6-30-1965

Senate Floor Debates: Presidential Inability and Vacancies in the Office of the Vice President: Conference Report

United States. Senate

I will not dwell upon the details of the very simple proposal which would provide an incentive for railroad management to build freight cars essential to the Nation's needs. It would grant authority to the Interstate Commerce Commission to fix rental rates which would provide just and reasonable compensation to freight car owners and it would encourage the acquisition and maintenance of a car supply sufficient to meet the needs of both commerce and the national defense.

I wholeheartedly endorse this proposal, and I urge its passage to offer relief to an important segment of our economy.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the amendments of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the United States Constitution 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.

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF VICE PRESIDENT—CONFERENCE REPORT

Mr. BAYH. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of today.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. BAYH. Mr. President, we have before us for final passage Senate Joint Resolution 1, which is a proposal to amend the Constitution to assure Presidential succession and authority in our Government.

The progress of the bill has been the result of the labors of many persons, particularly the President of the United States, the leadership of this body, the leadership of the House of Representatives, the executives of the American Bar Association, and my colleagues on the Judiciary Committee, with particular emphasis upon those who labored on the Subcommittee on Constitutional Amendments.

The measure was introduced by myself on behalf of myself and many other Senators. It has been slightly modified from the form in which it was introduced in December 1963. Since then it has been the subject of two sets of hearing before the Senate Subcommittee on Constitutional Amendments. It has been studied by the full Committees on the Judiciary of both the House and the Senate. It was twice passed in the Senate by unanimous yea and nay votes, and it was overwhelmingly approved by the other body.

Earlier this year the proposed amendment received the full support of the President of the United States. Earlier it had been endorsed, as was brought out in some detail in the debate which ensued in this body, by such distinguished nongovernmental groups as the American Bar Association.

At long last the Senate and House conferees have completed their studies of the proposed amendment. A short while ago the conference report was approved by the House of Representatives. All that remains is for this body to approve the conference report, and then the measure will be sent to the States for ratification.

If the Senate acts affirmatively, it will be the 11th time in the past 90 years that Congress has submitted a proposed amendment to the Constitution to the several States. Of the last 10 that have been submitted, 9 have been ratified.

We have every reason to believe that the States will look with favor upon the proposed amendment, which is not designed really to alter the Constitution, but rather to fill a void in that great document which has existed for 178 years. As all of us know, the amendment is designed to do three specific things. I should like hastily to review the three purposes:

First, the proposed amendment would make forever clear that when the office of President becomes vacant, the Vice President shall become President, not merely Acting President. We would clearly state in the Constitution what has become precedent through the actions of Vice President Tyler following the death of the then President Harrison.

Second, if the office of Vice President should become vacant, the proposed amendment would provide a means to fill that office so that we would at all times have a Vice President of the United States.

Third, the proposed amendment would provide a means by which the Vice President may assume the powers and duties of the Chief Executive when the President is unable to do so himself.

The conference report, which has now been approved by the House of Representatives, contains certain changes from the proposal which the Senate approved earlier this year by a vote of 72 to 0. I should like to describe those changes and then urge approval of the conference report by this body.

In the Senate version of the measure we prescribed that all declarations concerning the inability of the President or of his ability to perform the powers and duties of that office, particularly a declaration concerning his readiness to resume the powers and duties of his office made by the President of the United States himself, be transmitted to the Speaker of the House and to the President of the Senate.

The conference committee report proposes that those declarations go to the Speaker and to the President pro tempore of the Senate. The reason for the change is, of course, that the Vice President, who is also the President of the Senate, would be participating in making a declaration of presidential inability, and therefore would be unable to transmit his own declaration to himself. In addition, I believe that we would be on better legal ground not to send the declaration to a party in interest. The Vice President, who would be shortly assuming or seeking to assume the powers and duties of the office, would indeed be a party in interest.

In the Senate version of the bill we did not specify that if the President were to surrender his powers and duties voluntarily—and I emphasize the word "voluntarily"—he could resume them immediately upon declaring that his inability no longer existed. We believe that our language clearly implied this. Certainly the intention was made clear in the debate on the question on the floor of the Senate and in the record of our committee hearings, but the Attorney General of the United States requested that we be more specific on this point so as to encourage a President to make a voluntary declaration to the effect that he was unable to perform the powers and duties of the office, if it was necessary for him to do so.

We made that point clear in the conference committee report.

We added specific language enabling the President to resume his powers and duties immediately, with no waiting period, if he had given up his powers and duties by voluntary declaration.

That had been the intention of the Senate all along, as I recall the colloquy which took place on the floor of the Senate; and we had no objection to making that intention crystal clear in the wording of the proposed constitutional amendment itself.

In the Senate version we prescribed that the President, having been divested of his powers and duties by declaration of the Vice President and a majority of the Cabinet, or such other body as Congress by law may provide, could resume the powers and duties of the office of President upon his declaration that no inability existed, unless within 7 days the Vice President and a majority of the Cabinet or the other body issued a declaration challenging the President's intention. The House version prescribed that the waiting period be 2 days. The conference compromised on 4 days, and I urge the Senate to accept that as a

reasonable compromise between the time limits imposed by the two bodies.

Furthermore, we have clarified language, at the request of the Senate conferees, to make crystal clear that the Vice President must be a party to any action declaring the President unable to perform his powers and duties.

I remember well the words of President Eisenhower before the American Bar Association conference, when he said that it is a constitutional obligation of the Vice President to help make these decisions. We in the Senate felt that to be the case, and thus changed the language a bit to make it specifically clear.

That, I am sure, had been the intention of both the Senate and the House, but we felt that the language was not specific enough, so we clarified it on that point.

The Senate conferees accepted a House amendment requiring the Congress to convene within 48 hours, if they were not then in session, and if the Vice President and a majority of the Cabinet or the other body were to challenge the President's declaration that he, the Chief Executive, were not disabled or, once again, able to perform the powers and duties of his office.

We feel that the requirement would encourage speedy disposition of the question by the Congress, and I urge its acceptance by the Senate.

Finally, the Senate version imposed longtime limitations upon the Congress to settle a dispute as to whether the President or the Vice President could perform the powers and duties of the office of President. Senators know the question would come to the Congress only if the Vice President, who would then be acting as President, were to challenge, in conjunction with a majority of the Cabinet, the President's declaration that no inability existed. The House version imposed a 10-day time limitation. The Senate conferees were willing to have a time limitation as a further safeguard to the President, but we were unanimous in agreeing that 10 days was too short a period in which to decide on that grave a question.

The conferees finally agreed to a 21-day time limitation after which, if the Vice President had failed to win the support of two-thirds of both the Houses of Congress, the President would automatically return to the powers and duties of his office. I urge the Senate to accept that change.

I should like to specify one thing further about this particular point since I feel it is the main point of contention between the House and the Senate, and one upon which I was happy to see we could find some agreement.

First, including a time limitation in the Constitution of the United States would impose upon those who come after us in this great body a limitation on their discussion and deliberation when surrounded by contingencies which we cannot foresee. The Senate conferees felt that a 10-day time limitation was too short a period.

Our feeling in the Senate, as represented by the views of the conferees, was that we should go slowly in imposing a maximum time limitation if we could not foresee the contingencies that might confront those who were forced to make their determination as to who would be the President of the United States. I believe 21 days is a reasonable time. I emphasize that it is our feeling that this is not necessarily an absolute period. The 21 days need not always be used. In my estimation, most decisions would be made in a shorter time. But if the Nation were involved in a war or other international crisis, and the President had suffered an illness whose diagnosis might be difficult, a longer time might be needed, and the maximum of 21 days that was agreed upon might be required.

It should be made clear that if during the 21-day limit one House of Congress, either the Senate or the House of Representatives, voted on the issue as to whether the President was unable to perform his powers and duties, but failed to obtain the necessary two-thirds majority to sustain the position of the Vice President and the Cabinet, or whatever other body Congress in its wisdom might prescribe at some future date, the issue would be decided in favor of the President. In other words, if one House voted but failed to get the necessary two-thirds majority, the other House would be precluded from using the 21 days and the President would immediately reassume the powers and duties of his office.

I feel that further remarks are unnecessary. I thank all who have made it possible for us to bring the amendment to this stage, especially the distinguished Senator from Nebraska [Mr. HRUSKA].

I observe in the Chamber the father of the last constitutional amendment to be adopted, the distinguished Senator from Florida [Mr. HOLLAND], whose advice I shall be seeking with respect to the method of approaching State legislatures.

