9-28-1964

Senate Floor Debates: Proposed Amendment to the Constitution Relating to the Succession to Presidency and Vice Presidency

United States. Senate

Mr. RUSSELL. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROPOSED AMENDMENT TO THE CONSTITUTION RELATING TO THE SUCCESSION TO PRESIDENCY AND VICE PRESIDENCY

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 1317, Senate Joint Resolution 139.

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

The CHIEF CLERK. A joint resolution (S.J. Res. 139) proposing an amendment to the Constitution of the United States relating to the succession to the Presidency and Vice Presidency and to cases where the President is unable to discharge the powers and duties of his office.

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

The motion was agreed to; and the Senate proceeded to consider the joint resolution, which had been reported from the Committee on the Judiciary with amendments on page 1, line 7, after the word "several", to strike out "States" and insert "States within seven years from the date of its submission by the Congress", and beginning at the top of page 2, to strike out:

ARTICLE —

SECTION 1. In case of the removal of the President from office, or of his death or resignation, the Vice President shall become President for the unexpired portion of the then current term. Within a period of thirty days thereafter, the new President shall nominate a Vice President who shall take office upon confirmation by both Houses of Congress by a majority of those present and voting.

SEC. 2. In case of the removal of the Vice President from office, or of his death or resignation, the President, within a period of thirty days thereafter, shall nominate a Vice President who shall take office upon confirmation by both Houses of Congress by a majority vote of those present and voting.

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

SEC. 4. If the President does not so declare, the Vice President, if satisfied that such inability exists, shall, upon the written approval of a majority of the heads of the executive departments in office, assume the discharge of the powers and duties of the office of Acting President.

SEC. 5. Whenever the President makes public announcement in writing that his inability has terminated, he shall resume the discharge of the powers and duties of his office on the seventh day after making such announcement, or at such earlier time after such announcement as he and the Vice President may determine. But if the Vice President, with the written approval of a majority of the heads of executive departments in office at the time of such announcement, transmits to the Congress his written declaration that in his opinion the President's inability has not terminated, the Congress shall thereupon consider the issue. If the Congress is not then in session, it shall assemble in special session on the call of the Vice President. If the Congress determines by concurrent resolution, adopted with the approval of two-thirds of the Members present in each House, that the inability of the President has not terminated, thereupon, notwithstanding and further announcement by the President, the Vice President shall discharge such powers and duties as Acting President until the occurrence of the earliest of the following events: (1) the Acting President proclaims that the President's inability has ended, (2) the Congress determines by concurrent resolution, adopted with the approval of a majority of the Members present in each House, that the President's inability has ended, or (3) the President's term ends.

SEC. 6. (a)(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the officer of the United States who is highest on the following list, and who is not under disability to discharge the powers and duties of the office of President, shall act as President: Secretary of State, Secretary of Treasury, Secretary of Defense, Attorney General, Postmaster General. Secretary of Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health, Education, and Welfare, and such other heads of executive departments as may be established hereafter and in order of their establishment.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this section.

(3) To qualify under this section, an individual must have been appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, or inability of the President and Vice President. and must not be under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon him.

(b) In case of the death, resignation, or removal of both the President and Vice President, his successor shall be President until the expiration of the then current presidential term. In case of the inability of the President and Vice President to discharge the powers and duties of the office of President, his successor, as designated in this section, shall be subject to the provisions of sections 3, 4, and 5 of this article as if he were a Vice President acting in case of disability of the President.

(c) The taking of the oath of office by an individual specified in the list of paragraph (1) of subsection (a) shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(d) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

SEC. 7. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

And, in lieu thereof, to insert:

ARTICLE —

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

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

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

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

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

So as to make the joint resolution read:

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

"ARTICLE —

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

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

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

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

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

tinue to discharge the same as Acting President; otherwise the President shall resume the powers and duties of his office."

Mr. MANSFIELD. 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. Without objection, it is so ordered.

Mr. BAYH. Mr. President, I invite the attention of the Senate to a proposal involving a great degree of gravity. The recent publication of the Warren Commission Report has reawakened in our minds, if indeed that was necessary, the tragic events of last November in Dallas, when the President of the United States was assassinated. Tragic as was the passing of this man, and as were the diabolical events which led to his demise, more tragic, indeed, will be his passing if we do not use that unfortunate set of circumstances to understand and overcome an imperfection in our system of government which is made evident, once again, by the laws and constitutional provisions relating to the offices of President and Vice President of the United States.

I speak this afternoon in support of the constitutional amendment, Senate Joint Resolution 139, which deals with the basic structure and the basic transfer of authority of executive power, the office of the President and the office of the Vice President of the United States of America.

The problems of vice-presidential vacancies and Presidential inability are complex and significant, to say the least. In my estimation, they deserve our urgent attention. The problems are not insoluble. They are not new problems. They have confronted us many times in the past. They have been the subject of discussion from time to time since the adoption of the Constitution. But today they have a ringing urgency with the tragedy of our martyred President still fresh in our memory.

Now, for the first time in our history, we are on the brink of finding a solution. The Committee on the Judiciary has favorably reported Senate Joint Resolution 139.

One of the major difficulties confronting us in solving the problems of filling a vacancy in the office of Vice President, or finding a workable way to deal with Presidential inability is not that suggestions, ideas, and legislative proposals were scarce, but rather that we had so many of them that it was impossible to obtain a consensus—a majority opinion—and have it brought to the floor of the Senate for consideration.

As all Senators know, before a constitutional amendment can be adopted, it requires the support of two-thirds of the Members of both Houses of Congress, and three-fourths of the State legislatures.

Today, I am happy to report that there is a vast grassroots feeling of urgency. I should like to give particular credit to the American Bar Association which has done more than any single group to help us arrive at this consensus. I present this consensus today on behalf of the Subcommittee on Constitutional Amendments and on behalf of the Committee on the Judiciary.

Early this year, the American Bar Association conducted a 2-day meeting—a forum of the leading constitutional lawyers and scholars in the Nation—to which members of the subcommittee were invited. Those at the meeting had as many different ideas as there were people present. At least 14 or 15 different ideas were propounded.

At the meeting, each one present entered into reasonable give-and-take in the hope that we could finally come forth with a proposal that might not be perfect nor totally acceptable to any one of us, yet nevertheless a workable plan which could be enacted by the Congress and approved by the several States.

Mr. President, I ask unanimous consent to have printed in the RECORD certain material which in my estimation shows vividly the widespread national recognition of the importance of this question. More than 200 articles, columns, and editorials, have appeared stressing the gravity of the situation and urging Congress to do something about it. I believe that a small sampling of this material will indicate the national concern over these constitutional gaps.

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

[From the Evansville (Ind.) Press, May 26, 1964]

WHEN THE PRESIDENT IS SICK

For 175 years Congress has been authorized by the Constitution to set up a system by which a Vice President should take over the duties of the President if the President should be disabled. Congress never has acted.

Former President Eisenhower, who urgently asked Congress to act when he was in office, again gave some moving testimony in support of this urgency at a Washington forum Monday sponsored by the American Bar Association.

"I discuss this," General Eisenhower said, "from the standpoint of a patient."

Three times while he was President, Ike said, he was briefly incapacitated.

For a week after his heart attack in 1955, he saw no one on his staff—didn't even see a newspaper.

For a time, when he had his ileitis operation in 1956, Ike said flatly, he was "unable to function."

In 1957, he suffered a mild "spasm" or stroke, and for 24 hours, he said, he had a "loss of memory of words" and couldn't have remembered a name.

"The United States," the two-term President said, "cannot afford to be without someone to make a decision."

The country is totally without anything in the law which spells out what happens when a President becomes incapacitated, for a day or for weeks. The Vice President, General Eisenhower said, should be empowered to take over immediately, for however long he is needed.

President Garfield, after he was shot in 1881, and President Wilson, after he suffered a stroke in 1919, were unable to perform most of their duties. Garfield lingered 80 days, most of them in a coma, before he succumbed to the assassin's bullet. Wilson was critically ill for months.

In neither case was the Vice President able to take over.

During President Eisenhower's three illnesses, no crisis happened to develop, Ike recovered speedily and was able to resume his duties. But Ike's point is that that was just lucky. There never should be a time when the Vice President couldn't step in, ready and empowered to take action.

Congress never has set up a takeover system because Congress never could agree on how to do it. But as Ike said it is "not quite as intricate as we have made it." We must, he said, "solve it now." Any plan Congress devises hardly can be as dangerous to the country's welfare as no plan at all.

[From the Indianapolis (Ind.) Times, May 29, 1964]

FIRST SMALL STEP TO SAFETY

Until now, about all Congress has done about presidential disability is talk about it, and disagree.

But a Senate Judiciary Subcommittee has just approved a constitutional amendment plan to fill the gap if a President is incapacitated—and also to provide for a new Vice President when the Vice President becomes President or dies.

Under this plan if a President became unable to do his job, he could certify his disability and the Vice President would step in. If the President were disabled and didn't ask the Vice President to take over, the Vice President could assume the powers anyway with the consent of the Cabinet. In case of dispute, Congress would make the decision.

Also, when a vacancy occurred in the office of Vice President, the President promptly would nominate a new Vice President, subject to approval by both Houses of Congress.

Former President Eisenhower, three times temporarily disabled while in office, has made a strong case for the country never again being without a Vice President. The need for a plan by which the Vice President would take over in event of the President's disability is obvious.

Before the plan approved by the Senate subcommittee can be written into the Constitution, it must be approved by the full Judiciary Committee, adopted by two-thirds votes in both Houses and ratified by at least 38 States. A long road.

Nonetheless, this is a significant beginning. If the full committee will act promptly, the prospects for an answer to this long-neglected problem will be greatly enhanced.

There will be strong dissents from the details of this plan, some perhaps valid. But it is these differences which have stymied action all these years. Representative EMANUEL CELLER said the House Judiciary Committee, of which he now is chairman, has been debating disability since 1920—but has done nothing for lack of agreement on how to do it.

Senator BIRCH BAYH, chairman of the subcommittee, said no plan could be perfect, but the urgency of the problem is more important than argument over which plan. The American Bar Association is backing this proposal on this same basis.

There are hazards in any plan. But the continuity and stability of the Government are at stake. Loss of national leadership, even briefly, could endanger the safety of the country. Congress should act promptly.

[From the Washington (D.C.) Post, Mar. 9, 1964]

TO NARROW THE RISK

Former President Eisenhower, former Vice President Nixon, and many others have buttressed the arguments of the American Bar Association and the press in favor of legislation on the problems of presidential succession and disability. The risk that the country may be left without an Executive head in time of emergency is very real. No

time should be lost in approving the best precautions available.

The risk may be divided logically into three parts. The first is the danger arising out of any serious illness or other disability on the part of President Johnson during the next 8 months, while there will be no Vice President. Congress could lessen this risk by emergency legislation. The second risk arises from the fact that there is no way of replacing the Vice President when the office becomes vacant between elections. This will require a constitutional amendment. The third risk lies in the absence of any constitutional device for relieving a disabled President, and this can be corrected only by means of an amendment.

Constitutional amendments are necessary chiefly because the Founding Father's committee on style telescoped the provisions dealing with succession and inability. Most scholars think they intended that in the case of either death or disability on the part of the President, the Vice President should exercise the powers of the great office on an interim basis without actually becoming President. But Vice President John Tyler proclaimed himself President on the death of William Henry Harrison in 1841, and that precedent has become firmly fixed in American constitutional practice. It is a sound precedent so far as succession of the No. 2 man is concerned in case of death or removal of a President. But of course it has no relevance to the duty of the Vice President (or others in the line of succession) when the President is merely incapacitated.

One of the proposed amendments for which support is now being sought would confirm the Tyler precedent "in the event of the death, resignation, or removal of the President." The other would make clear that, in case of Presidential inability, only the duties and powers of the Presidency, and not the office, would devolve upon the Vice President or other person next in the line of succession. This would give the President complete assurance that he could be relieved in times of grave illness without risk of losing his office.

If the President should not announce his own disability and invite the Vice President to take over, the Vice President could take the initiative, in case of need, with the concurrence of a majority of the Cabinet. In either event the President could reclaim his powers by declaring his inability at an end. But if the Vice President and a majority of the original Cabinet (or other body that Congress might provide by law) should challenge the President's action, he could be restrained from reclaiming his powers by a two-thirds vote in Congress.

Doubtless there would be some risk of abuse in this procedure. No claim of perfection is advanced for it. But any risks that might remain would be minor in contrast to the present grave danger of leaving the Presidential power in the hands of a man incapable of exercising it.

One thing is certain: Congress should face up to the fact that the Presidency is a man-killing job and that continuity and orderly succession are imperative to the national safety and welfare. It follows that Congress should submit to the States the best amendment it can devise to remedy these dangerous defects in the succession and disability provisions of the Constitution.

[From the Atlanta (Ga.) Journal and the Atlanta (Ga.) Constitution, June 7, 1964]

PRESIDENTIAL SUCCESSION

The plan for presidential succession that is moving along now in the U.S. Senate (or moving along as much as any business there is being permitted to move along) is a proper and practical solution to a great problem.

Under it, a President who had succeeded from the Vice Presidency could designate a potential successor as Vice President. The Senate and House would have to confirm his choice.

With this provision, we could avoid periods such as the present one when there is no Vice President and succession would fall upon the Speaker of the House, now JOHN MCCORMACK, 72.

The plan also would provide for temporary or even permanent replacement of a disabled President.

A Vice President might become Acting President if the disabled President ordered this in writing; or the Vice President, with approval by a majority of the Cabinet, could declare the President disabled and assume his duties (though not his office); and if the disabled President objected to such action by a Vice President, Congress would decide the issue.

We must cover all these possibilities, and it is good to see the Senate at last moving to do something about them.

The prospect of a President's choosing a new Vice President is not ideal, admittedly. If that Vice President then should become the Chief Executive, we would have a President who had not been passed upon by all the people.

But we also would under the present succession system; and the man named Vice President by a new President probably would come much closer to national stature than the Congressman (elected by one district) who might happen to be Speaker of the House.

The American Bar Association and former President Eisenhower have urged plans similar to this one favored by a Senate subcommittee. We hope the basic plan can soon be enacted so that any possibility of perilous uncertainty about the Presidency may be eliminated.

[From the Los Angeles (Calif.) Times, May 28, 1964]

A PRESIDENTIAL SUCCESSION PROPOSAL

After 4 months of study, a Senate subcommittee which has been considering proposals dealing with presidential succession and disability laws reports it has now reached agreement on several recommendations to place before Congress.

Envisioned by the subcommittee is a constitutional amendment which would permit the President to appoint a new Vice President should that office fall vacant. The appointment would be subject to confirmation by a majority vote in Congress. This plan, resembling an earlier recommendation by the American Bar Association, has also been endorsed by former President Eisenhower. It appears sound and workable.

On the tackier issue of disability, the subcommittee suggests a more complex formula, by which the powers and duties—but not the office—of President would temporarily pass to the Vice President. If the President should recover from his disability he would once again resume his full authority.

Should a dispute develop over whether the President is indeed able to carry out his duties, this plan stipulates that a final decision rests with Congress, with a two-thirds majority required to rule against the President.

A bitter fight over this controversial section appears probable. For one thing it leaves to politicians the power to pass on what most probably would be a strictly medical judgment. This could create a dangerous situation.

The need for both a better succession law and a law governing disability—the Constitution is far from precise in this area—has long been manifest. In the present circumstances the need is pressing. Yet few expect congressional action on either subject this year. Among other reasons, the House is unlikely to move out of deference to its 72-year-old Speaker, JOHN MCCORMACK, who under present law is next in line for the Presidency.

At the same time the nature of the proposed amendment makes clear the need for full and careful consideration, not only in Congress but also among the State legislatures, which must also ratify the amendment. The sooner Congress gets started, the better.

[From the Salt Lake City Tribune, May 27, 1964]

LESSONS FROM EISENHOWER'S DISABILITIES

It is hoped the enormous prestige of General Eisenhower will help persuade Congress to take quick and positive action to fill the constitutional void as to how presidential disability shall be determined.

Mr. Eisenhower, who views the problem "from the standpoint of the patient," was disabled by major illnesses three times during his two terms in the White House. He supports the general proposals of the American Bar Association and also of a Senate judiciary subcommittee which has been working on legislation concerned with the problem.

Although the former President said the Vice President should have the ultimate responsibility for determining when a President is incapable of performing the duties of his office, he acknowledged that this might not be enough.

Congress should make the final decision, he said, in the event of a quarrel between the President and top Government leaders on presidential disability. Under the plan advanced by the American Bar, if a disabled President cannot or will not declare his inability to carry out his duties, a Cabinet majority or "such other body of Congress might decide upon" could authorize the Vice President to take over anyway. In addition, the ABA proposed that if a disabled President sought to resume his duties prematurely in the view of a Cabinet majority or of "such other body," two-thirds of both Houses of Congress, voting separately, could declare him still disabled. This would have the effect of sustaining the Vice President and permitting him to carry on for the President.

