3-7-1947

Hearings: Succession to the Presidency

Committee on Rules and Administration. Senate. United States.

SUCCESSION TO THE PRESIDENCY

HEARINGS

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION

UNITED STATES SENATE

EIGHTIETH CONGRESS

FIRST SESSION

ON

S. Con. Res. 1

A CONCURRENT RESOLUTION TO APPOINT A JOINT COMMITTEE TO INVESTIGATE MATTERS CONNECTED WITH THE SUCCESSION TO THE PRESIDENCY AND THE ELECTION OF PRESIDENT AND VICE PRESIDENT

S. 139

A BILL TO PROVIDE FOR THE HOLDING OF SPECIAL ELECTIONS TO FILL VACANCIES CAUSED BY REMOVAL, DEATH, RESIGNATION, OR INABILITY OF BOTH THE PRESIDENT AND THE VICE PRESIDENT

S. 536

A BILL TO PROVIDE FOR THE HOLDING OF A SPECIAL ELECTION BY THE MEMBERS OF THE ELECTORAL COLLEGE TO FILL VACANCIES CAUSED BY THE REMOVAL, DEATH, RESIGNATION, OR INABILITY OF BOTH THE PRESIDENT AND THE VICE PRESIDENT

S. 564

A BILL TO PROVIDE FOR THE PERFORMANCE OF THE DUTIES OF THE OFFICE OF PRESIDENT IN CASE OF THE REMOVAL, RESIGNATION, OR INABILITY BOTH OF THE PRESIDENT AND VICE PRESIDENT

MARCH 7, 11, AND 12, 1947

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SUCCESSION TO THE PRESIDENCY

FRIDAY, MARCH 7, 1947

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to call, at 10:30 a. m., in room 104–B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman), Lodge, Hayden, Green, and Holland.

The CHAIRMAN. The committee will come to order.

This is the first of a series of hearings by the committee on Senate Concurrent Resolution 1, S. 139, S. 536, and S. 564. I will ask that these be incorporated in the record at this point.

(S. Con. Res. 1, S. 139, S. 536, and S. 564 are as follows:)

[S. Con. Res. 1, 80th Cong., 1st sess.]

CONCURRENT RESOLUTION

Resolved by the Senate (the House of Representatives concurring), That there is hereby created a joint congressional committee to be composed of five Members of the Senate to be appointed by the President of the Senate and five Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. The joint committee shall select a chairman from among its members. A vacancy in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original appointment.

SEC. 2. It shall be the duty of the joint committee to make a full and complete study and investigation of all matters connected with the succession to the Presidency, and the election of the President and Vice President from the time of the nomination of the President and Vice President, through the time of their election and the time of their inauguration until the termination of their respective terms of office, with the purpose of making the law certain as to the Presidential election and succession. These matters shall include, but shall not be confined to, the following:

(1) Whether or not the President and Vice President should be elected by the Electoral College, as at present, and if so whether or not the members should be legally bound to vote in accordance with their instructions.

(2) Whether or not provision should be made for the case where before the election of Presidential electors, or after such time but before the election of President and Vice President, a candidate for the Presidency or for the Vice Presidency dies, declines to run, or is found ineligible to take office if elected.

(3) Whether or not provision should be made for the case of the death of any of the individuals from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

(4) Whether or not provision should be made for the case where, after election, the President-elect or Vice President-elect, or both, die, decline to serve, or fail to qualify.

(5) How it shall be determined whether the President, or individual acting as President, is unable to execute the powers and duties of the office, and how the duration of such inability shall be determined.

(6) Whether or not provision should be made for an individual to execute the office of President in case of removal, death, resignation, or inability, both of the President and Vice President, including provision for selecting an individual to execute such office in cases where by reason of removal, death, resignation, or inability there is no individual upon whom the powers and duties of such office would otherwise automatically devolve.

(7) Whether there are, or should be, any differences between the status, powers, duties, and privileges of an elected President and any other individual executing the office of President.

(8) Whether or not there should be any limitation on the number of terms a person may serve as President.

SEC. 3. The joint committee shall report to the Senate and House of Representatives the results of its study and investigation together with its recommendations, including drafts of legislation recommended and of any proposed constitutional amendments considered necessary or desirable. The joint committee shall submit its final report to the Senate and House of Representatives not later than May 1, 1947, and thereupon the existence of the joint committee shall terminate.

SEC. 4. For the purposes of this concurrent resolution, the joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Congress, to employ counsel, clerical and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. Disbursements to pay the expenses of the committee, which shall not exceed $10,000, shall be made by the Secretary of the Senate out of the contingent fund of the Senate, such contingent fund to be reimbursed from the contingent fund of the House of Representatives in the amount of one-half of disbursements so made.

[S. 139, 80th Cong., 1st sess.]

AMENDMENT (in the nature of a substitute) intended to be proposed by Mr. FULBRIGHT to the bill (S. 139) to provide for the holding of special elections to fill vacancies caused by removal, death, resignation, or inability of both the President and the Vice President, viz: Strike out all after enacting the clause and insert in lieu thereof the following:

That the first section of the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President", approved January 19, 1886 (24 Stat. 1; U. S. C., 1940 edition, title 3, sec. 21), is amended to read as follows: "That in case of removal, death, resignation, or inability of both the President and Vice President of the United States or in case, at the time fixed for the beginning of the term of the President, neither a President-elect nor a Vice-President-elect shall have qualified, the Secretary of State; or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Treasury; or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of War; or if there be none, or in case of his removal, death, resignation, or inability, then the Attorney General; or if there be none, or in the case of his removal, death, resignation, or inability, then the Postmaster General; or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Navy; or if there be none, or in case of his removal, death, resignation, or inability, then the Secretary of the Interior, shall act as President until the disability of the President or Vice President is removed or a President shall be elected or shall have qualified: *Provided*, That whenever the powers and duties of the office of President of the United States shall devolve upon any of the persons named herein, if Congress

be not then in session, or if it did not meet in accordance with law within twenty days thereafter it shall be the duty of the person upon whom said powers and duties shall devolve to issue a proclamation convening Congress in extraordinary session, giving twenty-day notice of the time of meeting."

SEC. 2. Such Act is further amended by adding at the end thereof of a new section as follows:

"SEC. 4. Whenever the powers and duties of the office of President of the United States shall devolve upon one of the persons named in the first section of this Act, such person forthwith shall cause a notification of the event by reason of which such powers and duties so devolved to be made to the executive of every State, and shall specify in such notification that electors of a President and Vice President to fill the unexpired term shall be appointed in the several States on the first Tuesday which occurs more than ninety days after the date of such event. Electors appointed pursuant to such notification shall be appointed in the same manner as is provided by law for the appointment of electors for a regular quadrennial election of a President and Vice President, and shall met and give their votes on the first Monday which occurs more than thirty days after the date of their appointment, at such place in each State as the legislature of such State shall direct. Except as otherwise provided in this section, all provisions of law relating to the choosing of a President and Vice President at a regular quadrennial election shall apply with respect to the choosing of a President and Vice President to fill an unexpired term as provided in this section. The person chosen for such purpose shall take office on the thirtieth day following the date on which the electors were chosen."

Amend the title so as to read: "To provide for the holding of special elections to fill vacancies caused by removal, death, resignation, or inability of both the President and the Vice President, or the failure of both the President and the Vice President to qualify."

[S. 536, 80th Cong., 1st sess.]

A BILL To provide for the holding of a special election by the members of the electoral college to fill vacancies caused by the removal, death, resignation, or inability of both the President and the Vice President

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President", approved January 19, 1886 (24 Stat. 1; U. S. C., title 3, secs. 21-22), is amended by adding at the end thereof four new sections as follows:

"SEC. 4. If the powers and duties of the office of President of the United States shall devolve upon one of the persons named in the first section of this Act at a time which is more than one hundred and twenty days before the time provided by law for the appointment of the electors of President and Vice President, such person shall, within ten days after the powers and duties of the office of President have devolved upon him, cause a notification of the event by reason of which such powers and duties have so devolved to be made to the chief executive of each State. The notification shall include a request, which it shall be the duty of each chief executive to carry out, that each of such chief executives shall cause the members of the electoral college of his State appointed for the last regular quadrennial election of a President to be assembled at some place in the State on the first Monday following the fifteenth day of such notification for the purpose of casting their votes for a President and a Vice President to fill the unexpired terms of the offices of President and Vice President, which have become vacant by reason of the removal, death, resignation, or inability of both the President and the Vice President. Any vacancy which has occurred in the college of electors since its appointment shall be filled in the manner provided by law for filling vacancies before a regular quadrennial election. The electors shall then proceed, in the manner provided by the Constitution and by law for the regular quadrennial election of a President and a Vice President, to cast their votes for a President and a Vice President, who shall serve the unexpired terms of the offices of President and Vice President, which have become vacant by reason of the removal, death, resignation, or inability of both the President and the Vice President.

"SEC. 5. The certificates and lists of the electors shall be transmitted in the manner as provided by the Constitution and by law for a regular quadrennial election of a President and a Vice President so as to reach the President of

the Senate not later than the second Monday after the meeting of the electors shall have been held. If such certificates and lists are not received by such time, the procedure provided in sections 5 and 6 of the Act entitled 'An Act providing for the meeting of electors of President and Vice President and for the issuance and transmission of the certificates of their selection and of the result of their determination, and for other purposes', approved May 29, 1928, as amended, shall be followed.