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

Mr. BAYH. I yield.

Mr. HOLLAND. I compliment the Senator from Indiana warmly on the fine service he has rendered to the Senate and the Nation. I hope he will have early success in obtaining action by the 43 State legislatures whose ratification of the amendment is necessary before it becomes a part of the Constitution. I believe he will receive that kind of action, because the Nation realizes that in these perilous times this difficult question, which has been pending for so long, should have this method of solution available at all times, and as speedily as possible.

I wish I could help the Senator from Indiana in relation to his contacts with Governors and State legislatures. But judging by the fine ability that he has shown in consulting others up to this time, he certainly needs no suggestions from me or from anyone else.

May I ask the distinguished Senator a question?

Mr. BAYH. Yes.

Mr. HOLLAND. Is it the Senator's intention to ask for a quorum call and then to ask for the yeas and nays?

Mr. BAYH. That is not my intention. Inasmuch as the Senate has voted on much the same proposal by a substantial margin on two occasions; inasmuch as the House, when it concurred in the conference report, did not take a yea-and-nay vote; and inasmuch as some Senators are not present at this time, I believe it is really unnecessary to have a yea-and-nay vote.

Mr. HOLLAND. I shall defer, of course, to the views of the distinguished Senator, who is the principal author and cosponsor of the measure, and to the views of the majority leader and the acting minority leader, who are in the Chamber.

I believe it would be impressive—and this is the only comment I shall have to make—when action is taken by the States if more than one or two Senators had affirmatively espoused a particular version of an amendment which had reached State legislatures. But I shall gladly defer to the judgment of the Senator from Indiana and the majority leader and acting minority leader.

Mr. HRUSKA. Mr. President, I join the Senator from Indiana in urging the adoption of the conference report.

The proposed constitutional amendment is a correction of a long-exposed defect in the organization of our National Government. The amendment provides for a solution of the disastrous but inevitable situation that would confront the Nation in the event of a fallen leader of the Nation, either because of violence, illness, or disability. It has been a troublesome problem, one which has provided many uneasy moments to the people of the Nation from time to time during our history.

In the course of examining the problem, we have found that there is an infinity of contingencies which could be raised in any number of hypothetical situations. If we ever tried to provide for all of them or for any substantial number of them, it would require an infinite number of days or months, or perhaps years, to continue the debate on this subject. So we had to fill the vacuum by agreeing upon the joint resolution which is before us as the resolute action of this body and the other body and of the conference committee.

I believe the solution is sound. It would restrict the role of Congress considerably. Under the amendment Congress would act only as an appellate body in the event there were a difference of opinion between the President, on the one hand, as to his ability to return to his office, and the judgment of the Vice President and a majority of the Cabinet, or some other body that might be constituted by law, which might have an opinion to the contrary.

Congress by itself would have no power to initiate a challenge of the President's ability or inability in this regard.

I wish to comment upon the role of the junior Senator from Indiana in the preparation of the joint resolution, not only with respect to sponsoring it, but also in so consistently pursuing the background and foundational material.

That material was gathered in conferences with, for example, representatives of the House of Delegates of the American Bar Association and with the house of delegates itself. That effort was followed by many discussions with professors and scholars learned in the law, in addition to the committee hearings themselves.

An effort was made to follow the established procedures of Congress in both bodies for the implementation of the amendment. That was not found to be possible with respect to the time limitation in section 3 which provides for the event of the issue of disability being joined between the President, on the one hand, and the Vice President and a majority of the Cabinet, on the other.

In deciding upon a period of 21 days, I believe we have provided a reasonable time in which the issue can be canvassed and acted upon intelligently.

A new duty has been placed upon Congress. It is a duty that lies upon men and women of good purpose in responding to the needs of their Nation in a time of crisis. It is my hope that the amendment will be consistently unneeded. Nevertheless, such an agreement, as provided in this fashion, is wise, indeed.

So I join the Senator from Indiana in urging the Senate to adopt the conference report and to do whatever any of us can do toward urging the legislatures of the several States to ratify the amendment to our organic law, so that it may be duly promulgated and given force and effect.

Mr. BAYH. I thank the Senator from Nebraska for his thoughtful words, but more particularly for the dedicated effort, the long, tiresome hours of hearings and conference work, and the constant writing and rewriting that were necessary to reach the end of the tortuous journey we have been making.

Mr. KENNEDY of New York. Mr. President, I congratulate the junior Senator from Indiana [Mr. BAYH] on the outstanding job he has done in shepherding Senate Joint Resolution 1 from the realm of abstract proposal to its realization today. Along the way he consulted with a great number of people about this problem, and he heard a considerable variety of ideas on how it should be solved. It is to his credit that he was able, with patience and diplomacy, to resolve these differences.

I call to the Senate's attention a most important aspect of Senate Joint Resolution 1 which has not received as much notice as it should have. That is the provision, in section 4, which gives Congress authority to provide by law for a body other than the Cabinet to determine the inability of the President to exercise the powers and duties of his office when he is unwilling to make the declaration of inability himself.

This provision was wisely added by the framers of Senate Joint Resolution 1 because of the doubts which some people voiced as to the workability of using the Cabinet as the body to determine the President's inability. Now that we are finally enacting Senate Joint Resolution 1, we must not cease thinking about this aspect of the inability problem. We must keep in mind that we have given Congress the power to provide a different body to determine Presidential inability, and we should engage in a continuing study of whether there is some better way to handle this very difficult matter.

The need to engage in continuing reexamination of whether the Cabinet is the best available body to determine Presidential inability is demonstrated by certain historical evidence which I call to the Senate's attention today.

I refer to the facts surrounding the resignation of Robert Lansing as President Wilson's Secretary of State. These facts were brought to my attention by Mr. Allen Dulles, who has served the Government for many years in many capacities. Secretary Lansing was his uncle, and Mr. Dulles has made available certain relevant correspondence and memorandums, which are now on deposit at Princeton University and are not yet available to the public.

Together with Secretary Lansing's correspondence with President Wilson at the time of the resignation—which is a matter of public record—these documents are interesting and revealing.

President Wilson fell ill during the latter months of 1919. Mr. Lansing, after consultation with other members of the Cabinet, decided that it was necessary for the Cabinet to meet and carry on the affairs of Government as best it could. About 25 meetings had taken place, over a period of some 4 months, when Wilson wrote to Lansing, charged him with usurpation of Presidential powers because of the Cabinet meetings, and asked for his resignation. After an exchange of letters, Lansing did resign.

There were other reasons for friction between Lansing and Wilson. They were at odds over the negotiation of the Treaty of Versailles and subsequent congressional consideration of the treaty. Nevertheless, Wilson's inference that the Presidential Cabinet had usurped power demonstrates the wisdom of the framers of this amendment in leaving open to further consideration the question of who should decide when the President is disabled.

For the point of the Wilson incident is that, even though no procedure there existed for declaring a President to be disabled and even though there was no evidence of any overt attempt to usurp the powers of the President, the ailing President nevertheless decided to dispose of any Cabinet member who seemed to present a threat. More serious conflict might follow, in a comparable situation, now that a procedure for determining disability is established. Indeed, a President might fire his entire Cabinet.

This is a matter concerning which I have had numerous conversations with the Senator from Indiana.

It is true that the committee reports and other legislative history make it quite clear that, for purposes of Senate Joint Resolution 1, the Deputies or Under Secretaries in the various departments would, when there clearly are vacancies in the Cabinet, become acting heads of the departments until new principal officers were confirmed, or, if Congress were not in session, until recess appointments were made. I believe this legislative history is extremely important, but if the President did become involved in this kind of dispute with his Cabinet the situation would nonetheless be most difficult and disruptive, especially in a period of crisis for the United States either domestically or with other countries around the world.

What could ensue is a conflict as to who is actually acting as President at a particular time.

The question that might arise is whether the President had, in fact, fired the Cabinet at the time they had met and decided to put in a new President. What we could end up with, in effect, would be the spectacle of having two Presidents both claiming the right to exercise the powers and duties of the Presidency, and perhaps two sets of Cabinet officers both claiming the right to act.

Thus there are dangers in the amendment, with all due respect to the Senator from Indiana. Nevertheless, I believe we should go forward, since the dangers involved in not enacting Senate Joint Resolution 1 are greater still and we do not know whether a procedure better than Cabinet determination can be found. Certainly if one were now possible, I believe the Senator from Indiana would have found it.

The Senator has wisely left open the way to further improvement. I urge that the Congress follow his lead, and move directly to continued examination of alternate procedures, to be enacted by the Congress, for determining when a President is unable to discharge the duties of his office.

