preferences. In the spirit of this simple reality, I shall support the proposed amendment. It is my earnest hope that the Congress and the State legislatures will approve and ratify it promptly.

There are two major reasons for my acceptance of the proposed amendment.

The first is the urgent need for a solution. Differences of opinion in Congress have deprived us of a solution for far too long. It is time that these constitutional shortcomings be met.

Secondly, the proposed language approaches the product which would have resulted under the proposal which I had urged, so that this amendment is acceptable as proposed and amended.

The refinements that have been made on the original language of Senate Joint Resolution 1 will clarify the detailed procedure to be followed in a case of disability.

The role of Congress is narrow. It is as an appeal open to the President from the decision of the Vice President and the members of the Cabinet. It will be brought into the matter only in those limited circumstances where the Vice President, with a majority of the principal officers of the executive departments, and the President disagree on the question of restored ability. It is important to note that Congress will not have the power to initiate a challenge of the President's ability.

The procedure by which Congress shall act is properly left to later determination within rules of each branch thereof. A point of possible conflict is resolved in the understanding that Congress shall act as separate bodies and within their respective rules.

The language that "Congress shall immediately proceed to decide the issue" leaves to Congress the determination of what, in light of the circumstances then existing, must be examined in deciding the issue. Thus, the matter will be examined on the evidence available. It is desirable that the matter be examined with a sympathetic eye toward the President who, after all, is the choice of the electorate.

It is apparent that Senate Joint Resolution 1 does have aspects which alleviate the dangers attendant to a crisis in presidential inability. Nevertheless, it is felt by this member of the committee that caution and restraint will be demanded should this inability measure be called into application.

A time does arrive, however, when we must fill the vacuum. The points which I have emphasized and previously insisted upon are important; but having a solution at this point is more than important, it is urgent. For this reason, I support Senate Joint Resolution 1 and urge its passage. I hope that it will be given expeditious approval by the other body and early ratification by the required number of States.

Mr. BAYH. Mr. President, I yield back the remainder of my time.

Mr. HRUSKA. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is, Shall the joint resolution pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Pennsylvania [Mr. CLARK], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Tennessee [Mr. GORE], the Senator from Alaska [Mr. GRUENING], the Senator from Utah [Mr. MOSS], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Florida [Mr. SMATHERS], and the Senator from New Jersey [Mr. WILLIAMS] are absent on official business.

I also announce that the Senator from Georgia [Mr. RUSSELL] is absent because of illness.

I further announce that the Senator from South Carolina [Mr. JOHNSTON], the Senator from North Carolina [Mr. JORDAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Minnesota [Mr. MONDALE], the Senator from Maine [Mr. MUSKIE], the Senator from Wisconsin [Mr. NELSON], the Senator from Connecticut [Mr. RIBICOFF], and the Senator from Missouri [Mr. SYMINGTON] are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Pennsylvania [Mr. CLARK], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Tennessee [Mr. GORE], the Senator from Alaska [Mr. GRUENING], the Senator from South Carolina [Mr. JOHNSTON], the Senator from North Carolina [Mr. JORDAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Minnesota [Mr. MONDALE], the Senator from Utah [Mr. MOSS], the Senator from Maine [Mr. MUSKIE], the Senator from Wisconsin [Mr. NELSON], the Senator from Oregon [Mrs. NEUBERGER], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Connecticut [Mr. RIBICOFF], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], the Senator from Missouri [Mr. SYMINGTON], and the Senator from New Jersey [Mr. WILLIAMS] would each vote "yea."

Mr. DIRKSEN. I announce that the Senators from Kentucky [Mr. COOPER and Mr. MORTON], the Senator from New York [Mr. JAVITS], the Senator from Idaho [Mr. JORDAN] and the Senator from Iowa [Mr. MILLER] are necessarily absent.

The Senator from California [Mr. KUCHEL] is absent on official business.

The Senator from Colorado [Mr. DOMINICK] and the Senator from California [Mr. MURPHY] are detained on official business.

If present and voting, the Senator from Kentucky [Mr. COOPER], the Senator from Colorado [Mr. DOMINICK], the Senator from New York [Mr. JAVITS], the Senator from Idaho [Mr. JORDAN], the Senator from California [Mr. KUCHEL], the Senator from Iowa [Mr. MILLER], the Senator from Kentucky [Mr. MORTON] and the Senator from California [Mr. MURPHY] would each vote "yea."

The yeas and nays resulted—yeas 72, nays 0, as follows:

[No. 24 Leg.]