"SEC. 6. For the purpose of counting the votes of the electoral college, the Congress shall meet on the third Monday after the meeting of the electors shall have been held. The certificates and lists of the electors shall be opened, presented, and acted upon in the manner provided by the Constitution and by law for a regular quadrennial election of the President.

"SEC. 7. Except as provided in this Act, the electors, where required by section 4 to elect a President and a Vice President, shall proceed in the manner provided by the Constitution and by law for a regular quadrennial election of a President and a Vice President and all laws relating to a regular quadrennial election of a President and a Vice President, so far as they are applicable, shall govern the election of a President and a Vice President as provided in this Act."

[S. 564, 80th Cong., 1st sess.]

A BILL To provide for the performance of the duties of the office of President in case of the removal, resignation, or inability both of the President and Vice President

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (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 Speaker of the House of Representatives shall act as President until the disability be removed, or a President shall be elected.

(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 subsection.

(3) An individual acting as President under this subsection shall continue to act until a President shall be elected in the manner prescribed by law, and until the expiration of the then current Presidential term, except that—

(A) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(B) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President, Vice President, or individual acting under this subsection, then he shall act only until the removal of the disability of one of such individuals.

(b) If, at the time when under subsection (a) a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, discharge the powers and duties of the office of President until the expiration of the then current Presidential term, but not after a qualified and prior entitled individual is able to act.

(c) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to discharge the powers and duties of the office of President under subsection (b), 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 discharge such powers and duties: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor.

(2) An individual discharging the powers and duties of President under this subsection shall continue so to do until a President shall be elected or until a Speaker is qualified in the manner prescribed by law but not after a Speaker of the House is qualified and prior-entitled individual is able to serve, except that the removal of the disability of an individual higher on the list contained in paragraph (1) or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(8) The taking of the oath of office by an individual specified herein shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to serve as President.

(d) Subsection (a), (b), and (c) shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (c) shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

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

(f) Sections 1 and 2 of the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President," approved January 19, 1886 (24 Stat. 1; U. S. C., 1940 edition, title 3, secs. 21 and 22), are repealed.

The CHAIRMAN. The bill with which we are particularly concerned at this time is Senate Concurrent Resolution 1, introduced by Senator Green. Senator, you may proceed and explain your bill to us.

STATEMENT OF HON. THEODORE FRANCIS GREEN, UNITED STATES SENATOR FROM THE STATE OF RHODE ISLAND

Senator GREEN. This is Senate Concurrent Resolution 1. It is almost identical with a similar Senate concurrent resolution, No. 50, which was introduced a year ago last January. The one change, among the specific matters to which attention is drawn, I believe, is the addition of a provision regarding the limitation on the term of the President.

All these specific items to which reference is made are included in the general terms of the investigation which is proposed, but it is thought well to mention those to which attention has been drawn in one way or another from time to time.

This matter of Presidential succession, under which heading all are grouped, is a matter a good deal more inclusive than has ever been thought of heretofore. It is at least more inclusive than is usually implied in the term "Presidential succession."

It has seemed to Mr. Smith, who is cosponsor of this bill with myself, both at the last session and in this, that all these questions ought to be considered together. There are too many incidents which might occur, as shown by our history, that will imperil the succession, because of death. It is not only death while the President and Vice President are in office, as has been usually thought, but death which occurs at other times after the time of nomination. If, after a President has been nominated by a party, or a Vice President has been nominated, he dies, there is room for debate as to how that vacancy can be filled by an election. And even after election there is still uncertainty. Suppose after election and before inauguration the President or Vice President dies, how are those vacancies to be filled? Then after election and inauguration—that is where they usually take up the question—suppose the President or Vice President dies, how are those vacancies to be filled?

These questions are not easily solved. They have been with us ever since the time of George Washington in 1792. It was a matter of great debate—and I am not going to trace the history of it which is

The CHAIRMAN. Do you have any suggestion as to changing the law so that that would be taken care of?

Senator GREEN. I am not making any suggestions as to what I think about any of these questions. There are many of them which are controversial. My point is that they all ought to be considered very carefully because they affect not only this country but the whole world.

Suppose there should be a controversy such as there was at the time of President Hayes, and it wasn't possible to settle it by peaceful means; and suppose there should be two parties, each claiming to have control of the Government—before those questions were settled constitutionally by the Supreme Court the feeling might run so high that it might result in a civil war, North against South, or East against West, or between classes in the country; and if that were to happen, since we are the greatest Nation in the world, other foreign nations might join in the fray and take sides on one side or another, thinking that there was a conflict of ideologies at the time—and it might become a world catastrophe.

It is a remote possibility and these situations haven't arisen in the whole history of our country, but they have come very near to arising, I mean situations which might arise we have been face to face with a number of times. And it seems to me that these all ought to be carefully considered, and all considered together.

So that was the occasion of this concurrent resolution. It was introduced in the last session, as I said, referred to the Committee on Privileges and Elections, reported out by it favorably, passed by the Senate and sent to the House of Representatives.

I was rather amused at a local paper, in an editorial not long ago, taking me to task by name as chairman of that committee—that was before the reorganization at the beginning of the year—for doing nothing in the matter, when this very bill had been referred to my committee, had been reported favorably, introduced in January, the first day of the session, reported favorably and sent to the House of Representatives by early March, and allowed to lie there dormant ever since. But nevertheless I was accused in this editorial of being responsible for this delay in a very important matter, and they hoped that the crisis wouldn't arise where it would have been needed because that would be heavy on my conscience.

Senator HAYDEN. You were successful in obtaining a favorable report upon the measure?

Senator GREEN. Yes.

Senator HAYDEN. And it was placed upon the Senate Calendar and passed by the Senate at the last session of Congress?

Senator GREEN. That is right.

The CHAIRMAN. Then where did it go?

Senator GREEN. It went to the House and was referred to the Committee on Rules over there.

The CHAIRMAN. And there it died?

Senator GREEN. Yes.

Senator LODGE. Your reason for having a joint congressional committee instead of the regular standing committee, is what?

Senator GREEN. I don't approve of joint committees except in rare instances, but it seems to me this is one of those instances. We don't

want to start out with a conflict as to whether the Speaker of the House or the President of the Senate shall be next in line.

Senator LODGE. Do you think that is our choice, either one of those two?

Senator GREEN. No, but that is one of the choices and one of the questions, and they both have been proposed in the line of succession for the Presidency, and it seems to me that it is very unfortunate not to try and adjust the different points of view if that is the solution, by a joint committee rather than by a committee of the Senate and then one of the House.

Senator LODGE. I understand what you mean about this little sensitive point here as between the President of the Senate and the Speaker of the House, but how would you get away from that by having a joint congressional committee instead of having it handled by the regular standing committees?

Senator GREEN. Well, it is easier to adjust those matters in committee room than it is on the floor of the Senate and on the floor of the House.

Senator LODGE. You could adjust it in this committee room here without having a joint committee.

Senator GREEN. Oh no, because they will say that we are all Senators and we would take the view that it ought to be the President of the Senate, and the House would take the view that it ought to be the Speaker of the House.

Senator HOLLAND. Furthermore, there are several of these questions which involve constitutional amendment which go to the Judiciary Committee. We have one on the calendar today which has emerged from the Judiciary Committee and hasn't been before this committee at all.

The CHAIRMAN. Those are matters involving constitutional questions.

Senator HOLLAND. That is right.

The CHAIRMAN. But the Reorganization Act specifically assigns the authority to this committee to determine the succession to the Presidency.

Senator HOLLAND. The statutory succession, of course.

Senator GREEN. I have tried to give you the reasons why we want a joint resolution. Now, to take up the resolution itself, it provides for a joint congressional committee to be composed of five Members of the Senate to be appointed by the President of the Senate, and five Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. The committee is to select its chairman from among its members. A vacancy in the committee is to be filled as provided for in the original appointment, but a vacancy would not interfere with the work of the committee proceedings.

That committee is given the duty to make a full and complete study and investigation of all matters connected with the succession to the Presidency, and the election of the President and Vice President from the time of the nomination of the President and Vice President, through the time of their election and the time of their inauguration until the termination of their respective term of office, with the purpose of making the law certain as to the Presidential election and succession.

These matters shall include, but shall not be confined to, the following—and these are suggested because they are matters to which we want particular answers:

(1) Whether or not the President and Vice President should be elected by the electoral college, as at present; and if so, whether or not the members should be legally bound to vote in accordance with their instructions.

A question may come up whether, at this stage in our history, if a member of the Electoral College should vote contrary to the instructions he is under, whether that would be counted as cast, or whether he would be bound in equity, if not in law, to cast it otherwise.

Senator LODGE. You don't go into the question of the popular election of the President, do you?

Senator GREEN. No.

Senator HOLLAND. He doesn't exclude that, though.

Senator GREEN. We don't exclude it. These are really questions which it seemed to us ought to be decided. That could be decided separately or it might be added to these.

(2) Whether or not provision should be made for the case where before the election of Presidential electors, or after such time but before the election of President and Vice President, a candidate for the Presidency or the Vice Presidency dies, declines to run, or is found ineligible to take office if elected.

(3) Whether or not provision should be made for the case of the death of any of the individuals from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

(4) Whether or not provision should be made for the case where, after election, the President-elect or Vice President-elect, or both, die, decline to serve, or fail to qualify.

(5) How it shall be determined whether the President, or individual acting as President, is unable to execute the powers and duties of the office, and how the duration of such inability shall be determined.