Mr. BAYH. Mr. President, first of all, I am indebted to the Senator from New York, and so is the Senate, not only for his present statement, but also for the discussion which he stimulated on the floor when we were considering the measure for passage earlier this year. The Senator points out very correctly that there is a degree of flexibility in this measure.

I am not so bold as to suggest that this is a perfect amendment. I believe that its perfection is based upon the ability of the men living at the time when the measure must be used to cope successfully with the problems and contingencies with which they are confronted. For that reason, we believed that the Cabinet, as we see it now, is the best body to serve as a check. However, we might be wrong. Why close the door? Why not leave us a degree of leeway so that when Congress is confronted with different circumstances than we presently foresee, it could designate a different body and give it authority to act.

Mr. KENNEDY of New York. Mr. President, as I said to the Senator from Indiana, I have strong reservations about the use of the Cabinet in this matter. I believe that the Senator from Indiana has considered my suggestions and every other suggestion and recommendation which he has received.

I praise the Senator for coming forward with this legislation, for which he is more responsible than anyone else. I should like to ask a series of questions of

the Senator from Indiana on another aspect of the proposed constitutional amendment. I think this would help in clarifying another important issue.

I go back to the colloquy which took place on the floor of the Senate when the matter was considered a month or so ago. Is it not true that the inability to which we are referring in the proposed amendment is total inability to exercise the powers and duties of the office?

Mr. BAYH. The inability that we deal with here is described several times in the amendment itself as the inability of the President to perform the powers and duties of his office.

It is conceivable that a President might be able to walk, for example, and thus, by the definition of some people, might be physically able, but at the same time he might not possess the mental capacity to make a decision and perform the powers and duties of his office. We are talking about inability to perform the constitutional duties of the office of President.

Mr. KENNEDY of New York. And that has to be total disability to perform the powers and duties of office.

Mr. BAYH. The Senator is correct. We are not getting into a position, through the pending measure, in which, when a President makes an unpopular decision, he would immediately be rendered unable to perform the duties of his office.

Mr. KENNEDY of New York. Is it limited to mental inability to make or communicate his decision regarding his capacity and mental inability to perform the powers and duties prescribed by law?

Mr. BAYH. I do not believe that we should limit it to mental disability. It is conceivable that the President might fall into the hands of the enemy, for example.

Mr. KENNEDY of New York. It involves physical or mental inability to make or communicate his decision regarding his capacity and physical or mental inability to exercise the powers and duties of his office.

Mr. BAYH. The Senator is correct. That is very important. I would refer the Senator back to the definition which I read into the RECORD at the time the Senate passed this measure earlier this year.

Mr. KENNEDY of New York. It was that definition which I was seeking to reemphasize. May I ask one other question? Is it not true that the inability referred to must be expected to be of long duration, or at least one whose duration is uncertain and might persist?

Mr. BAYH. Here again I think one of the advantages of this particular amendment is the leeway it gives us. We are not talking about the kind of inability in which the President went to the dentist and was under anesthesia. It is not that type of inability we are talking about, but the Cabinet, as well as the Vice President and Congress, are going to have to judge the severity of the disability and the problems that face our country.

Perhaps the Senator from New York would like to rephrase the question.

Mr. KENNEDY of New York. Is it not true that what we are talking about here, as far as inability is concerned, is not a brief or temporary inability?

Mr. BAYH. We are talking about one that would seriously impair the President's ability to perform the powers and duties of his office.

Mr. KENNEDY of New York. Could a President have such inability for a short period of time?

Mr. BAYH. A President who was unconscious for 30 minutes when missiles were flying toward this country might only be disabled temporarily, but it would be of severe consequence when viewed in the light of the problems facing the country.

So at that time, even for that short duration, someone would have to make a decision. But a disability which has persisted for only a short time would ordinarily be excluded. If a President were unable to make an Executive decision which might have severe consequences for the country, I think we would be better off under the conditions of the amendment.

Mr. KENNEDY of New York. The Senator realizes the complications for the people of this country and the world under those circumstances.

Mr. BAYH. I do, indeed. I also recognize our difficulty if we had no amendment at all. The Senator from New York realizes the consequences in that case. The Senator is aware of the time limitations which give the President a certain amount of leeway now. If he recovers from the illness within the time limitations, he would have protection under the amendment.

Mr. KENNEDY of New York. As I said at the beginning, I believe there should be a continuing study of the problem. Based on my own personal experience and on what was brought out in the hearings, I believe that members of the Cabinet could be subjected to political strains of one kind or another under certain circumstances of danger which might arise for the United States. They might be impelled to challenge the President's ability and capacity for the wrong reasons. And when we think of the great crisis in 1919 with President Wilson and Mr. Lansing, it is apparent that under the procedure set out in section 4 of Senate Joint Resolution 1 there could actually be a question as to who was acting as President of the United States at a particular time. That is why this subject should receive continuing study by this body to determine whether an alternative to the Cabinet's acting could be evolved.

What if the President of the United States made a decision which was very unpopular with members of his Cabinet?

I think back to the time of Abraham Lincoln in 1863. I think back to the time of President Andrew Johnson, and recall how unpopular he was with all the members of his Cabinet. They could have taken action, under the slightest pretext, to have him removed. Even with all the protections provided, I say the situation is dangerous. We would be deluding ourselves in thinking that by adopting the amendment the danger to our people and the people around the world would disappear, because a danger would still exist. The subject deserves our continuing effort and attention.

Mr. BAYH. I agree. There is leeway with respect to Congress and the committees and the Cabinet.

In discussing dangers to the people, think of the danger after President Garfield had been felled by a bullet and we had no President for 80 days. The danger of such a situation in this day and age is considerably more than the danger that could arise if the provisions of this amendment were invoked.

Mr. KENNEDY of New York. That is why I intend to support this amendment.

Mr. BAYH. I appreciate the Senator's comments.

CONTINUATION OF AUTHORITY FOR REGULATION OF EXPORTS

Mr. MANSFIELD. Mr. President, will the Senator yield without losing the floor?

Mr. BAYH. I yield.

Mr. MANSFIELD. I ask unanimous consent, for the purpose of providing regular procedure, that the consideration of Calendar No. 352, H.R. 7105, follow consideration of the present conference report.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 7105) to provide for continuation of authority for regulation of exports, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office.

Mr. BAYH and Mr. McCARTHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. McCARTHY. If it were not for the fact that the amendment provides that the Congress of the United States has a right to designate some body other than the Cabinet to pass upon the question of Presidential disability, I could not support the amendment. The Senator from New York has pointed out the necessity, and I hope that the appropriate committees of the Congress and the Congress will give consideration to some other body's passing upon the question of Presidential disability. If that provision were not in the amendment, I could not support the proposed amendment, and I would urge its rejection.

History shows that it is better to have one sane king rather than two who are not, each one of them claiming to be the

right king. There is the possibility of a situation in which one man, having been elected President, claims he was capable of exercising the duties of his office, and the other person, the Vice President, engages in a letter-writing contest as to which is the appropriate man. There could be a body other than the Cabinet which should have the ability to make a decision which would have the effect of giving the American public confidence in the person they had approved and a disposition not to accept the authority of someone who would be disapproved.

It is my judgment that it would have been better to follow the recommendations made by the Senator from Illinois [Mr. DIRKSEN] and not try to be so specific as provided in the present amendment.

Mr. KENNEDY of New York. Mr. President, will the Senator yield?

Mr. McCARTHY. I yield.

Mr. KENNEDY of New York. Let us go back to another situation, which I am sure the Senator from Indiana recognizes. A Cabinet decides that a President was disabled. The President fires the Cabinet. The members of the Cabinet say they did not receive notice that they were fired until after they had declared the President disabled. The President says he fired them first. If the Congress is in recess, the President appoints another Cabinet, or else he says the Deputies and Under Secretaries are now the Cabinet. There would be two Presidents and two Cabinets. There would be a conflict as to which ones were the members of the Cabinet and as to whether the members of the first Cabinet had made the decision before or after they were fired by the President.

It is recognized by the proposed legislation that this is a problem. I do not believe the danger disappears by the adoption of the amendment. I do not think, when we adopt the measure, that the problems of our Executive are gone and that we do not have to worry about it any more. We have to continue to worry about it. Although the legislation is better than the situation at the present time, there will be situations which might cause difficulty.