YEAS—72

Aiken	Fong	Monroney
Allott	Harris	Montoya
Bartlett	Hart	Morse
Bass	Hartke	Mundt
Bayh	Hayden	Pastore
Bennett	Hickenlooper	Pearson
Boggs	Hill	Pell
Brewster	Holland	Prouty
Burdick	Hruska	Randolph
Byrd, Va.	Inouye	Robertson
Byrd, W. Va.	Jackson	Saltonstall
Cannon	Kennedy, N.Y.	Scott
Carlson	Lausche	Simpson
Case	Long, Mo.	Smith
Church	Long, La.	Sparkman
Cotton	Magnuson	Stennis
Curtis	Mansfield	Talmadge
Dirksen	McCarthy	Thurmond
Dodd	McClellan	Tower
Douglas	McGee	Tydings
Eastland	McGovern	Williams, Del.
Ellender	McIntyre	Yarborough
Ervin	McNamara	Young, N. Dak.
Fannin	Metcalf	Young, Ohio

NAYS—0

NOT VOTING—28

Anderson	Jordan, N.C.	Nelson
Bible	Jordan, Idaho	Neuberger
Clark	Kennedy, Mass.	Proxmire
Cooper	Kuchel	Ribicoff
Dominick	Miller	Russell
Fulbright	Mondale	Smathers
Gore	Morton	Symington
Gruening	Moss	Williams, N.J.
Javits	Murphy	
Johnston	Muskie	

The PRESIDING OFFICER (Mr. MONTOYA in the chair). Two-thirds of the Senators present having voted in the affirmative, the joint resolution (S.J. Res. 1) is passed.

Mr. BAYH. Mr. President, I move that the Senate reconsider the vote by which the joint resolution was passed.

Mr. HRUSKA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MAGNUSON. Mr. President, earlier I had asked the Senator from Indiana to yield for 10 seconds, but I did not pursue my request because I wanted to have the joint resolution passed promptly. But I believe it is apropos now, after all the discussion today, that the Senate should wish the President and Vice President good luck and good health.

FORMATION OF BUSINESS ADVISORY COMMITTEE ON TRADE WITH EASTERN EUROPE

Mr. MAGNUSON. Mr. President, all of us who view expanded trade as a sensitive tool for piercing the Iron Curtain, welcome President Johnson's formation of a business advisory committee on trade with Eastern Europe, announced yesterday. I am particularly pleased that this committee, in charting new paths to increased peaceful trade with Russia and the other European bloc countries, will work in close cooperation with our dynamic new Secretary of Commerce, John T. Connor.

It is significant that the President announced his action during the throbbing crisis in Vietnam, for it should serve as a healthy reminder to those who see East-West trade in unthinking, cold war terms, that our object in expanding trade is not sentimental but the hardheaded pursuit of our own economic and strategic self-interest.

Less than 3 weeks ago, I introduced in the Senate, Senate Joint Resolution 36, to establish a high level permanent Council for Expanded Trade, composed of leading private citizens from the business, labor, and academic communities to advise the Congress and the President on a continuing basis of "the extent to which and the methods by which trade between the United States and countries within the Communist bloc can profitably be expanded in furtherance of the national interest."

In the past, business leaders and Government officials have each tended to let the other take the lead in urging innovations in our trade policies toward the bloc countries. As a result, businessmen in general have remained confused and uncertain of the guidelines of national trade policy, while the Government has been unable to grasp the commercial realities involved in the pursuit of expanded trade with the East.

What should be a great national debate has too often been obscured by myth and misconception. Before we will be able to establish a rational exchange of goods and services with the bloc countries, we must establish a rational machinery for the exchange of ideas, experience, and fact between our own business and Government.

The President's committee represents an exceedingly important first step toward the establishment of such machinery. But the exploration of expanded trade with the Communist bloc should not be a one-shot affair. The interchange of ideas on East-West trade between business and Government must be placed on a permanent basis so that the President and Congress might not only be informed of trade developments with the East but so that business leaders, in turn, might be informed of Government policies on such trade.

The development and cultivation of trade relationships is a continuing process which will undoubtedly take many years. Problems which now exist, and which may in the future arise, will require continuing scrutiny and attention.

For these reasons, while I wholeheartedly endorse the President's formation of his study committee, I believe that Congress has an obligation to place the effort to expand East-West trade on a more permanent, institutionalized basis, and so I urge that Congress support President Johnson's goal of an active East-United States trade policy by enacting Senate Joint Resolution 36.

AVAILABILITY OF FINE HARDWOOD LOGS FOR VENEER

Mr. BAYH. Mr. President, last evening, Senators HARTKE and JAVITS and I discussed the critical problem of excessive cutting of black walnut logs which will occur due to the removal of an export control order by the Secretary of Commerce.

In our discussions we suggested that the source of supply of replacement woods was virtually nonexistent in the United States and was, in fact, in short supply worldwide.