The "such other body" in case Congress should not wish to rely on the Cabinet would presumably be a high-level commission.

In 1958 the New York State Bar Association urged a constitutional amendment to the effect "that the commencement and termination of inability should be determined by such methods as Congress shall by law provide." This would keep constitutional provisions flexible and workable under various conditions—leaving the way open to Congress to make amendments if needed.

Speaking before the National Forum on Presidential Inability in Washington, General Eisenhower said: "Three times during my terms of office I faced the possibility that I might be the victim of a fairly prolonged disability. In each instance there was a gap when I could not carry out the duties of my office."

After his heart attack in 1955, "it was almost a week before the doctors let me see anyone else. Within a week," he added, he assumed some of his Presidential duties and "by the third or fourth week could carry out all the essential burdens of my office."

During his ileitis attack and operation in 1956, "I was unable competently to carry out the duties of the office * * * for a time." And the following year he suffered a stroke or "spasm of the brain" and "for 24 hours I had an absolute loss of memory."

Mr. Eisenhower's words doubtless gave his hearers goosepimples.

In the pushbutton, atomic-missile age the delay in succession must be held to a minimum, whether a President dies or is temporarily disabled.

Mr. Eisenhower and his Vice President, Mr. Nixon, had worked out a personal agreement on the circumstances under which the latter might assume the functions of the Presidency. Although Mr. Nixon presided over Cabinet and Security Council meetings during the President's first illness he did not really assume Presidential powers. Some observers felt Mr. Nixon leaned backward too far to avoid the appearance of seeking power prematurely, but a division in the Cabinet, which carried on meetings and functions, was perhaps an important influence.

Fortunately, Mr. Eisenhower recovered, but there is no guarantee that another President will not become physically or mentally disabled at a crucial time without proclaiming it. The determination of disability must be made simply and quickly.

Panelists at the National Forum on Presidential Inability agreed that the problem should be solved by constitutional amendment, rather than simple legislation. In that we heartily concur. And we hope Congress gets the necessary wheels turning for such an amendment before adjourning this year.

[From the Evansville (Ind.) Press, May 29, 1964]

U.S. SAFETY AT STAKE: ACTION ON PRESIDENTIAL SUCCESSION NEEDED NOW

Until now, about all Congress has done about presidential disability is talk about it, and disagree.

But a Senate judiciary subcommittee headed by Indiana's Senator BIRCH BAYH has just approved a constitutional amendment plan to fill the gap if a President is incapacitated—and also to provide for a new Vice President when the Vice President becomes President or dies.

Under this plan if a President became unable to do his job, he could certify his disability and the Vice President would step in. If the President were disabled and didn't ask the Vice President to take over, the Vice President could assume the powers anyway with the consent of the Cabinet. In case of dispute, Congress would make the decision.

Also, when a vacancy occurred in the office of Vice President, the President promptly would nominate a new Vice President, subject to approval by both Houses of Congress.

Former President Eisenhower, three times temporarily disabled while in office, has made a strong case for the country never again being without a Vice President. The need for a plan by which the Vice President would take over in event of the President's disability is obvious.

Before the plan approved by the Senate subcommittee can be written into the Constitution, it must be approved by the full Judiciary Committee, adopted by two-thirds votes in both Houses and ratified by at least 38 States. A long road.

Nonetheless, this is a significant beginning. If the full committee will act promptly, the prospects for an answer to this long-neglected problem will be greatly enhanced.

There will be strong dissents from the details of this plan, many of them perhaps valid. But it is these differences which have stymied action all these years. (Representative EMANUEL CELLER said the House Judiciary Committee, of which he now is chairman, has been debating disability since 1920—but has done nothing for lack of agreement on how to do it.)

Senator BAYH said no plan could be perfect, but the urgency of the problem is more important than argument over which plan. The American Bar Association is backing this proposal on this same basis.

There are hazards in any plan. But the continuity and stability of the Government are at stake. Loss of national leadership, even briefly, could endanger the safety of the country. Congress should act, promptly.

[From the Indiana Sentinel, Mar. 26, 1964]

BAYH AND SUCCESSION

History in the making and history in retrospect, but currently most effectively told, are combining to point up the value of a proposed constitutional amendment being pushed in Congress by Indiana Senator BIRCH BAYH.

The proposal, introduced by BAYH as chairman of the Constitutional Amendment Subcommittee of the Senate Judiciary Committee, provides that in the event a President dies, the Vice President, on his accession to the Presidency, then would nominate a new Vice President whose designation would be subject to approval by both Houses of Congress. It also would provide for a means of declaring a President disabled so that the Vice President could take over his duties.

The history in the making which is involved, is, of course, the fact that President Lyndon Johnson is now serving without a Vice President, although current law provides that in the event of his death the Speaker of the House, the aging JOHN W. MCCORMACK, of Massachusetts, would succeed to the office.

The retrospective account currently attracting national attention is Gene Smith's book, "When the Cheering Stopped." It is a sympathetic but tragic telling of the closing presidential days of Woodrow Wilson. While his second wife had nothing but sincere affection for the disabled Chief Executive and shared his beliefs in his goals of international peace, her handling of the governmental reins by keeping even the Cabinet at a distance from Wilson helped bring his illusions down in defeat. This tragic story, much more than the days of uncertainty immediately following President Dwight Eisenhower's first-term heart attack, points up the need for a new approach to the problem of passing on the reins of Government in the event of Presidential disability.

BAYH's is only one of the proposals before Congress. The other with important support was introduced by Senator KENNETH KEATING, New York Republican, and would provide for nomination by each party and election by the people through the electoral college, of two Vice Presidents—one called legislative and the other executive. It also makes provisions for a takeover in the event of Presidential inability.

Each plan has merits and it will be better for Congress to make its choice after hearings than for us to attempt it here. The important thing is, however, for one of the plans, or some modification of the two to be adopted. History in the making and history in retrospect emphasize the need.

[From the Boston (Mass.) Herald, May 27, 1964]

SECURING THE SUCCESSION

Ever since President Eisenhower's heart attack in September 1955, Congress has been pressed to clarify the constitutional provisions on presidential disability.

The assassination of President Kennedy also started a move to strengthen the succession law and provide for an interim Vice President.

Despite much discussion, however, nothing has been done. President Eisenhower and his successors have made private agreements to cover the disability loophole, and Speaker MCCORMACK, the reluctant heir apparent under the present succession law, has taken over some vice presidential duties. But no real solutions have been attempted.

This week a Senate subcommittee has come up with concrete proposals. And, although they could be improved, Congress should move swiftly to translate them into law. Almost any reform would be better than further inaction.

Basically the subcommittee proposals are sound.

For the succession problem, they suggest a constitutional amendment permitting the President to fill a vice presidential vacancy with the approval of the Senate and the House. This is essentially the same solution as one submitted by the American Bar Association. We have preferred a statute putting the Cabinet officers back in the line of succession but requiring that upon the death of the President and the accession of the Vice President they resign and be reconfirmed by the Senate. But the subcommittee plan will serve.

The disability problem would be solved, also through a constitutional amendment, by authorizing the Vice President to take over as acting President (1) when the President declared himself to be disabled or (2) when a majority of the Cabinet joined in declaring him disabled. In the latter case, if the President protested, the issue would be decided by a two-thirds vote of the Senate and the House.

This reform would be stronger if some independent or ad hoc body were asked to act instead of the Cabinet, which is bound by the ties of loyalty to the President, but the subcommittee plan is a great improvement over what we have now.

The important thing is that some plan—and the subcommittee's is the most likely—be pushed swiftly to passage. Mere luck has preserved us from a fatal succession or disability crisis. But we should not count on luck in the faster moving world of the 1960's and 1970's.

[From the Worcester (Mass.) Evening Gazette, May 27, 1964]

TO CORRECT A FLAW

Since 1789, this country has never been without a President. However, it has three times been without Presidential leadership.

The first was in 1881, after President Garfield was shot and lingered for 3 months in an incapacitated condition before he died.

The second was in 1919, when Woodrow Wilson suffered a stroke from which he never recovered completely.

The third was in 1955, when President Eisenhower had a serious heart attack that forced him to rest in bed for a number of weeks.

The country survived these crises successfully, but there is a growing feeling that something should be done about the situation. A sudden hiatus of leadership in Washington in this era of potential push-button disaster could be dangerous.

After months of study, a Senate subcommittee now is reported on the verge of agreement on correcting the flaws in the Constitution in regard to both the Presidential succession and Presidential disability.

The plan favored to take care of the Presidential succession problem is substantially that proposed by the American Bar Association and endorsed by former President Eisenhower. It would let the President fill a Vice Presidential vacancy with the approval of the Senate and House.

As fixed by law at present, the succession, after the Vice President, goes to the Speaker of the House, and then to the President of the Senate. This is unsatisfactory because these figures, being elected to their congressional posts partly on the basis of long service, tend to be old men. Speaker JOHN MCCORMACK is 73. Former Speaker Sam Rayburn was 80 at the time of his death. CARL HAYDEN, President of the Senate, is 87.

The disability flaw is harder to correct, because a disabled President might not agree that he was disabled. In that case, under the new proposal, the Vice President, with the concurrence of the majority of the Cabinet, could declare the President disabled and could assume the powers and duties—but not the office—of the President. If the President

disputed the Vice President's action, the issue would be decided by a two-thirds vote of both branches of Congress.

This is not a perfect solution, for there is no perfect solution. But certainly it is preferable to the present arrangement, which is vague to the point of being incomprehensible on the disability question.

The U.S. Presidency is the most important office in the world today. The shot that felled President Kennedy was heard round the world. This mighty office needs to be more strongly buttressed against the vagaries of chance and fate.

[From the Detroit (Mich.) News, May 30, 1964]

CONGRESS MOVES ON NASTY PROBLEM: AN INCAPACITATED PRESIDENT

Agreement finally appears to be near on a constitutional amendment to permit the President to fill a vice-presidential vacancy and to solve the knotty problem of succession in the event the President is disabled. Both pending proposals make good sense.

Former President Eisenhower, the American Bar Association and a Senate Judiciary Subcommittee are in substantial agreement that, when the Vice-Presidency becomes vacant, the President ought to pick his Vice President rather than rely on the present law that makes the Speaker of the House next in line of succession. Under the proposal now being considered in Congress the President's choice would be confirmed by a majority of the House and Senate.

Mr. Eisenhower also goes along with the subcommittee and the bar in their recommendation that the Vice President should have the ultimate responsibility of determining when a President is incapable of performing his duties, assuming the President himself fails to make the decision.

Concurrence of a majority of the President's Cabinet would be required before a President could be declared disabled and the Vice President could then assume the powers and duties—but not the office—of the President. This would provide a necessary check on the Vice President.

But there would be a further check. If the President should dispute the ruling of the Vice President and a majority of his Cabinet that he was incapable of serving, then the matter would go to Congress. It then would take a two-thirds vote of both Houses to enable the Vice President to continue to serve as Acting President. If that vote failed to pass, the President would resume the powers and duties of his office.

It is no secret in Washington that almost everyone except Speaker MCCORMACK is unhappy with the present succession law. MCCORMACK is a living argument against it. He is a parochial Boston Congressman who rose to be Speaker largely because of seniority. As President, he would be a national calamity.

Under the new succession proposal the President would want to nominate the best man he could find in his own party as his possible successor. And Congress could be there to vote to guarantee that the Vice President was of that top quality.

But the new plan also would eliminate one of the major faults in the present succession law. This permits the succession of a man of a different party from the President when the opposition party controls the House. If the Speaker had become eligible to the Presidency during Mr. Eisenhower's last 6 years in office, for example, the successor would have been the late Sam Rayburn, a Democrat.

The presidential disability provision would fill a void. Right now there is no legal method of determining what to do in the event of the President's disability, although President Johnson and Speaker MCCORMACK have adopted a private agreement similar to the Eisenhower-Nixon and Kennedy-Johnson agreements.

The matter ought to be legally determined and not left to any voluntary agreement. Too much is at stake—in an atomic age the very life of the Nation—to permit a controversy over a President's disability to paralyze national action. The pending proposal ought to be adopted, and submitted to the States for ratification.

[From the St. Louis (Mo.) Post-Dispatch, June 1, 1964]

PRESIDENTIAL DISABILITY PLAN AT LAST? SENATE SUBCOMMITTEE RECOMMENDS FIRST BREAKTHROUGH SINCE STUDY BEGAN IN 1956

The Nation has just seen the first breakthrough on the delicate and urgent problem of Presidential succession. A Senate subcommittee, headed by Senator BIRCH BAYH, of Indiana, last week recommended action on proposals designed to fill a constitutional vacuum involving Presidential disability and filling vacancies in the Vice Presidency.

This is the first time since 1956, when full-scale Presidential study of these problems was launched, that a consensus has been reached at any level of Congress.

A majority of Senator BAYH's subcommittee has agreed to support a proposal similar to be backed by the American Bar Association. The subcommittee's majority has agreed in principle to amend the Constitution to effect the following changes:

1. Whenever a vacancy occurs in the office of Vice President, the President would nominate a Vice President subject to the approval of both Houses of Congress.

2. When the President declares in writing that he is unable to perform the duties of his office, the Vice President would become Acting President until the President declares that he has recovered sufficiently to resume his duties.

3. If the President does not concede his inability to function, the Vice President, with the approval of the majority of the Cabinet, could declare the President disabled and assume the powers and duties—but not the office—of President.

4. If the President challenges the action of the Vice President and the Cabinet, Congress would decide the issue. A two-thirds vote of the House and Senate would be required to sustain the Vice President. Otherwise, the President would resume his powers and duties.

This plan, of course, is not foolproof. But certainly it is an improvement over the dangerously inadequate alternative we now have. As Senator KEATING, of New York, a member of the subcommittee, observed: "If we continue to strive for what each feels is the best solution, we will never get anywhere. To reach a solution is more important than to attempt perfection. Therefore, everyone interested in this problem must be ready to make some concessions in the interest of arriving at a consensus."

Obviously, this approach does not settle the question of the line of succession after the Vice President. This, however, could be effected by statute. Under a law adopted in 1947, the line of succession after the Vice President progresses, in order, from the Speaker of the House to the president pro tempore of the Senate and various Cabinet officers, beginning with the Secretary of State. This is not ideal, since it cannot be assumed that a legislative leader or Cabinet officer is best equipped to exercise the executive functions of the presidency. Moreover, legislative leadership frequently owes more to seniority than anything else.

Nevertheless, the plan advocated by the Bayh subcommittee would make the matter of succession less important than it is at present. It would provide for a permanent Vice President; therefore, the order of succession after the Vice President would come into play only if the President and Vice President are lost at the same time.

More importantly, the proposal does deal with the complex problem of Presidential disability, and this a problem that we cannot any longer afford to leave to chance. In this age of pushbutton Armageddon, it is chilling to contemplate a situation in which a President could, in fact, no longer perform his duties but could be relieved of them.

Mr. BAYH. Mr. President, the first of our problems is that there is a vacancy in the office of Vice President. I remind Senators that the office of Vice President has gone through a period of development, perhaps to a greater degree than any other office in the history of the country.

Senators will recall that John Adams, the first Vice President, described his new job as the most insignificant one that ever the invention of man had contrived.

Later, Theodore Roosevelt, Vice President at the age of 42, was quoted as saying that he was going to Washington not to be praised, but to be buried.

John Nance Garner, graphically described the Nation's second highest office in terms which are typical of this great Texan. He described the Nation's second highest office as not being "worth a pitcher of warm spit."

Although I do not particularly agree with this illustration, I believe that it emphasizes the opinion held by many down through the years to the effect that the office of Vice President did not amount to a great deal.

In the administrations of President Eisenhower and President Kennedy, we witnessed a resurgence and redevelopment of the office of Vice President to the point where today the office of Vice President is, a most significant office—the second most important office in the land.

It is almost unbelievable that on 16 different occasions, totaling more than 38 years in time, the United States has been without a Vice President. In any one of those years something could have happened to the President which would have required another individual other than the Vice President to act as President.

Eight times in our history a President has died and has been succeeded by the Vice President.

Seven times, the Vice President himself has died in office. On one occasion, the Vice President, John Calhoun, resigned.

Each time a President has died, it has been a severe shock to the Nation; but each time the Government has withstood the test, and there was an orderly transfer of Executive authority. We pray that we may never be faced with the supreme test—the loss of a President and a Vice President within the same 4-year term of office. But in the event that history does not treat us so kindly in the future as it has in the past, we must be prepared for such an eventuality. For, whatever tragedy may befall our national leaders, the Nation must continue in stability, functioning to preserve a society in which freedom may prosper.

Why have a Vice President?

Has not this office been the object of sharp satire since the Constitutional Convention created it as an afterthought? Is this not the position that has been described as a one-way ticket to political oblivion? Perhaps so, once upon a time. But no more—not in the 20th century.

Today, the office of Vice President is a full-time, highly responsible office. It is the office of the President's chief ambassador.

When President Johnson was Vice President, he traveled more than 75,000 miles abroad on missions for the Chief Executive, including top-level trips to Berlin and Vietnam, to name only two.