Mr. McCARTHY. Generally speaking, it is better, but there could be worse situations arising under the amendment than there would have been under the indeterminate and vague way in which we could have moved.

The amendment has nothing to say about whether the executive officers who pass on the disability have been confirmed by the Senate. This is a point which might well be included in the amendment. I believe that they have to be executive officers confirmed by the Senate. We would have to work out the making of temporary appointments. The Senator from New York said that we could have two Cabinets. This would be something like the old days in Avignon, when there were two Popes, which created a great deal of trouble, the same kind of trouble which was created for many, many years in England when two Kings claimed the crown. It has meant nothing but trouble.

I do not know whether, under this amendment, the executive officers would have to be confirmed by the Senate. They could be temporary appointees, which could be passed upon by the Senate.

Mr. GORE. Mr. President, will the Senator from Minnesota yield?

The PRESIDING OFFICER (Mr. HARRIS in the chair). Does the Senator from Minnesota yield to the Senator from Tennessee?

Mr. McCARTHY. I yield.

Mr. GORE. The Senator from Minnesota finds some consolation in the fact that, if I have understood him correctly, the amendment provides that Congress could designate another body by law. I invite his attention to the possibility that this could compound the question, because the amendment reads:

> Whenever the Vice President and a majority of either officers of the executive departments or of such other body as Congress may by law provide.

I should like to inquire of the Senator if, in addition——

Mr. McCARTHY. Ask the Senator from Indiana.

Mr. GORE. There would be a possibility of a contest or controversy between the Cabinet that may or may not have been dismissed, and one which may or may not have been confirmed by the Senate. Might there not be the probability of a contest between the two groups which, by the conjunction or, are permitted to perform the same function?

Mr. McCARTHY. I believe that there is great uncertainty as to whether Congress could act and designate some other group, or define the executive officers who were to pass upon this question—officers who would be approved by Congress. But this is an open question. I should like to ask the Senator from Indiana whether this is an open question, or whether there is some uncertainty.

Mr. BAYH. First, let me go into a brief explanation of why this provision was included. This was the result of the consensus meeting with scholars and ex-Attorneys General whom I shall not bother to enumerate, trying for the first time in congressional history to weld together the 42 different proposals which previously came before Congress. This has always been historically a problem, in trying to reach agreement and to reconcile the differences in order to obtain a two-thirds majority.

It was felt that if there was an arbitrary Cabinet that completely refused to go along with the fact that the President, who was obviously disabled, was disabled—the condition referred to by the Senator from New York—the President might get wind of it and, although he might be in extremely bad condition, he might manage to have issued a document firing the Cabinet. This would not preclude Congress, in its wisdom, from establishing another panel, perhaps, of the majority and minority leaders of both Houses, the Chief Justice of the Supreme Court. We in our wisdom as Members of Congress, would do so because it is wise. This body, in conjunction with the Vice President, could make its determination.

Mr. McCARTHY. In the meantime, who would control the Army, Navy, and Air Force?

Mr. BAYH. The President of the United States.

Mr. McCARTHY. Whoever he might be.

Mr. BAYH. Whoever he might be.

Mr. McCARTHY. Which one might be?

Mr. BAYH. He would be the President until a declaration from the Vice President and a majority of the Cabinet or the other body had been made and received by the Speaker——

Mr. McCARTHY. We do not accept the determination of this body. We are going to set up another body.

Mr. BAYH. That is correct.

Mr. McCARTHY. Congress would have to act quickly to set up another body which might act in such a case.

Mr. GORE. Mr. President, will the Senator from Minnesota yield?

Mr. McCARTHY. I yield.

Mr. GORE. The answer of the Senator from Indiana indicates that he is thinking of the possibility of action by Congress at such time, and after such time as there may be an obstinate, nonexistent, or otherwise inactive Cabinet.

As I read the proposed amendment, Congress could, by law, provide now, subsequent to approval of this amendment—

Mr. BAYH. The Senator is correct.

Mr. GORE. For such a body. Or, to add still further to the uncertainty, it could await such time as the Senator has foreseen when, because of uncertainties, or because of uncertainties which are not now unforeseen. Congress could act at that time.

Mr. McCARTHY. I am not sure whether this body could not be a body within the Congress itself.

Mr. GORE. Will the Senator yield once more?

Mr. McCARTHY. I am glad to yield to the Senator from Tennessee.

Mr. GORE. This is done specifically for the purpose of giving Congress a certain amount of leeway which the Senator from Minnesota feels it should have?

Mr. BAYH. I should be glad to respond to that. Any time Congress in its wisdom thought it necessary, if further discussion and deliberation on this issue by Congress led it to believe that another body should be established, it could establish it.

Mr. GORE. Do I correctly understand the able Senator to say that Congress could, immediately upon adoption of this constitutional amendment, provide by law for such a body as herein specified and that, then, either a majority of this body created by law or a majority of the Cabinet could perform this function?

Mr. BAYH. No. The Cabinet has the primary responsibility. If it is replaced by Congress with another body, the Cabinet loses the responsibility, and it rests solely in the other body.

Mr. GORE. But the amendment does not so provide.

Mr. BAYH. Yes, it does. It states—

Mr. GORE. The word is "or."

Mr. BAYH. It says "or." It does not say "both." "Or such other body as Congress may by law prescribe."

I wish the RECORD to be abundantly clear that that is the case. I am glad the Senator brought up that point. I believe that this colloquy on that point is important and should be added to that already in the RECORD.

The Cabinet, upon enactment of ratification, has the responsibility, unless Congress chooses another body, at which time that other body, and that other body alone, working in conjunction with the Vice President, has the responsibility. Indeed, Congress may choose a third body.

Mr. GORE. Mr. President, will the Senator from Minnesota yield?

Mr. McCARTHY. I yield.

Mr. GORE. I suppose it might be possible to read legislative intent into this conjunction, but——

Mr. BAYH. If I may interrupt here—let me read the exact wording: "and a majority of either the principal officers of the executive departments or—"

Either/or "of such other body as Congress may by law provide."

So when there is an "either/or" solution, it nails it down to one or the other.

Mr. GORE. It seems to me that if it is "either/or" it places the two on a par——

Mr. BAYH. I do not see how that would be the case at all. The Cabinet has the responsibility. What if Congress by law should provide for another body that it feels should have the responsibility?

Mr. GORE. Then it has such a responsibility, too.

Mr. BAYH. Then it has such a responsibility, too.

Mr. McCARTHY. Could we not have both?

Mr. BAYH. If we have one or the other, we do not have both. If I have apples or pears, I do not have both.

Mr. McCARTHY. Under the language of the amendment we could keep the Cabinet and set up another body. We could run it through two or three bodies, and have the Cabinet act and then have the other body act.

Mr. BAYH. Whatever body acts should act quickly.

Mr. McCARTHY. The Vice President would have to act with either body. We might have a Vice President who would be reluctant to take office, and the Government would be paralyzed, unless the Vice President were willing to say, "I believe the President is not able to act."

Mr. BAYH. It would be possible to impeach the President and the Vice President.

Mr. McCARTHY. It would not be possible to impeach the Vice President unless he were not willing to preside over the Senate or to vote in the case of a tie.

Mr. BAYH. We cannot put the Vice President in office if he is unwilling to assume the office.

Mr. McCARTHY. He might be suffering from inability himself, even before the President. I believe the amendment should provide that the elected officers of the Government, of the House and Senate, should decide that the President is unable to fulfill the duties of his office, and we ought to be able to move directly.

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

Mr. McCARTHY. I yield.

Mr. COOPER. Mr. President, I should like to direct questions to the distinguished Senator from Indiana, who is managing the conference report. I join with all my colleagues in paying tribute to the Senator for sponsoring the proposed constitutional amendment and for his persistent effort to bring it to final action. I raise these questions with respect to particular phraseology of the amendment. I quote this language:

> Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate.

And so forth. The language is repeated in the next paragraph.

Is it the intention of Congress, as interpreted by the Senator from Indiana, who is in charge of the conference report, that the Vice President and a majority of the principal officers of the executive departments would transmit the information of the President's inability to perform his duties to Congress, unless Congress had by legislative action provided for the establishment of another body to perform this function?

Mr. BAYH. I should like to answer the Senator's question by setting up a hypothetical example. If the President became disabled, the Vice President would get the Cabinet together and say, "Gentlemen, I think the best interests of the country would be served if I, reluctant as I am, assumed the powers and duties of President."

The Cabinet, let us assume, would refuse to agree.

Congress, in its wisdom, upon studying the situation, and the obvious physical condition of the President, might judge that the Vice President was correct.