That has arisen various times in our history. When Garfield was at the point of death for months, and when Wilson was incapacitated in the White House are two illustrations.

(6) Whether or not provision should be made for an individual to execute the office of President in case of removal, death, resignation, or inability, both of the President and Vice President, including provision for selecting an individual to execute such office in cases where by reason of removal, death, resignation, or inability there is no individual upon whom the powers and duties of such office would otherwise automatically devolve.

Senator LODGE. Senator, do you object to questions while you are going along?

Senator GREEN. Certainly not.

Senator LODGE. This covers both matters of statute and matters of constitutional amendment, does it not?

Senator GREEN. That is right.

Senator LODGE. Of course you make it clear that the list of topics which you mention are not the only things that can be looked into but that they are the things that are, in your opinion, particularly important. You do not mention the proposal to have two Vice Presidents.

Senator GREEN. No.

Senator LODGE. Is that because you don't think well of it?

Senator GREEN. No; I put all of these in the form of questions. I am not taking sides. I have very definite ideas on a good many of

these things as a result of my studies of the questions, but I thought it was a good deal better to put these in the form of questions.

Senator LODGE. Would you mind telling me what you think of the proposal to have two Vice Presidents?

Senator GREEN. I would prefer not to express any opinion at the present.

Senator LODGE. I thought that is what you would say, but you don't object to my asking?

Senator GREEN. No; if you don't object to my not answering.

Senator LODGE. It would make it more interesting if you would answer, but I can see how you feel.

Senator GREEN. Now the next is very important, and I think very little attention has been given to it by writers on the subject.

(7) Whether there are, or should be, any differences between the status, powers, duties, and privileges of an elected President and any other individual executing the office of President.

There are ambiguities in the Constitution. I don't know in certain situations whether a President is simply a President, or only an acting President, executing the duties of the office, and the answers to those affect the question of the Speaker of the House or the President pro tempore of the Senate becoming President.

Senator HOLLAND. In other words, whether they should have a dual capacity or whether they should cease to be one and become the other with full capacity?

Senator GREEN. Yes, and if they act in a dual capacity, aren't they inconsistent? Can he represent the executive and the legislative branches of the Government at the same time?

The CHAIRMAN. Has there ever been any legislation proposed, to your knowledge, or passed, that would consider that they should have a dual capacity? Hasn't all the legislation that has been passed, up to this date, defined their activity as a sole activity of being acting President?

Senator GREEN. Well, that is open also to dual constructions. I don't think the point was in mind when the legislation was passed. I think it has been assumed that the Speaker of the House should become President, if he were elected, and thereby cease to be Speaker of the House.

The CHAIRMAN. In all the reading I have been able to do in the time I have been able to give to it, I have gotten the general impression—that is the reason for my question of you, who I believe has considered it at great length—I find that every bit of legislation required the President pro tempore or the Speaker of the House to resign and become the acting President. So it excluded entirely the possibility of acting in a dual capacity.

Senator GREEN. I don't think they all do; some do and some don't. But even then another difficulty arises. Suppose the vacancy were to occur before the time of the reorganization of the House. Sometimes the House would be evenly divided and there would be no head of the House.

The CHAIRMAN. There would be, then, a President pro tempore.

Senator GREEN. There are other times, when a session is adjourned and before the new Congress convenes, when there is no Speaker of the House.

The CHAIRMAN. Have you given thought to this? Can we or can we not, by law, prescribe that for the purpose of this act the Speaker of the House last elected is the Speaker of the House until a new speaker is chosen?

Senator GREEN. In that case he would be acting in a dual capacity, would he not?

The CHAIRMAN. No; he would not, sir. He would act in that capacity only until he became the acting President.

Senator GREEN. Suppose he became acting President and ceased to be Speaker of the House, then there would be no Speaker of the House.

The CHAIRMAN. That is right, and if you had the same provision for the President pro tempore of the Senate, there would certainly be one of the two available; and if not, you could provide for succession as the other bills have, that it would follow down the line of Cabinet officers.

Senator GREEN. Well, all those suggestions are within the scope of this concurrent resolution; they all ought to be taken into consideration. To a certain extent they are interwoven. It seems to me that after 155 years of the history of these doubts, we ought to straighten them out and not have these uncertainties which become more and more important as time goes on.

The CHAIRMAN. In studying the bill that was passed, in 1945, by the House, I note no provision was made for a speaker of the House after the House adjourned sine die. Now what is your interpretation of this? Does the Speaker's office end at that adjournment or does he continue to be the Speaker of the House until a new Speaker of the House is elected?

Senator GREEN. As that would affect my answer to these other questions I would rather not, I think, as a matter of policy, take any position at present on any one of these questions.

The CHAIRMAN. I thought you might give us the benefit of your study. I find that you have been studying this, as chairman of this committee, for years.

Senator GREEN. Yes.

The CHAIRMAN. But you don't wish to give us an opinion?

Senator GREEN. I think it better policy not to take any position on any of these questions, but to put them in the form of questions so as to draw attention to them and so that the committee can consider them. Of course there isn't anything to prevent the committee from giving them attention or sympathetic consideration. It is impossible to answer a great many of these questions; no one could. I think if they went to the Supreme Court we might get divided opinions as to the proper construction both of the statutes and the Constitution itself.

The CHAIRMAN. Well, I assume that would be true no matter whether you gave your views as a member of this committee or a member of a joint committee or whether it was the majority of the joint committee, there would still be that question hanging in the air about what the Supreme Court would do about that.

Senator GREEN. It might not be if they recommended certain constitutional amendments to clear these matters up, and then passed the necessary legislation as a result of those amendments.

I don't see, myself, any other way of accomplishing it. But that requires pretty careful thought, and it should be subjected to every

severe test we can put it to of criticism, technical criticism as well as substantial criticism.

Senator LODGE. Then we have added this provision, which was not in the resolution last year:

(8) Whether or not there should be any limitation on the number of terms a person may serve as President.

The CHAIRMAN. That matter is presently before the Senate.

Senator GREEN. Yes.

The CHAIRMAN. And has passed the House; that is right, is it not?

Senator GREEN. Yes.

Senator LODGE. Is it not true that this matter has always been considered in the light of death by illness or assassination? Now we have to contemplate the possibility of death due to the action of modern warfare.

Senator GREEN. Yes.

Senator HOLLAND. And in airplane transportation.

Senator LODGE. I don't think airplane transportation is any more dangerous than anything else.

Senator HOLLAND. They used to stay home, it was a tradition that the President should not leave the country.

Senator LODGE. That is true.

Senator HOLLAND. Now, with speedy transportation, they go everywhere.

Senator LODGE. The point I am trying to make is that if all you are guarding against is death by sickness or assassination or by travel, that is one thing; but if you are trying to guard against the effects of modern war, then it suggests the need of havin the succession run to people whose official business is not all in the same place; isn't that right?

Senator GREEN. That is right, that ought to be either supplemented——

Senator LODGE. That suggests the matter of having two Vice Presidents, one who will be in Washington presiding over the Senate, and one who will be 500 or 600 miles away.

Senator GREEN. I don't know how far away he would have to be to escape all these possibilities of modern destruction.

Senator LODGE. You have to be a fatalist about these matters anyway.

Senator GREEN. There ought to be a way of determining that, no matter what happens, there ought to be somebody who would take over automatically without any hitch.

Furthermore, I might add that in my opinion, it is far more important to have some solution of these questions than it is to have the best solution. I would like to see the best solution; I would like to have, in other words, the solution which I think is best, of course. But I think it is far more important to get some solution, to have it certain. Certainty in a matter of this importance is far more important than to get the best solution.

Senator LODGE. I agree with you that certainty is very important; it is a vital consideration.

Senator GREEN. Now then, in this resolution there are the usual provisions about holding hearings, and sitting, and so forth, and a pro-

probably well known to the members of this committee—but these questions have arisen from time to time, and it usually takes the death of a President to bring any action at all, or even any discussion.

Our present law which defines the succession in the case of the death of the President, was the result of some 4 years of discussion after the death of President Garfield, and there is a renewal of the discussion now since the death of President Roosevelt. It seems as though Heaven has guarded over this country pretty well, considering how many opportunities there were for crises to arise which haven't arisen, how many gaps in the law which ought to be filled, how many combinations of circumstances there are which might arise and which are not provided for in the law.

At the present time there are some 21 bills and resolutions, which have been introduced in the House and the Senate relating to the subjects covered by this resolution, and my primary point is this. They ought all to be considered together. You don't want a succession of constitutional amendments on different phases of this matter, and in my opinion, if I may express it, constitutional amendments will be necessary.

There is confusion in the law as drafted, there is confusion in the Constitution itself as to what it means, and there is much at stake now. There always has been throughout our history but there is more now than ever before. This Nation is the greatest Nation in the world, and yet a combination of circumstances may arise under which we would have no head, no President, and we are just trusting to luck, and it is an awful gamble with fate. Now you may say that it is taken care of by the present succession that was adopted in 1886. However, at that time it might have been considered comprehensive as there was no likelihood of all the members of the Cabinet dying before the Government had been reorganized. But nowadays anything may happen, in the day of the atom bomb.

If an ordinary bomb should strike the White House at a time when the Cabinet was in session, they might all be wiped out. If no Cabinet meeting were being held, and all its members were in Washington, and if an atom bomb were dropped on Washington they might all be wiped out. That is just in the case of the President and Vice President, which is provided for under that succession bill, but there are all these other cases I speak of for which no provision at all is made.