Vice President Nixon, the previous Vice President, spent more than twice as much time abroad as did President Eisenhower during the 8 years of that administration.

It will be recalled that when Mr. Nixon was on an official mission as this Nation's chief ambassador as Vice President, he confronted surly youths in Latin America, and also met Mr. Khrushchev in the famous kitchen debate.

Today, the Vice President is an integral part of Cabinet meetings. Modern-day Presidents seek the advice and counsel of their Vice Presidents. The Vice President is a statutory member of the National Security Council. He is Chairman of the President's Committee on Equal Employment Opportunity. He is also Chairman of the National Aeronautics and Space Council.

I am sure it is the consensus of Senators that there are few more significant issues of the day than the security of our Nation, the race for space, and the fight for equal rights. These are certainly among the paramount issues of our day and age. The Vice President, by virtue of his office, is in the thick of each and every one of them.

It will be recalled that in Atlantic City recently, when President Johnson selected our distinguished colleague, the Senator from Minnesota [Mr. HUMPHREY] as his running mate for Vice President, he said—and I believe that this is a feeling shared by all of us, Republicans and Democrats alike—that the vice-presidential candidate should be the man best qualified to be President of the United States, should that unhappy day come.

I believe there is a general awareness on the part of all citizens of the country that this is the prime qualification that the vice-presidential candidate should have—the ability to fulfill the office of President if tragedy should strike.

I submit that reason dictates that we take steps to assure that the Nation shall always have a Vice President. He would lift at least some of the awful burden of responsibility from the shoulders of the President and make the most important office in the world perhaps a little bit less burdensome. His presence would provide for an orderly transfer of executive authority in the event of the death of the President—a transfer that would win public consent and inspire national confidence.

As was the case following the tragedy in Dallas, he would be there to substitute as President, as Hamilton suggested, when events required him to do so.

Our obligation to deal also with the question of presidential inability is crystal clear. In this instance, there is a constitutional gap, or a blind spot. We must fill this gap if we are to protect our Nation from the possibility of floundering in the sea of public confusion and uncertainty.

The provision for impeachment is clearly written into the Constitution. It has been implemented on but one unfortunate occasion in the history of our country. Yet, there is not a word, not a hint about what is meant by the inability of a President. There is no clue as to the method of determining disability, who would make such a determination, what would happen once the determination was made, how the period of inability would be terminated, and whether the President would then resume his office or simply lose his position. These are some of the vexing problems which are presented by the superficial manner in which presidential inability is referred to—on only one occasion, and by only one word—in the entire Constitution of the United States.

It seems to me that history has been trying to tell us something, and it is high time we listened. President Garfield lay wounded for 80 days before he died. During this period, despite the fact that there were many serious duties that needed to be performed, he signed only one extradition paper.

For nearly 2 years, after President Wilson collapsed with a stroke, our Government was virtually controlled by Mrs. Wilson and the President's personal physician—two well-meaning individuals, but hardly those with constitutional authority to direct our affairs of State. When we think of the critical issue that was before the country, and, in fact, the entire world at that time; namely, whether there should be a League of Nations, what the participation of the United States in the League of Nations would have meant to us in the possible prevention of World War II, and what the assistance of an able Vice President, acting in the stead of President Wilson, would have meant to us in helping to get us into the League of Nations, only time, which we cannot relive, would have told. But Mr. Wilson was physically unable to serve as President. He was unable to carry this task forward to consummation. I believe that is one of the unfortunate facts in the history of this country. No one knew exactly what to do when President Eisenhower suffered a heart attack, one of three serious illnesses he suffered during his administration. Later, the President and Vice President Nixon set a precedent with a mutual agreement on what to do in the event of the future inability of the President.

I compliment both those gentlemen for taking the initiative. It was the first time that anything concrete had been proposed in this area. But such informal agreements are unsatisfactory as permanent solutions. Both Mr. Eisenhower and Mr. Nixon were among the first to say so. Such agreements depend on good will between the President and the Vice President. They do not have the force of law. They could be subjected to serious constitutional challenge. They open the door for possible usurpation of power from the President.

I point out that the one thing we must press for is an orderly transfer of power. Whatever procedure is established, it must be generally accepted by a majority of the people. It seems to me that a private agreement would not enjoy the confidence of the public, as would the measure which I hope will be enacted by this body.

These questions can be solved by amending the Constitution. Some say they could best be solved by statute. Many distinguished lawyers disagree. But what most lawyers do agree upon is that if a reasonable constitutional doubt exists, the best method to eradicate any doubt is to amend the Constitution.

How unfortunate it would be if we were confronted with a tragedy, with a disabled President, in a time of emergency. We should have an acceptable formula readily available. Further, a statute would be subject to criticism and a test in the courts. It might be declared unconstitutional. A constitutional amendment would do away with this risk and make it quite clear that the Vice President, acting in behalf of the disabled President, would have constitutional authority to do so.

It seems to me that there can be little question that the time to act is not when the President is lying ill and there is no machinery to deal with the execution of Executive power. If we act in those circumstances, we may come forth with an expedient, but ill-conceived answer to these pressing problems. The time to act is now, when we still find it hard to believe that President Kennedy is gone, and when we have a President who, fortunately for us all, is in robust health.

I have tried to make two principal points thus far. I have said that we should provide means by which we might have a Vice President at all times. And I have said that we must provide machinery by which the Vice President could act as President if the President himself were disabled. Senate Joint Resolution 139, which is now before the Senate, deals most effectively with both these problems.

I express my gratitude to the long list of cosponsors—which now lists some 32 Senators. I point out that this is good evidence of the fact that Senators today are willing to compromise, even though they have their own ideas on the best way to achieve the end we all seek.

At the American Bar Association conference, to which I referred earlier, there were scholars and lawyers who were willing to compromise. It has been my experience that Senators are willing to give and take in such significant matters.

There is no pride of authorship in Senate Joint Resolution 139. Rather, there is the desire that Senators on both sides of the aisle support the resolution.

Some 13 different proposals were submitted to our committee. Half the Senators who sponsored the various resolutions have now joined in cosponsoring

Senate Joint Resolution 139. I believe it is fair to say that we have come as far as we can in obtaining a consensus which I hope this body will accept.

I shall touch very quickly on the two proposals, which are combined into one, for dealing with the doubled-barreled problem. The first problem is that of filling a vacancy such as exists today and, God forbid, which may exist 20 years from today, in the office of Vice President.

This, it seems to me, can be corrected by a relatively simple solution. In the event a vacancy exists in the office of Vice President, Senate Joint Resolution 139 provides that the President of the United States should nominate an individual who he feels is qualified to fill the office of Vice President and, subsequently, that both Houses of Congress should elect the individual by a majority vote.

What would the proposal accomplish? First, it provides that the Vice President would be an individual with whom the President could work closely. In a time of crisis and turmoil, such as we experience with the loss of a President, we must give the new President the individual upon whom he could depend, the one who would cooperate with him and help him carry on the tremendous burden of the Presidency.

Second, we would provide, by the means proposed, for a continuity of authority, direction, and program.

When a President is taken from us, it is hardly a time to change the policy or the course upon which our Nation is embarked.

Third—and I feel most important of all—in a democratic system such as that in which we live today, by submitting the name of the proposed nominee to the office of Vice President to the Congress, we would be assured that the representatives of the people of our land, the Representatives and Senators who deal daily with problems of crisis and decision, would have the final determination as to who the Vice President should be.

So, basically, we would do two things. First, we would provide for a continuity of program and cooperation with the President, on the one hand, and we would enable the voice of the people to be heard on the other.

Mr. ERVIN. Mr. President, I should like to ask the Senator from Indiana a set of questions in order to point out what is involved in the problems he has been discussing—unless the Senator wishes to complete his statement first.

Mr. BAYH. I am more than happy to yield to the distinguished Senator from North Carolina. Later I intended to point out that the Senator is one of those who has led us down the road to a consensus. The Senator from North Carolina had a proposal of his own. He participated in the committee meetings and helped report from the committee the present measure. Were it not for his dedicated effort to have the proposed constitutional amendment adopted, I feel that the roadblocks still ahead of us would have been much larger than they are. I am very grateful to the Senator.

Mr. ERVIN. I thank the Senator from Indiana for his most gracious remarks. On my own behalf I should like to state that the person who is primarily responsible for bringing these problems as near a solution as is possible today is the able and distinguished junior Senator from Indiana [Mr. BAYH], who has worked tirelessly on the problems.

I ask the Senator if at times he did not share my fear that there might be a situation in which, to use an old adage, too many cooks would spoil the broth, particularly in respect to the phase of the question that the Senator is now discussing.

One group, like myself, felt that the selection of a person to fill a vacancy in the office of Vice President should be made by the representatives of the people in Congress. Those of us who shared that view adhered to it very strongly.

There were those who feared that if the selection were made solely by Congress, it might happen that Congress would have to exercise such power at a time when it was controlled by one political party, whereas the White House might be controlled by the other political party and, as a result of vesting the power solely in the Congress, there would be friction between the person designated as Vice President and the President, and also a lack of continuity of the administration in case the person selected by the Congress to be Vice President should be a member of the other political party.

Mr. BAYH. Yes. I agree with my distinguished colleague from North Carolina. In the past there have been several examples of various legislative offices having been controlled by members of the opposite party. We would not have to go back very far in our memories. When the present succession law was passed, I believe that in the minds of many it was designed so that the beloved Mr. Sam, the famous Speaker of the House, would be next in line in succession and therefore would be in line to succeed a Democrat, President Truman. But by the time the law was enacted by Congress, there had been a change, and a Republican, JOSEPH W. MARTIN, JR., was Speaker of the House, so there would have been a change of continuity. The people, by voting in an election, should be the ones to decide a change of policy and a change of direction in our Government, and not some illness, some assassin's bullet, or some other unfortunate situation which would remove a President from the scene.

Mr. ERVIN. The Senator will recall that historians frequently have stated that the only reason the Founding Fathers were able to draft and ratify the Constitution was that they were able to compromise the great differences between the larger States and the smaller States with respect to representation in the Congress. They did this by giving the small States and the large States equal representation in the Senate, and by apportioning seats in the House of Representatives among the several States upon the basis of population. The Senator will recall that historians have frequently said that this compromise made the drafting and ratification of the Constitution possible by reconciling the differences between the smaller States and the larger States.

Mr. BAYH. That is correct.

Mr. ERVIN. Does not the Senator from Indiana agree with the Senator from North Carolina that the compromise which made the present resolution possible between those who believe in continuity of the administration on the one hand and those who believe in the selection of a person to fill the vacancy in the office of Vice President by representatives of the people is a like compromise?

Mr. BAYH. This is a ready compromise. The Senator and I have discussed the question enough so that we know very well that one of the major problems which could confront us would arise when a name was submitted to Congress, if the Congress were controlled by the opposite party, whether Republican or Democratic. The party in the majority might tend to delay or play politics with the nomination. I believe that the Senator firmly agrees with me that at a time of national crisis the public would not tolerate the playing of politics in the choice of a Vice President. In pointing out the compromise that was made between the larger and smaller States in the electoral college system, we should point out for the RECORD that by taking the votes of Members of the House and Senators from each State, we would arrive at a number identical with that now composing the electoral college. We have tried to stay as close as possible to the present laws, and the use of the same formula in the event we should be confronted with an emergency such as we have experienced recently.

Mr. ERVIN. My good friend the junior Senator from Indiana is more responsible than any other individual interested in this problem for effecting the proposed reconciliation of the two viewpoints that I thought for a time would shatter any hopes of accomplishing anything worthwhile in this field.

Mr. BAYH. I thank the Senator.

Mr. ERVIN. Another thing I should like to comment upon is the first section of the joint resolution, which reads as follows:

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

This lays at rest the ghost that has troubled some constitutionalists since the death of William Henry Harrison, about 1 month after "Old Tippecanoe and Tyler, Too" were elected, respectively, President and Vice President of the United States. As the Senator knows, there has been an argument among some scholars and some constitutional lawyers ever since John Tyler assumed the office of President on the death of William Henry Harrison, as to whether or not the Vice President who comes to the office under those circumstances is really the President or whether he is merely the Acting President. I think this is a fine provision in the proposed joint resolution, because it would lay to rest the constitutional ghost that has been stalking to and fro in America ever since that time.

It stamps with approval the assertion that John Tyler himself made at the time that he was President, and not merely acting President, when he succeeded William Henry Harrison.

Mr. BAYH. As the distinguished senior Senator from North Carolina, who is the greatest constitutional expert in this body, knows, the office of Vice President was more or less an afterthought on the part of the Founding Fathers. As we study the proceedings of the Constitutional Convention, we observe that at first there was some thought that perhaps a legislative officer, the Chief Justice, or some commission could fulfill the duties of the Office of President in the event the President were no longer able to do so, or were killed, or died. But at the last moment the Office of Vice President was suggested and, as the Senator said, in 1841, when President William Henry Harrison died in Office and President Tyler assumed the duties, the first papers that were given to him to sign, as I recall, read, under the place where he was supposed to sign, "Acting President." He did not like that idea at all. So he struck out the word "acting" and said he was the President, and later was supported by majorities of both Houses of Congress.

Mr. ERVIN. If Congress will pass the joint resolution, it will be saying "amen" in the year 1964 to what John Tyler said on that occasion.

Mr. BAYH. Let this Senator say "amen" to what the Senator from North Carolina has said.

Mr. ERVIN. The Senator has touched essentially on the problem of the inability of a President. The Senator has pointed out how long Garfield lay lingering between life and death, between consciousness and unconsciousness, after he was struck down by an assassin's bullet; and how, after Woodrow Wilson suffered a stroke, Admiral Grayson, his physician, and his wife, Mrs. Wilson, were said to have acted upon some matters of Government, although they had no constitutional power to do so. Also, as we recall, during his administration, President Eisenhower, twice had serious illnesses when it was uncertain as to whether he would be able to resume the functions of his Office.

I introduced a proposed constitutional amendment which provided for the determination of the disability of the President by a process which is identical with the impeachment process. But I must admit that this joint resolution is a vast improvement over my original proposal. It accomplishes the determination of whether a President is disabled to perform the duties of his Office with the least embarrassment to the President and in the most efficacious manner. At the same time, it combines action on the part of the Vice President and the members of the Cabinet, or such other body as the Congress may designate, with action on the Congress in case the President is unable or unwilling to make a determination of his own disability.

By so doing, the joint resolution makes it certain that in a time of great and violent partisanship—such as existed in respect to Andrew Johnson during Reconstruction—we are not likely to have under the amendment any exhibition of partisanship which is destructive of the welfare of our Nation. This is true because it does not permit a single political party controlling the Congress when there is a division between the political affiliation of those in the executive branch and those in the legislative branch to assume sole power to act when a question arises as to whether the President is able to perform the functions of his office.

Mr. BAYH. This solution deals with a consensus, because we have a precedent, despite the fact that some declare we are wrong in intermingling or commingling the three branches of our Government. As the Senator knows, there is a precedent in the election law which permits Congress to decide how a President can be elected in case one candidate does not receive a majority of the electoral votes. There is a precedent in impeachment proceedings, in which it is provided that one branch, the House, shall bring the impeachment and the Senate shall try, and the Chief Justice of the Supreme Court shall preside over the formalities and trial itself.

As the Senator has said, I believe that by requiring cooperation by all branches of the Government, we shall arrive at the right answer.

I shall discuss in a moment in detail what Senate Joint Resolution 139 provides, but I should like to remind the Senator from North Carolina of a conversation the two of us had when another proposed constitutional amendment was brought before the Judiciary Committee. We were both concerned about the security of the office of President. The Constitution provides for a two-thirds vote in order to convict the President on impeachment. Can we imagine what would have happened in the Reconstruction Days if it had taken a majority to impeach President Andrew Johnson and a majority to declare him disabled? We know he would have been declared disabled.

Mr. ERVIN. Andrew Johnson would have been declared mentally incompetent by a simple majority of the hostile Congress, and our country would have experienced a total blackout of constitutional government.

Mr. BAYH. The Senator brought this out very quickly, and the question was analyzed in the Judiciary Committee; and it resulted in congealing the thought that this must be an integral part of Senate Joint Resolution 139.

Mr. ERVIN. This solution and resolution of the manner of determining disability of the President represents in the finest manner the system of checks and balances which the Founding Fathers put in the Constitution to make certain that neither partisanship nor tyranny could take charge of the American Government.

I commend the Senator from Indiana and give him credit for the fact that it was his patience and his understanding of these problems which brought divergent views into what he calls a consensus, and what I call a compromise. As a result of his efforts, many of us have laid aside pride in our own proposed solutions and agreed upon a common solution of this problem.

I sincerely trust that the Senate and the House of Representatives will vote to pass the joint resolution by the required two-thirds majority, and that three-fourths of the States will ratify the joint resolution in the shortest possible time. This is most desirable because such action would remedy two very serious omissions in our Constitution—omissions which must be remedied to insure continuity and stability of government.

