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### Report on Presidential Inability and Vacancies in the Office of Vice President, S. Rep. No. 89-66

Committee on the Judiciary. Senate. United States.

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## PRESIDENTIAL INABILITY AND VACANCIES IN THE OFFICE OF THE VICE PRESIDENT

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FEBRUARY 10, 1965.—Ordered to be printed

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Mr. BAYH, from the Committee on the Judiciary, submitted  
the following

### REPORT

together with

### INDIVIDUAL VIEWS

[To accompany S. J. Res. 1]

The Committee on the Judiciary, to which was referred the resolution (S.J. Res. 1), proposing an amendment to the Constitution of the United States relating to succession to the Presidency and Vice-Presidency and to cases where the President is unable to discharge the powers and duties of his office, having considered the same, reports favorably thereon with amendments and recommends that the resolution as amended be agreed to.

#### AMENDMENTS

On page 2, in line 14, strike "If the President declares in writing" and insert in lieu thereof: "Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration".

On page 2, strike the entire text of section 4, and insert in lieu thereof the following:

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

On page 3, in lines 1 and 2, strike the word "Congress" and insert in lieu thereof the following:

President of the Senate and the Speaker of the House of Representatives

On page 3, in line 5, strike the word "heads" and insert in lieu thereof the following: "principal officers".

On page 3, in line 9, strike the words "will immediately" and insert in lieu thereof "shall immediately proceed to".

#### PURPOSE OF AMENDMENTS

The text of Senate Joint Resolution 1, as introduced, requires, under certain contingencies, for a written declaration to be made by the President, under section 3, and by the Vice President and principal officers of the executive departments under section 4, and by the President, the Vice President and principal officers of the executive departments under section 5. It is the intention of the committee that for the best interests of the country to be served, notice by all parties should be public notice. The committee feels that notice by transmittal to the President of the Senate and the Speaker of the House of Representatives guarantees notice to the entire country.

The committee is concerned about the possibility that such written declaration might be transmitted during a period in which Congress was not in session. In this event the committee feels that transmittal of such written declaration to the presiding officers of both Houses, the President of the Senate and the Speaker of the House of Representatives, would be sufficient transmittal under the terms of this amendment.

It is the opinion of the committee that, under the language of section 5, Congress is empowered to reconvene in special session to consider any disability question arising under this section. Furthermore, under the language of this section, the President of the Senate and the Speaker of the House of Representatives would be required to call a special session of the Congress to consider the question of presidential inability whenever the President's ability to perform the powers and duties of his office are questioned under the terms of section 5. However, nothing contained in this proposed amendment should be construed to limit the power of the President from exercising his existing constitutional authority to call for a special session of the Congress.

It is further understood by the committee that should the President of the Senate and the Speaker of the House of Representatives not be found in their offices at the time the declaration was transmitted that transmittal to the office of such presiding officers would suffice for sufficient notice under the terms of this amendment.

It is the judgment of the committee that the language "principal officers of the executive departments" more adequately conveys the intended meaning of sections 4 and 5, that only those members of the President's official Cabinet were to participate in any decision of disability referred to under these sections. This language finds precedent under article II, section 2, clause 1, of the Constitution. The pertinent language there reads as follows:

he may require the Opinion, in writing, of the principal Officer in each of the executive Departments,

In its discussion of the ramifications of section 5, the committee considered it important to add additional stress to the interpretation of two questions which might arise:

(1) Who has the powers and duties of the office of the President while the provisions of section 5 are being implemented?

(2) Under what sense of urgency is Congress required to act in carrying out provisions of this section?

Under the terms of section 3 a President who voluntarily transfers his powers and duties to the Vice President may resume these powers and duties by making a written declaration of his ability to perform the powers and duties of his office and transmitting such declaration to the President of the Senate and the Speaker of the House of Representatives. This will reduce the reluctance of the President to utilize the provisions of this section in the event he fears it would be difficult for him to regain his powers and duties once he has voluntarily relinquished them.

However, the intent of section 5 is that the Vice President is to continue to exercise the powers and duties of the office of Acting President until a determination on the President's inability is made by Congress. It is also the intention of the committee that the Congress should act swiftly in making this determination, but with sufficient opportunity to gather whatever evidence it determined necessary to make such a final determination. The language, as amended, reads as follows:

Thereupon Congress shall immediately proceed to decide the issue.

It was the opinion of the committee that the words "Thereupon", "shall", and "immediately" were sufficiently strong to indicate the necessity for prompt action.

Precedence for the use of the word "immediately" and the interpretation thereof may be found in the use of this same word, "immediately" in the 12th amendment to the Constitution. In the 12th amendment, in the event no candidate for President receives a majority of the electoral votes, the House of Representatives "shall choose immediately,". The committee was of the opinion that the same sense of urgency attendant to the use of the word "immediately" in the 12th amendment when Congress was in fact deciding who would be the President of the United States should be attendant in proceedings in which the Congress was deciding whether the President of the United States should be removed from his office because of his inability to perform the powers and duties thereof.

The committee is concerned that congressional action under the terms of section 5 should be taken under the greatest sense of urgency. However, because of the complexities involved in determining different types of disability, it is felt unwise to prescribe any specific time limitation to congressional deliberation thereupon. Indeed, the committee feels that Congress should be permitted to collect all necessary evidence and to participate in the debate needed to make a considered judgment.

The discussion of the committee made it abundantly clear that the proceedings in the Congress prescribed in section 5 would be pursued under rules prescribed, or to be prescribed, by the Congress itself.

## PURPOSE OF THE RESOLUTION AS AMENDED

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

## STATEMENT

*The constitutional provisions*

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

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

This is the language of the Constitution as it was adopted by the Constitutional Convention upon recommendation of the Committee on Style. When this portion of the Constitution was submitted to that Committee it read as follows:

In case of his (the President's) removal as aforesaid, death, absence, resignation, or inability to discharge the powers of duties of his office, the Vice President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.