Now there is doubt as to the meaning of the law. Concerning the Speaker of the House or the President of the Senate, who have been proposed in line of succession, all sorts of questions come up. In the case of the Speaker of the House, he may not be eligible to be President. There is a question as to whether he is an officer of the Nation or whether he is simply an officer of the House. The same thing arises in connection with the President of the Senate. Is he anything more than an officer of the Senate? Does he come within the Constitution whereby he is eligible for the Presidency? And if we conclude that he is, then the President of the Senate can be changed from time to time very easily. A man may be President of the Senate only for a few weeks when his successor is elected President of the Senate. It is a very uncertain line of succession, and produces all sorts of constitutional debates.

You may say that that might not be harmful, but it might be very harmful. The "lame duck" amendment to the Constitution

brought new complications. It provides that the new Congress shall take office on January 3, but the new President doesn't take office until January 20. So you have a "lame duck" President for 2 weeks there, and unless the Houses of Congress organize, that situation may last indefinitely. In times of great division of opinion in the country such a thing would be very serious. It might not only affect this country but it might affect the world.

Let me tell you a humorous anecdote. In my travels in South America, in one country at one time I got to know some of the high officials of the government pretty well, and at a party one of the leading statesmen of South America said, "I wonder if I could ask you a question, Senator. It has bothered me a good deal. If you don't want to answer it, of course you don't have to, and you can tell me so frankly." I said, "What is your question? I would like to know what is on your mind." "Well," he said, "it is about President Roosevelt's death." I said, "What about it?" very curious. "Well," he said, "tell me now, why was it when President Roosevelt died that the Republicans didn't seize the Government?"

Now that may seem very humorous to us, and I answered with a quip. I said, "You know the Republicans are not very bright and I don't think the idea ever occurred to them." [Laughter.]

The CHAIRMAN. You didn't mean that.

Senator LODGE. You were joking when you said that.

Senator GREEN. Now, that isn't so funny. If you think that over it isn't impossible that in such a situation as the death of a President, with party feeling running very high and a controversy as to the constitutional provisions, that such a situation could arise in the House of Representatives and in the Senate that there wouldn't be any President.

The CHAIRMAN. How could that be if there was a Vice President?

Senator GREEN. I am assuming a combination of circumstances; I am assuming that the President and Vice President died.

The CHAIRMAN. That wasn't in the equation about which you had your colloquy with the high official of another government.

Senator GREEN. Oh, no—but that just suggested it to me, as remote as it was. I thought it was a most ridiculous idea and it showed the difference between their conception of government and our conception of government. But in thinking it over I thought a similar condition might arise where there might not be any President, and a party might seize the Government, with one party in control of the Government and another party claiming the right to that control.

The CHAIRMAN. Give us an illustration of how you think that might come about. That is a very striking statement. Would you give us an illustration of how you think that might develop?

Senator GREEN. Well, suppose the President died and the Vice President became President. Then there is no Vice President. Suppose the Cabinet is wiped out by a bomb; as I suggest, it is a limited succession, a limited number of men. Then some people claim that there is provision in the Constitution whereby a new President can be selected by the House of Representatives, or that the House of Representatives can make provision for the election of the President. Now suppose there is controversy there and neither happens—there is no President.

vision that the expenses of the committee shall not exceed $10,000.

I do hope that we can report this favorably and pass it in the Senate, and send it to the House; and I hope this time the House may be persuaded to take some action.

The CHAIRMAN. The history of the House taking action of this kind, indicates they declined to pass a bill similar to yours, but did pass a bill last session at the suggestion of and following out the recommendations of the President in 1945. Again this matter was brought more forcibly to our attention by a second letter from the President, urging that we change the law, making the Speaker of the House the first in line for succession. His main reason for this suggestion was that he felt it ought not to be left in the hands of any President to designate his own successor, but that he should be one chosen from those elected by the people, and that throughout our history we have never had a Speaker of the House—although it is conceivable that you could have—who was not elected a Member of the House; they always have been House Members. History has proven that they have been elected for a great number of terms, and that they have then been chosen because of many qualifications, such as knowledge of the law, affability, knowledge, and competency as a legislator——

Senator LODGE. That doesn't exhaust the list of reasons why they are chosen.

The CHAIRMAN. No; but those are some. That, I say, is the reason that is brought more forcibly to our attention now.

But as far as I can find, in the House at the time they passed the bill before, Mr. Monroney had a bill quite similar to the one you now propose, which the House declined to pass, while they did pass the bill in accordance with the suggestions made by the President.

Senator GREEN. Of course, that is one of the phases of the matter that the President brought up, but that phase has been discussed since the time of the original Constitutional Convention. In the Constitutional Convention at one time they adopted a constitutional clause which carried this idea into effect. Then the argument was reopened and they decided no, that wasn't right, that they would be more apt to get a man qualified for the Presidency if they took someone to succeed the President of the same party; that it was more important—our Government was a government of parties—to continue the same party in office than it was to pick out a man who was elected by the people, as you suggest. Of course, the Speaker of the House might not have other qualifications for the Presidency; he may not have been born in this country.

The CHAIRMAN. Of course, he has to be qualified to be President to assume this responsibility.

Senator GREEN. I don't want to take the argument against it or for it, but I am saying there is a controversy as to which is most important, to be sure that one party which is elected stays in for 4 years until there is another general election, or to devise some other means of selecting a President and avoid the criticism which can justly be made about the President selecting his successor.

But this isn't anything new. At the time of George Washington it was discussed; at the time of Thomas Jefferson it was discussed. There were great differences of opinion and changes of opinion, on the part of some of our greatest statesmen, and they finally decided it was better this way.

Now, this isn't a new thing coming up. Ever since 1886 we have had this line of succession, and all this debate was gone into then and also previously, and from time to time it has been gone into ever since the Constitutional Convention itself. They may have decided improperly, but that is one of the points for this committee to consider.

The CHAIRMAN. I think, just as an observation, it is rather unique that with regard to the discussion as to whether it should be the party continuing in power or the one chosen by the people, we have almost the identical recommendation from President Truman, both when his party was in control of the House and when the opposition party was in control of the House. So it must have been considered by the present occupant of the White House essential to change it, no matter which party was in control at the moment.

Senator GREEN. That is right.

The CHAIRMAN. Another observation. I think it might be interesting, if you haven't studied it, to note that there have been 15 instances in our history where we have been without a Vice President. Seven occurred when they moved up to the Presidency.

Senator GREEN. Mr. Farley brought that out in his recent speech.

The CHAIRMAN. Seven of them died in office, and one resigned to become a Senator of his own State. So we have had 15 times when, had anything happened to the then occupant of the White House, we would have gone into succession, but it has never yet occurred.

Is there anything further you would like to offer on your bill at this time, Senator?

Senator GREEN. I think I have covered it.

Senator HAYDEN. You make the suggestion here that this committee be required to report not later than May 1, 1947.

Senator GREEN. That date ought to be changed on account of the delay in acting. It wouldn't of course, give time enough now. Whatever date you think would be appropriate is agreeable.

The CHAIRMAN. I found in the record that you had appointed a special committee, when you were chairman of this committee to study this. Did they ever make a report?

Senator GREEN. Yes; I have a copy of it here.

Senator HAYDEN. It might be well to include that report in the record.

The CHAIRMAN. I think it would be well.

Senator GREEN. The report was made January 24, 1946, and here is a copy of it.

The CHAIRMAN. Let us put it in the record so that the members can have the benefit of it.

(The report referred to is as follows:)

[S. Rept. No. 892, 79th Cong., 2d sess.]

The Committee on Privileges and Elections, to whom was referred the concurrent resolution (S. Con. Res. 50) relating to the succession to the Presidency of the United States, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution do pass.

Perhaps no subject has aroused more speculation and discussion over the years than the method of election of the President and Vice President and succession to the Presidency. Moreover, any intelligent discussion of this subject is certain to involve grave legal and constitutional questions. Many of these questions have from time to time come to the attention of your committee in the form of proposed legislation. The interrelation between the many issues involved is such

that no one phase of the subject can be given adequate consideration without a thorough examination of the whole subject.

On June 19, 1945, the President sent a message to the Congress requesting action on the question of Presidential succession. Bills and joint resolutions have been introduced in the Senate touching this question. There has been referred to your committee a bill, H. R. 3587, passed by the House during the last session seeking to carry out the objective of the President's message. Other bills and proposed constitutional amendments dealing with some aspect of the subject are pending before Senate and House committees.

To what extent existing law is inadequate, to what extent the problems involved may be solved by legislation, and to what extent it will be necessary to resort to constitutional amendment has not been thoroughly canvassed.

In these circumstances your committee believes that it is desirable to have a full and complete study of all matters connected with the succession to the Presidency and the election of the President and Vice President, by a joint committee of the Senate and House of Representatives, and accordingly recommends that Senate Concurrent Resolution 50 be adopted. The resolution creates a joint congressional committee composed of five Members of the Senate and five Members of the House of Representatives to make a full and complete study and investigation of all matters connected with the succession to the Presidency and the election of the President and Vice President, from the time of the nomination of the President and Vice President through the time of their election and the time of their inauguration until the termination of their respective terms of office, with the purpose of making the law certain as to the Presidential election and succession. Reference to the terms of the resolution will indicate the many and grave questions that are involved. The investigation may disclose others, in addition to the matters specified. Some of the questions involved are partially, and some will say inadequately, covered by the provisions of existing law. Others are in the category of matters on which the Constitution has authorized the Congress to legislate, but no legislation has been enacted. In the case of still other matters any change must be brought about by constitutional amendment.