At that particular time Congress might by law set up another body. This body, upon agreeing with the Vice President, again might declare that the President was unable to perform his duties. At this time the Vice President would assume the office of Acting President.

Mr. COOPER. Then it is the intention, that this function and duty shall be that of the Vice President and the Cabinet unless the Congress provides that it shall be performed by another body. Is that correct?

Mr. BAYH. The Senator is correct.

Mr. COOPER. The duty would fall on the Vice President and the Cabinet, unless Congress by law provided that it should be the function of some other body created by Congress. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. COOPER. It is intended that the words "principal officers of the executive departments" mean all the members of the Cabinet?

Mr. BAYH. The Senator is correct. It means the official members of the Cabinet.

Mr. COOPER. In case the Cabinet acted and performed this function, the assent of the Vice President would be required, even though a majority of the Cabinet members were willing to transmit information to the Congress that the President suffered from an inability.

Mr. BAYH. The Vice President must be a party to the decision.

Mr. COOPER. I believe it is well to have an answer to another question. In the event Congress decided to enact legislation to provide that another body, a body other than the Cabinet and the Vice President, should perform this function, would the Vice President be required to concur in the recommendation of such other body?

Mr. BAYH. Yes, he would.

Mr. COOPER. Not unless Congress so provided in legislation that it might enact?

Mr. BAYH. The wording of the amendment would permit two separate agencies, either the Vice President and the Executive Cabinet, or the Vice President and the other body.

Mr. COOPER. As I understood the question raised by the Senator from Tennessee and the Senator from Minnesota, it was their fear that both the Cabinet and the Vice President, and another body which Congress might establish, might claim the authority to perform this function. The question of the Senator from Tennessee [Mr. GORE] expressed concern that the words "either" and "or" might give rise to a situation in which the Vice President and a majority of the Cabinet, and a body which Congress might establish, would both claim the authority to exercise the function. Is there any problem about the use of those words that troubles the Senator from Indiana?

Mr. BAYH. That is a good point to clarify for the RECORD. However, in my mind it is perfectly clear that if I said I would go to the office of either the Senator from Kentucky or the Senator from Tennessee, my statement would not reasonably be interpreted to indicate that I would go to both. It would be either one or the other.

Mr. COOPER. Then the intent of the conference committee was that the language meant that unless another body were established by law, the Vice President and the Cabinet would perform the function; but in the event that Congress should establish another body by law, that body alone would have the authority to exercise the function, and in that event, the Vice President and the Cabinet would be without authority to exercise the function.

Mr. BAYH. It would then be exercised by the Vice President and the other body. The Cabinet would be out of the picture at that time.

Mr. COOPER. I raise another question. Would the Vice President have any part to play in the decision in the event that another body were established?

Mr. BAYH. The answer is "Yes." The Vice President must make a separate determination with either the Cabinet or another body.

Mr. COOPER. In either event the Vice President must participate?

Mr. BAYH. I think it is wise to bring out this point. I wish the RECORD to show that we do not desire two bodies to make the decision with the Vice President. If in its wisdom the Congress should decide that another body should make the determination, in the public interest of the country, as the Senator from New York and the Senator from Minnesota feel would be the case, and the Congress should go to the trouble of passing proposed legislation appointing such another body, at that time the newly created body and not the Cabinet would act with the Vice President.

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

Mr. BAYH. I yield.

Mr. GORE. I should like to submit a question to the distinguished senior Senator from Kentucky, who has been a distinguished judge. Suppose in consequence of the amendment, Congress should proceed by law to create such a body as has been referred to. Then suppose at some foreseeable period a Vice President should appear before such a body, or with such a body, and that body should decline to act. Would there be any reason why, under the constitutional amendment, the Vice President and a majority of the principal officers of the executive departments could not then act?

Mr. COOPER. That is one of the questions which the Senator from Tennessee originally posed, and it is a question to which I have directed questions to the Senator from Indiana, [Mr. BAYH]. It is easy for one who was not a member of the conference committee and one who is not on the Subcommittee on Constitutional Amendments and did not participate in its work, and one who has not worked on the question as has the distinguished Senator from Indiana and the distinguished Senator from Nebraska [Mr. HRUSKA], to raise questions. I admit it, but I think it important that questions be asked on such an important matter. It is easy also, with hindsight, to think of better language. But I must say, that I believe the language could be clearer. The answers of the Senator from Indiana have been directed to the intent of the committee respecting the language. The courts pay attention, but not all, to such declarations of intent.

Mr. GORE. If that is what the conferees mean, I suggest that the amendment should so provide. We are not passing on conversations held between the conferees. The Congress is asked to adopt language which provides that—

> Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide.

That is what is before the Senate. Undoubtedly there have been many conferences and colloquies, but the language should be explicit when it becomes a part of the U.S. Constitution.

Mr. COOPER. The reason I directed questions to the Senator from Indiana [Mr. BAYH], was that his answers as the Senator in charge of the bill are important in the interpretation of the amendment.

Mr. BAYH. The language to which the Senator has referred has not been changed one iota from the specific language which was passed by this body. The conference report does not alter that language. Any interpretation of the Constitution, as the Senator knows, includes reference to the record of the debate, the record of the hearings, and specific interpretations placed upon the measure by the Senator in charge of the bill. Those who have been in particular intimate touch with it are those whose statements are considered in an interpretation of the measure. The Senator has made a considerable contribution to the debate by raising that point at the present time.

Mr. COOPER. The statements of the Senator from Indiana are more important than our statements.

Mr. BAYH. I would not go along with the Senator from Kentucky on that.

Mr. COOPER. From a legal standpoint, that is correct, for the Senator from Indiana is the Senator in charge of the bill. The Senator's statements bear upon the intent of the Senate to a greater degree than our statements would.

Mr. BAYH. I have made as crystal clear as I know how that the Vice President must make a determination, and he would make that determination with the Cabinet unless the Congress——

Mr. GORE. But the word "unless" is not in the amendment.

Mr. BAYH. If the Senator from Tennessee would like to listen to my thoughts on the point, I should be glad to state them for the RECORD.

Mr. GORE. But the Senator has used a word that is not in the proposed amendment.

Mr. BAYH. I should be glad to change the word I have used if that would help the Senator. I have not been able to make the interpretation clear by using another word; I thought I would try a little different approach.

Mr. GORE. I can understand the difficulty of making the point clear by using the language of the amendment, because the language of the amendment, in my opinion, does not support the interpretation which the able Senator has given to it. I would be glad, however, to listen to his interpretation.

Mr. BAYH. I really have nothing to offer that I have not already offered—perhaps insufficiently—to the Senator from Tennessee. The Vice President would make the determination with one of two bodies or three bodies. The choice would not necessarily be limited to one other body. The Congress might, in its wisdom 100 years from now, decide to choose the third body. One of those bodies would be the body with which the Vice President would act. Let the RECORD so state. That is what the committee feels. That is what I, as the original sponsor of the measure, feel. That is what the conferees believe. I do not know how we can get into the RECORD a stronger interpretation than that which has been brought out by the penetrating questioning of the Senator from Tennessee.

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

Mr. BAYH. I am happy to yield.

Mr. GORE. If that is the clear intent of the authors of the amendment and the conferees, why cannot the conferees return to their labors and prepare language that is explicit?

Mr. BAYH. The Senator from Tennessee has been in the halls of this great body much longer than has the junior Senator from Indiana. I do not believe that it is necessary for his extremely junior colleague to point out that we have been 178 years getting a measure on this subject even voted upon in either House of Congress. I do not need to point out that it has been 18 months and more the subject of deliberation by both Houses of Congress to get it thus far. It took us almost 2 months in the conference committee alone. I would seriously doubt the wisdom of going back to the conferees to risk undoing everything that has been done—the House already adopted the conference report this afternoon at a quarter after twelve—on the premise that we cannot understand what is in the measure. The Senator from Indiana, with all respect, feels that we have written a very good record as to what that language means, if, indeed, there is any doubt of its proper interpretation. The Senator from Tennessee is a student of law and has expressed doubt. For that reason, we have gone to some length to explain what the interpretation of the language is.

Mr. GORE. If I understand the rule of construction as to legislative intent and the interpretation of that intent is looked to only when there is doubt as to the exact and precise meaning of a statute or constitutional provision.