In closing, I reiterate that the Senator from Indiana deserves the thanks of Congress and the thanks of the American people for the fine work he has done in bringing the joint resolution into being and in presenting it to the Senate.

Mr. BAYH. I thank my colleague, the Senator from North Carolina. He has been more than kind. Although this is my first session in this great body, and I cannot speak with authority to my senior colleagues here, I believe Senators would probably have to look for a long time before they would find a better example of legislative process in this free government of ours in working to resolve differences of opinion by coming forward with this one idea. I am grateful for the contribution made by the Senator from North Carolina.

Let me briefly discuss the second part of the proposed solution of the two problems facing us—first, a vacancy which may exist in the Vice Presidency; and second, the equally, if not more vexing problem of disability which may occur in the office of the Presidency.

It is fair to say the entire problem of dealing with presidential inability is made much more difficult and much more complex by the precedent to which the Senator has referred, namely, the Tyler precedent.

It is one thing for the Vice President to assume the role and office of President if the President is dead. It is an entirely different situation for the Vice President to take over the reins of Government when the President is not dead, but is disabled, or for some other reason is unable to fulfill the powers and duties of the office of President.

For this reason, in the two times in history, and also the third time, when President Eisenhower and Vice President Nixon entered into an informal agreement—there is ample proof that there was a great deal of public response. In the case of Garfield, his Cabinet urged Arthur, then Vice President, to take over and act as President, but he, on sound legal counsel, refused to do so; and the record even discloses that the former Secretary of State, the great American, Daniel Webster, was one of the proponents of the feeling that we cannot separate the office of President from the duties and powers thereof. The way the Constitution is written, if the Vice President should take over the powers and duties of the office of President, he would in fact take over the office of President.

Secondly, if the President should recover or regain his ability to perform his duties of office, he would have been removed by the act of the Vice President.

For this reason there was reluctance on the part of Arthur to move in and to assist Garfield in his time of need.

Vice President Thomas Marshall had the same reluctance, and he refused to step in when President Wilson could have used his helping hand.

In closing, I should like to say that in the case of Presidential inability we must take every precaution to safeguard the President from unwarranted usurpation of his office. Thus it seems to me that the first provision in our disability section is to give the President the primary right to declare his own disability, and also to declare the termination of his disability. Therefore we state that if the President specifies in writing that he is disabled, the Vice President shall then assume the powers and duties of the office, and not the office itself. He would be Acting President; not President. In that way, I believe we could eliminate the difficulties which have existed in the past.

The second provision, in the event of disability of the President, refers to the case in which the President does not make known his disability, perhaps because he is unable to do so. In this event, the Vice President, with the concurrence of a majority of the Cabinet or other body which Congress might designate, should have the authority to determine Presidential disability.

In such a case, as I mentioned, the Vice President would become Acting President, just as he would if the President himself had declared his own inability.

The thinking of the committee was that we do not want a President to lose his power by usurpation; and we felt that by granting the Cabinet a concurrent role with the Vice President, it would give him, and give those who are appointed to office by him, equal power with the Vice President.

President Eisenhower was confronted personally with this problem of disability. He said unquestionably that he thought the Vice President had not only the authority to act but that he should and must act in the event of disability. He also stated to a conference which was held in the spring in Washington that he thought that having the Cabinet go along and help make the decision would be a satisfactory arrangement.

The third circumstance is the unlikely one in which the President might be found disagreeing with the Vice President and a majority of the Cabinet as to whether he was able or unable to exercise the powers and duties of his office. In the event the President should say, "I am able to perform," and the Vice President and a majority of the Cabinet on the other side should say, "You are not capable of performing," we felt that the proper body to make the final determination was the Congress.

As I mentioned in the colloquy with the Senator from North Carolina [Mr. ERVIN], we would require a two-thirds vote of Congress to remove the President from office. It is to safeguard the President and at the same time provide checks and balances, because our system recognizes no person, even the President of the United States, as being infallible.

In closing, let me say that perhaps there was a time when it was not very important to have a Vice President, and perhaps there was even a time when it was not a matter of great national urgency to have a President who was completely in control of all his faculties.

When the carrier pigeon was the most rapid means of communication, and the horse was our most rapid means of transportation, our national security could not be threatened in such a short period of time as it can be today. However, in this day of nuclear power, in the age of space flight and of rapid jet transportation and Telstar communication, when it is possible to destroy civilization as we know it in a matter of minutes, when we can move armies halfway around the world in a matter of hours, the safety of the United States demands a President who is always capable of making rational decisions and rational determinations; and in the event the President is unable to make these determinations it demands that the Vice President be able to assume the powers and duties of the President, so that this country may always be in the hands of one who is able to make the necessary decisions at the necessary time.

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

Mr. BAYH. I am glad to yield to the Senator from Oklahoma.

Mr. MONRONEY. I wish to associate myself with the remarks of the distinguished Senator from Indiana, and congratulate him on the fine work he has done as chairman of the subcommittee which handled this very important issue. We must set at this time, as early as possible, the line of succession in the Presidency, more particularly with respect to the point he has just emphasized with such great clarity, on the determination of inability of the President, as referred to in the Constitution.

The subcommittee has rendered an excellent service in perfecting language that clarifies the Constitution and sets a clear line of the powers of the successor to the President in the event of the President's inability to carry forward the duties of that great office.

This, I think, is even more important than the line of succession at this time. I recognize the need for changing the line of succession. I recognize the many ideas that have been voiced by so many students of the problem, such as the distinguished Senator from North Carolina [Mr. ERVIN], particularly with reference to his position on the selection of the Vice President by Congress itself, and the many other suggestions that have been made for the line of succession. I also recognize the need for a compromise if we are to arrive at any single determination.

I regret that the point of view that I have long held since with respect to the line of succession going to the Speaker of the House and the President pro tempore of the Senate appeared to be somewhat dangerous to the party control of the Presidency for the full duration of the elected term of President, and that we could not work out something that was more responsive to the electorate of the country.

The distinguished Senator was most kind to me and permitted me to testify when hearings were being held on these proposals. I have advocated that at the time of the election, a first and second Vice President should be nominated and voted upon by the people in the regular election of President, based on the fact that this would be an expression of the entire electorate of the United States, and thus bless the office or ratify the offices of first Vice President and second Vice President with the vote and the acceptance of the entire electorate.

I recognize the fact that the joint resolution must be a compromise; but I question one bit of the philosophy in the selection of the successor by the nomination of one man, placing in the supreme line of authority over 180 million Americans one man chosen absolutely by the President, by sending the nomination to Congress, and saying, "This is my man, I choose him for my successor."

I feel that this was one of the reasons why Congress wanted to get away from the Cabinet members in designating the line of succession; and get away from having the President or the Vice President choose his successor.

It seems to me we spread our democracy very thin when, out of 180 million people, only the President and Vice President are the officials elected by the entire Nation. They are the only two who are elected by the entire Nation for the vast, important, and powerful elective offices of the executive department.

It has always seemed to me a particularly bad time to decide, after the shock of losing a President, in the next Congress, upon the ratification of one man whose name was submitted as the successor to the Presidency in the event of the death of the then existing first officer of the land. I would much prefer, if possible, to see a contingency that might develop or take place having been firmed up in the Constitution at the time the choice is made of a President. I cannot bring myself to believe that we cannot find the most competent persons to serve as first Vice President and second Vice President, persons who would be selected by the party conventions.

Although the presidential candidate may express his preference, and the convention may approve that preference, still the electorate would have to pass upon the wisdom of the choice.

So it would be necessary to abide by the choice of the public concerning the persons who would be in the line of succession.

It would appear to me to be still better, although perhaps impossible, as the distinguished Senator from Indiana has said, to reach any consensus on any individual viewpoint.

I still believe that a line of succession so clearly and positively made in the quadrennial selection of the President would enable the Nation better to resist the shock that is felt throughout our great Nation, and perhaps throughout the free world, upon the death of a President. We would always have a person

in line of succession to backstop the then acting President of the United States.

It might be asked, What would a second Vice President do? I feel that there is ample service as well as ample quality in the United States for the fulfillment of the two positions I speak of. The first Vice President could very well become the eyes and ears of the President and be his agent in the field of foreign affairs, including relationships with other nations and tours throughout the world. He could appear at ceremonial observances as well as proffer advice at the White House on many subjects, as recent Vice Presidents have done.

The second Vice President could fulfill the present constitutional duties of the Vice-Presidency. He could be the representative of the Executive in Congress and serve as the Presiding Officer of the Senate. He could keep the President intimately informed about the state of mind and feelings of the elected representatives who serve in the legislative bodies of Congress.

I hope that this issue can be settled before any new tragedy occurs, and that there will be not one Vice President, but two Vice Presidents elected by the whole people.

Again, I believe the argument is somewhat valid that the nominee for President has, by custom, the right to choose or select the nominee for Vice President. Similarly, he would have the right to choose or select his successor under the proposal in Senate Joint Resolution 139. Nevertheless, there would still have to be ratification by the public in the quadrennial election, and the people would then know that the successor to the Presidency, should the event arise, had been elected.

I would appreciate having the comment of the Senator from Indiana on this theory, which has been supported by a large group of people, as was the proposal that was made and endorsed by the committee and originally proposed by the American Bar Association.

I wish the distinguished chairman of the subcommittee to understand that I appreciate the diligent work and the compromise that have been necessary to introduce this joint resolution. It was necessary to act. Even though the joint resolution does not comport with my hopes and feelings that two vice-presidential candidates would be better, it is still a subject on which Congress must take action. Therefore, I intend to vote for the joint resolution that is now before us. However, I wish that it had been possible to provide for this contingency by having the nominations voted upon in the general election and ratified by the entire public, rather than by Congress alone upon the recommendation of the President.

Mr. BAYH. I deeply appreciate the comments of the distinguished senior Senator from Oklahoma. Perhaps it does not need to be said—but I should like to say it, anyway—that no Member of either branch of Congress has been a more thorough student of the need for legislative reorganization and has done more to secure it than the Senator from Oklahoma. The latest comprehensive legislative Reorganization Act was passed during the tenure of office of the distinguished senior Senator from Oklahoma. As I recall, he was the leading light or the main proponent of it while he was a Member of the House. His achievements were recognized by several national publications, and he received various awards for the contribution he made to the improvement of the legislative process. For this reason, his thoughts and interests are of particular significance to those of us who feel that the Presidential succession is another area of reorganization which needs discussion and action now.

I shall speak to the points that have been raised by the Senator from Oklahoma. First, there is the problem of succession. The Senator from Oklahoma believes that the present line of succession through the Speaker of the House and the President pro tempore of the Senate is not the best possible way of filling the offices of Vice President and President. I am certain that the Senator from Oklahoma realizes that when Senate Joint Resolution 139 was first introduced, it contained a third section, which dealt with changing the line of succession. It was our feeling, as it is the feeling of the Senator from Oklahoma, that nothing personal was intended in the case of the persons who presently hold those offices. It has been most unfortunate that comments have been made in the press, including the press of my own State, to the effect that the distinguished Speaker of the House, because of his age, is not qualified to become President. That is one of the most unfortunate statements that has been made. Speaker MCCORMACK is an able and well qualified legislator. He is probably the second or third busiest man in the United States in his office as Speaker of the House.

But that is not the question. How could he perform his duties so capably as Speaker and still perform other duties, such as being a member of the Security Council and Space Commission, that constitute part of the duties of the Vice President? For this reason, we look forward to the comprehensive program which the Senator from Oklahoma is envisioning.

Mr. MONRONEY. Is it not also true that one point not realized, when changing from the Cabinet to the Speaker of the House, is we jeopardize continuing control of a government which has been elected for a 4-year period by putting it through the speakership of the House, because every 2 years control of the House is subject at least to change by the votes of the electorate of the people. Automatically to have this change would create a rather difficult political situation in the management and operation of the country, right at a time when the Nation was suffering from the shock of the death of its Chief Executive. The change, at this period of time, would be most unwise from the point of view of party control and would be upsetting to the general authority of the Government.

Mr. BAYH. The Senator from North Carolina touched on that issue a moment ago, and tried to point out that in the history of our country there have been occasions when succession laws were designed for the sake of experience. In fact, in my memory, I can recall one occasion when the present succession law was enacted that was designed, really, with the beloved Speaker of the House, Sam Rayburn, in mind, as one who, as a Democrat, could carry on the policies and the principles of the then Democratic President, Harry S. Truman. Before this law was even enacted, there had been a change to the distinguished Speaker of the House in the home State of my colleague from Massachusetts who was a member of another party. Had something happened to the President, a member of another party would have succeeded him and this would have resulted in a complete change of policy without the consent of the electorate.

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

Mr. BAYH. I yield.

Mr. ERVIN. I should like to make some observations about the question raised by the Senator from Oklahoma, with the understanding that no one's right to the floor will be affected by my so doing.

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

Mr. ERVIN. I have been very much impressed by what the Senator from Oklahoma has said. He has been a keen student of government for many years. As the Senator from Indiana has stated, the Senator from Oklahoma did much to secure the formulation and passage of the Reorganization Act of 1946, which certainly marked a great step forward in our system of government.

The Senator from Oklahoma raises a point here which merits grave consideration. There are other problems, however, in this field. I introduced a resolution to amend the Constitution to take care of one of them which was pointed out by the tragic assassination of President Kennedy on November 22, 1963.

If the assassin had changed his target, the country could have lost both its President and its Vice President in one common tragedy. I thought that we should adopt a constitutional amendment to deal with that tragic possibility. As a consequence, a proposed joint resolution offered by me, as the Senator from Indiana will recall, embraced not only provisions to fill vacancies in the office of Vice President, and to deal with the question of determining inability of the President, but it also contained a provision designed to provide for the possibility that the country might lose both the President and the Vice President at one time in a common tragedy.

The proposal of the Senator from Oklahoma and my proposal to cover the possibility of the loss of both the President and Vice President in a common tragedy simply went beyond the scope of the area which a majority of the subcommittee, headed by the distinguished Senator from Indiana [Mr. BAYH], and a majority of the full Committee on the Judiciary, thought that Congress and the country would accept in a single constitutional amendment.

There were other suggestions which went beyond the scope of that area. For example, one of them was the suggestion

that we should have national elections to fill the vacancies both in the case of a vacancy in the office of the Vice President and also in the case of the loss of both the President and the Vice President at the hands of a single assassin.

A great deal can be said for all these proposals. There was a consensus of opinion, however, that amending the Constitution is a rather difficult task, and that proposals for changes should be held to a minimum rather than expanded. The underlying thought, which I believe to be absolutely sound, was that every proposal additional to filling vacancies in the Vice-Presidency and coping with Presidential inability would cause some loss of support in the subcommittee, the full committee, the Congress, or the country at large, and thus endanger the prospect of any accomplishment.

For this reason, the subcommittee eliminated my proposal dealing with the possibility of the loss of both the President and the Vice President at the hands of a single assassin and the proposal of the Senator from Oklahoma. It was not because the members of the subcommittee felt that the proposals did not merit consideration, but because they felt that if they added those additional proposals to a joint resolution to remove defects in the existing Constitution, their action would jeopardize the possibility of securing favorable action on two essential changes which everyone concedes must be made.

There is much merit in the proposal of the Senator from Oklahoma. I hope that Congress will be able to give consideration to it at a later time.

Mr. MONRONEY. Mr. President, the Senator from Massachusetts has been wishing to ask the chairman of the committee some questions. I should like to reserve one or two other questions which I should like to go into, after consideration of the questions of the Senator from Massachusetts [Mr. SALTONSTALL].

Mr. BAYH. If we could continue the colloquy it would be valuable, because the Senator from Oklahoma raised two or three points on the specifics of the resolution and I should like to discuss them with him to show him that we did discuss them and did give thought to his suggestions. However, I know that the Senator from Massachusetts has to leave.

Mr. ERVIN. Mr. President, I ask the Senator to yield for another observation before the Senator from Massachusetts leaves. The Senator from Oklahoma is familiar with Aseop's fable about the dog carrying a bone in its mouth while it was crossing a stream on a small bridge; the dog looked down and saw his own reflection in the water. He thought he saw another dog with another bone. He opened his mouth to grab the bone he thought he saw in the water and lost the one he was carrying.

I believe that story illustrates the reason the subcommittee did not go any further than it did and why it did not incorporate in its joint resolution the proposal of the Senator from Oklahoma, that we should have a first Vice President and second Vice President, and my suggestion to deal with the possibility of the loss of both the President and the Vice President in a single disaster. The subcommittee recalled the fable of the dog, and knew that if it tried to get too many additional bones it would lose the ones it was attempting to carry across the legislative stream.

Mr. BAYH. The Senator from North Carolina, as usual, has picked a very appropriate story to illustrate his point.

Mr. President, I ask unanimous consent to yield to the Senator from Massachusetts [Mr. SALTONSTALL] without losing my right to the floor.

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

Mr. SALTONSTALL. Mr. President, I appreciate very much the courtesy of the Senator from Indiana, and also the courtesy of the Senator from Oklahoma.