In recent months there has been particular agitation for a change in the law on Presidential succession. This generally follows the death in office of a President. Under the resolution the joint committee will consider whether any change is necessary in the law of Presidential succession, along with other issues involved in the whole question.

It is believed that inasmuch as the committee is required to submit its final report not later than May 1, 1946, no time should be lost in the adoption of this resolution. It is hoped that a great deal of valuable information and background for intelligent action will be obtained and that, as a result, all uncertainties as to these important questions may be removed and all contingencies in connection with the election and succession of Presidents and Vice Presidents may be provided for adequately.

The CHAIRMAN. Senator McMahon was advised we would like to hear him, but he is tied up this morning with the Atomic Energy Commission hearing.

Senator GREEN. What I have said applies to all these 21 bills or resolutions which have come to us and to others which may come to us. It seems to me that it is a great mistake to act on any of them separately, and if you are going to appoint this committee, they ought to consider them all together.

Senator HOLLAND. Mr. Chairman, would it be appropriate for me to say into the record, if I may, that I strongly approve of the purposes of this resolution, and hope we may report it. I have noted not only in the case of my own State, but it has been called to my attention that it is also true in other States, that this recent situation in Georgia has stepped up the examination of this very question with reference to the succession to the governorship. And it seems to me that the question of the succession to the Presidency is, of course, a vastly more vital one, and it certainly is not handled with certainty under our present constitutional or statutory procedure, or both; and with the hazards of travel multiplied as they are, not only by

airplane and motor travel but simply by the availability or acquisition of speed which makes it possible and desirable and apparently necessary that the President shall travel over distances that heretofore would have not been regarded as at all possible, I think we would just have to be very blind to the actualities if we didn't realize that there is a greatly enhanced problem in this field, even without considering war; and certainly the implications of modern war are visited much more destructively and disastrously upon civilian population than was ever the case under war as it used to be.

It goes without saying that in the event there should be another war, which we all are doing our utmost to avoid, that at least one of the possibilities would be that of immediate attack against the nerve center of the Nation, the Capitol of the Nation, where most of the high-ranking officials presumably would be.

I think we should by all means set up this study to see that as certainly as men's minds can devise it, we have a machinery which will anticipate all of the disagreeable things that might conceivably happen in this world we are living in now, and I strongly favor the adoption of the resolution.

The CHAIRMAN. If there are no further questions or no further witnesses, we will stand adjourned until Monday morning at 10:30.

(Whereupon, at 11:20 a. m., the committee adjourned until 10:30 a. m., Monday, March 10, 1947.)

SUCCESSION TO THE PRESIDENCY

TUESDAY, MARCH 11, 1947

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to call, at 10:30 a. m., in room 104–B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman), Knowland, Jenner, Ives, Hayden, Green, McMahon, and Holland.

The CHAIRMAN. The committee will come to order.

Senator McMahon, will you give us the benefit of your thinking on your bill.

STATEMENT OF HON. BRIEN McMAHON, UNITED STATES SENATOR FROM THE STATE OF CONNECTICUT

Senator MCMAHON. Mr. Chairman, this proposal is quite simple and direct. The essence of it is: Upon the death of the President and, of course, the Vice President having succeeded him and also passing away, the Secretary of State shall become President. If, however, more than 4 months intervenes between the date when he takes office and election day, it is mandatory under the bill for him to notify the governors of the States, who are thereupon directed to call the electors who have been elected at the last presidential election together for the purpose of electing a President and Vice President.

I think that describes the proposal. I might say that if it is less than 4 months, the intent is not to bring this machinery into operation, on the theory that for such a short period of time it would be all right for the Secretary of State to continue.

As we all know, the electoral college has been the subject of a great deal of discussion during the past 75 to 100 years, and it has not been a totally popular institution. However, it is interesting to note that the electoral college was the thing that the founding fathers were the most pleased with when they finished their labors in framing the Constitution.

It seemed to be a subject of general congratulation that they had worked out this so difficult problem with satisfaction to all.

While the electoral college has been attacked on all sides for many years and while good arguments, I realize, can be made against it and in favor of a direct election of President and Vice President by the people; nevertheless, I think we are dealing with realities and we might as well realize that there is small, if any, chance of the electoral college being abolished in our political system.

If you reflect on that, you can understand that the smaller States—Nevada, for example, where they have, I believe, three electoral votes—would be reluctant to surrender that advantage they have proportionately over New York or Pennsylvania. That goes for all the smaller States.

Now, there has been some suggestion that one of the things that should move us to speedy action is the fact that in this modern world with the weapon development being what it is, with the atomic development being what it is, with the possibility that in the event, the catastrophic event, that atomic war should ensue in years to come, that it would be highly necessary that we provide for continuity of Government.

Certainly, the electoral college would, I suppose, be as good a method as any for quick action in that respect. There is no necessity—assuming that many of the electoral college members should be wiped out or killed—there is no necessity in the Constitution that the election of the President and Vice President be by all of the members of the electoral college.

If that were true, Abraham Lincoln, for instance, couldn't have been elected in the second election. He was elected by the electors from the States which had not seceded.

Now, it has been inquired of me as to how vacancies in the electoral college would be filled. The answer to that is in the Constitution. Each State shall elect its electors as it chooses. Up until the time of the Civil War, South Carolina and, I believe, Delaware had their electors chosen by the legislature; and there is no reason, as I understand it, in the law today why any State couldn't go back to that system if they so desire.

Under the power that has been given to the States to regulate not only the election of the electors up to its quota and also to fill vacancies, the various States have enacted statutes to take care of that.

I haven't looked at them all, but I did look at those of my own State, Connecticut, which provide that the members of the electoral college who survive shall elect to the vacant places; and that is also true in New York.

Much has been said about the proposition—I believe the President posed it—that we should not have an appointed officer in the Presidency. We should have an elected officer. Under his suggestion, as I recall it, he suggested the Speaker of the House and the President pro tempore of the Senate.

Well, while they are elected officers, they are not elected by the people with the office of the Presidency in mind. One can agree with the general proposition that we ought to have someone elected by the people, but the Speaker of the House certainly cannot be held by any stretch of the imagination to be the choice of the people of the United States for the office of President, no more than the President pro tempore can.

So if the objective of the President is to see that in the event of the death of the President or Vice President, someone chosen by our people should succeed to the office—and I think that is a very legitimate objective—I can't see any reason, frankly, why we don't make use of the machinery that we have in existence, which seems to fulfill the objective, which seems to be immediately workable, and which I think would be highly satisfactory.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Are there any questions?

Senator HAYDEN. As a practical matter of politics, in case the electors had to be assembled to carry on, would they do it in the spirit of the founding fathers of this Government—that is, meet and deliberate in a broad-minded manner as to what was best for the country—or would they be guided by their political affiliations?

By that I mean, would the Democratic National Committee, if most of the electors were Democrats, meet and suggest who should be voted for; or would the party machinery be used in any way?

Senator MCMAHON. The approach to the individual electors with suggestions as to whom they should vote for, I presume in a society such as ours, would be open to all. I can conceive of the Democratic National Committee, for instance, being one of the bodies in case the last electors were Democrats, or the Republican National Committee if the reverse were true—and parenthetically permit me to voice the hope that we legislate for the ages and not just for tomorrow in this matter—I can conceive of their meeting and recommending to the electors a choice. I can conceive in that individual States and with individual electors such recommendations would have great weight.

On the other hand, there is nothing mandatory about it. The electors would be free to reject it.

Senator HAYDEN. The electors assemble in each State. They do not meet together as a national body.

Senator MCMAHON. That is right.

Senator HAYDEN. So that any advice they would receive would have to be sent from the national headquarters of the party in power to each State suggesting that Mr. So-and-So would be an excellent Vice President and recommending that they vote for him. They could vote for him or for somebody else.

In case their votes were divided, then I asume the election would go to the House of Representatives.

Senator MCMAHON. Under the Constitution it would have to do so.

The CHAIRMAN. In your State do they elect the electors by name?

Senator MCMAHON. We did up until, I think, 1936. Since then we have put Roosevelt electors and Dewey electors on the ballot. I think your question is a good one. I think it makes no difference if we should not adopt this suggestion—no particular difference—as to the indentity of the electors, but if they are going to be given a choice, the power of really making the choice, I think it is important that their identity be known.

I do not know what the general standards are for selection as electors in the other States of the Union, but I can say that in our State, where I am familiar with it, the citizens who have been chosen by both parties as electors are outstanding citizens of the State.

While it is true that the power and authority of being an elector is not very great under our recent history; nevertheless, the prestige is considerable and we consider it so in our State convention—of course, we have a convention—we consider it a signal honor that we are paying one of our citizens.

I think that applies in the Republican Party, also.

The CHAIRMAN. It can't be truly said—when you have candidates for President X and Y and electors for them—it can't be truly said

that these individuals were chosen to exercise any independence of thought at all when their name isn't even on a ballot. It is just a form.

Senator McMAHON. I grant you that.

The CHAIRMAN. And in a great many of the States it is just a form. Even in your State where it is just a form to make somebody think he is quite an important person because he is chosen as an elector, when as a matter of fact, he has no independence of thought at all; he just does what the convention tells him to.

Senator McMAHON. If we enacted this and put the power in his hands, such as is suggested in this bill, then I feel sure our State legislature, no matter what its political complexion, would recognize the different situation and again print the electors' names.