The Legislature may declare by law what officer of the United States shall act as President, in case of the death, resignation, or disability of the President and Vice President; and such officer shall act accordingly, until such disability be removed, or a President shall be elected.

While the Committee on Style was given no authority to change the substance of prior determinations of the Convention, it is clear that this portion of the draft which that Committee ultimately submitted was a considerable alteration of the proposal which the Committee had received.

*The inability clause and the Tyler precedent*

The records of the Constitutional Convention do not contain any explicit interpretation of the provisions as they relate to inability. As a matter of fact, the records of the Convention contain only one apparent reference to the aspects of this clause which deal with the

question of disability. It was Mr. John Dickinson, of Delaware, who, on August 27, 1787, asked:

What is the extent of the term "disability" and who is to be the judge of it? (Farrand, "Records of the Constitutional Convention of 1787," vol. 2, p. 427.)

The question is not answered so far as the records of the Convention disclose.

It was not until 1841 that this clause of the Constitution was called into question by the occurrence of one of the listed contingencies. In that year President William Henry Harrison died, and Vice President John Tyler faced the determination as to whether, under this provision of the Constitution, he must serve as Acting President or whether he became the President of the United States. Vice President Tyler gave answer by taking the oath as President of the United States. While this evoked some protest at the time, noticeably that of Senator William Allen, of Ohio, the Vice President (Tyler) was later recognized by both Houses of Congress as President of the United States (Congressional Globe, 27th Cong., 1st sess., vol. 10, pp. 3-5, May 31-June 1, 1841).

This precedent of John Tyler has since been confirmed on seven occasions when Vice Presidents have succeeded to the Presidency of the United States by virtue of the death of the incumbent President. Vice Presidents Fillmore, Johnson, Arthur, Theodore Roosevelt, Coolidge, Truman, and Lyndon Johnson all became President in this manner.

The acts of these Vice Presidents, and the acquiescence in, or confirmation of, their acts by Congress have served to establish a precedent that, in one of the contingencies under article II, section 1, clause 5, that of death, the Vice President becomes President of the United States.

The clause which provides for succession in case of death also applies to succession in case of resignation, removal from office, or inability. In all four contingencies, the Constitution states: "the same shall devolve on the Vice President."

Thus it is said that whatever devolves upon the Vice President upon death of the President, likewise devolves upon him by reason of the resignation, inability, or removal from office of the President. (Theodore Dwight, "Presidential Inability, North American Review," vol. 133, p. 442 (1919).)

The Tyler precedent, therefore, has served to cause doubt on the ability of an incapacitated President to resume the functions of his office upon recovery. Professor Dwight, who later became president of Yale University, found further basis for this argument in the fact that the Constitution, while causing either the office, or the power and duties of the office, to "devolve" upon the Vice President, is silent on the return of the office or its functions to the President upon recovery. Where both the President and Vice President are incapable of serving, the Constitution grants Congress the power to declare what officer shall act as President "until the disability is removed."

These considerations apparently moved persons such as Daniel Webster, who was Secretary of State when Tyler took office as President, to declare that the powers of the office are inseparable from the

office itself and that a recovered President could not displace a Vice President who had assumed the prerogatives of the Presidency. This interpretation gains support by implication from the language of article I, section 3, clause 5 of the Constitution which provides that:

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the *office* of President of the United States. [*Italic supplied.*]

The doubt engendered by precedent was so strong that on two occasions in the history of the United States it has contributed materially to the failure of Vice Presidents to assume the office of President at a time when a President was disabled. The first of these occasions arose in 1881 when President Garfield fell victim of an assassin's bullet. President Garfield lingered for some 80 days during which he performed but one official act, the signing of an extradition paper. There is little doubt but that there were pressing issues before the executive department at that time which required the attention of a Chief Executive. Commissions were to be issued to officers of the United States. The foreign relations of this Nation required attention. There was evidence of mail frauds involving officials of the Federal Government. Yet only such business as could be disposed of by the heads of Government departments, without Presidential supervision, was handled. Vice President Arthur did not act. Respected legal opinion of the day was divided upon the ability of the President to resume the duties of his office should he recover. (See opinions of Lyman Trumbull, Judge Thomas Cooley, Benjamin Butler and Prof. Theodore Dwight, "Presidential Inability, North American Review," vol. 133, pp. 417-446 (1881).)

The division of legal authority on this question apparently extended to the Cabinet, for newspapers of that day, notably the New York Herald, the New York Tribune, and the New York Times contain accounts stating that the Cabinet considered the question of the advisability of the Vice President acting during the period of the President's incapacity. Four of the seven Cabinet members were said to be of the opinion that there could be no temporary devolution of Presidential power on the Vice President. This group reportedly included the then Attorney General of the United States, Mr. Wayne MacVeagh. All of Garfield's Cabinet were of the view that it would be desirable for the Vice President to act but since they could not agree upon the ability of the President to resume his office upon recovery, and because the President's condition prevented them from presenting the issue to him directly the matter was dropped.

It was not until President Woodrow Wilson suffered a severe stroke in 1919 that the matter became one of pressing urgency again. This damage to President Wilson's health came at a time when the struggle concerning the position of the United States in the League of Nations was at its height. Major matters of foreign policy such as the Shantung Settlement were unresolved. The British Ambassador spent 4 months in Washington without being received by the President. Twenty-eight acts of Congress became law without the President's signature (Lindsay Rogers, "Presidential Inability, the Review," May 8, 1920; reprinted in 1958 hearings before Senate Subcommittee on Constitutional Amendments, pp. 232-235). The President's

wife and a group of White House associates acted as a screening board on decisions which could be submitted to the President without impairment of his health. (See Edith Bolling Wilson, "My Memoirs," pp. 288-290; Hoover, "Forty-two Years in the White House," pp. 105-106; Tumulty, "Woodrow Wilson as I Know Him," pp. 437-438.)