I do not wish to extemporize, but I believe that the colloquy of the Senator from North Carolina and the Senator from Oklahoma is interesting. I, for one, desire that it should be by itself, rather than tied into my remarks.

Mr. President, first let me commend the Senator from Indiana for his persistence in bringing this matter to the floor of the Senate. We have heard this issue discussed for several years, but it has never been brought to the point of amending the Constitution.

Mr. President, I joined Senator BAYH in cosponsoring Senate Joint Resolution 139, the proposal to amend the Constitution to insure that we shall always have a clear line of succession to the Presidency. I did so because I feel that it is imperative that there be no gap in the continuity of our Government in these days when the President of the United States is so important, not to our Nation alone, but to the rest of the free world as well.

There are three major problems which this proposal would resolve. The first of these concerns the succession to the Presidency by the Vice President when the Chief Executive is removed from office for one reason or another. The second concerns the filling of a vacancy in the office of Vice President. The third concerns the inability of the President to exercise the duties of his office.

We were all witnesses to the tragic events of last November when President Kennedy was assassinated, and to the smooth and rapid assumption of the office of the Chief Executive by President Johnson. Even this, however, was based solely on precedent set by President Tyler when he took the oath of office upon the death of President Harrison, for article II, section 1 of the Constitution spells out what shall happen only in the case of a vacancy in both of the Nation's top offices. This amendment, Senate Joint Resolution 139, would give constitutional force to this longstanding precedent by declaring that in the event of removal of the President from office, or his death or resignation, the Vice President shall become President.

Second, we must consider the problem of a vacancy in the Vice-Presidential office, caused either by the death or resignation of the Vice President or by his succession to the Presidency. Although we have legislation providing for a continuing line of succession if both offices should become vacant, it can readily be seen that the best person to assume the difficult task of the Presidency would be the one who has worked most closely with the President, is intimately familiar with his goals and policies, and who shares the President's general political viewpoint. Under our system of government, this could only be the Vice President, an individual whose office has become increasingly important both to the President and to the Nation in recent years. This proposal would provide, therefore, that the President could nominate a man to be Vice President, who would take office upon confirmation by a majority vote of both Houses of Congress. This follows the generally accepted practice of our political nominating conventions, where the vice-presidential designee of the presidential nominee is usually approved by the convention.

The Senator from Oklahoma [Mr. MONRONEY] proposes or suggests that the names of two men be submitted. It seems to me that that would complicate a situation which we would want to have covered very quickly. It would not be a question of choosing one of the two men. It would be a question of the succession of an administration that was already in power.

Third, this proposal would provide a method by which the Vice President might assume the powers and duties of the President, but not his office, during a period of temporary Presidential disability. This would prevent the occurrence of any confusion such as our country experienced under Presidents Garfield and Wilson. The Constitution does not specifically state what should happen in the event of Presidential disability. When so much depends upon the continued and uninterrupted functioning of our Government, this confusion must not be permitted to occur. Even in 1919 when our country was concerned primarily with domestic and internal affairs, President Wilson's lengthy disability caused grave disruptions in the conduct of our Government both at home and abroad.

President Eisenhower was most concerned about the problem of Presidential disability and drew up an informal agreement with Vice President Nixon to help resolve the matter. Although there is some question whether such agreements would have the force of law or be subject to dispute at a time when a dispute would be least desirable, this practice has been continued to the present as a useful stopgap measure. There is general accord among constitutional experts at this time, however, that a constitutional amendment is needed to clarify the situation. I concur in this.

Senate Joint Resolution 139 would provide that the President could declare that he was unable to discharge the duties of his office, and that such duties would then be executed by the Vice President as Acting President. If the President did not declare his inability, the Vice President would be empowered to transmit to the Congress his written

statement of the President's disability, with the concurrence of a majority of the members of the Cabinet or some other body Congress could designate by law. He would then become Acting President.

This proposal further provides that the President may declare when he is again able to carry on his duties and that he shall resume them unless the Vice President, with the consent of a majority of the Cabinet—or some other body designated by Congress—states that the President's inability has not terminated. Congress shall decide the issue immediately. If it determines by two-thirds vote of both Houses that the President is unable to resume his duties, the Vice President shall continue as Acting President; otherwise the President shall take up his duties once again.

I feel that this proposed amendment satisfactorily resolves the present ambiguity of article II, section 1 of the Constitution relating to Presidential succession and disability. Although we cannot foresee every eventuality that might befall our Government, I think this makes adequate provision for the uninterrupted conduct of our Nation's affairs.

With the election of a President and Vice President in November, we shall once again have passed through this dangerous period when we have a vacancy in the Vice-Presidency—a situation we have encountered 16 times in our history. However, we should not let this opportunity pass to resolve the situation once and, hopefully, for all time. Since 1792, when the first succession law was passed, this matter has been disputed. The proposal now before us is the result of exhaustive study and numerous committee hearings. It has the support of State and National bar associations as well as distinguished constitutional lawyers from all over the country. I urge my colleagues to consider this amendment carefully, and to take favorable action on it so that at last we may have a clear and definite constitutional policy on these twin problems of Presidential succession and disability.

Mr. President, a few years ago we passed a law which designated the Speaker of the House, rather than the Secretary of State, as next in the line of succession, should both of the Nation's top offices become vacant. There is now some feeling that the Speaker might not be the most logical choice to follow the Vice President in the line of succession. This is in no way a reflection upon the present occupant of that office. I feel the same way that the Senator from Indiana [Mr. BAYH] does about Mr. McCORMACK. He is a competent and able gentleman in every way. He is able to assume the office and duties of the President. The proposed amendment does not change the present line of succession as provided for by law, but leaves it up to Congress to revise as it sees fit. However, it seems to me that this whole question of Presidential succession and disability should now be clarified by constitutional amendment, beyond this one statutory designation, so that there will be no question as to whom would assume the office of the President or the Vice President should some tragedy occur and either one or both of these offices become vacant.

I hope that this hard work on the part of the junior Senator from Indiana [Mr. BAYH], the Senator from North Carolina [Mr. ERVIN], and other members of the subcommittee may be approved by the Senate at this session, even though the House may not act on it. It means a big step forward on an important constitutional question relating to our whole system of life in the United States.

I thank the junior Senator from Indiana for giving me the opportunity to speak briefly on this measure.

Mr. BAYH. I thank the senior Senator from Massachusetts, not only for his able presentation and his very welcome support at this particular time, but also for his advice and counsel at an early date on this effort. It was very helpful to us. We are very grateful.

I ask unanimous consent that I may yield to the distinguished Senator from Hawaii [Mr. FONG] without losing my right to the floor.

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

Mr. FONG. Mr. President, the proposal now before the Senate, Senate Joint Resolution 139, proposing an amendment to the U.S. Constitution relating to vacancies in the Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office, is, in my opinion, a very meritorious measure deserving of Senate approval.

As I rise to speak in behalf of this measure, I am most happy to commend in the highest terms the distinguished junior Senator from Indiana [Mr. BAYH], for it was only through his unflagging efforts that the very critical problems of Vice Presidential vacancy and Presidential inability have been studied and researched so painstakingly, so thoroughly, and in such a scholarly fashion, and only through his efforts that the bill Senate Joint Resolution 139 has been so carefully and so well drafted.

For his diligent, dedicated, unwavering, and effective leadership in this very important field, I extend Senator BAYH my warmest congratulations.

Mr. President, the tragic assassination of President Kennedy has pointed up once again the urgent need to resolve two critical constitutional problems—first, a vacancy in the office of Vice President; and second, the disability of the President.

First, the Constitution does not say anything about what should be done when there is no Vice President. No one in America today doubts that the Vice-Presidency is an office of paramount importance. The Vice President of the United States today carries very vital functions of our Government.

He is the President's personal representative and emissary; he is a member of the Cabinet, Chairman of the National Aeronautics and Space Council, member of the National Security Council, head of the President's Committee on Equal Employment Opportunity, and he takes part in other top-level discussions which lead to national policymaking decisions.

Besides his many duties, he is the only man who is only a heartbeat away from the world's most powerful office. Yet on 16 different occasions covering a period of 40 years in our history, the Nation has been without a Vice President. Eight Vice Presidents have succeeded to the Presidency; seven have died in office; one resigned.

The security of our Nation demands that the office of the Vice President should never be left vacant for long, such as it is now.

Second, the Constitution does not say anything about what should be done when the President becomes disabled; how and who determines his disability; when the disability starts, when it ends, who determines his fitness to resume his office, and who should take over during the period of disability.

As a member of the subcommittee, I have studied these problems very carefully. I have looked into all the various proposals submitted by other Senators. I have considered the testimony of the many experts who testified before the subcommittee. I have read the data collected and the research done by the subcommittee's staff.

I believe that any measure to resolve these very complex and perplexing problems must satisfy at least four requirements:

First. It must have the highest and most authoritative legal sanction. It must be embodied in an amendment to the Constitution.

Second. It must assure prompt action when required to meet a national crisis.

Third. It must conform to the constitutional principle of separation of powers.

Fourth. It must provide safeguards against usurpation of power.

I believe Senate Joint Resolution 139, which I helped draft, and which is cosponsored by a bipartisan group of 32 Senators, best meets each of these requirements.

This proposal deals with the problems of Vice-Presidential vacancy and Presidential inability by a constitutional amendment, rather than by a law enacted by Congress. I believe a constitutional amendment is sounder, because so many legal questions have been raised about the authority of Congress to act on these subjects, that any statute on these subjects would be open to criticism and challenge at the most critical time—when a President dies in office; when a President becomes disabled; and when a President seeks to recover his office.

We must not gamble with the constitutional legitimacy of our Nation's executive branch. When a President or Vice President of the United States assumes his office, the entire Nation and the world must know without doubt that he does so as a matter of right. Only a constitutional amendment can supply this necessary legitimacy.

Senate Joint Resolution 139 provides that when the former Vice President succeeds to the Presidency, he must select a new Vice President with the confirmation of a majority of both Houses of Congress present and voting.

The Vice-Presidential office under our system of government is tied very closely

with the Presidency. The extent to which the President takes the Vice President into his confidence or shares with him the deliberations leading to executive decisions is largely determined by the President.

Another important reason for allowing the President to nominate a Vice President is that the close relationship between the President and Vice President will permit the person next in line to become familiar with the problems he will face should he be called on to assume the Presidency.

This close relationship between the President and the Vice President is recognized by our political conventions, which allows the presidential nominee to choose his own running mate. This system has proved workable in our history.

Practical necessity would seem to require that the President be given a primary say as to who the Vice President will be.

Senate Joint Resolution 139 also makes clear that when the President is disabled, the Vice President becomes Acting President for the period of disability. It provides that the President may himself declare his inability and that if he does not, the declaration may be made by the Vice President with written concurrence of a majority of the Cabinet.

The President may declare his own fitness to resume his powers and duties, but if his ability is questioned, the Cabinet by majority vote and the Congress by a two-thirds vote on a concurrent resolution resolve the dispute.

These provisions of Senate Joint Resolution 139 not only achieve the goals I have outlined, but they are also in consonance with the most valued principles established by our Founding Fathers in the Constitution.

They observe the principle of the separation of powers in our Government. They effectively maintain the delicate balance of powers among the three branches of our Government. Most important of all, they insure that our Nation's sovereignty is preserved in the hands of the people through their elected representatives in the National Legislature.

I believe that it is a highly meritorious measure which should be promptly enacted into law in this session.

Mr. BAYH. I would like to thank the Senator from Hawaii for his remarks today, and I would like to extend my appreciation for his diligent efforts, as a member of the Subcommittee on Constitutional Amendments, on behalf of Senate Joint Resolution 139.

Mr. President, I now ask unanimous consent that I may yield to the distinguished Senator from Nevada [Mr. BIBLE] without losing my right to the floor. I shall then continue the colloquy later.

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

Mr. BIBLE. Mr. President, I associate myself with the remarks of those who have commended the distinguished junior Senator from Indiana [Mr. BAYH] for his able leadership in bringing this joint resolution before us. This is a task that has been put off for far too long. Under his guidance, leadership, and vigorous approach to this problem, we are finally bridging one of the gaps that we find in the very important field of succession and disability.

It is difficult for me to comprehend why Congress has so long put off the important problem of insuring orderly succession in the event of death or disability in our Government's highest office. The fact that it is a difficult problem to solve is no excuse. Now we at last have the chance to do something in this critical area of Government. We must not pass up this chance—we must not continue to avoid the issue.

To say that action is long overdue is an understatement. We in Congress are all aware that the Constitution, while setting the general guidelines, does not go far enough in covering every possible emergency that might arise in the Office of President of the United States. Even the basic question of whether the Vice President assumes the Office or only the duties of President in the event of the President's death has been left only to precedent. This is a precedent established in 1841—more than 100 years ago—when Vice President John Tyler asserted his right to both the duties and the Office of the fallen President William Henry Harrison.

Nothing, as we all well know, has been done either by Congress or by precedent to cover the need of succession when a President becomes incapacitated. Nothing, as we all well know, has been done either by Congress or by precedent to fill the Vice Presidential vacancy created by a President's death—a situation that exists even at this moment.

Mr. President, the time is past when our Government can put off this problem. The Government cannot afford any area of doubt in the authority of a Vice President who assumes the Presidency. The Government cannot afford the luxury of Executive inactivity because of illness or other inability in the Presidency such as was witnessed during the terms of Presidents Garfield and Wilson. And the Government cannot afford the lack of a Vice President.

In this day of instant global communication, of rapid worldwide transportation, of nuclear power, and space exploration, the United States cannot gamble its security and its world leadership simply because we in Congress hesitate to resolve a difficult issue.

President Eisenhower realized this. He dealt with the possibility of his own death or incapacitation through the historic informal agreement with Vice President Nixon to provide for continuity of Executive power. President Kennedy also recognized the problem in a similar arrangement with Vice President Johnson. The need for a President to take such informal steps demonstrates the need for Congress to propose formal guidelines in a constitutional amendment.

Contrary to some views, I believe it is most logical to deal with Presidential succession in a constitutional amendment. By placing succession procedures in the Constitution, we insure them against passing political whims and hasty judgments. We also follow the spirit of the Constitution, which already spells out in detail the duties and powers, methods of election, length of term, and method of impeachment for the Presidency. We must include in the basic law of our Nation equally detailed provisions for Presidential incapacity and Vice-Presidential vacancy.

Considering the many divergent views—and some of them have been voiced here today—I believe the Judiciary Committee has done an excellent job of putting together proposals which are adequate, logical, and workable—proposals acceptable to a majority in Congress and a majority of the States.

Let me discuss first the proposal for filling a Vice-Presidential vacancy. In the event of a Vice President's death or his succession to the Presidency, the President will nominate a man of his choice to fill the vacancy. This nomination will be subject to confirmation by a majority of Congress. By this means, it is virtually assured that the Vice President will continue to be a man in whom the President has full confidence and a man of the same political party and political philosophy. At the same time, congressional confirmation gives the people of the United States a voice through their elected representatives.

To those who argue against congressional confirmation, I would point out that we are talking about the choice of a man who may himself become President—a man normally elected by the people. The people must retain a margin of control in this choice, and congressional confirmation provides this.

To those who argue that Senate confirmation alone would be adequate, I must point out that we are dealing with an elective office, not an appointed one as in the case of a Cabinet officer. Both Houses should have a voice.

To those who propose giving the choice to the electoral college, I would point out that this body, except in a presidential election year, is not subject to the direct will of the people. Nor is it constituted to perform the complete function of nominating and electing a Vice President.

To those who argue that this proposal contradicts existing constitutional provisions, I would point out that the order of succession set out by the Constitution is not changed. All that this proposal contemplates is the continuance of the Vice Presidency. In the event of vacancies in both the Presidency and Vice Presidency, the Speaker of the House remains the next in line to succeed.

I believe I am correct in that respect. If I am not, I invite the junior Senator from Indiana to correct me. In the event that vacancies in both the office of the Presidency and the office of the Vice Presidency should occur in the case of a common disaster, as has been suggested today, to both the President and the Vice President—as could have happened at Dallas, God forbid—the Speaker of the House would be next in the line of succession.

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

Mr. BIBLE. I am happy to yield.

Mr. BAYH. The Senator is absolutely correct. The joint resolution relates only to replacement in vacancies and filling vacancies which might exist in the office of Vice President. As we discussed earlier, the original measure dealt with that question plus the entire means of succession. However, for reasons that we discussed, that part was removed from the joint resolution, and it deals now only with the replacement of a Vice President. Then, in the case of a dual tragedy—and I share the Senator's hope that may never happen—if it should happen, we would revert to the provisions of the law which was enacted in 1947, which would place in succession first the Speaker of the House, then the President pro tempore, and then the heads of the various executive agencies.

Mr. BIBLE. I am glad to have my belief in that respect confirmed. I realize that this is an area that could be argued pro and con, and I believe that the end product proposed is a good one.

The system proposed in this resolution is, I believe, the best possible method for filling the vacancy and keeping the identity of the office of Vice President.