The CHAIRMAN. I checked it, but I have forgotten and do not have the figures at hand; but probably more than half of the States are now not printing the names on their ballots.

Senator McMAHON. That is easy to cure.

The CHAIRMAN. You would have to change the laws. Have you gone into the question of in the event of the shock of losing the President and then the subsequent disturbance and shock of losing the Vice President, what another election would do to the country at the time?

Senator McMAHON. I can't conceive of its being any greater shock to let the people's representatives gather in the various States than it would be to permit the Speaker and the President pro tem to take over.

That prompts a question. I am frank to say I haven't looked recently at the President's proposal. Does his proposal change any provision for the succession past the President pro tem of the Senate?

The CHAIRMAN. I am not sure that the letter does. I think it was contemplated and in the bill that was passed in the House following his first letter of recommendation they did provide for the Secretaries in their accepted order, not in the order of their origin, but in the order that they had been named since 1886.

Senator McMAHON. That was in the bill?

The CHAIRMAN. That was in the bill after the Speaker of the House and the President pro tem.

Senator McMAHON. Now, I would call your attention to the fact that every single one of those persons are residents of the District of Columbia and are here all the time. Literally it might happen that if a catastrophe were to come that the Secretary of Agriculture might be in New Mexico at the moment; but they could all be present within the area of one square mile and without in any way wanting to be sensational, for I think it is just pointing out the obvious, and I do not make it my statement but refer to the testimony before the Senate Atomic Energy Committee of last year where General Groves, I believe it was, testified that one of the present type bombs such as were dropped on Hiroshima and Nagasaki were dropped on the city of Washington it would obliterate the White House, the Capitol, and the Pentagon Building and everything in a corresponding radius.

So if the objective is to absolutely insure continuity of government, you haven't done it under this bill.

The CHAIRMAN. Have you thought of having the Senate meet at one end of the United States and the House meet at the other?

Senator McMAHON. I think sometimes, Mr. Chairman, we are too far apart now.

The CHAIRMAN. I am thinking of the problem that you bring so suddenly at us. Of course, the world is conscious that if such a catastrophe should happen, they would drop the bomb here, but if you are contemplating that, then you ought to contemplate underground capitals and you ought to contemplate the House meeting at one place quite different from the Senate, and the Supreme Court in another area, and decentralizing the whole system of government.

Have you gone that far in your thinking?

Senator MCMAHON. That is exactly what we should do in the event that we do not have effective international control of atomic energy, and the Army says there is none. The only conceivable approach to a defense would be to burrow the whole Nation underground; which is an attractive alternative.

Senator GREEN. Burrow instead of bury.

The CHAIRMAN. Every time we get into this and I think in most legislation from now on you will always find the atomic bomb in the legislation, or at least, it is popular to mention it when you are testifying in legislation. I think we will come some day to that very problem of having underground meeting places unless you can find effective international control; but there is only one barrier to the international control at the moment; isn't that true?

Senator MCMAHON. Apparently, yes; and a very sad one.

The CHAIRMAN. So that is something that we can't legislate here at the moment.

Senator MCMAHON. No. All we can do is try to anticipate—as I suppose people in our business ought to do—anticipate anything that a reasonably prudent man could anticipate. It isn't pleasant to think of these things, I will grant you that.

Nevertheless, we have got to think about them.

The CHAIRMAN. Had you in your bill thought of whether you would elect a President for a new 4-year term or for an unexpired term?

Senator MCMAHON. Just for the unexpired term. In other words, it was the contemplation of the framers of our Constitution that a 4-year term should be had.

On page 3, line 4—"unexpired terms of the offices of President and Vice President"—no, I wouldn't want the electors chosen in 1940 called together in 1942 to elect a President to serve until 1946. I don't think that would be sound.

Senator KNOWLAND. I think the point raised by the chairman has some considerable merit, and that is that if we had the unfortunate circumstance of the President dying, the Vice President taking office and dying, or being assassinated, and then immediately to throw the country into the uncertainties of a Presidential election—even by Presidential electors—whereas, the succession proposed by the President or some other succession under the law, you at least have a certainty as to who shall take the oath of office immediately following the death of the occupant of the Presidency.

However, while it may seem a little farfetched, perhaps, I think that the suggestion of the Senator from Connecticut is entitled to some consideration, perhaps after we have gone down the succession—the Speaker of the House and the President pro tem of the Senate, or whatever order they shall be in, and then the President's Cabinet.

However, if on Inauguration Day, for example, you should wipe out the entire Government here at Washington, there should be some machinery available so that the country wouldn't be absolutely in chaos, not knowing by what machinery they should elect a President of the United States.

I think we have some responsibility in giving thought to that even though it might be a farfetched eventuality. You can imagine what condition the country would be in with the entire seat of government wiped out and everyone who is listed as a possible Presidential successor, and in this atomic age it is certainly a possibility.

Senator HOLLAND. As I read this bill it doesn't propose to amend the earlier sections of the Presidential Succession Act, but assumes they will be operative at once in the event of catastrophe and this simply provides machinery to be used in the event there is more than 4 months between that date and the date of expiration of the then current Presidential term. This doesn't propose to set up the immediate succession that disturbs you.

Frankly, that is a ground for disturbance of all of us. However, this seeks simply to make available the electoral college, as it then may be stepped up to full membership, to select a President for the people; notwithstanding what immediate succession may have been provided. Is that correct?

Senator MCMAHON. That is right, Senator. In other words, I think that meets the objection of the chairman, about this throwing the country into another election. The Secretary of State immediately takes over and under the bill if the Secretary should be out of the way, then the Secretary of the Treasury, and so on down the line would take over.

Senator HOLLAND. If that list isn't long enough, then your point would be immediately applicable to the lengthening of it so there would be sure to be somebody available. There should be somebody available to step in immediately.

This machinery prevents the operation of any machinery in such a way as to defeat the people and prevent them from having a choice shortly in the event of more than four months' hiatus.

Senator KNOWLAND. Of course, the situation like this wouldn't be likely to happen unless we have a Pearl Harbor attack on the National Capital to be immediately followed by a declaration of war, or that we be involved in war; so that we must just maintain, as you point out there, a continuity of government here that wouldn't leave us in a completely disorganized position.

Senator HOLLAND. That is one question and a very important one, but his question is a different one, as I see it.

Now you are talking about disagreeable things, but suppose on one of his journeys the President should have a mishap and come to an unfortunate and untimely death. He was elected Vice President. Then the Secretary of State, General Marshall, would immediately become available to act, but under this bill if more than 4 months then remain from the date of that accession by General Marshall to the Presidency to the end of the term, this machinery would immediately become operative to prevent that kind of a choice of the Presidency being operative for the whole rest of the term.

Instead, through the electoral college the people would be given a chance to name someone. They might name the same man, but they at least would be given the chance to act.

That is it, unless I misunderstand the intent of the bill.

Senator McMAHON. That is right.

Senator HOLLAND. The thing you brought up, which is extremely important as an objective, is not the objective of this bill.

Senator McMAHON. It serves a good purpose.

Senator GREEN. I wanted to draw attention to a statement the Senator made, which I don't think should go uncommented on. That is that the Speaker of the House was necessarily elected by the people, although not the people of the whole country, by people of one congressional district. That isn't necessarily the case, legally.

Senator McMAHON. I didn't say that, Senator. I said that the Speaker of the House and the President pro tempore were not elected by the whole people—at least, that is what I meant to say.

Senator GREEN. But they were elected by a small proportion of the people.

Senator McMAHON. By the people in their districts.

Senator GREEN. That is the statement I am criticizing because that isn't true, as a matter of fact. They have been, but they don't have to be. The Speaker of the House does not have to be a Representative.

Senator McMAHON. That is right, and I might call attention to the fact——

Senator GREEN. So even under the President's suggestion, the alternative he suggested, in order to have somebody elected by the people to some degree isn't fulfilled by providing for the Speaker of the House to be in line.

Senator McMAHON. I will add the President pro tempore by pointing out that the President pro tempore conceivably could be an appointee of some Governor seeking to pay off a political obligation in the event of the death of a Senator.

Senator GREEN. Furthermore, you can have a new President pro tempore of the Senate every week. It can legally be done.

Senator McMAHON. Yes.

Senator HOLLAND. He would have to have a political potency much greater than any I have observed.

Senator JENNER. Sometimes the people that elect the Speaker of the House and the President pro tem of the Senate are representatives of all the people assembled together, which is the equivalent of electors of all the people.

Senator HOLLAND. The man elected to be Speaker in order to be President may be fine for his parliamentary knowledge, fine for his sense of fairness, fine as a legislator, but entirely without experience as an executive in important matters; and it doesn't follow at all that a man who could make a good Speaker or President pro tem would necessarily be good material or even be considered as material for the presidency.

Senator JENNER. It likewise doesn't follow that the electors wouldn't make the same mistake by picking somebody out of the blue, so to speak.

Senator HOLLAND. They were selected by the people to do this job.

Senator JENNER. They were selected under our system to elect certain people as they were voted on in this election and if these people are dead, what are they going to do? They weren't elected to elect anybody else.

Senator MCMAHON. They would be under this bill. That is the point.

Senator GREEN. They are up against the same difficulty if the candidate whose name appears on the ballot dies before the electors meet.

Senator JENNER. That is right.