As in 1881, the Cabinet considered the advisability of asking the Vice President to act as President. This time, there was considerable opposition to the adoption of such procedure on the part of assistants of the President. It has been reported by a Presidential secretary of that day that he reproached the Secretary of State for suggesting such a possibility (Joseph P. Tumulty, "Woodrow Wilson as I Know Him," pp. 443-444). Upon the President's ultimate recovery, the President caused the displacement of the Secretary of State for reasons of alleged disloyalty to the President (Tumulty, "Woodrow Wilson as I Know Him," pp. 444-445).

On three occasions during the Eisenhower administration, incidents involving the physical health of the President served to focus attention on the inability clause.

President Eisenhower became concerned about the gap in the Constitution relative to Presidential inability, and he attempted to reduce the hazards by means of an informal agreement with Vice President Nixon. The agreement provided:

1. In the event of inability the President would, if possible, so inform the Vice President, and the Vice President would serve as Acting President, exercising the powers and duties of the office until the inability had ended.

2. In the event of an inability which would prevent the President from so communicating with the Vice President, the Vice President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the office and would serve as Acting President until the inability had ended.

3. The President, in either event, would determine when the inability had ended and at that time would resume the full exercise of the powers and duties of the Office.

President Kennedy entered into a similar agreement with Vice President Johnson as did President Johnson with Speaker John McCormack and Vice President Hubert Humphrey. Such informal agreements cannot be considered an adequate solution to the problem because: (A) Their operation would differ according to the relationship between the particular holders of the offices; (B) a private agreement cannot give the Vice President clear authority to discharge powers conferred on the President by the Constitution, treaties, or statutes; (C) no provision is made for the situation in which a dispute exists over whether or not the President is disabled. Former Attorneys General Brownell and Rogers as well as Attorney General Kennedy agree that the only definitive method to settle the problem is by means of a constitutional amendment.

#### THE NEED FOR CHANGE

The historical review of the interpretation of article II, section 1, clause 5, suggests the difficulties which it has already presented. The language of the clause is unclear, its application uncertain. The



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

The resolution of these issues is imperative if continuity of Executive power is to be preserved with a minimum of turbulence at times when a President is disabled. Continuity of executive authority is more important today than ever before. The concern which has been manifested on previous occasions when a President was disabled, is increased when the disability problem is weighed in the light of the increased importance of the Office of the Presidency to the United States and to the world.

This increased concern has in turn manifested an intensified examination of the adequacy of the provisions relating to the orderly transfer of the functions of the Presidency. Such an examination is not reassuring. The constitutional provision has not been utilized because its procedures have not been clear. After 175 years of experience with the Constitution the inability clause remains an untested provision of uncertain application.

#### METHOD OF CHANGE

— In previous instances in history when this question has arisen, one of the major considerations has been whether Congress could constitutionally proceed to resolve the problem by statute, or whether an enabling constitutional amendment would be necessary. As early as 1920, when the Committee on the Judiciary of the House of Representatives, 66th Congress, 2d session, considered the problem, Representatives Madden, Rogers, and McArthur took the position that the matter of disability could be dealt with by statute without an amendment to the Constitution, whereas Representative Fess was of the opinion that Congress was not authorized to act under the Constitution, and that an amendment would first have to be adopted (hearings before the Committee on the Judiciary, House of Representatives, February 26 and March 1, 1920). Through the years, this controversy has increased in intensity among Congressmen and constitutional scholars who have considered the presidential inability problem.

Those who feel that Congress does not have the authority to resolve the matter by statute claim that the Constitution does not support a reasonable inference that Congress is empowered to legislate. They point out that article II, section 1, clause 5 of the Constitution authorized Congress to provide by statute for the case where both the President and Vice President are incapable of serving. By implication Congress does not have the authority to legislate with regard to the

situation which concerns only a disabled President, with the Vice President succeeding to his powers and duties. Apparently this is the proper construction, because the first statute dealing with Presidential succession under article II, section 1, clause 6, which was enacted by contemporaries of the framers of the Constitution, did not purport to establish succession in instances where the President alone was disabled (act of March 1, 1792, 1 Stat. 239).

Serious doubts have also been raised as to whether the "necessary and proper" authority of article I, section 8, clause 18, gives the Congress the power to legislate in this situation. The Constitution does not vest any department or office with the power to determine inability, or to decide the term during which the Vice President shall act, or to determine whether and at what time the President may later regain his prerogatives upon recovery. Thus it is difficult to argue that article I, section 8, clause 18 gives the Congress the authority to make all laws which shall be necessary and proper for carrying out such powers.

In recent years, there seems to have been a strong shift of opinion in favor of the proposition that a constitutional amendment is necessary, and that a mere statute would not be adequate to solve the problem. The last three Attorneys General who have testified on the matter, Herbert Brownell, William P. Rogers, and Acting Attorney General Nicholas deB. Katzenbach, have agreed an amendment is necessary. In addition to the American Bar Association and the American Association of Law Schools, the following organizations have agreed an amendment is necessary: the State bar associations of Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Indiana, Iowa, Kansas, Louisiana, Michigan, Ohio, Rhode Island, Texas, Virginia, Vermont; and the bar associations of Denver, Colo.; the District of Columbia; Dade County, Fla.; city of New York; Passaic County, N.J.; Greensboro, N.C.; York County, Pa.; and Milwaukee, Wis.