To fully describe the critical proportions of our veneer quality log supply I would like to have inserted in the RECORD a speech by the Director of the Forest Products Division of the Department of Commerce, Mr. Thomas C. Mason, entitled "World Availability of Fine Hardwood Logs for Face Veneer." This speech analyzes the total world supply of walnut logs and other fine hardwoods and emphasizes the dimensions of the shortage we face.

This speech by a respected Department of Commerce official again underscores the folly of removing the export quota and I commend it to my colleagues attention.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

WORLD AVAILABILITY OF FINE HARDWOOD LOGS FOR FACE VENEER

(Speech by Thomas C. Mason, Director, Forest Products Division, BDSA, at the annual spring meeting of the Hardwood Plywood Institute luncheon, Mar. 5, 1964, Las Vegas, Nev.)

BLACK WALNUT

Coincidence of growing domestic and foreign demands for American black walnut veneer logs has, since 1958, resulted in excessive drain on the resource.

As of the end of 1958, the resource was able to provide about 18 million board feet of veneer logs per year.

Domestic use increased from about 12 million board feet in 1958 to 19½ million in 1962 and continued at a high level in 1963.

Exports increased from 2¼ million board feet in 1958 to 10⅓ million in 1962, and well over 14 million in 1963.

In 1962, domestic use and exports combined were nearly twice the indicated growth reported late in 1963 by the Forest Service.

For those of you who may be interested in details, I have copies of two small charts. These compare annual growth and drain of veneer-quality black walnut: In the one case, had 1960–63 trends of use been allowed to continue; in the other, the trends anticipated as a result of the conservation program.

In 1963, estimated domestic consumption plus exports were at an annual rate materially exceeding twice the indicated growth. If this rate had been permitted to continue, it would have taken less than 10 years to exhaust all the growing capital of veneer-quality black walnut trees down to 15 inches in diameter breast high. All the larger trees available for cutting, from which the high-quality veneer logs come, would have been exhausted much sooner that that. After about 10 years, the only supply of walnut veneer logs would have come from what is known in forestry terminology as in growth in the veneer tree size class; in other words, trees which reach 15 inches in diameter breast high during the year. The indicated volume of in-growth is less than

lions of dollars. But suppose it cost a number of billion dollars. If it would save the lives of millions of Americans, which it is admitted it will do—it is said that it would save 30 or 40 million Americans—I say it is worth the cost.

Further, the destruction that could be wrought in one or two of the cities in this Nation alone would amount to as much as the cost of moving forward with that system. I think we are making a mistake in not moving forward and building the antiballistic missile system. I think we are making a mistake in not going forward and building these strategic bombers which we need in order to have a deterrent to the Communists. This would be a credible deterrent. Building these bombers would help to avert a war. Building these bombers and having them ready to go would be a tremendous deterrent. It might keep this country out of an all-out war.

I commend the able Senator from Mississippi for calling attention to this important matter at this time. I hope that Congress will not delay any longer on this matter.

Mr. STENNIS. Mr. President, I thank the Senator.

I was asked a question by the Senator from Ohio concerning some budgetary figures. As I said, there is $3 million provided in the 1966 budget for system studies of a new manned bomber. This is a relatively small amount for a matter as important as this. It will mean that the system studies will necessarily be on a low-level basis.

In the 1966 budget there is also $24 million for propulsion and $12 million for avionics. These matters are, of course, important in the development of an advanced strategic bomber. But they are also of more general application and their finding does not mean that there has been a decision to go ahead with a new bomber system. In fact, it is clear that the decision is not to go ahead with this. My plea is for a "green light" for the development of a follow-on bomber as a weapon system. I believe we should go ahead as soon as possible. Anything short of that will not meet the demands of our future security. If it requires $50 million or more in 1966, to give it the high priority that it really deserves we should provide it.

Mr. CARLSON. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. CARLSON. I commend the distinguished Senator from Mississippi for calling the attention of the Senate and the country to a situation that concerns, I am sure, every Member of Congress. That situation pertains to the future strategic bombers that are to be built to protect this great Nation. Those of us who have followed the development of these planes in the past have been greatly concerned over their deterioration, their being phased out, and the fact that no effort, or at least no substantial effort, is being made to begin to get the plans on the drawing boards.

I was amazed at the figures read by the Senator from Mississippi concerning the amount that we are to spend on research and development of planes that are absolutely necessary if we are to preserve the defense of this great country.

I commend the Senator for calling attention to this matter.

Mr. STENNIS. I thank the Senator. I hope that my presentation of this information will bring it into focus for the consideration of the proper committees when they study our military program.

Mr. ERVIN. I ask the Senator from Mississippi if one vital distinction between a missile and a long-range bomber is not that when the missile is once fired, it is gone forever.

Mr. STENNIS. The Senator is correct.

Mr. ERVIN. A long-range bomber can carry a load of bombs and, if it is not shot down, it can come back and carry another load.