Senator HOLLAND. It might follow if this bill were passed that people with very sound judgment, very sound general judgment, would be selected as electors instead of its being a matter of honorary selection.

Senator MCMAHON. You have good people, don't you?

Senator JENNER. Yes.

Senator GREEN. I think this bill takes care of certain contingencies, but the one which we discussed the other day should take care of all the contingencies, and that seems most desirable.

Senator HAYDEN. May I make this suggestion to you, Senator? The Senate is entitled to have a Vice President to preside over it in the event that the President dies and the Vice President becomes President. Why not have your proposal in operation and have the Presidential electors elect a Vice President whenever a vacancy occurs?

Senator MCMAHON. I see no reason why that couldn't be done Senator.

Senator HAYDEN. Then there would always be a Vice President to take the place of the President in case of death or disability.

Senator MCMAHON. That is a good suggestion.

Senator HOLLAND. Senator Lodge's suggestion was good. He suggested that the Constitution be so changed as to have two Vice Presidents.

Senator HAYDEN. But your plan would not require an amendment to the Constitution.

Senator MCMAHON. No.

Senator HAYDEN. In the event the Vice President of the United States should die in office or should become President, the electors would then be assembled within a comparatively short time to elect another Vice President. In that way there would always be a Vice President. If Congress took that step, we would not have to wait until an atomic bomb explodes.

Senator MCMAHON. I would be happy to incorporate that suggestion. I think it is an added attraction, if I might call it that.

Senator HOLLAND. Just one statement in your remarks, Senator, that I have a question about in my mind, and that is this: I understood you to say that in the event the electors made no choice, that the choice would then under the Constitution devolve upon the House of Representatives.

That, of course, is the case with reference to the quadrennial election but I believe it would have to be so included in this statute—might have to be included in this statute to become applicable to this kind of condition.

Senator MCMAHON. Don't you think section 7 on page 4 would take care of that? It says:

Except as provided in this act, the electors, where required by section 4 elect a President and a Vice President, shall proceed in the manner provided

the Constitution and by law for a regular quadrennial election of a President and a Vice President and all laws relating,

and so forth.

Senator HOLLAND. Do you mean that you think the phrase "all laws relating" would incorporate the constitutional provision applicable to the House in this bill?

Senator MCMAHON. That is the catch-all phrase, but in the first line—

Except as provided in this act, the electors, where required by section 4 to elect a President and a Vice President, shall proceed in the manner provided by the Constitution—

the Constitution spells out specifically what happens in the event a majority does not occur.

Senator HOLLAND. This is very specific so far as the functioning of the electors is concerned, but I don't see anything specific in there with reference to the functioning the House, unless it is included in that latter part.

Senator MCMAHON [reading]:

All laws relating to a regular quadrennial election.

I think it is included, but it might be added to make certain.

Senator HOLLAND. I think that might be looked into because certainly the Constitution as written does not spell out any further function of the House than at the regular quadrennial election.

The CHAIRMAN. If there is no further comment, Senator Fulbright is here and we will proceed to hear him on his proposed bill.

Senator MCMAHON. Thank you, Mr. Chairman.

STATEMENT OF HON. J. WILLIAM FULBRIGHT, UNITED STATES SENATOR FROM THE STATE OF ARKANSAS

Senator FULBRIGHT. Mr. Chairman, I have hardly had a chance to look at my own notes, and I do not have a prepared statement. You have seen the bill and it is not, I might say, an original idea.

This bill is modeled after the original Succession Act of 1792. It was approved March 1 by President Washington. Many of the men who passed upon that act had participated in and were members of the Constitutional Convention.

The principal provision, of course, which I was interested in and am interested in, is the provision for an election to supply a vacancy after the death, disability, resignation, etc., of the Vice President and of the President. That is what we are interested in, as I understand it—the matter of succession thereafter.

Very simply, my suggestion for that is to provide for the calling of an election. The person who succeeds the President would be acting in the nature of a caretaker, following the death of the President and Vice President, under the law as it now is. That is, through the Secretary of State, the Secretary of Treasury, Secretary of War, and so on; but the significance of who becomes the acting President is not particularly great because his only function is to act as President pending the calling of an election and the election of a real President.

The idea that either the President pro tempore of the Senate or the Speaker of the House should succeed as President and really succeed

to the office of President has never appealed to me. It seems to me that is not the proper approach. There was always much disagreement about that when it was discussed in the consideration of this original act.

Whether or not they are officers within the meaning of the Constitution—we have assumed that. There is still debate about it, whether they would come strictly within the meaning.

But there are many complications that can arise from using such officers as either of those. The thought that they are elective officers as opposed to appointed officers doesn't seem to be very significant today because they certainly wouldn't be elected to the office of the President.

They were elected, certainly in the case of the Speaker of the House, by a very small constituency and with no thought that there was a possibility of his acting as President or becoming President.

I have examined the various proposals. The others have been the Supreme Court Justices. None of those seem to be appropriate. I don't think that the members of the Cabinet are properly men to act as President indefinitely—that is, for the full term.

The vacancy, as was pointed out on the floor yesterday, often occurs during the first year. Until we have an election, I think they are properly what I would call the caretaker President. I think the only way you can properly have a man really to discharge in the fullest sense the office of President is where he is elected, either the President or Vice President, or in the case of their deaths, as President again.

The bill by Senator McMahon has just come to my attention. It utilizes the services of the existing electoral college to achieve the common purpose. Of course, if the vacancy occurs shortly after the election of his predecessor, I see no real objection, but if it occurs a long time after, there may be a very considerable change in the settlement of the people.

In that case it wouldn't be as safe a way as to follow the procedure in my bill; that is, have a new election, which would reflect the attitude and the will of the people as of the time when the contingency arises.

Senator McMahon. Could I interrupt you, Senator?

Senator Fulbright. Let me make one more point. I may forget it.

This original bill, adopted in 1792, which carries the provision in section 10 relating to elections very similar to the one in my bill, was examined by the Committee on the Judiciary of the Senate, I think in 1856, or 1858—and I have read that report. I didn't bring it here, but I can get it if the committee is interested.

That committee examined that act and gave their views as to its constitutionality, and so forth.

The Chairman. They also said in their judgment the Speaker of the House and the President pro tempore were officers within the meaning of the Constitution?

Senator Fulbright. Yes; and they also said, that the act was constitutional in providing for elections.

As I understand it, in the original discussions in the House about whether or not it should be one or the other the House wanted the President pro tempore and the Speaker, and the Senate wanted the Secretary of State. There was a difference in the political views of the two bodies.

The real quarrel centered around Thomas Jefferson—whether or not it should be made possible for him to become President, as he was then Secretary of State.

Senator HAYDEN. Were they printed committee reports?

Senator FULBRIGHT. The one in 1856 is printed. I did have it in my office. You have seen that, I think.

The CHAIRMAN. I read excerpts from it.

Senator FULBRIGHT. I have the report and I have the citation in my office. It is a very interesting report by the Committee on the Judiciary, but it is true that the choice, whether it be the President pro tempore and the Speaker or the Cabinet officers, has varied primarily, I think, because of the politics of the House and Senate as to whether they are in accord with the Executive.

Senator HAYDEN. I take it that your objection to the use of the electoral college is purely a matter of timing?

Senator FULBRIGHT. Yes. If the death occurred immediately or soon after election, of course, it is all right. However, in view of the shifting of opinion, it would be funny to have them called together 3 years after they were elected and under the circumstances now I think it would be a very rash man who would say they reflect the opinion of the country.

Senator HAYDEN. On the other hand, the farther away it was the less time the newly elected Vice President or President would have to serve.

Senator FULBRIGHT. On that particular term, but under our system it certainly creates a very great advantage, and, I think, creates a situation that is difficult to get away from in the next election if this old electoral college is given the chance to elect.

I might add further that I don't think the electoral college is a very good instrumentality of government as it operates at present. It performs a function entirely different from that which the founding fathers intended.

Senator GREEN. Wouldn't this return it to its original purpose?

Senator FULBRIGHT. No; because of the development of parties. They didn't foresee the development of parties. My view is the parties ought to be strengthened, improved, and not abolished; and I don't see how you can get away from party government.

Senator GREEN. I am not taking a position for or against, but I would like to ask what you think of the general proposition often made that the important thing is not to have any change in policy for the 4 years, that once in 4 years is often enough to have a fundamental change in policy that usually occurs as a result of party government in this country.

Senator FULBRIGHT. I don't think these modern conditions lend themselves to any such rigidity. I think it was all right during the first 150 years of our history, but to say you can't change a policy for 4 years is not sound. Conditions change too fast.

Senator MCMAHON. If you follow your idea to its ultimate end, it would man the strict adoption of the British parliamenatry system. A President may not die—to follow your line of thought—but at any given time in his term he might have much less than a plurality of the people who would on that day elect him to office, and yet he goes on under the Constitution until the end of his term.

I don't see the strength of your objection to the fact that if the electors 3 years after they are chosen select one who would pursue the basic policy of his predecessor—particularly, as Senator Hayden points out, that brings him nearer to the election.

Now, as to your objection that the man selected by the electoral college would have a leg up to the nomination—he still has to be passed upon by the people, and if under the bill suggested by the President, he, unfortunately, was to pass away and the Speaker of the House was to succeed him, I daresay that he would have a leg up on a nomination.

Senator FULBRIGHT. I don't approve of that, either.

Senator MCMAHON. But the people would have a chance to pass on it.