The second area to which the joint resolution relates is, it seems to me, a controversial and important one. If anything, it may be even more so than the first area. That is the area that deals with the disability problem. In that respect, I believe the committee has come forth with an excellent end product.

I feel the proposed solution is adequate and practical. It cannot meet every conceivable situation, but it comes the closest to this ideal of any I have studied.

The proposed constitutional amendment gives the President authority to recognize his own disability first and to provide for orderly transfer of his powers to the Vice President. There is little serious objection to this proposal.

What to do in the event a President is unable or unwilling to recognize his disability is an infinitely more difficult question to answer. Under the proposed amendment, the Vice President in such a circumstance may assume the powers of the Presidency without the President's agreement if a majority of the Cabinet supports such a move. To maintain our historic separation of powers, the legislative branch of our Government—Congress—would remain out of the picture unless there were a contest between the President and Vice President over the President's resumption of his powers. A simple statement from the President that his disability had passed would be enough to restore his official powers. If the Vice President, with the backing of a majority of the Cabinet should contest the President's statement, a two-thirds vote in each House of Congress would be required to decide that the President, is, indeed, still unable to perform his duties adequately. Congress, in other words, could not initiate an invasion of Executive power, but Congress could exercise a veto in the event of a contest. In addition, Congress would have the power to designate a body other than the Cabinet to concur in Presidential disability.

It seems to me that the enactment of the joint resolution into a constitutional amendment would enable us to maintain our traditional separation of executive and legislative powers.

Members of the executive branch—men of the President's own choosing—would retain control in an executive crisis. Yet the representatives of the people in Congress—the legislative branch—would not be barred completely from the picture in event of controversy. By placing this system in the Constitution, we also avoid the cumbersome and even dangerous possibility that the question of who shall exercise Presidential powers will be tied up in the third branch of Government—the judicial branch. A simple act of law would be easily susceptible to court action. This is not the case with a constitutional amendment.

The method in the proposed constitutional amendment does not completely protect our Government from the remote possibility that a corrupt Vice President and a corrupt Cabinet could unscrupulously wrest away the President's powers. But we are talking about our highest level of Government. We can safely assume, I think, that responsible and reasonable men will be involved. We must rely, as always, on the people. We must continue to place our confidence in the people's ability to elect a good and wise President and Vice President. We must rely on the men they select to exercise reasonable judgment in the selection of a Cabinet. We must rely on this body, the Senate, to exercise reasonable judgment in confirming Cabinet appointments.

We must, in short, rely on our basic system to justify the provisions of this proposed amendment. This we can and must do.

I am proud to have been closely associated with the problem of Presidential succession and the problem of disability; and as a cosponsor of the joint resolution, I believe there are many varying solutions which the Senator from Indiana has heard, and which the other members of his subcommittee, and the other members of the full Committee on the Judiciary have heard. I know that no single proposal will ever satisfy everyone. But I believe we have at last confronted and met the problem. I believe at last we have presented the most workable and acceptable solution. It seems to me that now we must act without further delay in view of the possible consequences of inaction. We have no other responsible choice.

I urge full approval of the joint resolution at the present session of the Congress without further delay.

I close on a note of strong commendation for the excellent work that has been done by the Senator from Indiana.

Mr. BAYH. I thank the distinguished Senator from Nevada for his interest over a period of months, and also for his very articulate statement expressing his support for the proposal.

Mr. President, I believe it is appropriate that I should reply to my friend the Senator from Oklahoma [Mr. MONRONEY]. The points which he made here and at the hearings were good points and were well taken.

We appreciate very much the help of the Senator from Oklahoma in our deliberations. He came before us, taking of his time to give us the benefit of his thoughts. As I said earlier, he has been one of the leading proponents for reform and tidying up of our Constitution and statutes so far as governmental operations are concerned. So although it might appear that the suggestions which he made fell on fallow ground, they did not. They did not fall on deaf ears. We considered them. Since the Senator brought them out here, certainly an explanation should be given as to why one particular subject proposed by the Senator was not contained in the resolution.

First, I reiterate what the Senator from North Carolina said in discussing why we did not retain in the joint resolution the provision pertaining to succession. It seemed to us, upon looking at the proposal, that we would have to meet three criteria.

First, in a time of crisis and national tragedy, such as either disability or death of a President or Vice President, we should have a proposal of continuing Executive authority which would win the confidence of the people, or we might flirt with turmoil and anarchy.

Second, it had to be an answer that would accomplish the purpose—perhaps not one that I or the Senator from Nevada or the Senator from North Carolina or the Senator from Massachusetts would agree would cover every conceivable contingency, but we had to agree on something that would do the job.

Third, from a practical standpoint, it had to be one that could pass, because even if we could find a perfect solution, unless we could get the votes of two-thirds of our colleagues and three-fourths of the State legislatures to support it, it would do no good. It would put us in the same place we have been for the past several decades.

We felt, in the last category, that the inclusion of additional factors would fail to meet this criterion. There seemed to be increasing evidence that we could not, if we made a proposed constitutional amendment longer and longer and longer, get sufficient votes to pass it.

Another point—which is a good point—on which there has been a great deal of discussion is why we did not permit the nomination and subsequent election of two Vice Presidents. The Senator could point out, as he told me in private discussion on this matter—and rightly so—that big corporations have perhaps as many as 35 vice presidents. Why cannot the United States of America have at least two Vice Presidents? That is a good point. I am glad it has been brought out. I should like to explain the position of the committee on it.

In our constitutional system, under which there are three separate divisions of power—the executive, the legislative, and the judicial—there is only one source of Executive power; namely, the President of the United States. The Constitution has provided for a slight diminishing of that power by the creation of the office of Vice President, but it has been only recently that any power has been given to the office of Vice President. I

personally regard it as a desirable tendency to have the Vice President become a full-fledged, working member of the executive branch. I fear, however, that further divisions of power would result in a reversal of the trend of the past several years toward recognizing the Vice President as an important, significant official, and that the other proposal would result in a reversal of that trend.

Second, and of equal importance, is the fact that when there is a sole repository of Executive power, to the extent that secondary sources of authority are established, the chances of confusion and turmoil are created. This factor was, frankly, not in my mind until we heard discussions from some of the scholars who had studied the history of Executive power in this country.

Oftentimes the President and Vice President may not agree on issues confronting them. There is a school of thought that if there were a second Vice President, not only would there be involved the possibility of further disagreement between that second person and the President, but there would be the possibility of a vying between the two Vice Presidents for a favored position with the President.

I agree that Congress could set out constitutionally the powers and functions of each, who should be the first, and who should be the second Vice President. Nevertheless, human beings being what they are, it seemed to me and to the committee and to others who appeared before us—and I tried to explore this question as objectively as I could—that a second Vice President would result in the possibility of dissension while the President was living.

Another factor which led to our determination not to follow this course was that, traditionally, we have tried to reconcile various sections of the country, various philosophic points of view, and various minority groups, with appointments of certain vice-presidential nominees to the ticket. In the last two elections we have tended to do away with that idea, and tried to get the best men we could for the position. If there were another Vice President, there would be an effort to have the East or the Midwest or the Far West represented, or to have a vice-presidential nominee with a certain philosophic or religious tendency selected to round out the ticket, while the objective should be to get the best possible man to serve in that post.

As the Senator has pointed out, the recent choice was the decision of one man.

The Senator pointed out that if the President makes the nomination, it is not too different from making it in the convention. The Senator pointed out that the man to be appointed by the President and subsequently chosen by the Congress would not get the stamp of approval of the entire electorate. I would prefer that he did. I think the other matters I mentioned, in view of the conflicts involved, override this latter factor. If Congress is to choose the man nominated, it will certainly consider this serious responsibility and act as the voice of the people. What better opportunity is there for the people to express their wishes than through those who serve in Congress?

One suggestion made was that the electoral college be convened, since it is already part of the constitutional system, and that the college meet to determine who the President and Vice President shall be. I for one feel that that would be a terrible solution. It would fall far short of having the confidence of the people. It is surprising, but nevertheless a fact, that very few Americans know any one member of the electoral college. To have the electoral college choose, out of the clear sky, someone who had not been on the ticket, who had not made speeches over the country, would not tend to gain the confidence of the people.

Mr. MONRONEY. I agree that the electoral college is archaic, and that we need a constitutional amendment to modernize the selection of the President and Vice President. This is an urgent need that Congress has tried to meet by the Lodge-Gossett proposed constitutional amendment, and others. I quite agree that the electoral college system would not be the proper vehicle to decide the question of succession to the Presidency in the event it had to be done. I would not go along with that suggestion.

I am afraid, however, that the major reason for abandoning the idea of having the line of succession go through the speakership was the fact that the majority of Congress might be of a rival party and thereupon bring about further confusion at a time when the country was in a state of anxiety. I believe that purpose is carried forward in section 2 by requiring the confirmation by a majority vote of both Houses of Congress of the President's recommendation of the man who will become Vice President and his successor to the Presidency in the event of his death.

Mr. BAYH. This is very definitely a possibility. It is one we examined over and over again, as the Senator from North Carolina will confirm. This is something I wondered about in my own mind. As the original sponsor of this measure, I gave that matter considerable thought. It made sense, particularly at a time of crisis. Let us bring our minds back to last November, December, and January. The most impolitic thing would have been for someone in public life to play politics to be a successor to Lyndon Johnson as Vice President. At that time, with the death of the national leader fresh in the minds of the people, the last thing a Member of Congress would do would be to play politics; there would be a recognition of the right of the people to make a choice and have a voice.

Mr. MONRONEY. I see a difference between the automatic succession of a Speaker who may be of a rival political party and the rejection of the presidential nomination of a Vice President to become his successor. But we are dealing with the problem that the Constitution has not been changed in this area since it was first written, except about 1800, when there was added a requirement for the electoral college to choose both a President and Vice President rather than take the No. 2 man in the electoral college selection and make him automatically the Vice President—thus giving the President a competitor for the Presidency. It did away with that which proved to be a failure in the few years it was practiced, and had the electoral college select both the President and Vice President.

We do not know what the situation will be 20, 30, or 40 years from now, or what great rivalry might exist between the two parties. I can think of nothing worse, looking into the future, and the dangers of that situation, than to have a newly succeeding Vice President to the Presidency send to Congress as his first act the name of the man who he believes is competent to be his successor, and having it tied up in a long confirmation fight, with the ultimate possibility of rejection; and with a rival party in the majority in both Houses, or even rivalry in the majority party, over the choice of the nominee, with perhaps leading Members in either House being anxious to come in the line of authority, and one or the other Houses refusing to confirm.

Mr. BAYH. Mr. President, I agree with the Senator from Oklahoma that it is possible to take this measure and some of the 13 or so other suggestions that were before our committee, as the Senator from North Carolina knows, and that in each one we could find, if all the circumstances happened at just the right time, a loophole big enough through which to drive a truck.

However, we must try to place all this in the context of dealing with reasonable men. Otherwise, we shall not find a solution to this complex problem.

Mr. MONRONEY. Mr. President, if the two Houses were unable to arrive at a solution as to the confirmation, the office of Vice President would not be filled. In that case would there be the line of succession which now exists with respect to the Speaker of the House and then the President pro tempore? Would that succession apply?

Mr. BAYH. It would.

Mr. MONRONEY. Therefore, in any eventuality—and I mention all this only as a possible contingency down the road—there would still be a legal successor to the Presidency in the event that Congress was not able to comply by a majority vote and thereby confirm the nomination of the President for his successor.

Mr. BAYH. Yes. As I mentioned earlier, the Senator from Oklahoma and I share concern over the fact that the present succession law does not appear to be the best way to provide for a line of succession, because of the burdens on the present Speaker of the House, not because of the individual who is involved. I hope some steps can be taken on this point in the future. I hope the Senator from Oklahoma will assist in this effort.

What we are trying to do is solve this particular problem by establishing a way in which a man will be in training, so to speak, as Vice President, who is one heartbeat away from the Presidency, and who is becoming more and more familiar with his duties; whereas today there is a void.

Mr. MONRONEY. I can see the point of having a designee, in one way or another, formalized and selected to occupy the office of the Vice-Presidency. With that portion of the joint resolution in section 2, I agree. It is regrettable that it was not found possible, in the numerous compromises that the committee had to make, to reach agreement on something which would include having two Vice Presidents selected at the same time that the President is selected, and thereby at least double our assurance of a constitutionally elected Chief Executive serving out the full 4 years under the same party that had elected the President.

There is no easy way, I am sure; and the committee has explored these situations and questions. I shall vote for the joint resolution.

I compliment again the diligence of the chairman and the committee on bringing out these results. I hope ways will be found to pass this proposal in this Congress, and to give the various States the opportunity to ratify or reject the amendment.

The second half of the amendment is vitally necessary, more so each day as we go along with the hazards of a vacancy in the Presidency and the chance of accidents that could incapacitate him from carrying forward the duties of his office, aircraft being what they are—reliable, but still have an element of uncertainty—and traffic accidents, to say nothing of a vicious attack on the President's life.

I compliment the Senator on moving this proposed legislation forward. I hope that we shall be able in due time to submit this proposal for ratification to the 50 States.

I thank the distinguished Senator for his great courtesy in allowing me to discuss these matters with him and allowing me to express the fears I have, although I recognize that in the light of conditions it probably is impossible to obtain what I had advocated.

Mr. BAYH. I appreciate the willingness to cooperate of the Senator from Oklahoma, and also his thoughtfulness in helping to make the record clear and in helping to explain the problems involved.

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

Mr. BAYH. I yield.

Mr. ERVIN. I wish to make one or two further observations on this point. The Senator from Oklahoma put his finger on why the joint resolution has some provisions in it, and why it does not have other provisions in it, when he referred to the numerous compromises that had to be made in order to get any kind of resolution to the Senate floor. I believe my observation will be illustrative of the point the Senator from Oklahoma is making. There was a strong school, headed largely by former President Eisenhower, which felt that the Vice President ought to be nominated by the President in order to assure continuity of administration.

There was another group, which included me, and which believed that the representatives of the people in Congress should have a part in filling any vacancy in the Vice-Presidency.

Another group, as the Senator from Indiana mentioned a moment ago, thought that we ought to reconvene the electoral college and make it fill the vacancy, since its members had been elected by the people.

Another group headed by the Senator from Oklahoma thought the problem could be solved most satisfactorily by electing two Vice Presidents, a first Vice President and a second Vice President each quadrennial election.

Still another group maintained that there should be a special election by the people to fill any vacancy arising in the office of Vice President.

Fortunately, the subcommittee did not follow the pattern which has been followed by those who advocated changes in the electoral college. I venture to assert that probably 90 percent of the Members of Congress believe there should be some reformation of the electoral college. However, a substantial part of that 90 percent prefer the Lodge-Gossett amendment process by which the electoral vote of each State would be prorated among presidential candidates on the basis of the entire popular vote of the State.

An equally determined part of the 90 percent favoring reform advocate the Coudert amendment, which would prorate two of the electoral votes of each State among the presidential candidates according to their statewide vote and prorate all the other electoral votes of each State among the presidential candidates according to the votes they received in each of the congressional districts of the State. A third part of the 90 percent favor the direct election of the President. The three groups have been unable to reconcile their differences.

I believe that one of the greatest accomplishments for which the Senator from Indiana and the other members of the subcommittee deserve credit is the fact that they did not insist upon their respective views as being the only permissible ones, but, on the contrary, laid aside all pride of individual authorship and the human quality which one's friends call firmness and one's enemies call obstinacy, and sought a broad area of agreement. As a result, they have brought forth a most workable joint resolution which will take care of two defects in the Constitution, by providing a practical method for filling vacancies in the office of Vice President and a sound method for determining when presidential inability exists.

I thank the Senator from Indiana again for his fine work. I also wish to tell the Senator from Oklahoma that I am much impressed by the wisdom of his observation, as indeed I always am when he speaks.

Mr. MONRONEY. I thank the Senator from North Carolina.

Mr. BAYH. Again, I thank the Senator from North Carolina for his thoughtfulness and his participation in committee. I also wish to renew my thanks to the Senator from Oklahoma for his participation.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendments. Under the rule, they will be considered separately.

Mr. BAYH. Mr. President, I desire to make one or two closing remarks at this time; then I shall yield the floor, inasmuch as the Senator from New York [Mr. JAVITS], who has made a special flight from New York on the shuttle, desires to be heard on this subject.

The ACTING PRESIDENT pro tempore. Before the Senator from Indiana makes his closing remarks, would he be agreeable to having the committee amendments agreed to?

Mr. BAYH. Certainly.

The ACTING PRESIDENT pro tempore. Without objection, the committee amendments are agreed to en bloc, and the bill will be considered as original text for the purpose of further amendment.

The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, I shall yield the floor at this time and make my closing remarks at the conclusion of the remarks that will be made by the Senator from Idaho and the Senator from New York.