Mr. STENNIS. The Senator is correct. It is ready for use again. It has that human brain in it, too.

Mr. ERVIN. Mr. President, I ask the Senator if a normal missile would be equipped to carry a nuclear warhead.

Mr. STENNIS. The Senator is correct.

Mr. ERVIN. On the contrary, a long-range bomber can carry a load of conventional or nuclear bombs, depending upon which is advisable in the particular movement that is being made.

Mr. STENNIS. The Senator is correct. All it requires is changing the bomb racks.

Mr. ERVIN. They are more flexible.

Mr. STENNIS. The Senator is correct. Their great virtue is their flexibility.

Mr. ERVIN. Mr. President, I ask the Senator from Mississippi if most of the missiles are not stationary, and therefore subject to hostile action.

Mr. STENNIS. The Senator is correct. They are sitting targets. The question is, How well can we protect them? We think we have them protected as well as man can protect them. But there is a question of whether that is sufficient protection.

Mr. ERVIN. Is it not true that long-range bombers could be placed in motion in the event of a hostile attack, and therefore they are far less vulnerable to attack than a missile?

Mr. STENNIS. The Senator is correct.

Mr. ERVIN. I know that the Senator from Mississippi, because of his service on the Armed Services Committee, believes, as I do, that we need an adequate number of both missiles and long-range bombers.

Mr. STENNIS. That is the mixed concept that we have been talking about. We do not want to detract from our missiles. But there is always some uncertainty about being able to protect them. There is some uncertainty as to the extent to which they are vulnerable. To abandon the concept of a new bomber is unthinkable to me.

Mr. ERVIN. Does not the Senator from Mississippi know, as a member of the Armed Services Committee, that virtually all the men who have devoted their lives to the military service and have spent their days and nights studying how this country should be defended, recommend that we should have a program for renewing our long-range bombers?

Mr. STENNIS. The Senator is correct. I quoted some of the chief ones a few moments ago.

Mr. ERVIN. Does not the Senator from Mississippi agree that when we get down to the fact that we cannot foretell what precise weapons we shall need in these two areas or whether we need them both, it is the height of folly for the sake of economy or anything else, not to be prepared with both missiles and long-range bombers?

Mr. STENNIS. We cannot afford to do otherwise.

Mr. ERVIN. There is no advantage in having Uncle Sam become the richest man in the graveyard by virtue of having saved some money that should have been spent for long-range bombers.

Mr. STENNIS. The Senator has expressed it very well, as usual.

I shall review quite briefly the figures I cited a moment ago—$3 million is provided in the 1966 budget for system studies, $24 million is provided for propulsion, and $12 million for avionics. But those in the Air Force who know tell me that they do not understand that this is in any way earmarked for a new bomber system or that such a system has been approved by the Secretary of Defense.

I hope that in our hearings, and in the process of considering the budget, we can get a promise to earmark an adequate amount for a new manned bomber system. Then we can put in such additional amounts as we find necessary for other weapons and other airplanes. Certainly, some of the technology applicable to an advanced manned bomber—such as propulsion and avionics—is also applicable to other aircraft. But we ought to make a start now on a bomber system.

As I have said, I think this matter ought to be brought up early this year and discussed fully. I hope Mr. McNamara will be able to assure us in the hearings that he will give a green light to a new bomber system and that adequate funds will be made available for this purpose if they are appropriated by the Congress.

PRESIDENTIAL AND VICE-PRESIDENTIAL SUCCESSION—PRESIDENTIAL DISABILITY

The Senate resumed the consideration of 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.

Mr. BAYH. Mr. President, I wish to yield to the distinguished Senator from Hawaii [Mr. FONG].

Mr. FONG. Mr. President, as a cosponsor of Senate Joint Resolution 1 and as a member of the Judiciary Subcommittee on Constitutional Amendments, I should like to compliment and highly commend the distinguished junior Senator from Indiana for his dedication, hard work, diligence, and constant effort in drafting and guiding this critically important legislation through the subcommittee and the Judiciary Committee.

The Senator from Indiana has certainly done yeoman service in this regard and has given the subject long, deep, and scholarly thought. He has listened with great patience to the advice and counsel of the country's outstanding political scientists and other leading experts in this matter. He has forged a proposal from these considerable resources and has produced an outstanding document that is a practical and workable solution to the problems of presidential disability and vice-presidential vacancies.

The joint resolution before us is therefore a product of considerable thought and effort and represents a consensus of many proposals.

Two years ago, the tragic assassination of President Kennedy pointed up once again the urgent need to resolve these two critical gaps in the U.S. Constitution.

First. The Constitution does not say anything about what should be done when there is no Vice President. No one in America today doubts that the Vice President of the United States today carries very vital functions of our Government.