The most persuasive argument in favor of amending the Constitution is that so many legal questions have been raised about the authority of Congress to act on this subject without an amendment that any statute on the subject would be open to criticism and challenge at the most critical time—that is, either when a President had become disabled, or when a President sought to recover his office. Under these circumstances, there is an urgent need to adopt an amendment which would distinctly enumerate the proceedings for determination of the commencement and termination of disability.

#### *Filling of vacancies in the Office of the President*

While the records of the Constitutional Convention disclosed little insight on the framers' interpretation of the inability provisions of the Constitution, they do reveal that wide disagreement prevailed concerning whether or not a Vice President was needed. If he was needed, what were to be his official duties, if any.

The creation of the office of Vice President came in the closing days of the Constitutional Convention. Although such a position was considered very early in the Convention, later proposals envisaged the President of the Senate, the Chief Justice and even a council of advisers, as persons who would direct the executive branch should a lapse of Executive authority come to pass:

On September 4, 1787, a Committee of Eleven, selected to deliberate those portions of the Constitution which had been postponed, recommended that an office of Vice President be created and that he be elected with the President by an electoral college. On September 7, 1787, the Convention discussed the Vice-Presidency and the duties to be performed by the occupant of the office. Although much deliberation ensued regarding the official functions of the office, little thought seems to have been given to the succession of the Vice President to the office of President in case of the death of the President.

A committee, designated to revise the style of and arrange the articles agreed to by the House, returned to Convention on September 12, 1787, a draft which for all practical purposes was to become the Constitution of the United States. It contemplated two official duties for the Vice President: (1) to preside over the Senate, in which capacity he would vote when the Senate was "equally divided" and open the certificates listing the votes of the presidential electors, and (2) to discharge the powers and duties of the President in case of his death, resignation, removal, or inability.

While the Constitution does not address itself in all cases to specifics regarding the Vice President as was the case for the President, the importance of the office in view of the Convention is made apparent by article II, section 1, clause 3. This clause, the original provision for the election of the President and the Vice President, made it clear that it was designed to insure that the Vice President was a person equal in stature to the President.

The intent of the Convention, however, was totally frustrated when the electors began to distinguish between the two votes which article II, section 1, clause 3 had bestowed upon them. This inherent defect was made painfully apparent in the famous Jefferson-Burr election contest of 1800, and in 1804 the 12th amendment modified the college voting to prevent a reoccurrence of similar circumstances.

There is little doubt the 12th amendment removed a serious defect from the Constitution. However, its passage, coupled with the growing political practice of nominating Vice Presidents to appease disappointed factions of the parties, began a decline that was in ensuing years to mold the Vice-Presidency into an office of inferiority and disparagement.

Fortunately, this century saw a gradual resurgence of the importance of the Vice-Presidency. He has become a regular member of the Cabinet, Chairman of the National Aeronautics and Space Council, Chairman of the President's Committee on Equal Employment Opportunities, a member of the National Security Council, and a personal envoy for the President. He has in the eyes of Government regained much of the "equal stature" which the framers of the Constitution contemplated he should entertain.

#### THE NEED FOR CHANGE

The death of President Kennedy and the accession of President Johnson in 1963 pointed up once again the abyss which exists in the executive branch when there is no incumbent Vice President. Sixteen times the United States of America has been without a Vice President, totaling 37 years during our history.

As has been pointed out, the Constitutional Convention in its wisdom foresaw the need to have a qualified and able occupant of the Vice President's office should the President die. They did not, however, provide the mechanics whereby a Vice-Presidential vacancy could be filled.

The considerations which enter into a determination of whether provisions for filling the office of Vice President when it becomes vacant should be made by simple legislation or require a constitutional amendment are similar to those which enter into the same kind of determination about Presidential inability provisions. In both cases, there is some opinion that Congress has authority to act. However, the arguments that an amendment is necessary are strong and supported by many individuals. We must not gamble with the constitutional legitimacy of our Nation's executive branch. When a President or a 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 the necessary air of legitimacy.

The argument that Congress can designate a Vice President by law is at best a weak one. The power of Congress in this regard is measured principally by article II, section 1, clause 6 which states that—

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

This is not in specific terms a power to declare what officer shall be Vice President. It is a power to declare upon what officer the duties and powers of the office of President shall devolve when there is neither President nor Vice President to act.

To stand by ready for the powers and duties of the Presidential office to devolve upon him at the time of death or inability of the President, is the principal constitutional function of the Vice President. It is clear that Congress can designate the officer who is to perform that function when the office of Vice President is vacant. Indeed it has done so in each of the Presidential Succession Acts. Should there be any more objection to designating that officer Vice President than there is to designating as President the Vice President upon whom devolve the powers and duties of a deceased President, for which designation there is no specific constitutional authorization?

The answer to that question is "Yes." The Constitution has given the Vice President another duty and sets forth specific instructions as to who is to perform it in his absence. Article I, section 2, clause 4, provides that the Vice President shall be the President of the Senate and clause 5 provides that the Senate shall choose its other officers including a "President pro Tempore, in the Absence of the Vice President or when he shall exercise the Office of the President of the United States." It is very difficult to argue that a person designated Vice President by Congress, or selected in any way other than by the procedures outlined in amendments 12 and 22 can be, the President of the Senate.

One of the principal reasons for filling the office of Vice President when it becomes vacant is to permit the person next in line to become

familiar with the problems he will face should he be called upon to act as President, e.g., to serve on the National Security Council, head the President's Committee on Equal Employment Opportunity, participate in Cabinet meetings and take part in other top-level discussions which lead to national policymaking decisions. Those who consider a law sufficient to provide for filling a Vice Presidential vacancy point out that the Constitution says nothing about such duties and there is therefore nothing to prevent Congress from assigning these duties to the officer it designates as next in line in whatever Presidential succession law it enacts. Regardless of what office he held at the time of his designation as Vice President, however, he would have a difficult time carrying out the duties of both offices at the same time.