Mr. CHURCH. Mr. President, first I commend the distinguished Senator from Indiana and other members of the committee for the excellent work that has been done on this most important subject. As the Senator from Indiana knows, I have some reservations with respect to the proposal finally reported by the committee. Specifically, I have felt that it would be preferable if the President were to nominate a panel of at least two, but not more than five, candidates, so that the role of Congress might be a more significant one, in the final selection of the new Vice President. I have set forth my personal views on this problem in an article entitled "The President's Successor," which was published in the Progressive magazine for May 1964. I ask unanimous consent that the article be printed at this point in the RECORD.

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

THE PRESIDENT'S SUCCESSOR

(By Senator FRANK CHURCH)

When President Johnson assumed his new duties on that day of tragedy last November, it was the 16th time in American history that the country was left without a Vice President. The fact that no President has died while the Vice-Presidency was vacant, each having thus far lived out his term, would seem to vindicate Bismarck's famous observation that "God looks after fools, drunkards, and the United States of America."

Indeed, we have been lucky. During 40 of the Nation's 195 years, the Vice-Presidency has been vacant. Nevertheless, the country has not yet had to test the highly delicate operation of succession beyond the Vice-Presidency, the laws concerning which tend to reflect short-term and often fickle considerations on Capitol Hill.

Never before has the fundamental problem been faced—how to fill the Vice-Presidency itself whenever the office becomes vacant between elections. The Constitution is silent on this. The framers did not go

beyond providing that, "In Case of the Removal of the President from Office, or at his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President".

They then empower the Congress to provide by law, "* * * for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly until the Disability be removed or a President shall be elected."

That is all.

Now, once again, the question of statutory succession is beclouded by controversy. Some advocate a return to the former practice of placing the Cabinet in line, and others defend the present law under which the Speaker of the House of Representatives, followed by the President pro tempore of the Senate, would precede members of the Cabinet in the order of succession. Since the death of President Kennedy, it has become obvious that more is needed than simply another statute to determine succession beyond the Vice-Presidency.

In response to the present interregnum, some 12 bills have been introduced in the Senate and another dozen in the House to amend the Constitution. A good number of the proposals extend to such divergent problems as succession beyond the Vice-Presidency, or in the event of Presidential disability. However, all reflect two emerging realities.

First, it is now recognized that a serious effort is called for to guarantee that the momentum built up to find a solution not be dissipated. Lawmakers are aware that a start must be made in this session of Congress so that after the November election, genuine progress may be made. After all, repairs to our constitutional roof are rarely undertaken when the Republic enjoys unobstructed sunshine; it is likely that they will be made, if at all, at a time like the present, when recent tragedy has dramatized the need.

Second, it is recognized that the gap in the Constitution—which fails to provide for the filling of a vacant Vice-Presidency—can be remedied only through a constitutional amendment. Why tamper with the Constitution? Because it is necessary to fashion a formula based not on short-term political considerations, but on long-term governmental principles. The country must get away from its historic tendency to change the succession system on the basis of contemporary personalities or transient political situations.

For example, the order of succession contained in the 1792 Succession Act—passed by the Second Congress with little discussion of possible constitutional objections—was influenced by the personal animosity that existed between Alexander Hamilton and Thomas Jefferson. The act provided that the President pro tempore and the Speaker of the House of Representatives should follow the Vice President in succession to the Presidency. Legislative officers were named ahead of the Secretary of State for one reason. Both President Washington and Hamilton, dominant figure of the Federalist Party, were hostile to Jefferson, who was Secretary of State.

In 1886, after the death of Grover Cleveland's Vice President, Thomas A. Hendricks, Congress passed a new statute. This act provided that, after the Vice President, succession of the Presidency should vest in the Secretary of State, followed by other members of the Cabinet. For 60 years this law went unchallenged, largely because the Nation's Secretaries of State were men of sufficient stature. Yet, in 1945, the law again came under attack, partly because of concern over Secretary of State Edward R. Stettinius, Jr., who, according to his critics, "was not schooled in politics."

But President Truman, in urging the 1886 law be changed, was moved by other considerations as well. He insisted that it was undemocratic for a Vice President who had succeeded to the Presidency to be able to appoint the man who could become his own successor. He contended that the person next in succession, after the Vice President, should be an elected official, and observed that "the Speaker is the official in the Federal Government whose selection, next to that of the President and Vice President, can be most accurately said to stem from the people themselves."

President Truman, of course, had in mind Speaker Sam Rayburn, Texas Democrat. However, it was not until 2 years later, after Republicans had won control of both Houses in the 1946 midterm elections, that Mr. Truman's proposal was acted upon. The 1947 Succession Act made two Republicans, JOSEPH W. MARTIN, Speaker of the House, and Arthur S. Vandenberg, President pro tempore of the Senate, next in line. Had Mr. Truman died or fallen victim to assassination that year, the Republicans would have taken over the White House without a vote of the people.

Today—lacking a Vice President—the country once again is in a delicate position. To provide a remedy, several different suggestions have been made. The most publicized proposal is that of Senator BIRCH BAYH, the Indiana Democrat who is chairman of the Judiciary Subcommittee now studying the problem. BAYH's plan, which is supported by the American Bar Association, would have a President name a new Vice President, subject to congressional confirmation. An American Bar Association report points out, correctly I think, that "It is desirable that the President and Vice President enjoy harmonious relations and mutual confidence." The question I would raise is whether mere congressional ratification is an adequate safeguard against the danger President Truman alluded to in 1945—the concentration of too much power in the President's hands, by permitting him, in effect, to choose his own potential successor.

Former Vice President Richard Nixon wants to upgrade the electoral college and have it choose a new Vice President in the event of a vacancy. While Mr. Nixon acknowledges that the college at present is a constitutional anachronism, he thinks it could be made into the proper instrument for selecting a new Vice President. His reasoning is that the electoral college, unlike the Congress, always reflects the will of the people as of the last presidential election. First, however, he would want more responsible people to serve on the college.

Senator KENNETH KEATING, New York Republican, suggests that there be two Vice Presidents—an Executive Vice President to be followed in line by a Legislative Vice President. Senator KEATING argues that this would insure, first, that potential successors to the Presidency were men of the same party, and secondly, that the successors would be acceptable to the President.

These proposals, while differing in method, all reach to the heart of our constitutional deficiency—the need to establish a procedure to insure that the office of the Vice President, when vacated for any reason, will be promptly filled. This would render moot most of the argument about statutory succession beyond the Vice-Presidency. For this need would arise only in the unlikely event, against which careful precautions are taken, that both the President and Vice President should perish at the same time.

To be sure, this leaves aside the problem of what to do in cases of Presidential disability. But the question of devising procedures to cover all contingencies involving disability is a very different one from that of filling vacancies in the office of Vice President. Indeed, tying the two together most likely will make harder the solution of either. After careful study, lawmakers may decide the problem of disability also requires constitutional revision. But I think the question of disability should be divorced from the question of replacing a Vice President. The simpler an amendment dealing with the latter problem can be made, the better its chances for ratification by the legislatures of three-quarters of the States.

As regards the choosing of a new Vice President, I have made the following proposal:

Let the President, with the advice and consent of the Senate, nominate not less than two, nor more than five, persons qualified for the office. Then, let the House proceed at once, by majority vote, to choose one of these nominees to be Vice President.

The best guiding principle, it seems to me, is to make maximum use of the provisions already in the Constitution and of the customs which have developed under them. It is in this context that the other proposals seem to me to be wanting. For example, as I have already indicated, the American Bar Association's proposal would give to the President too much power—the power to choose his own potential successor. While it is true that the President, or candidate for President, often selects his running mate at nominating conventions, the two remain candidates who must then be elected by the people. The American Bar Association plan does not bring into play any equivalent democratic procedure. If adopted, this plan would make it most difficult if not impossible for Congress—with only one choice—to turn down the President. The confirmation would become pure formality, suggestive of the role often assigned to sham parliaments in authoritarian countries.

Selection of a new Vice President by the electoral college seems plausible only at first glance. It is not really in accord with our present political practice. The members of the electoral college are not in fact chosen to be representatives of the people, or for the wisdom needed to make so momentous a judgment. They are chosen to perform a ministerial function, limited to the formality of casting their votes for a previously selected party candidate.

Senator KEATING's suggested solution also involves a number of difficulties, not the least of which is that it misses the real need, which is to fill one vacated seat, not to split it in two.

Let me repeat. I believe the best approach to selecting an interim Vice President should conform as closely as possible to existing constitutional patterns. A practicable analogy, it seems to me, is the procedure we follow for choosing the highest nonelective offices of the Government, such as Cabinet ministers, Ambassadors, and Justices. In such cases, the President nominates, and "by and with the advice and consent of the Senate," appoints. I would utilize the same procedure.

My proposal provides the President, the Senate, and the House of Representatives roles in the selection for which each is best suited. The President would exercise his responsibility in such a way as to insure that the new Vice President would be acceptable to him, reflecting the actuality of our present nominating procedures at party conventions, and guaranteeing that continuity of party and policy would be maintained.

The plan has the added strength of preserving for the Senate its separate integrity. The Senate would scrutinize the qualifications of each nominee, free from the pressures to which a President may sometimes be subjected, to insure that each is fully qualified for the second highest office in the land. The House, most representative of the people, would then make the final choice of the candidate it believes to be best endowed with

the qualities of leadership and popularity without which no President can realize the full potential of the office.

There are, of course, objections that can be made to the plan I have offered. The soundest criticism, I think, is that the three-step election process, given the present Senate rules, could prove a source of undue delay. After sifting all the evidence, the Senate Subcommittee on Constitutional Amendments might be well advised to strengthen the American Bar Association's plan by upgrading the congressional role. Such a modified plan might well require the President to nominate not one but a slate of candidates, from which a joint session of the Congress would then select the Vice President.

The election of a new Vice President by Congress has gained the approval of such newspapers as the New York Times, and such scholars as Paul Freund, professor of law at Harvard. Freund recently told Senator BAYH's subcommittee, "of the several methods which have been suggested for selection of an interim Vice President, the most satisfactory, in my judgment, would be election by Congress with the approval of the President."

He added, "This would be done by the President's submission of one or more nominees to the Conrgess. The Vice-Presidency should have a popular base and at the same time be in harmony with the Presidency. These objectives can best be achieved by associating the Congress and the President in the selection, with the opportunity for informal consultation to be expected in such a process."

Other objections have been raised to those amendments so far discussed. Some, for example, argue that Congress, with its somewhat more conservative political base, is not the proper body to choose a Vice President. This view overlooks the fact that Congress changes, too. The present coloration of Congress is a transient one. Besides, as important as it is to fill the Vice-Presidency in an emergency, it is equally important to do so in a genuinely democratic manner.

Yet another group has argued that, in the event of a vacancy in the Vice-Presidency, a special election should be held. However, the difficulties in the way of holding a special election seem formidable. At the very least, it would involve delay and a radical departure from our historic system of quadrennial presidential elections. Moreover, how the candidates could be chosen for such an election, whether it would or could be confined to the party in power, and what confusion might result if it were not, all combine to suggest the advisability of allowing Congress to play the interim electoral role.

We can no longer afford to laugh off the Vice President's office, as John Nance Garner once did when he said it wasn't worth "a pitcher of warm spit." Clearly, an amendment to the Constitution is called for, because, as the American Bar Association has recognized, "it is highly desirable that the Office of Vice President be filled at all times." The challenge is to choose a method which will stand the test of the ages.

Mr. CHURCH. Mr. President, despite the difference between the position I have taken and the conclusion reached by the committee, I nevertheless feel that the committee proposal is highly meritorious, and that the need to remedy the deficiency that now exists in the Constitution is so great that it is incumbent upon Congress to move forward in the best way that is open to it. Therefore, I shall vote for the joint resolution, in the hope that it may stimulate interest in this matter, and in the expectation that early next year Congress can move ahead toward submitting to the States an amendment to the Constitution, thus rectifying this serious weakness.

The Senator from Indiana and other members of his subcommittee deserve the greatest credit for the manner in which they have taken hold of this problem, for the care with which they have studied it, and for the proposal they have brought to the floor. As a result it is entirely likely that next year we shall find it possible to amend the Constitution and thus make certain that in the years ahead there will always be a Vice President ready to step into the Presidency, and that this particular deficiency in the Constitution will be properly rectified.

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

Mr. CHURCH. I thank the Senator from Indiana for yielding to me. I am happy to yield to him.

Mr. BAYH. I reemphasize to the Senator from Idaho what I said earlier. As he knows, this is the first time in the history of the Nation that Congress has moved this far. We have reached the point where we are actually preparing to vote on measures to deal with these two perplexing problems. This progress could not have been achieved had it not been for the willingness of a few Members of this body, including the distinguished Senator from Idaho [Mr. CHURCH], to give and take a bit and to recognize that only if we were willing to give and take a bit and concede the need for some action could we be where we are.

I say to the Senator from Idaho that I particularly enjoyed reading his article.

He is a precise thinker. He discussed well the problems confronting us. He did not discuss them in a vein of argument but in a vein of explanation. Because of the amount of time and thought he has expended on this subject, the Senator from Idaho deserves strong commendation.

The Senator's proposal to have the President submit to Congress a panel of from two to five names, and thus give Congress a wider choice, has considerable merit in the minds of some Members of Congress, including my own. However, it was our thinking that the committee's proposal would lead to a more peaceful transition, a more peaceful choice, if the President were not put on the spot to select, as he would probably have to do, from among many names in order to choose up to five that he would submit to Congress. Under the committee's proposal, he would have to choose only one. This choice would become known. At a time of crisis, when a death or illness had occurred, turmoil might otherwise result. That was our reasoning. But the proposal of the Senator from Idaho has much merit. I thank him for his willingness to help.

Mr. CHURCH. I appreciate the remarks of the Senator from Indiana and compliment him again upon the work he has done.

Mr. JAVITS. Mr. President, first, I express gratitude to the Senator from Indiana for his typical courtesy in bearing with me while I came down from New York, so that I might participate in this debate.

I am one of the many cosponsors of the joint resolution that is now before the Senate. This joint resolution followed the introduction by me of Senate Joint Resolution 138, in which I sought the adoption of a somewhat different plan, calling for the election by Congress in joint session of a Vice President, if the office were vacant, from a panel consisting of Members of Congress, and the President's Cabinet, with the power of veto granted to the President. I thought that that was a system that would bring the election closest to a popular election, which, after all, would be the ideal.

But I am so much persuaded that action in this field is critically essential that when the plan of the Senator from Indiana [Mr. BAYH], which is now before the Senate, was agreed upon by the Committee on the Judiciary, I hastened to join him in it, because I felt that the need for unified action was so great, particularly since the joint resolution would require a two-thirds vote, that none of us should be a slave to his own ideas.

This joint resolution comes before the Senate at a uniquely appropriate time. I do not know whether this fact was mentioned before or not, but I believe it should be mentioned. I hope that action upon the joint resolution will be prompt, and that attention will be focused upon it in the campaign for the election of a President and Vice President. The country will be voting on November 3 not only for a President, but for a Vice President as well. The personality, quality, expression of intent, and persuasiveness with which the vice-presidential candidates make the American people feel that they can be relied upon if they become President ranks high, to my mind, in importance with the decision which the American people will make on the Presidency.

(At this point Mr. METCALF took the chair as Acting President pro tempore.)

Mr. JAVITS. Mr. President, one thing both history and the immediate past have taught us is that the American people have not one but two popularly elected national leaders in Government; namely, the President and the Vice President of the United States. Whatever may be the fate of the ideas for relieving the Presidency of so much of its back-breaking toil, let alone its responsibility, one thing is sure: The position of the Vice President will be built up. For example, in recent decades, the Vice President has become an important member of the National Security Council. It is now traditional for the Vice President to be Chairman of the President's Committee on Equal Opportunity and of the National Aeronautics and Space Council. There are many other duties and responsibilities of that character to which the Vice President may be delegated. The Vice President has also become almost firmly fixed in tradition as the President's traveling ambassador all over the world. Both Vice President Nixon and Vice President Johnson performed that role most admirably.

Those are a few indicators of what awaits the Vice President as history has

moved on and has, relatively frequently, called upon the Vice President to take the President's place—happily for us, not always under such terribly tragic circumstances as on last November 22.

Therefore, this resolution is extremely welcome. I hope the fact that it is being considered in juxtaposition to almost the day of the release of the historic Warren Commission Report, will further emphasize to the American people how critically important we in the Congress consider the office of the Vice President to be. The people must be vigilant in respect to their choice of a presidential ticket, which includes the vice-presidential candidate whom the people are willing to see as President of the United States, and must base their decision at least in part upon that assumption.

The joint resolution also provides for the regularization of the practice of our Government in respect to the disability of the President. The event so markedly illustrated in the close of the administration of President Woodrow Wilson, and also in connection with the administration of President Garfield are both critical parts of this particular resolution and constitutional amendment.

The plan which the committee has adopted, considering American practice and the self-discipline which a democratic form of government imposes upon us, is an admirable plan and well designed to deal with the responsibility which faces the country in the event of disability of the President, and especially in the event of disability which the President himself is unable to declare because of his own physical condition.