He is the President's personal representative and emissary; he is a member of the Cabinet; Chairman of the National Aeronautics and Space Council; member of the National Security Council; head of the President's Committee on Equal Employment Opportunity; and he takes part in other top-level discussions which lead to national policymaking decisions.

The modern trend toward the increasing importance of the Vice-Presidency began with President Franklin D. Roosevelt. President Eisenhower furthered this trend greatly in assigning Vice President Nixon many duties of critical importance, and President Johnson has made it very clear that he intends to make it an even more important office.

Ever since Vice President John Tyler took over the Presidency in 1841, when President William Henry Harrison died, this precedent has been confirmed on seven occasions. Vice Presidents Fillmore, Andrew Johnson, Arthur, Theodore Roosevelt, Coolidge, Truman, and Lyndon Johnson all became President in this manner.

Besides his many duties, the Vice President is the man who is only a heartbeat away from the world's most powerful office.

Yet, on 16 different occasions in our history the Nation has been without a Vice President.

The security of our Nation demands that the office of the Vice President should never be left vacant for long, such as it was between November 22, 1963, and January 20, 1965.

Second. The Constitution does not say anything about what should be done when the President becomes disabled, how and who determines his disability, when the disability starts, when it ends, who determines his fitness to resume his office, and who should take over during the period of disability.

In short, there is no orderly constitutional procedure to decide how the awesome and urgent responsibility of the Presidency should be carried on.

Third. The Constitution also is unclear as to whether the Vice President would become President, or whether he becomes only the Acting President, if the President is unable to carry out the duties of his office.

These are very closely related problems, since they involve the devolution and orderly transition of power in times of crisis.

Mr. President, as a member of the Subcommittee on Constitutional Amendments, I have studied very carefully all the various proposals submitted by other Senators during the 88th Congress and in this current session of the 89th Congress. I have considered the testimony submitted to the subcommittee in previous hearings, including those of the distinguished experts who have testified. I have read the data collected and have read the research done by the subcommittee's staff.

I believe that any measure to resolve these very complex and perplexing problems must satisfy at least four requirements:

First. It must have the highest and most authoritative legal sanction. It must be embodied in an amendment to the Constitution.

Second. It must assure prompt action when required to meet a national crisis.

Third. It must conform to the constitutional principle of separation of powers.

Fourth. It must provide safeguards against usurpation of power.

I believe Senate Joint Resolution 1 best meets each of these requirements.

Senate Joint Resolution 1 deals with each of the problems of vice-presidential vacancy and presidential inability by constitutional amendment rather than by statute.

Mr. President, on this legal controversy, well-known legal authorities have argued persuasively on both sides of this question. At issue is the interpretation of the "necessary and proper" authority of article I, section 8, clause 18—Does Congress have the power to legislate with respect to the question of vacancy and inability?

Recently there appears to have been a strong shift of opinion favoring a constitutional amendment over the statutory approach. Two past Attorneys General—Herbert Brownell and William Rogers—and the present Attorney General Nicholas Katzenbach, the American Bar Association, and many other State and local bar associations say a constitutional amendment is necessary.

The most persuasive argument for an amendment is that so many legal questions have been raised about the authority of Congress to act on these subjects, that any statute on these subjects would be open to criticism and challenge at the most critical time—when a President dies in office; when a President had become disabled; and when a President sought to recover his office.

We must not gamble with the constitutional legitimacy of our Nation's executive branch. When a President or Vice President of the United States assumes his office, the entire Nation and the world must know without doubt that he does so as a matter of right. Only a constitutional amendment can supply this necessary legitimacy.

With respect to the problem of vice-presidential vacancies, Senate Joint Resolution 1 provides for the selection of a new Vice President when the former Vice President succeeds to the Presidency within 30 days of his accession to office; the selection is to be made by the President, upon confirmation by a majority vote of both Houses of Congress.

I believe this is sound.

The vice-presidential office, under our system of government, is tied very closely with the Presidency. The extent to which the President takes the Vice President into his confidence or shares with him the deliberations leading to executive decisions is largely determined by the President.

Another important reason for allowing the President to nominate a Vice President is that the close relationship between the President and Vice President will permit the person next in line to become familiar with the problems he will face should he be called on to assume the Presidency.

Mr. SALTONSTALL. Mr. President, will the Senator yield?

Mr. FONG. I yield.

Mr. SALTONSTALL. Is it not also true that a Presidential nomination of a Vice President to succeed him should presumably be of one of the same party as the President?

Mr. FONG. Yes. The President must work closely with the Vice President. He is a very close confidant of the President. The Vice President would succeed the President, and he should be of the same political party.

Mr. SALTONSTALL. And, therefore, the President should nominate him?