The able Senator has given us what he regards as the legislative intent. I do not doubt that what he has stated is the legislative intent. But why will the legislative intent be searched out and interpreted to ascertain the meaning of language which states clearly that the Vice President, acting either with a majority of the Cabinet or with a majority of a body created by Congress can certify the disability of the President? Can this mean that Congress could by statute eliminate the function of the Cabinet though it could strip such power from a majority of the Cabinet even though such powers would have been vested by the proposed constitutional amendment?

It seems to me that that is an unreasonable assumption. It is regrettable that for so long a time this constitutional need has not been met. It is to be regretted that 18 months have passed in which this problem has not been dealt with satisfactorily. But I doubt whether that is any excuse to proceed in one afternoon, on the floor of the Senate, to adopt a conference report containing an ambiguous provision, when the author of the amendment himself and the conferees themselves say it does not mean what it says.

Mr. BAYH. The Senator from Indiana does not agree with the Senator from Tennessee that the amendment does not mean what it says. I differ with the interpretation of the Senator from Tennessee. The RECORD will show that the Senate spent almost 7 hours debating the subject earlier in this session, and that

the Senator from Tennessee participated in the debate.

I am not saying that reasonable men cannot disagree, but I am saying that, in my estimation, the interpretation is clear. I am further saying that if I am any judge of what Congress might do when confronted with situations provided for in this measure—and the Senator from Tennessee is probably a better judge than I of what this body might do, because he has served considerably longer and with much greater distinction—I presume that our successors on a later scene in this body, if confronted with a situation that they believed the Cabinet could deal with—it might be tomorrow—would, in the enactment of a law specifying another body, be astute enough to use enough words to satisfy themselves that such a body would in fact replace the Cabinet, pursuant to constitutional authority.

The Senator from Tennessee knows that it is much easier to be specific and to provide much greater detail in a statute than in a constitutional amendment. I believe we would have been in error to have written all this language into the Constitution. I believe we have been specific enough to have covered the intent.

Mr. GORE. Is it the Senator's interpretation that the language should read somewhat as follows:

Whenever the Vice President and a majority of either the principal officers of the executive departments or, in the event Congress creates another body pursuant to law, then the Vice President and a majority of such other body as Congress by law shall create—

Mr. BAYH. I see no objection to that interpretation of what is written in the amendment.

Mr. GORE. If that is what is intended, why could not the conferees write it into the amendment? I do not believe the amendment is subject to that kind of interpretation, though, as the Senator says, that is the legislative intent.

Mr. BAYH. I feel, with all due respect to the Senator from Tennessee, that the interpretation is clear that if Congress specifies another body, it will not do so as a lark; it will do so because it wants another body to replace the Cabinet, which would have the primary responsibility until Congress precribed another body.

The Senator from Tennessee knows that if there were to be a conference for every little misinterpretation that might be involved among 100 Senators, we would never obtain a conference report. The Senator from Tennessee is more aware of this than I, because he was serving on conference committees before I was out of knee pants.

Mr. GORE. I appreciate all the nice compliments, but I doubt if that is a compliment.

Mr. BAYH. The Senator from Indiana intended it to be a compliment, because the Senator from Tennessee knows how much respect the Senator from Indiana has for him.

Mr. GORE. I appreciate the respect; but do not put too much longevity on me.

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

Mr. BAYH. I yield.

Mr. JAVITS. I have joined the distinguished Senator from Indiana for a long time in the endeavor to solve the problem and am a cosponsor of Senate Joint Resolution 1. I should now like to propound a series of questions to him, in an endeavor to pinpoint what he has said in the answers he has given to other Senators.

First, would the Vice President, under section 4, have to act with a majority of the principal officers of the executive departments or of the other body that Congress would provide by law, or would he act in and of himself, sending to Congress whatever notices he wished?

Mr. BAYH. It has to be joint action.

Mr. JAVITS. Both have to act; but it does not have to be joint action in the sense that he is presiding over any body.

Mr. BAYH. No.

Mr. JAVITS. He sends his notice and the executive body sends its notice.

Mr. BAYH. Either way; or they could act together.

Mr. JAVITS. But they could act separately.

Mr. BAYH. Yes.

Mr. JAVITS. If they were hostile, they could act separately.

Mr. BAYH. Yes.

Mr. JAVITS. The action must be taken by a majority vote?

Mr. BAYH. Majority vote.

Mr. JAVITS. Suppose they did not like each other. If they separately notified Congress, would that satisfy the amendment?

Mr. BAYH. I think that would satisfy the qualification.

Mr. JAVITS. Congress may, by law, provide for another body. May it provide that that other body shall be the Cabinet?

Mr. BAYH. Yes.

Mr. JAVITS. It may provide at the same time that it shall be the Cabinet only if it is composed of officers whose nominations have been confirmed by the Senate, not temporary appointees.

Mr. BAYH. The Senator from New York brings out a good point.

Mr. JAVITS. So we could do that ourselves by law?

Mr. BAYH. That is correct.

Mr. JAVITS. We could make them the body.

Mr. BAYH. Yes.

Mr. JAVITS. Could we also, by law, say that when we create the body, we settle the question of "either"; that is, that only one can take action; that whatever body we create, it is exclusive?

Mr. BAYH. That is what I was trying to point out.

Mr. JAVITS. Let us point it out now and nail it down.

Mr. BAYH. Congress in its wisdom could, in the enactment of the law, specify that the body should take the place of the Cabinet, and a new Cabinet could be created.

Mr. JAVITS. The body created by Congress is exclusive?

Mr. BAYH. Yes.

Mr. JAVITS. Whether Congress would or would not specify that the body should take the place of the Cabinet neither the Senator from Indiana nor I know. But the point is that Congress could.

Mr. BAYH. That would depend upon the wisdom of those who follow us.

Mr. JAVITS. Congress could make the body it created exclusive?

Mr. BAYH. Yes.

Mr. JAVITS. Twenty-one days are provided in which the Congress must act on determination of Presidential disability. Congress has provided, implicitly under the 21-day limitation, restrictions on a filibuster, a precedent for which is contained in the Reorganization Act.

Mr. BAYH. At the end of the 21-day period, nothing would prevent Congress from continuing to discuss the situation; but at the end of 21 days, the President would resume his office.

Mr. JAVITS. Nonetheless, Congress could protect itself against filibusters by writing an antifilibuster rule into the statute that would be passed to implement the amendment, could it not?

Mr. BAYH. That is correct.

Mr. JAVITS. Congress has done that under the Reorganization Act. The Senator may take my word for that.

Mr. BAYH. Of course. I was trying to tie it in with this particular issue. There would be nothing to preclude Congress from establishing rules as to how to use the 21 days. Congress could incorporate any rule it desired.

Mr. JAVITS. Sc inaction would restore the President to office.

Mr. BAYH. Yes. We are trying to place a safeguard around the President.

Mr. JAVITS. Why is there not a generic clause providing that Congress shall have power to pass legislation to implement the amendment, as, for example, was done with respect to section 2 of the 14th amendment? I have tried, by the questions and answers that have been propounded and given, to show that there is ample opportunity and ample authority for Congress to act. Will the Senator now tell us whether there was any reason for not having a boilerplate implementing clause with respect to Congress?

Mr. BAYH. Yes; that is a good point. The Senator may recall that we discussed it at some length. When the distinguished Senator from Illinois and the distinguished Senator from Minnesota attempted to remove most, if not all, of the provisions from the bill, sections 3, 4, 5, and 6, as they were before, were incorporated. They do not constitute merely permissive legislation on the part of Congress.

There is considerable discussion among constitutional scholars, the present Attorney General, Attorney General Brownell, and three or four previous Attorneys General who feel doubt as to whether a statute would be constitutional. They say, "Let us not wait until we are confronted with a crisis concerning the disability of the President to have it tested. Let us put it in the bedrock law of the land and eliminate doubt as to whether it is constitutional."

Second—and I believe it is more significant—is the fact that we have tried to

provide the President of the United States with the kind of safeguards that he needs when he must make unpopular decisions which are necessary for the safety of our country. For that reason, we have required that the approval of two-thirds of the Senate shall be necessary before the President can be removed from office by impeachment. Thus, a hostile Congress cannot remove a President who is unpopular at the time because of decisions which he has made. Once he is elected President, he serves for 4 years.

If we were to take the statutory means, although it would still require two-thirds of the Senate to remove a President from office under impeachment proceedings, a majority of 51 Senators could remove a President for disability and thus get around the two-thirds safety clause contained in our present impeachment statute. Thus we feel that if we were to have a provision placed in the Constitution requiring the approval of two-thirds of both Houses of the Congress, we would have given the President much more safety than a mere act of Congress, which is the original case, providing that two-thirds of the House and Senate would be required to declare a President disabled rather than a simple majority. This could be changed at any time in our history.