When, to all these weaknesses, one adds the fact that no matter what laws Congress may write describing the duties of the officer it designates to act as Vice President, the extent to which the President takes him into his confidence or shares with him the deliberations leading to executive decisions is to be determined largely by the President rather than by statute, practical necessity would seem to require not only that the procedure for determining who fills the Vice-Presidency when it becomes vacant be established by constitutional amendment but that the President be given an active role in the procedure whatever it be.

Finally, as in the case of inability, the most persuasive argument in favor of amending the Constitution is the division of authority concerning the authority of Congress to act on this subject. With this division in existence it would seem that any statute on the subject would be open to criticism and challenge at a time when absolute legitimacy was needed.

#### ANALYSIS

##### *Inability*

The proposal now being submitted is cast in the form of a constitutional amendment for the reasons which have been outlined earlier.

Article II, section 1, clause 5 of the Constitution is unclear on two important points. The first is whether the "office" of the President or the "powers and duties of the said office" devolve upon the Vice President in the event of Presidential inability. The second is who has the authority to determine what inability is, when it commences, and when it terminates. Senate Joint Resolution 1 resolves both questions.

The first section would affirm the historical practice by which a Vice President has become President upon the death of the President, further extending the practice to the contingencies of resignation or removal from office. It separates the provisions relating to inability from those relating to death, resignation, or removal, thereby eliminating any ambiguity in the language of the present provision in article II, section 1, clause 5.

Sections 3, 4, and 5 embrace the procedures for determining the commencement and termination of Presidential inability.

Section 3 lends constitutional authority to the practice that has heretofore been carried out by informal agreements between the President and the person next in the line of succession. It makes clear that the President may declare in writing his disability and that upon such an occurrence the Vice President becomes Acting President.

By establishing the title of Acting President the proposal makes clear that it is not the "office" but the "powers and duties of the office" that devolve on the Vice President and further clarifies the status of the Vice President during the period when he is discharging the powers and duties of a disabled President.

Section 4 is the first step, of two, that embraces the most difficult problem of inability—the factual determination of whether or not inability exists. Under this section, if a President does not declare that an inability exists, the Vice President, if satisfied that the President is disabled shall, with the written approval of a majority of the heads of the executive departments, assume the discharge of the powers and duties of the Office as Acting President upon the transmission of such declaration to the Congress.

The final success of any constitutional arrangement to secure continuity in cases of inability must depend upon public opinion with a possession of a sense of "constitutional morality." Without such a feeling of responsibility there can be no absolute guarantee against usurpation. No mechanical or procedural solution will provide a complete answer if one assumes hypothetical cases in which most of the parties are rogues and in which no popular sense of constitutional propriety exists. It seems necessary that an attitude be adopted that presumes we shall always be dealing with "reasonable men" at the highest governmental level. The combination of the judgment of the Vice President and a majority of the Cabinet members appears to furnish the most feasible formula without upsetting the fundamental checks and balances between the executive, legislative, and judicial branches. It would enable prompt action by the persons closest to the President, both politically and physically, and presumably most familiar with his condition. It is assumed that such decision would be made only after adequate consultation with medical experts who were intricately familiar with the President's physical and mental condition.

There are many distinguished advocates for a specially constituted group in the nature of a factfinding body to determine presidential inability rather than the Cabinet. However, such a group would face many dilemmas. If the President is so incapacitated that he cannot declare his own inability the factual determination of inability would be relatively simple. No need would exist for a special factfinding body. Nor is a factfinding body necessary if the President can and does declare his own inability. If, however, the President and those around him differ as to whether he does suffer from an inability which he is unwilling to admit, then a critical dispute exists. But this dispute should not be determined by a special commission composed of persons outside the executive branch. Such a commission runs a good chance of coming out with a split decision. What would be the effect, for example, if a commission of seven voted 4 to 3 that the President was fit and able to perform his Office? What power could he exert during the rest of his term when, by common knowledge, a change of one vote in the commission proceedings could yet deny him the right to exercise the powers of his Office? If the vote were the other way and the Vice President were installed as Acting President, what powers could he exert when everyone would know that one vote the other way could cause his summary removal from the exercise of Presidential powers? If the man acting as President were placed

in this awkward, completely untenable and impotent position, the effect on domestic affairs would be bad enough; the effect on the international position of the United States might well be catastrophic.

However, in the interest of providing flexibility for the future, the amendment would authorize the Congress to designate a different body if this were deemed desirable in light of subsequent experience.

Section 5 of the proposed amendment would permit the President to resume the powers and duties of the office upon his transmission to the President of the Senate and the Speaker of the House of Representatives of his written declaration that no inability existed. However, should the Vice President and a majority of the principal officers of the executive departments feel that the President is unable, then they could prevent the President from resuming the powers and duties of the office by transmitting their written declaration so stating to the President of the Senate and the Speaker of the House of Representatives within 2 days. Once the declaration of the President stating no inability exists has been transmitted to the President of the Senate and the Speaker of the House of Representatives, then the issue is squarely joined. At this point the proposal recommends that the Congress shall make the final determination on the existence of inability. If the Congress determines by a two-thirds vote of both Houses that the President is unable, then the Vice President continues as Acting President. However, should the Congress fail in any manner to cast a vote of two-thirds or more in both Houses supporting the position that the President was unable to perform the powers and duties of his office, then the President would resume the powers and duties of the office. The recommendation for a vote of two-thirds is in conformity with the provision of article I, section 3, clause 6, of the Constitution relating to impeachments.

This proposal achieves the goal of an immediate original transfer in Executive authority and the resumption of it in consonance both with the original intent of the framers of the Constitution and with the balance of powers among the three branches of our Government which is the permanent strength of the Constitution.