A word must be said, too, at this time, as I strongly commend the constitutional amendment to the Senate, concerning the present Speaker of the House of Representatives, who is next in order of succession for the Presidency under the law which is in effect now. I believe that Speaker McCormack has handled this issue in every way with the most impeccable taste and the utmost graciousness, with wisdom and patriotism. As a former Representative myself, who served in the House when Speaker McCormack was majority leader I consider it a high privilege and honor, to pay tribute to the fine position which the Speaker of the House of Representatives has taken during this period when amendments of this kind and other plans have been debated. I have the highest regard for him. I consider him to be so much a patriot in terms of our Nation's welfare that I believe he would be the first to seek to bring about some resolution in a definitive way, of these problems which have remained open ended.

I hope that although the Senate is not too busily attended today, and this debate will have been consummated in a relatively short period of time, people will not overlook the portentous decision which we shall make for the future of American Government. After the experience which we have had with dictators in the world, no one can say that anything is impossible anywhere—including the United States. Hence, the integrity with which these organs of government are developed, the awful power of the President of the United States which could, if mischievously exercised, make over the face of the Nation and seriously jeopardize its freedoms in a very short period of time, make it vital that every American give the most careful and judicious scrutiny to our handiwork. I am satisfied that it has been well done, that this is the way to do it, but I believe that it would be a great mistake if every State legislature and every body of citizenry called upon to ratify such an amendment did not examine it most scrupulously and carefully, and with the deepest of conscience.

I believe, too, that it will have served a very important purpose by focusing our attention upon the critical importance of the choice which we make in that regard, coming so close to a great national election as does this constitutional amendment.

Again, let me express my appreciation to the Senator from Indiana for his graciousness and courtesy in receiving me as a cosponsor, and in accommodating me in respect to this debate. I would have considered it missing out on an historic opportunity to participate in the work of the Senate if I had not been able to bring my views—albeit briefly—upon this critically important constitutional amendment to the attention of the Senate.

Mr. BAYH. I should like to express my gratitude to the Senator from New York for his willingness to be one of those who were so well aware of the problem that they were willing to give some of themselves, inasmuch as they would compromise and go along with the consensus. The Senator from New York has long been interested in this subject. He introduced legislation himself, as he mentioned, and it was with a great deal of satisfaction to our committee and to the chairman of the subcommittee that we learned he was willing not only to continue his interest, but also to cosponsor this proposed legislation and to make a presentation of his views. We are grateful to him for his efforts.

Mr. JAVITS. I thank my colleague.

Mr. HART. Mr. President, I am delighted that we have reached the point where apparently we are about to act favorably on the proposed constitutional amendment.

I delay the vote for the time necessary to express my appreciation to the Senator from Indiana for the thoughtful and effective leadership he has given both as a member of the Committee on the Judiciary and as chairman of the subcommittee which for many long months gave detailed study to this question.

I have some idea of the complex makeup of this problem. Much of the mail I have received indicates that people across the country have the notion that this issue is rather an easy one to dispose of, that we can sit down for 5 minutes and figure it out. With each 5 minutes they shall find that we have to have another 5 minutes, and then days and weeks of thought and work.

As the Senator from New York has stated, I believe that what we propose in this constitutional amendment is sound and highly necessary. It is a reflection of the Senate acting at its very best. Because of this, I feel especially an obligation to delay the vote for a few minutes, to tell the Senator from Indiana that as the Senator from New York [Mr. Javits] has pointed out, this is an historic occasion, although it will not sell many newspapers. As we move down this road, the Senator from Indiana is the principal engineer. As the Senator from New York also stated, it should highlight across the country the obligation of each of us to measure the candidates offered on November 3d for the office of Vice President.

Drama and tragedy remind us that a Vice President can become President of the United States. It is essential, therefore, that the voters of America ask the question as to which of the two men proposed by the major parties, by experience, background, and performance, would perform more effectively if tragedy should require that they assume the office of President.

I believe that the timing of this action is useful. Again I thank the junior Senator from Indiana for carrying forward what a few months ago I thought would not be possible.

Mr. BAYH. I thank the Senator from Michigan.

I should like to ask that the Record show that the distinguished junior Senator from California [Mr. Salinger], is a cosponsor of the joint resolution. He, for some reason or other, was not listed as one of the cosponsors of the measure.

I thank the committee staff for all that it has done.

In closing, I should like to say that what the Senator from Michigan has said is true—this will not sell many newspapers. It is not an issue such as employment or something about which we can become thoroughly emotional. But, when one reads the proceedings of the Constitutional Convention of 1787 he finds a specific reference to this problem. John Dickerson, of Delaware, posed the question as to the extent to which we should consider disability, and who shall decide it.

One hundred and seventy-seven years later, we still have no answer. I hope that the Senate will go one step further toward finding an answer.

I now yield to the Senator from Kansas [Mr. Pearson].

Mr. PEARSON. Mr. President, the legislative measure now before us is of great importance to both the stability and tranquillity of this Nation. The electrified rapidity of events which occurred last November riveted attention to the necessity for an effective Presidential succession and disability arrangement.

Eight of the thirty-six Presidents of the United States have died in office. Eight Vice Presidents have either died or resigned. The office of the Vice President has been vacant for 37 of our country's 188 years. For 80 days of the Garfield administration and 2 years of the Wilson administration the Office of the President was occupied by a man unable to per-

form his duties because of physical disability.

In this century, Presidents McKinley and Kennedy were victims of assassination. McKinley's successor, Theodore Roosevelt, was a subject of an assassination attempt, as were Presidents Franklin Roosevelt and Harry Truman. Presidents Harding and Franklin Roosevelt died in office and were succeeded by their Vice Presidents, Coolidge and Truman. President Taft's Vice President, James Sherman, died in office. President Eisenhower suffered three serious illnesses during his administration although he was never incapacitated to the extent of Garfield and Wilson. Then on November 22, 1963, the tragic event of Dallas took place.

The Constitution provides that the Vice President shall succeed the President in case of death, resignation, or disability. Congress has the authority to provide for a line of succession after the Vice President. Three different succession laws have been enacted.

The Succession Act of 1792 stated the Vice President was to be succeeded by the President pro tempore of the Senate and then the Speaker of the House. If both these offices were vacant, the electoral college would be convened to elect a new President.

Dissatisfaction with the act of 1792 was expressed during the impeachment proceedings against President Andrew Johnson because it combined in the Senate both the power to impeach and the right to succeed a President. It was also criticized because of the possible shift in Executive continuity from one political party to another. For example, a Republican President pro tempore could become President in a Democrat administration.

The Succession Act of 1886 attempted to correct these problems. It provided for a line of succession in the Cabinet beginning with the Secretary of State. Since the President chooses his Cabinet, the Presidency would remain in one political party. A popular check on the quality of Cabinet members was maintained by Senate confirmation.

The Succession Act of 1947 provided that the Vice President be succeeded by the Speaker of the House and then the President pro tempore of the Senate. President Truman sponsored this act. He believed the 1886 act was undemocratic because the President appointed a potential successor.

The Succession Act of 1947 has been criticized for several reasons. A change of political continuity in the Executive is possible. During President Eisenhower's 8 years, for example, a Democrat was Speaker of the House.

One of the constant criticisms with respect to all succession acts is the fact that none of them have provided for the replacement of the Vice President. That office remains vacant in case of Presidential death, resignation, or disability. With the Vice President's responsibilities and obligations continuously increasing in importance, that office can hardly remain vacant.

Several corrective legislative proposals, designed to deal more capably with the problems of succession have been put forward and thoroughly considered by the Congress in the past few months.

It is my belief that, among all the various proposals offered with respect to Presidential succession, one alone stands out above all others. This proposal would provide that the Vice President, upon becoming President, shall nominate a new Vice President. Confirmation of the nomination by both the House and the Senate would be necessary.

There are several strong arguments in favor of this measure. The Vice-Presidency would not remain vacant. Succession would be in the same political party. Confirmation by the House and Senate subjects the Vice-Presidential appointment to the approval of the popularly elected Congress.

Perfect solutions, however, are hard to come by. Just criticism of this proposal does exist. The President, for example, may conceivably be given too much leeway concerning his choice. He may, if he wishes, go completely outside Government circles to choose his possible successor. In a time of crisis this might break the sense of continuity necessary to sustain national confidence in the orderly transferral of power.

With respect to this criticism, I firmly believe that reason in a time of crisis will prevail. It has in the past. There is no reason why it should not do so in the future. Continuity will be maintained.

The disability of a living President poses a problem as difficult as that of succession. Under existing constitutional provisions many questions arise. May the President, for example, lawfully proclaim his own disability? If the President would not declare his disability is there any process short of impeachment whether the Vice President may assume office? If the President were then to recover from his disability, would he be able to return to his office and duties?

President Eisenhower attempted to solve the problem by an agreement with Vice President Nixon. President Kennedy followed this proceeding. There is, however, some question of the legality of these agreements. They are generally considered an inadequate solution.

Once again many proposals have been put forward in an attempt to resolve this dilemma. Once again it appears that one such proposal stands head and shoulders above the rest. This legislative measure would provide that the President declare his own disability in writing. The Vice President would then become Acting President. If the President does not, or cannot, do so, the Vice President, with the written approval of the majority of the Cabinet, may do so and thereby assume the duties of Acting President.

The President, upon recovery, would declare his disability to be concluded and resume office. If the Vice President and the majority of the Cabinet disagree, the controversy would be submitted to the Congress. Several strong points are inherent in this proposal. It provides that disability can be quickly determined. The decision would be made by either the President or those closest to him. During disability the status of the Vice President as Acting President is clear. The President's return to office upon recovery would be easily and quickly effective.

The two proposals for Presidential succession and disability which I have just described and which I consider to be by far the best suggested are embodied in Senate Joint Resolution 139. Therefore, I wish to register my wholehearted support in favor of this measure.

Mr. BAYH. I would like to thank the Senator from Kansas for his lucid remarks on this complex subject. The Senator from Kansas is a cosponsor of Senate Joint Resolution 139 and he has worked diligently to bring this matter before the Senate.

The ACTING PRESIDENT pro tempore. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 139) was ordered to be engrossed for a third reading, and was read the third time.

Mr. MANSFIELD. Mr. President, before the Senate unanimously approves the joint resolution, I take this means of extending my thanks to the junior Senator from Indiana [Mr. BAYH] for his persistence, perspicacity, and continued interest in this particular problem.

It is something which we should have faced a long time ago. As the distinguished Senator from Michigan [Mr. HART] and the distinguished Senator from New York [Mr. JAVITS] have indicated, it is not an easy problem to solve, even though it may look easy on the surface.

I believe this is a momentous and historic occasion. I am delighted that so many of our colleagues on both sides of the aisle have joined with the distingished junior Senator from Indiana, and, under his leadership, I am delighted that the proposed joint resolution is now on the verge of passage. It is a foundation which will set well in the building which is this Republic.

Mr. BAYH. Mr. President, if I may take one final moment I would like the Senate to know that none of this could have taken place without the continuing interest and assistance of the distinguished majority leader. During the last 2 historic years, when the Congress has been faced with a multitude of pressing, often delicate, problems, and has been confronted with a number of delays, the distinguished Senator from Montana [Mr. MANSFIELD] has never lost sight of the significance of this issue now before us. Now, when all of us are anxious to complete our business, he has, nonetheless, seen to it that we take the time to debate and act on this issue. I thank the Senator. It is just one more example of his statesmanship and devotion to the good and welfare of our Nation above all other considerations.

The ACTING PRESIDENT pro tempore. The joint resolution having been read a third time, the question is, Shall it pass? [Putting the question.]

In the opinion of the Chair, two-thirds of the Senators present and voting having voted in the affirmative, Senate Joint Resolution 139 is passed.

The joint resolution is as follows:

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

"ARTICLE —

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

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

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

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

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

CONTROL OF NUCLEAR WEAPONS

Mr. DOMINICK. Mr. President, the subject of nuclear control seems to have become one of the key issues in this campaign. It is perhaps one of the most misunderstood and misinterpreted issues.

Senator GOLDWATER has suggested giving discretionary authority to the American NATO commander to use tactical nuclear weapons under certain conditions where the enemy has attacked first. The reasons given for this stand are clear. First, we are committed to defending Europe. Second, existing nuclear forces, in the opinion of NATO commanders of all nationalities, are not sufficient to defeat a determined Soviet attack. Third, the only nuclear weapons available for the defense of NATO are American weapons. The Europeans have a right to count on the use of these weapons for their defense if it should ever prove necessary. In the event of a sudden attack against NATO forces, an almost instant reply would be necessary if our own forces were not to be destroyed and effective defense made impossible. Minutes, perhaps even seconds, might be all the time available to them. If the enemy is not certain of such a response, deterrence might easily fail. If our allies cannot count for sure on such a response, the pressure on them to develop their own independent nuclear forces will surely increase. The rush of France to create its own nuclear force is indicative of this very fact. Fourth, commonsense tells us that there are conceivable circumstances under which the President might not be able to give a timely order for the employment of nuclear weapons. There could be a communications failure, or a period of confusion following the illness or death of the President.

President Johnson, in his speech in Seattle, said:

The responsibility for the control of U.S. nuclear weapons rests solely with the President, who exercises the control of their use in all foreseeable circumstances. This has been the case since 1945, under four Presidents. It will continue to be the case as long as I am President of the United States.

Senator HUMPHREY, on a recent "Meet the Press" program, implied that the NATO Commander, General Lemnitzer, had no authority to use tactical nuclear weapons under any circumstances without the express order of the President. He further implied, as have other administration spokesmen, that all tactical nuclear weapons are of the size which destroyed Hiroshima, or are larger.

Mr. President, both these statements tend to mislead the people. The President, whomever he may be, certainly has, and will continue to have, power to control nuclear weapons. Similar power over other programs has been granted by Congress to the Executive. Arrangements have been made by the President to exercise this control through his Cabinet officers, or our military personnel. In like manner, while some tactical nuclear weapons may equal the power of the nuclear bomb dropped on Hiroshima, others do not nearly approach its size and scope. We hope that the development of even smaller nuclear weapons is proceeding.

Recently, the misleading nature of these campaign statements by President Johnson and Senator HUMPHREY were pinpointed in very able articles contained in the September 25, 1964, issue of Time magazine, and the September 28, 1964, issue of the U.S. News & World Report. The Members of the Senate and the American people should congratulate these magazines for helping them to clarify this issue.

I read from the article published in Time magazine:

There is nothing in the law to prevent him [the President] from delegating to, say, a NATO commander, authority to use nuclear weapons under certain circumstances. GOLDWATER insists that the President should delegate such authority. Johnson lets on that he can't and won't. The fact is that he already does, as did Presidents Eisenhower and Kennedy before him. In 1957, the Congressional Joint Committee on Atomic Energy received written notification that plans were being developed to give NATO's Supreme Commander in Europe the right to use nuclear weapons in certain contingencies—such as the incapacity of the President or the breakdown of communications between Europe and the United States.

Those plans are now in operation. All are classified top secret, but they apply not only to NATO's commander, but to the Commander of the North American Air Defense.

I read further from the article in Time magazine concerning the political tactics that the President is using to exploit the issue:

[Johnson] gets across the notion, for instance, that GOLDWATER is irresponsible and reckless because he has suggested that NATO's Supreme Commander ought to be given some sort of contingency authority for using tactical nuclear weapons—at a time when General Lemnitzer, under a delegation of power from Johnson has just such authority.

Mr. President, both the President and the Democratic candidate for Vice President avoid the discussion of specifics by hiding behind security. Senator HUMPHREY dodged the question on "Meet the Press" when he was asked specifically whether commanders would have to wait until they got in touch with the President of the United States before they could retaliate with nuclear weapons when under attack. He pleaded ignorance by saying:

I am not privy to all the most intimate details of relationships between the generals in the field and the Commander in Chief, the President of the United States.

The U.S. News & World Report had this to say:

Even now, the understanding is widespread among NATO allies that U.S. commanders in Europe already have orders, issued in advance, to use nuclear weapons in certain emergencies with no further instructions from Washington.

Mr. President, on September 23 the Republican leadership issued a statement discussing the same subject and calling on President Johnson to answer categorically whether such authority had been delegated thus clarifying the situation. Unfortunately, we still have had no reply.

I ask unanimous consent to have printed in the RECORD the statement adopted at that joint Senate-House Republican leadership meeting.

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

STATEMENT ADOPTED AT A MEETING OF THE JOINT SENATE-HOUSE REPUBLICAN LEADERSHIP, SEPTEMBER 23, 1964

There is one issue in this campaign on which clear proof is available that either Senator GOLDWATER or President Johnson is right. That issue is the subject of nuclear control.

Senator GOLDWATER has said: "I suggest that the Supreme Commander of NATO—who is an American officer and probably always will be—have direct command over a NATO nuclear force."

President Johnson has said: "The responsibility for the control of U.S. nuclear weapons rests solely with the President, who exercises the control of their use in all foreseeable circumstances."

The most recent issue of Time magazine had this to say on the subject:

"There is nothing whatever in the law to prevent him [the President] from delegating to, say, a NATO commander, authority to use