Mr. FONG. And, therefore, the President should nominate him, and the Congress should have the right to confirm his nomination by a majority vote. Senate Joint Resolution 1 provides precisely these points.

The bill proposes what I believe to be a practical solution to a practical problem.

With respect to the problem of presidential disability, Senate Joint Resolution 1 makes clear that when the President is disabled, the Vice President becomes Acting President for the period of disability. It provides that the President may himself declare his inability and that if he does not, the declaration may be made by the Vice President with written concurrence of a majority of the Cabinet.

The determination of presidential inability by the Cabinet—along with the Vice President—is sound. It is reasonable to assume that persons the President selects as Cabinet officers are the President's most devoted and loyal supporters who would naturally wish his continuance as President.

The Vice President and the Cabinet are a close-working unit, having a daily relationship with the President. They are in the past position to assess the President's capacity to perform his duties and functions.

In addition, a majority of the Cabinet usually are members of the President's political party. They would be the last to declare his inability to carry out the duties of his office if he were able to do so.

Senate Joint Resolution 1 provides that the President may declare his own fitness to resume his powers and duties, but if his ability is questioned, the Cabinet by majority vote and the Congress by a two-thirds vote of both Houses resolve the dispute.

These provisions of Senate Joint Resolution 1 not only achieve the goals I outlined earlier, but they are also in consonance with the most valued principles established by our Founding Fathers in the Constitution.

They observe the principle of the separation of powers in our Government. They effectively maintain the delicate balance of powers among the three branches of our Government. Most important of all, they insure that our Nation's sovereignty is preserved in the hands of the people through their elected representatives in the National Legislature.

Several amendments to Senate Joint Resolution 1 have been proposed which in substance place back into the hands of the Congress many of the problems we have been discussing.

It is my considered judgment that these amendments will serve only to leave these critical questions unanswered—and we would not have accomplished what we intended to accomplish under Senate Joint Resolution 1.

I believe that these amendments should be voted down.

Mr. President, this is the first time since 1956, when a full-scale congressional study of the problems was conducted, that wide agreement has been reached on these vastly complex constitutional problems.

Last September, a measure similar to Senate Joint Resolution 1 was passed by the Senate by the overwhelming vote of 65 to 0. It was sent to the House, but Congress adjourned before any further action could be taken.

Last January, at the call of the American Bar Association, a dozen of the Nation's leading legal authorities meeting in Washington came up with a consensus, which is essentially embodied in the provisions of Senate Joint Resolution 1. This consensus was subsequently endorsed by the ABA house of delegates.

I understand that Senate Joint Resolution 1 is being cosponsored by a bypartisan group of 77 Senators.

I am most delighted and pleased to cosponsor this proposal with the very distinguished and able junior Senator from Indiana [Senator BAYH]. As one who has worked closely with him on this joint resolution, I know that he has worked hard to draft and guide it through the Subcommittee on Constitutional Amendments and the full Judiciary Committee.

Mr. President, I highly commend Senate Joint Resolution 1 to the Senate as a meritorious measure that should be enacted promptly into law.

Mr. SALTONSTALL. Mr. President, will the Senator from Hawaii yield?

The PRESIDING OFFICER (Mr. MONTOYA in the chair). Does the Senator from Hawaii yield to the Senator from Massachusetts?

Mr. FONG. I am glad to yield to the Senator from Massachusetts.

Mr. SALTONSTALL. What the Senator has said in substance is that Congress should act now on this subject, that it should act by constitutional amendment, and that the constitutional amendment should be specific in its terms rather than general, in order to leave future actions to future Congresses to supplement it.

Mr. FONG. The Senator is correct. We have been working on these problems for a long time, but have not been able to come up with a substantively sound proposal. Now, we have such a proposal in Senate Joint Resolution 1, which is specific in its terms, in order to leave no doubt as to the devolution and orderly transition of power, and the constitutional legitimacy of our Government. I believe that the various amendments which have been proposed to give the Congress statutory power to act on these problems will only lead us back to where we started.

The resolution of these problems are much too critical to leave for future statutory action, and, like the problem of presidential succession, be the subject of political decision.

I believe that we should pass Senate Joint Resolution 1 now, because it is statesmanlike and the very best possible solution to critical problems and will specifically deal with the problem as we wish it to be dealt with.

Mr. SALTONSTALL. The Senator would deal with the problem by a constitutional amendment rather than by statute.

Mr. FONG. The Senator is correct. That is the consensus of all the experts.

Mr. BAYH. Mr. President——

The PRESIDING OFFICER (Mr. HARRIS in the chair). The Senator from Indiana.

Mr. BAYH. Mr. President, I compliment the Senator from Hawaii [Mr. FONG] on his well-defined statement, in which he covered all the principal points, and in which he stressed the need for the Senate to join behind the consensus of the experts, feeling that we have the best proposal before the Senate now, and that if we spend more time searching for that which is perfect it will become a search for the impossible. We are solving the two key problems which have confronted us—namely, vice-presidential vacancies and the disability of a President; and if we solve these two problems, we can solve the other problems at a later date.