### *Vacancies*

Section 2 is intended to virtually assure us that the Nation will always possess a Vice President. It would require a President to nominate a person who meets the existing constitutional qualifications to be Vice President whenever a vacancy occurred in that office. The nominee would take office as Vice President once he had been confirmed by a majority vote in both Houses of the Congress.

In considering this section of the proposal, it was observed that the office of the Vice President has become one of the most important positions in our country. The days are long past when it was largely honorary and of little importance, as has been previously pointed out. For more than a decade the Vice President has borne specific and important responsibilities in the executive branch of Government. He has come to share and participate in the executive functioning of our Government, so that in the event of tragedy, there would be no break in the informed exercise of executive authority. Never has this been more adequately exemplified than by the uninterrupted assumption of the Presidency by Lyndon B. Johnson.

It is without contest that the procedure for the selection of a Vice President must contemplate the assurance of a person who is compatible with the President. The importance of this compatibility is recognized in the modern practice of both major political parties in according the presidential candidate a voice in choosing his running mate subject to convention approval. This proposal would permit the President to choose his Vice President subject to congressional approval. In this way the country would be assured of a Vice President of the same political party as the President, someone who would presumably work in harmony with the basic policies of the President.

#### CONCLUSION

This amendment seeks to remove a vexatious constitutional problem from the realm of national concern. It seeks to concisely clarify the ambiguities of the present provision in the Constitution. In so doing, it recognizes the vast importance of the office involved, and the necessity to maintain continuity of the Executive power of the United States.

The committee approved this proposal after its subcommittee heard testimony and received written statements from many distinguished students on the subject. Last year the subcommittee also had the benefit of considerable study reflected in congressional documents previously published on this subject. In the light of all this material and evidence, and for the fact that 76 Senators have sponsored Senate Joint Resolution 1, the committee believes that a serious constitutional gap exists with regard to Presidential inability and vacancies in the office of the Vice President, and that the proposal which is now presented is the best solution to the problem.

#### RECOMMENDATION

The committee, after considering the several proposals now pending before it relating to the matter of Presidential inability, reports favorably on Senate Joint Resolution 1 and recommends its submission to the legislatures of the several States of the United States so that it may become a part of the Constitution of the United States.

#### COMMITTEE AMENDMENTS TO SENATE JOINT RESOLUTION 1 SHOWING OMISSIONS, NEW MATTER AND RETAINED WORDING

The committee amendments to the Senate joint resolution are shown as follows: Provisions of the resolution as introduced which are omitted are enclosed in black brackets, new matter is printed in italics, provisions in which no change is proposed are shown in roman.

#### “Article—

SEC. 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] *Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his Office, such powers and duties shall be discharged by the Vice President as Acting President.*

SEC. 4. [If the President does not so declare, and the] *Whenever the Vice President, [with the written concurrence of] and a majority of the [heads] principal officers of the executive departments or such other body as Congress may by law provide, transmit[s] to the [Congress his] President of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.*

SEC. 5. *Whenever the President transmits to the [Congress] President of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President, with the written concurrence of a majority of the [heads] principal officers 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 [will] shall immediately proceed to decide the issue. If the Congress determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to discharge the same as Acting President; otherwise the President shall resume the powers and duties of his office.*

## INDIVIDUAL VIEWS OF SENATOR EVERETT MCKINLEY DIRKSEN

When the Congress considers amendments to the Constitution, it deals not with the problems of today, or yesterday, or tomorrow, but in terms of the grand sweep of our Nation's history and future. The Constitution is the basic charter of our Government. It is appropriate to keep its function separate from the various laws we derive from it, laws that are designed to meet specific problems as they may arise. The Constitution must meet the test of time. It can do this only if it provides the means by which the Congress may meet the needs of the moment, not the solution to specific problems.

The questions of Presidential succession and Presidential inability are not new to the Senate. It has been wrestling with them for many years. Time and again it has tried its hand at contriving an amendment to the Constitution to deal with the problems. But each time when the Senate almost reaches a conclusion as to language for the amendment it becomes aware that its labors have been so narrowly directed to the problems arising out of particular events that it has failed to think and write in the broad fundamental concepts which are necessary to a constitutional amendment. And then, because it realizes the dangers of a job half done, it does nothing at all.

Congress cannot go along that way any further. It must deal with the problems of Presidential succession and Presidential inability by a constitutional amendment. It is necessary that the pertinent provision of the Constitution dealing with vacancy or inability, article II, section 1, that reads as follows:

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

be amended to clarify whether the devolution is of the Office of the President or only of his powers and duties. Presumably it is the former in the case of death or resignation and the latter in case of inability. Be that as it may, it has been the uncertainty of construction of this language that in the past has prevented Vice Presidents from assuming authority during the periods of disability of various Presidents. Next, it is essential that the Constitution provide a means of dealing with the other matters encompassed in Senate Joint Resolution 1. But the amendment should not deal with details. They can be handled by statute and rightly should be.

This solution was well laid out before this committee last year and 2 years ago by the then Deputy Attorney General of the United States, Mr. Katzenbach. His entire statement in the 1963 hearings, incorporated again in the 1964 hearings, should be read by everyone who is considering this problem. Let me only emphasize his concluding thoughts:

Apart from the wisdom of loading the Constitution down by writing detailed procedural and substantive provisions into it has been questioned by many scholars and statesmen. The framers of the Constitution saw the wisdom of using broad and expanding concepts and principles that could be adjusted to keep pace with current needs. The changes are that supplemental legislation would be required in any event. In addition, crucial and urgent new situations may arise in the changing future—not covered by Senate Joint Resolution 28<sup>1</sup>—where it may be of importance that Congress, with the President's approval, should be able to act promptly without being required to resort to still another amendment to the Constitution. Senate Joint Resolution 35<sup>1</sup> makes this possible; Senate Joint Resolution 28<sup>1</sup> does not.