I believe that this is important enough so that we should demand that the approval of two-thirds of the Congress be required before a President could be removed from office.

Mr. JAVITS. Mr. President, the Senator, however, affirms to us that Congress has full latitude to pass the necessary enabling legislation under the authority of what is meant by "such other body as Congress may by law provide."

Mr. BAYH. The Senator is correct.

Mr. JAVITS. Congress has the right to provide for the exclusivity of that body in exercising this authority, as well as the way in which the body shall exercise that authority, and other pertinent details necessary to the creation of such a body, its continuance, its way of meeting, the rules of the procedure, and the way in which it shall exercise its power.

Mr. BAYH. The Senator is correct.

Mr. GORE. Mr. President, what was the beginning of that question?

Mr. JAVITS. The Senator in charge of the bill affirms to us that Congress, under this amendment, would have full authority to enact a law, not only creating this body, but also giving it exclusivity in respect of its action under this particular amendment, and determining its procedure, how it shall be formed, and so forth.

Mr. GORE. This would not be by terms of the amendment itself, but would be by way of legislative intent?

Mr. JAVITS. No. I should say that it is by the express terms of the amendment itself, by the following words, "such other body as Congress may by law provide."

I believe that the words "by law provide" is what the Senator in charge of the bill is implementing now in his statement concerning what the law which creates this body can cover.

Mr. GORE. Congress could not enact a law which would be superior to a provision of the Constitution.

Mr. JAVITS. Certainly not.

Mr. GORE. This would then be a provision of the U.S. Constitution, let me remind the Senator, which would provide, in explicit language that "Either a majority of the principal officers of the executive department, or such body as the Congress may by law create."

I doubt that the fact that Congress is authorized to create by law another body could reasonably be interpreted as conveying authority and power to deny to a majority of the Cabinet powers that the Constitution would then by this amendment vest.

Mr. JAVITS. Mr. President, I can only give the Senator my view—and I do this with great humility—and my opinion as a lawyer.

Mr. GORE. I am not as learned as the distinguished Senator, but I believe that my interpretation is reasonable.

Mr. JAVITS. I do not believe so, and I shall explain to the Senator my view. In a situation in which the Congress has conferred, and enacted legislation providing for a new body, and it would be my judgment, if I were a judge sitting on a case involving the constitutionality of that legislation that if that power of Congress were exercised, it was exercised to give exclusivity to the other body. I believe that the court would construe this amendment to most feasibly accomplish the purpose of Congress. As the purpose of Congress is to settle this kind of issue, rather than leave it in a great area of uncertainty and controversy, would it not be completely contrary to the purpose of Congress to create two bodies which could compete with one another?

I believe that the construction which the courts would give to what we are doing is that if the Congress were to exercise the authority that the amendment would give, the courts would hold that that body has exclusivity as to its action.

That is my opinion as a lawyer, and I have submitted my reasons to the Senator.

Mr. GORE. The Senator speaks quite ably, and whether he is a judge, a citizen, a Senator, or a practicing attorney, I respect his opinion.

The points that I raise concern the justification for throwing this ambiguous question into the courts.

The time to be explicit is when we write an amendment into the Constitution. I say quite frankly to the Senator that I am unprepared to see this amendment approved in this uncertain way, with only a few Senators on the floor.

I should like to see the proposal examined further, to my own possible satisfaction, to determine the exclusivity to which the Senator refers. I am not sure that comports with the rules of construction.

Mr. JAVITS. I should welcome the Senator's researching the matter. I have no quarrel whatever with the desire of the Senator to examine into the question carefully.

I am satisfied that this is what the proposal would do. I am speaking only for myself. I have great respect and regard for the Senator. I would stand aside to enable the Senator to satisfy himself by appropriate research to determine whether this is the way in which it should be handled.

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

Mr. JAVITS. I yield.

Mr. COOPER. Mr. President, a few moments ago when I addressed questions to the Senator from Indiana, my purpose was the same as that of the Senator from New York, to ascertain that if the first procedure were followed—which concerns the Cabinet and the Vice President, whether it would possess exclusivity in its authority to act; and to ascertain if Congress were to create another body, such a body would have the exclusivity to which the Senator has referred.

I agree wholeheartedly, with the position of the Senator from New York, and also with his view that the courts would consider the purpose of the proposed amendment and not do an exercise in futility.

I believe that it would be unreasonable to follow any other position.

I ask the Senator if in his good judgment he believes that the language which proposes the alternative procedure is ambiguous of such ambiguity as to create a situation in which it would be unclear as to whether the Vice President and the Cabinet or the Vice President and the body established by the Congress would have authority to act. Such a situation would be the last thing that we would desire.

Mr. JAVITS. I do not believe it is so ambiguous as to make it unclear. It is not the optimum nor the most precise language. Every Senator and lawyer may have his opinion, and my colleague from Kentucky, in my judgment, yields to no other Senator in his distinction as a lawyer but to me it is not so ambiguous as to be unclear. It is not the optimum language that I or the Senator from Tennessee or the Senator from Kentucky or other Senators might have sought, but I feel that I could vote for it in good conscience.

I agree with what the Senator has said. I do not see any earth-shaking necessity for not having a delay of a few days to look it over; but if I had to vote this afternoon, I would feel in good conscience that I could vote "yea."

Mr. GORE. Mr. President, if the Senator will yield, is there any necessity to vote this afternoon?

Mr. JAVITS. That has not been determined. But, as I have said, if I had to, I would vote for it.

Mr. GORE. The Senator from New York has raised a serious question. The Senator from Minnesota has raised a serious question. The Senator from Kentucky and the Senator from Tennessee have expressed doubts. It seems to me we could give this matter a little more consideration than I admit I have given it. Perhaps I have been derelict in my duty in not studying it more before now, but, as I listened to questions

raised by the Senator from New York and the Senator from Minnesota and began to read and study the conference report, I detected language that seemed to me to be uncertain, if not ambiguous.

Mr. BAYH. Of course, the Senate of the United States is the world's greatest deliberative body. If my colleagues feel it should be debated more, I believe we should do so. I have tried, and will continue, to listen to every argument. However, I have studied this measure enough to know—and I say this from the bottom of my heart—that if we ever expect to have a constitutional amendment on this important question, the most complicated and intricate issue that we have ever tried to put into the Constitution, because of all the medical ramifications and power struggles that might exist—if we ever intend to get a measure with respect to which there will not be a scintilla of controversy, with very specific wording, we might as well terminate the debate and throw this year and a half's work in the ashcan, because we are not going to do it.

I have never pretended to the Senate or to my colleagues that this measure is noncontroversial or that it would cover every possible, conceivable contingency that the mind of man could contrive. I have suggested that it is the best thing we have been able to come up with, and it is so much better than anything we have ever had before—namely, nothing—that I dislike to see us, by delay, jeopardize the great protection we would get by this constitutional amendment.

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

Mr. BAYH. I am glad to yield.

Mr. GORE. I would not expect an amendment to be drafted to meet the imagination of all. The point I raise here is that the able Senator brings to us the intent of the amendment which, in my view, is not supported by the language of the amendment.

If this is the intention of the House and Senate and the conferees representing those two bodies, surely the language can be explicit.

I have previously referred to the language as being ambiguous. I may have used the wrong term. It seems to me it is rather plainly stated that either the Cabinet or the body to be created by Congress could perform this official function.

There may be some way that the courts could find that exclusivity ran to the body created by law, but if that is the intent, why leave the decision to a court under some possibly tragic circumstance that might arise? Surely, a few days of delay and a few days of further consideration should not be interpreted as being antagonistic to an amendment. On the contrary, it is suggested as a means of permitting more careful consideration.

Mr. BAYH. I appreciate the Senator's contribution.

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

The PRESIDING OFFICER (Mr. MURPHY in the chair). Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business, the conference report on presidential succession, be laid aside temporarily, pending conferences, and that the Senate resume the consideration of the Export Control Act.

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

CONTINUATION OF AUTHORITY FOR REGULATION OF EXPORTS

The Senate resumed the consideration of the bill H.R. 7105 to provide for continuation of authority for regulation of exports, and for other purposes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a time limitation of 25 minutes on the debate on the pending business, with 15 minutes allowed to the Senator from New York [Mr. JAVITS] and 10 minutes to the Senator from Maine [Mr. MUSKIE] who is in charge of the bill on the Senate floor.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, before we settle on that question, may we have a quorum call? I should like to have the Senator from New Jersey [Mr. WILLIAMS] present. It may take a few minutes.