I compliment the Senator and thank him for the cooperation he has given the subcommittee, as well as for the personal sacrifice he made to be in the Chamber this afternoon to participate in this debate.

Mr. FONG. I thank the Senator from Indiana. He has been working hard on this measure. It is through his dedication that the joint resolution is now before the Senate. This has not been an easy resolution to arrive at. The Senator from Indiana and the other members of the committee have worked very hard on it. They have given it deep thought. We have listened to the experts on the subject, and this is the best possible solution that we can suggest. I believe that it is a completely workable and practical solution to the two key problems.

Mr. SCOTT. Mr. President, will the Senator from Hawaii yield?

Mr. FONG. I yield.

Mr. SCOTT. Mr. President, I rise in support of Senate Joint Resolution 1, but first, I commend the distinguished Senator from Hawaii for the fine presentation he has made, and for the scholarship which is evident in his exposition.

Let me say, for my part, that I shall support the proposed Dirksen substitute for Senate Joint Resolution 1 because I believe it to be simpler, wiser, and more farsighted on a long-range basis to leave to Congress the discretion to prescribe, by statute, procedures for the transfer of the President's powers and duties in the case of presidential inability.

It occurs to me that one illustration as to why Senate Joint 1 should leave this discretion to Congress is that there is no provision in Senate Joint Resolution 1, as reported to the Senate, that deals with the inability of a Vice President to perform his duties. If a Vice President dies or resigns, there is a provision for filling the vacancy. Let us suppose, however, that the Vice President suffers from an inability. It would be rather awkward, it seems to me, to overburden the Constitution with procedural details, better and more flexibly prescribed by statute, in an effort to foresee and imagine every possible eventuality and to meet every conceivable contingency.

Yet, with the increased importance of the office of Vice President, the contingency of the Vice President's inability becomes a significant consideration and Congress could take care of it by law, as it would be permitted to do under the broader language of the Dirksen amendment.

I am an original cosponsor of Senate Joint Resolution 1, but subsequent study of the Judiciary Committee's hearings and report, particularly the views expressed therein by my distinguished minority leader, has persuaded me to accept the Dirksen amendment.

However, if the Dirksen amendment should not be adopted, I revert, then, to my desire to see a workable proposal adopted, one which will be at least as wisely considered and prepared as Senate Joint Resolution 1, sponsored by the distinguished Senator from Indiana [Mr. BAYH]. I would, then, as a cosponsor, support Senate Joint Resolution 1.

Mr. President, the tragedy which this Nation witnessed only 15 months ago brought most forcefully to our attention once again the striking absence in the Constitution of appropriate provision for continuity of presidential leadership. In this era of recurring crises at home and abroad, it is imperative that at no time should there be any doubt in anyone's mind as to who is exercising the powers and duties of the Presidency. That is the central issue we are

dealing with today in Senate Joint Resolution 1.

This measure, of which I am honored to be a cosponsor, provides a workable means of assuring continuity of presidential leadership. It recognizes the very distinct nature of the two exigencies—death and inability—under which the Nation may lose the leadership of its President, and it provides suitable solutions for each of these peculiarly different situations.

The uncertainty concerning the legitimacy of our traditional method of providing for presidential succession, which is prompted by the existing vague constitutional language, would be removed. The addition of language providing for the filling of vacancies in the office of the Vice President, which occur upon the death, resignation, or removal of the President, would assure the Nation that it will always have a Vice President ready and able to assume the office of President or exercise the powers and duties of that office should the occasion arise.

Provision of continuity of presidential leadership is an urgent need that must be met now. There is widespread support for Senate Joint Resolution 1, and the climate for early ratification of this measure by the States seems to be favorable. Let us therefore promptly approve it.

Before closing, Mr. President, let me heartily commend the junior Senator from Indiana for his thorough study and diligent efforts in drafting Senate Joint Resolution 1, and for bringing it to the floor of the Senate. And I thank the Senator from Hawaii for giving me this opportunity to express my views.

Mr. FONG. I thank the Senator for his compliments. In answer to his questions, let me say that the Dirksen amendment would leave us almost in the same position as that from which we started. Many questions will still remain unanswered. If something should happen to the Vice President, we would not have the answer to that problem. It does not militate against Senate Joint Resolution 1. At present, no one succeeds to the position of Vice President if a Vice President succeeds to the office of President. I believe that if we take one step at a time, we shall accomplish what we are trying to accomplish. I believe that the present resolution is workable and practical.