Since it is difficult to foresee all of the possible circumstances in which the Presidential inability problem could arise, we are opposed to any constitutional amendment which attempts to solve all these questions by a series of complex procedures. We think that the best solution to the basic problems that remain would be a simple constitutional amendment, such as Senate Joint Resolution 35,<sup>1</sup> which treats the contingency of inability differently from situations such as death, removal, or resignation, which states that the Vice President in case of Presidential inability succeeds only to the powers and duties of the Office as Acting President and not to the Office itself, and which declares that the commencement and termination of any inability may be determined by such methods as Congress by law shall provide. Such an amendment would supply the flexibility which we think is indispensable and, at the same time, put to rest what legal problems may exist under the present provisions of the Constitution as supplemented by practice and understanding.

Senate Joint Resolution 35, referred to by Mr. Katzenbach, now the Attorney General, and modified in accordance with his suggestions reads as follows:

Article—

In case of the removal of the President from office or of his death or resignation, the said office shall devolve on the Vice President, in case of the inability of the President to discharge the powers and duties of the said office, the said powers and duties shall devolve on the Vice President as Acting President until the inability be removed. The Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice

<sup>1</sup> 88th Cong.

President, declaring what officer shall then be President, or in case of inability, act as President, and such officer shall be or act as President accordingly, until a President shall be elected or, in case of inability, until the inability shall be earlier removed. The commencement and termination of any inability may be determined by such method as Congress shall by law provide.

I, therefore, propose that we adopt as a constitutional amendment this proposal which not only bears the imprimatur of the two distinguished men who were then Members of the Senate, Senator Kefauver and Senator Keating, but which was so persuasively supported by the Attorney General. He has confirmed to me that he still holds those views. And in his testimony this year he said only that he would not insist on the preference he had expressed in the past.

But such a constitutional amendment would be only the beginning. We must then prepare specific legislation to establish the mechanics and the details of Presidential succession and inability. It could be in much the same language as that proposed by the Senator from Indiana for a constitutional amendment.

This course of action has one advantage above all others. It removes the fear that we may embed in the Constitution procedures which may not turn out to be workable. If they are in a statute we can change them. If they become a part of the Constitution, it would take another constitutional amendment to change them.

Indeed the events of the past few days have created a presumption and perhaps a conclusive presumption that a constitutional amendment in the form reported will be ill advised. In testimony before the Committee on the Judiciary of the other body, the Attorney General has given further indication of doubts he holds about the adequacy of the language of Senate Joint Resolution 1. Is section 3 permitting the President to declare his inability if he transmits a declaration in writing to the Senate and the House to be used when the President is having a tooth pulled? Is it to be used when he is out of the country on a visit to Mexico or to a NATO meeting, or perhaps when he is in the air at any time? If so, then we have imposed in the Constitution a very cumbersome procedure for him to take back his powers and duties. We have provided the same mechanics for an inability of a few minutes, or a few hours, as we have for long periods of illness.

Then, too, as has been suggested by those who have studied Senate Joint Resolution 1 in the form reported by the committee, there are many things which are not covered by the detailed language of this amendment which perhaps should be covered if we are going into such detail instead of adopting broad constitutional language which can be applied by statute to situations as they may arise. If one of the purposes of the amendment is to provide to the greatest extent possible for the filling of the Office of Vice President, have we done so? What happens if the President is disabled for many months and the Vice President assumes his powers and duties as Acting President? Can he appoint a Vice President, or must that Office remain empty? Surely there is as much chance that some ill may befall the mortal who is Acting President due to the disability of the President as there

would be if he succeeded to the Presidency upon the death of the President. By moving into this area with a constitutional amendment containing such specifics dealing with the one case we may have foreclosed ourselves from dealing by statute with other parts of the problem. On the other hand the broader language of Senate Joint Resolution 35, 88th Congress, would permit us to deal with this whole problem by statute.

And, let us never forget, that it is often argued that because situations of great variety and complexity may arise at any time in the conduct of our foreign relations and in the administration of the laws which we pass, we should not too tightly or too rigidly control the exercise of discretion by those who must deal with the problems. But by writing such specifics into the Constitution as are proposed by Senate Joint Resolution 1 as reported, we are even more tightly and more rigidly binding ourselves in dealing with the details of problems of Presidential succession and inability.

We should certainly heed the wisdom of the Attorney General when he testified on the merits of the various proposals last year and the year before. And we should give thought to the implications of all the assumptions the Attorney General felt constrained to make when he testified this year. Let us see what he said:

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

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

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

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

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

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

The fact that we give heed and thought to these suggestions does not mean that we do nothing about the problem of presidential succession and disability. Indeed, we must do something. Let us do it with the sweep of history in our mind and pen rather than the shackles of specifics.

EVERETT MCKINLEY DIRKSEN.

## INDIVIDUAL VIEWS OF SENATOR ROMAN L. HRUSKA

Agreements devised by the President and his Vice President in past administrations to cope with an inability crisis are not satisfactory solutions. Recent history has also made us very much aware of the need for filling the Office of Vice President when a vacancy arises.

It is abundantly clear that, rather than continue these informal agreements, the only sound approach is the adoption of a constitutional amendment.

The hearings, which have been held on this important subject in recent years and in which this Senator has had the opportunity to participate, have led me to prefer a different approach than the present one. As in other legislative matters, the finished product requires the refinement of individual preferences. In the spirit of this simple reality, I shall support the proposed amendment. It is my earnest hope that the Congress and the State legislatures will approve and ratify it promptly. There is, however, one amendment which I would urge, as discussed at a later point.

There are two major reasons for my acceptance of the proposed amendment.