Mr. MANSFIELD. Mr. President, will the Senator permit the Chair to announce the agreement at the end of the quorum call?

Mr. JAVITS. Yes. 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. JAVITS. 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. JAVITS. Mr. President, I ask for order in the Chamber. We are about to discuss something totally different from the presidential succession conference report.

The PRESIDING OFFICER (Mr. KENNEDY of New York in the chair). The Senate will be in order.

Is there objection to the unanimous-consent request that there be a time limitation of 25 minutes on the pending bill, that 15 minutes be allotted to the Senator from New York [Mr. JAVITS] and 10 minutes to the Senator from Maine [Mr. MUSKIE]? The Chair hears none, and it is so ordered.

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

Mr. President, the Export Control Act of 1949 will expire at midnight tonight. The Banking and Currency Committee, after two sets of hearings in the general field, has reported the House bill on the subject, H.R. 7105. We urge the Senate to act at once on this bill so that it can be sent to the President for his signature before it expires.

This is essential because the Export Control Act of 1949 is the act under which exports of strategic and critical materials from the United States are kept from going behind the Iron Curtain. In the absence of an extension, American producers and shippers will be free to send commercial and industrial materials and equipment to Communist China, the U.S.S.R., and the rest of the Soviet bloc.

The Banking and Currency Committee has accepted the House bill, without change.

The bill would accomplish three purposes. First, it would extend the Export Control Act for 4 more years—to June 30, 1969. Second, it would authorize the administrative imposition of civil monetary penalties not exceeding $1,000 for violations of the act. Third, it will make a formal declaration that—

it is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

It will also require the issuance of regulations to implement this policy within 90 days after the enactment of the bill. The bill leaves in the President the necessary discretion as to the type and terms and scope of these regulations. This administrative flexibility is appropriate in view of the President's constitutional role in the field of foreign policy.

The committee's report contains a full description of the Export Control Act and its administration and enforcement. It also contains a full description of the several amendments made by the bill, which need not be repeated here.

The committee in considering the bill devoted considerable time to three proposals.

The first was a proposal by Senator WILLIAMS of New Jersey, to amend the provisions of the bill relating to boycotts, along the lines of the Senator's bill S. 948, on which hearings had been previously held. The committee agreed that the general purpose of S. 948 should be included in the bill. However, a majority of the committee felt that the provisions included in the House bill constituted an appropriate statement of policy and supplied adequate legal basis for enforcement of the policy, while at the same time providing the necessary flexibility to meet the changing needs and circumstances of our foreign policies.

Another amendment, strongly supported by Senator HARTKE, of Indiana, and other Senators, and strongly opposed by others, would have required the impostion of quotas on exports of materials under certain circumstances—when

It is my understanding that at that time the distinguished Senator from Oregon [Mr. MORSE] desires to have the floor, and that he will be followed by the distinguished Senator from Utah [Mr. Moss], with some of the time in between to be used by the distinguished Senator from Ohio [Mr. YOUNG].

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

COMMITTEE MEETINGS DURING SENATE SESSION TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate tomorrow.

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

PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT—CONFERENCE REPORT

The Senate resumed the consideration of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the joint resolution (S.J. Res. 1) proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further action on the pending conference report be postponed until Tuesday next and that at the conclusion of the routine morning business on Tuesday next there be 2 hours of debate on the conference report, the time to be equally divided between the chairman of the subcommittee, the distinguished Senator from Indiana [Mr. BAYH], and the distinguished senior Senator from Tennessee [Mr. GORE].

Mr. GORE. Mr. President, reserving the right to object—and I shall not object—in the event that one-third of the Senate plus one wished to have the proposed constitutional amendment returned to conference, the only way that purpose could be accomplished would be to reject the conference report. That could be accomplished by a nay vote of one-third plus one of Senators voting. The House could then be asked for a further conference.

I do not wish to announce that either I or the senior Senator from Minnesota [Mr. MCCARTHY] or any other Senator will desire so to act. I expect to study the proposed constitutional amendment between now and next Tuesday. It is my hope, as of now, that the amendment will not ultimately be defeated. I would much prefer to see the language explicitly provide what the authors say is intended. But I have entered into this agreement and believe that in the event it is desired to return the amendment to conference, it can be accomplished if two-thirds of the Senate wish to ratify it as it is, regardless of what the minority might wish. That purpose could be accomplished. I shall be amenable to the decision of the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. I should like to say to the Senator from Tennessee that there will be a yea-and-nay vote.

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

UNANIMOUS-CONSENT AGREEMENT

Ordered, That effective on Tuesday, July 6, 1965, at the conclusion of the routine morning business, further consideration of the conference report on 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, be limited to 2 hours of debate to be equally divided and controlled by the Senator from Indiana (Mr. BAYH) and the Senator from Tennessee (Mr. GORE).

JUNE 30, 1965.

TWENTIETH ANNIVERSARY OF THE UNITED NATIONS

Mrs. SMITH. Mr. President, this past week marked the 20th anniversary of the United Nations. It was an occasion with mixed feelings and emotions. Even many of its supporters would admit that in recent years the United Nations had fallen far short of the original hopes for it. It had not produced peace in the degree that was optimistically hoped for 20 years ago.

It was floundering on a financial issue in which some key members refused to pay their dues. It had proved so inept and moribund in coping with international aggression that the President of the United States had repeatedly bypassed it in coping with such crises as Vietnam and the Dominican Republic.

On the occasion of its 20th birthday, the United Nations was at its most vulnerable point to the criticism that it was only a debating society. Added to this criticism was the charge that it was growing subservient to young, immature small nations that belligerently demanded and got authority and power far beyond their right and even their ability to carry wisely and well—and yet, without appropriately accompanying responsibility with such authority.

Members were not paying their dues—there was open resentment by the Organization of American States at the attempted intervention of the United Nations in the Dominican controversy—big powers courting small nations were stooping below the dignity of responsible nations and in doing so were inviting contempt from the very small nations they were courting. In short, the tail was wagging the dog—a trembling, shaky dog unsteadied by its tail—the small nations.

But if the United Nations in its 20th year had its grave weaknesses and had disappointingly fallen far short of the original hopes held for it, there were some achievements that the 20 years had produced. For one thing, the United Nations in comparison with the ill-fated League of Nations was a giant in international strength and influence. The mere fact that it had survived was proof enough of this.

True was the charge that it had disappointingly failed to bring peace in the measure it should. But undeniably, it had brought some measure of peace. While an undeclared war was being fought in South Vietnam, while the Russian ravage of Hungary was unchallenged by the United Nations, the United Nations had played a very vital role in resisting the invasion of South Korea and in bringing about a peaceful cease-fighting status there, however unsatisfactory the compromise might have been.

And while it was true to a great degree that the United Nations had been hardly more than a debating society in a wind tunnel of acrimonious oratory and polemics, nevertheless it had achieved a major accomplishment in that very role in that it had kept men talking and debating more often than fighting and shooting. On balance it was a definite plus and certainly not the tragic negative that its enemies claimed.

For without doubt, the United Nations had been a potent factor in the once easing of the cold war and the development of better relations between the United States and Russia—and it had been a factor in preventing general war. And while it was experiencing its most unsteady period in its 20 years of existence, the United Nations was not about to go down for the count as did the League of Nations after 20 years.

United Nations intervention in the Korean conflict was perhaps its greatest achievement. But in all honesty, we must recognize that it was the fortuitous circumstance of a Russian boycott of the U.N. Security Council at the time. Had not Russia so boycotted the Security Council at that time but instead had been present to vote, undoubtedly Russia would have exercised her veto power and thus prevented the United Nations from intervening and going to the defense of South Korea.

It is in this context that critics of U.S. intervention in the Dominican Republic crisis should view President Johnson's circumvention of the United Nations. This has an ironic note for it has been generally acknowledged that Lyndon Johnson has eagerly sought to be a President by consensus and to create the national image of being a consensus President.

Yet, in the international crises of Vietnam and the Dominican Republic, President Johnson has gone in the opposite direction of consensus for he has not sought the consensus of even our friendly allies, much less the slow and cumbersome Organization of American States and the veto-plagued United Nations.

This points up the great difference in the past between the free world and the Communist world. Because the member nations of the free world have acted by consensus reached only after considerable debate and time, the free world has moved so tragically slower than the Communist world in time of crises—and Communist-created crises at that. In