THE CONSTITUTIONAL RIGHTS OF ALL AMERICANS

Mr. EASTLAND. Mr. President, in 1954, soon after the decision in Brown against Topeka, I made the statement that it was impossible to fulfill the implications of Brown against Topeka without destroying the constitutional rights of all other American citizens and all other rights embodied in the Constitution and guaranteed to the people.

Acting under the contemporary and current insanity in the country relating to so-called civil rights, various bureaus are issuing edicts and decrees without any justification in law which deprive the American people of their basic rights.

The Department of Defense under Secretary McNamara, together with certain underlings, has probably been the most zealous of these department heads in issuing decrees irrespective of the rights of the American citizens. I wish to read to the Senate a letter which I have just received from Hon. Perry S. Ransom, Jr., of Ocean Springs, Miss., to show to the Senate how far these Government bureaus have gone in surrendering basic rights to the current insanity of the country:

PERRY S. RANSOM, JR.,
CONSULTING ENGINEER,
Ocean Springs, Miss., February 16, 1965.

Senator JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.

DEAR SIR: Realizing full well the large volume of mail that you receive daily from the people you represent and the futility of individual correspondence, I nevertheless feel compelled to write. Under our system of democratic government we claim the right of the individual citizen to protest when we feel the Federal Government exceeds the limitations set forth by our Constitution.

For my explicit protest the following facts are herewith submitted:

The Jackson County Baptist Association is currently conducting in numerous Baptist Churches a school of missions, whereby missionaries come to our churches and relate to us the work that is being done for the Lord on local and foreign fields. Through this mission emphasis our Christian people are made aware of just what our denomination is doing to fulfill our Lord's great commission to "go and teach unto all nations." One of our scheduled missionary speakers was to be a Sergeant Fuller (first name, serial number, and specific assignment unknown to me), who is currently stationed at Keesler AFB in Biloxi, Miss. Our association has now been informed that said Sergeant Fuller has received orders from his superiors in the Air Force that he is not to speak in our church as the audience is segregated. How can the first amendment which guarantees the complete separation of church and state be ignored by the military in prohibiting this man from exercising his religious beliefs by speaking to a local Baptist Church group because there are no Negroes in the audience? To the best of my knowledge the Baptist Negroes of Ocean Springs are completely satisfied and happy in their own church and have no desire to attend our church. Can it be that the Government will attempt to compel the Negroes to integrate our churches, or can not the Great Society leave a soul's salvation to the individual and to the Lord?

To reiterate, I, as an individual citizen strongly protest the actions of the military at Keesler AFB to prevent any American citizen from exercising his religious beliefs just because he happens to be in the Air Force.

Any actions that you may be able to make to rectify this situation are endorsed and encouraged.

Yours very truly,
PERRY S. RANSOM, JR.,
One American Citizen.

In other words, a sergeant in the U.S. Air Force, who happens to be a religious person, was invited to address on a religious subject other Americans who belonged to his religious sect. Because the meeting of this sect was not integrated, Sergeant Fuller of the U.S. Air Force was deprived of his right of free speech. The religious association was deprived of their religious liberty. Freedom of assembly was likewise violated.

Mr. President, I bring this to the attention of the Congress in order that the Congress may know just how far the insanity of the country has progressed and the insanity of the bureaus which are administering the laws under the Constitution of the United States.

Mr. President, this brings me to ask the Secretary of Defense one question: If Sergeant Fuller can be prohibited from attending a Baptist church in Ocean Springs, Miss., to make a few remarks, then can the Secretary of Defense prohibit Sergeant Fuller from attending that Baptist church in Ocean Springs?

I do not expect that Sergeant Fuller's troubles or the troubles of the Baptist Church at Ocean Springs, Miss., will attract the wrath of either the National Council of Churches or the Civil Liberties Union, but I do think the country might be interested in the subject matter if they are apprised of it.

PRESIDENTIAL AND VICE-PRESIDENTIAL SUCCESSION—PRESIDENTIAL DISABILITY

The Senate resumed the consideration of 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.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request.

I ask unanimous consent that 1 hour for debate be allowed on the Dirksen substitute, to be equally divided between the sponsors of the substitute and the Senator in charge of the joint resolution on the floor of the Senate, the Senator from Indiana [Mr. BAYH]; that an hour for debate be allowed on each amendment, the time to be divided between the sponsors of the amendment and the Senator from Indiana [Mr. BAYH]; and that 2 hours for debate be allowed on the joint resolution, to be equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The unanimous-consent agreement, subsequently reduced to writing, is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That the further consideration of 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 were the President is unable to discharge the powers and duties of his office, debate on any amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the Senator from Indiana [Mr. BAYH]: *Provided,* That in the event the Senator from Indiana is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him.

Ordered further, That on the question of the final passage of the said joint resolution, debate shall be limited to 2 hours, to be