The first is the urgent need for a solution. Differences of opinion in Congress have deprived us of a solution for far too long. It is time that these constitutional shortcomings be met.

Secondly, the proposed language approaches the product which would have resulted under the proposal which I had urged, so that this amendment is acceptable.

—Nevertheless, it is in order to state the bases of my earlier preference and the preference of three Attorneys General.

The proposed amendment would distinguish the inability situation from the three other contingencies of permanent nature; death, resignation, and removal from office, and would recognize that, in the first instance, the Vice President becomes Acting President only.

At this point, we encounter the first major difference of opinion. Some would advocate spelling out the procedure for determining inability within the language of the proposed amendment. I disagree with the method of locking into the Constitution those procedures deemed appropriate today but which, in the light of greater knowledge and experience may be found wanting tomorrow.

The preferred course would be for the amendment to authorize the Congress to establish an appropriate procedure by law. This practice parallels the situation of Presidential succession, wherein the power is delineated by the Constitution but the detail is left for later determination.

I would also add one fundamental limitation to the process.

I refer to the doctrine of separation of powers. The maintenance of the three distinct branches of Government, coequal in character, has long been accepted as one of the most important safeguards for the preservation of the Republic.

The executive branch should determine the presence of and termination of the inability of the President. It is my view that a method which would involve neither the judicial nor the legislative branch of the Government would be the better course.

The determination of Presidential inability and its termination is obviously a factual matter. No policy is involved. The issue is simply whether a specific individual with certain physical, mental, or emotional impairments possesses the ability to continue as the Chief Executive or whether his infirmity is so serious and severe as to render him incapable of executing the duties of his Office.

Injecting Congress into the factual question of inability does create a secondary impeachment procedure, although limited, in which the conduct of the President would not be the test.

The impeachment trial of President Andrew Johnson affords a clear illustration of the dangers presented when Congress performs a judicial function. The intrigue and interplay within the Congress during the impeachment trial serves as a warning of clear and present dangers which exist when Congress is called upon to consider where to place the mantle of the presidential powers.

An additional compelling argument for restricting this authority to the executive branch is that this determination must be made with a minimum of delay. Although this objection has been alleviated in the present language, the executive branch is clearly best equipped to respond promptly as well as effectively in the face of such a crisis.

Obviously, such a decision must rest on the relevant and reliable facts regarding the President's physical or mental faculties. It must be divorced from any thoughts of political advantage, personal prejudice, or other extraneous factors. Those possessing such firsthand information about the Chief Executive, or most accessible to it on a personal basis, are found within the executive branch and not elsewhere.

We must be mindful that the President is chosen by the people of the entire Nation. It is their wish and their right that he serve as President for the term for which he was chosen. Every sensible and sympathetic construction favoring his continued performance of presidential duties should be accorded him. Indeed, were error to be committed, it should be in favor of his continuation in office or, were it interrupted by a disability, by his resumption of the office at the earliest possible moment upon recovery. The members of the executive branch are best situated to protect that interest.

What briefly has been developed is the basis of my view that Congress should not be injected into the decisionmaking process in cases of presidential inability or recovery.

Considerable reference has been made in the discussion of Senate Joint Resolution 1 to the 76 cosponsors of the proposed resolution. Cosponsorship of a proposal does not mean acceptance of detail and the exact text. I am certain that cosponsors do not consider themselves bound by a proposal as introduced. Cosponsorship does not indicate a desire to proceed without hearings, deliberation, and amendments in committee as well as on the floor of the Senate. Refinements made by the committee on this measure illustrate that whether a proposal has a single sponsor or 99 cosponsors, it must be examined in detail before it is considered by the Senate with a view to change by amendment or substitution.



The refinements that have been made on the original language of Senate Joint Resolution 1 will clarify the detailed procedure to be followed in a case of disability.

The role of Congress is narrow. It is as an appeal open to the President from the decision of the Vice President and the members of the Cabinet. It will be brought into the matter only in those limited circumstances where the Vice President, with a majority of the principal officers of the executive departments, and the President disagree on the question of inability. It is important to note that Congress will not have the power to initiate a challenge of the President's ability.

The procedure by which Congress shall act is properly left to later determination within rules of each branch thereof. A point of possible conflict is resolved in the understanding that Congress shall act as separate bodies and within their respective rules.

The language that "\* \* \* Congress shall immediately proceed to decide the issue" leaves to Congress the determination of what, in light of the circumstances then existing, must be examined in deciding the issue. Thus, the matter will be examined on the evidence available. It is desirable that the matter be examined with a sympathetic eye toward the President who, after all, is the choice of the electorate.

It is apparent that Senate Joint Resolution 1 does have aspects which alleviate the dangers attendant to a crisis in presidential inability. Nevertheless, it is felt by this member of the committee that caution and restraint will be demanded should this inability measure be called into application.

A time does arrive, however, when we must fill the vacuum. The points which I have emphasized and previously insisted upon are important; but having a solution at this point is more than important, it is urgent. For this reason, I support Senate Joint Resolution 1 and urge its passage. I hope that it will be given expeditious approval by the other body and early ratification by the required number of States.

#### PROPOSED AMENDMENT

Section 5 gives the majority of the Cabinet and the Vice President only 2 days in which to challenge the President's declaration that his inability has terminated.

This is not enough time considering the gravity of the situation and the circumstances which might exist.

In the discharge of their duties, members of the Cabinet often travel widely. There are also long periods of time in which they may not have had an opportunity to observe and visit with the President so as to judge whether he has recovered sufficiently to resume his duties. Such periods of inaccessibility might even be longer, in the event of the President's illness.

The 2-day period should be extended to properly allow for these factors. I urge amendment of this point to provide additional time.

ROMAN L. HRUSKA.