Senator FULBRIGHT. First let me say something about that great bugaboo about the parliamentary system. I don't consider my bill introduces that. The essence of the parliamentary system is election of the executive by the legislature. We still retain the election by the people. All this idea that this is a British idea is not so.

That very thing was discussed in the Convention, and the Virginia plan, which was one of the leading plans, had that provision in it—the election of the Executive by the Legislature.

As a matter of fact, during the course of the Convention on three different occasions they decided that that was the way it should be, but finally they changed their minds and developed this electoral system; but my bill will not introduce the parliamentary system.

Senator MCMAHON. Of course, it wouldn't; but I say the basic philosophy behind it, which I am neither agreeing with nor disagreeing with—I am simply pointing out that there are certain things that there is no likelihood you are going to change our system. I think the electoral college is one of them, as I said before while explaining the bill; and I think another thing is the 4-year term for the President. I do not see any great likelihood of change in those basic concepts. Since there will be no basic change, I think we had better formulate our thinking to that fact.

I could make a good argument against the electoral system, however.

Senator HAYDEN. It seems to me that the only thing necessary to take care of the election of a Vice President because if the President passed away there will be another man selected by the electoral college, as proposed by the Senator from Connecticut, ready to take his place. Then the electoral college will select another Vice President.

Senator FULBRIGHT. Three or four years later?

Senator HAYDEN. Yes; but all that is needed is to be sure that there is a waiting Vice President to take the office. Congress does not have to do anything more.

Senator FULBRIGHT. You don't think it is important that the people have anything to do with his selection—that it is just a matter of having somebody there? If that is true, why not leave that out and let it go down the Cabinet? You have some man who can function, and if it makes no difference whether he represents any particular views or has any ability, that is all right.

Senator GREEN. Doesn't it meet the objection the President made, that he is selecting his own successor?

Senator FULBRIGHT. I don't see that there is much difference in his making the selection and having it made by my old district in the Ozark Mountains consisting of 250,000 people.

Senator GREEN. It is the same point, isn't it?

Senator FULBRIGHT. The point, Senator Hayden makes, if I understand him, is, that it doesn't make any difference who the successor is so long as you have a man. He is not elected to be President and he is not elected by any electors who have been recently designated by the people to choose a man.

The real men who name the President are the men at the convention. Under our system, the electors are just a conduit. They have no function to play of any importance. After the election in November we know who was elected before the electors even meet.

Senator HAYDEN. Congress might provide by law that there shall be party conventions to instruct the electors.

Senator FULBRIGHT. That is what really happens now, isn't it?

Senator HAYDEN. To follow the modern practice, a national convention of the party that had the majority of electors could meet and instruct them.

Senator GREEN. Do you think it would be a good thing to have campaigns and elections 6 months after one or 6 months before another?

Senator FULBRIGHT. I don't think it is a bad thing to have the possibility of elections because it keeps the people much more aware of their Government. Under our present system there is a tendency to get excited every 4 years and then forget about it.

Senator GREEN. They would never have a change to forget about it.

Senator FULBRIGHT. They shouldn't have a chance to forget about it. They ought to become familiar with the Government in view of the difficulties that confront us.

Senator GREEN. The whole country is always upset during a preelection campaign and during the election itself.

Senator FULBRIGHT. I think if they knew they would have them, they would get used to them, they would not be in the nature of a county fair, as elections are now.

Senator GREEN. Why not have a President and Vice President chosen every year? Then they would keep in close touch with the people, and the people would be educated to all the measures before the Congress.

Senator FULBRIGHT. I don't propose that we must have a definite time. Whenever the circumstances and occasion indicates that it is proper to have one, we ought to have one, and I think that the death of the two people who were elected for these two offices is a proper occasion.

That is about all. I think the circumstances that we are under indicate whether we need it. I wouldn't advocate one every year regardless.

Senator GREEN. If it was beneficial, why not? I thought you regarded it as beneficial.

Senator FULBRIGHT. It might possibly be beneficial. I can't think of any reason why it should be set down as a rule. In this bill I am going back to the faith of the founding fathers.

Incidentally, there is a very excellent little statement that concerns that. It is by the Library of Congress, and if you don't have one, I

think it ought to be made a part of the record. It condenses the history of this original act.

Senator GREEN. It is already in the Congressional Record.

Senator KNOWLAND. I think it would be well to have it in the record.

Senator IVES. Yes; I believe it should be in the record.

Senator FULBRIGHT. It is a very conservative suggestion. It is going back to the way the founding fathers thought this ought to be handled; and as I said, there were a number, about 16 Members, that had participated in the Convention in one way or another, and Washington approved it. So it has pretty good authority and was the law until 1886.

Senator GREEN. Washington changed his mind, if I remember correctly.

Senator FULBRIGHT. I am not one to say nothing should be changed. I merely mention that it isn't anything too radical.

The CHAIRMAN. Are there any further questions? Have you anything further that you wish to add, Senator?

Senator FULBRIGHT. I might add further about these other bills. I saw the one the Senator from Rhode Island suggested, Senator Green, about a committee to study the entire question of succession. I certainly think that is a good idea. If this committee doesn't feel that it is necessary to pass any one of these bills, I think that it is of sufficient importance to warrant a study by the committee.

There has been one other idea that I had thought of that there might be made a distinction regarding the way this contingency came about—that is, as between accidental vacancy and a vacancy which might be caused by voluntary action on the part of the Executive.

I don't want to go into that now. It is a thought I just wanted to mention—that if this is taken and considered seriously and pursued, I think that ought to be further considered.

The CHAIRMAN. I guess that is all the witnesses we have this morning.

Senator IVES. Do you want that document in the record, Mr. Chairman?

The CHAIRMAN. Yes.

(The following is the document referred to by Senator Fulbright:)

SECTION 9 OF THE PRESIDENTIAL ELECTION AND SUCCESSION ACT OF 1792

On March 1, 1792, President Washington approved "An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President." Section 9 of this act provided:

"That in case of removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States until the disability be removed or a President shall be elected."[1]

Inasmuch as both the legislative and executive sessions of the Senate were held behind closed doors until 1793, the arguments presented in the Senate debates relative to Presidential succession are inaccessible; the Senate suffered only an outline of its proceedings to be reported. The House of Representatives, on the other hand, permitted its debates to be reported, but only meagerly. A study of the Annals of Congress reveals, consequently, little

[1] 1 Stat. 240.

more than the mechanics by which the Succession Act of 1792 was finally passed.[3]

When the Second Congress first convened, October 24, 1791, the legislators found it imperative to devise quickly some method for the choice of electors for the Presidential campaign of the ensuing year. On November 1, 1791, the Senate appointed John Rutherfurd, Roger Sherman, and Aaron Burr to serve on a committee "to report a bill determining the time of choosing the electors of President and Vice President, and the day in which they shall give their votes, and prescribing the mode of transmitting the votes to the seat of government."[4] The committee reported a bill on the 15th of November; on the 23d of that month the bill was recommitted and the committee instructed to insert a clause in the bill providing for the administration of the Government in the case of vacancies in the offices of President and Vice President. Five days later the committee reported the amendments, which were agreed to and read, and the bill was ordered to a third reading. On the 30th of the month it was read the third time and passed, with the ninth section precisely the same, save for punctuation, as it appeared in the act of March 1, 1792.[5] As the Senate debates were closed to the public at that time, there is no record as to why the subject of Presidential succession should have been coupled in the same bill with the provisions relative to the choice of electors.

The House received the bill on November 30, 1791; on the 1st of December it was read the first time, and on December 22 the House in Committee of the Whole proceeded to consider it.[6] Representative Alexander White, of Virginia, a Federalist, moved that section 9 be struck out, on the grounds that it was not germane to the main purpose of the bill and that the Speaker "was not a permanent officer, if he could be considered as one in any point of view." White was convinced that the Speaker "was no more an officer of the Government than every other Member of the House." Representative Jonathan Sturges, of Connecticut, likewise a Federalist, supported White's contention, adding that he did not believe that the framers of the Constitution endowed either Speaker or President pro tempore with the status of officer of the Government. Sturges also observed that inasmuch as the Speaker possessed the power to decide the amounts of compensation to be accorded the President and Vice President, it would be "evidently improper" for the Speaker ever to have the opportunity to assume the Presidency. Representative Theodore Sedgwick, of Massachusetts, another Federalist, supported the section, asserting that its passage was necessary immediately to settle the question of succession, and that the present Speaker and President pro tempore were as far removed from Executive influence as any persons could possibly be. After the expression of a few more pro and con arguments, none of which varied from those already outlined, the question for striking out the section was negatived.[7]

Immediately after White's motion was defeated, Sturges moved, on December 22, that the words "the President of the Senate pro tempore, and the Speaker of the House of Representatives" be struck out. Representative William B. Giles, of Virginia, an anti-Federalist, supported the motion, declaring that the Constitution contemplated the creation of some permanent officer, and neither Speaker nor President pro tempore could be considered even a temporary officer. Mr. Sedgwick countered with the remark that it was impossible to determine what constituted a permanent officer. He was also surprised to learn that anyone doubted that the leaders of Congress were officers. Representative Elbridge Gerry, anti-Federalist from Massachusetts, agreed with Sedgwick's viewpoint, and read the clause from the Constitution which states that the House is to choose its Speaker "and other officers." Gerry hoped, nevertheless, that the provision for the Speaker of the House be struck out, "in order to avoid blending the legislative and executive branches together."[8]

Representative James Hillhouse, a Federalist from Connecticut, stated that the President pro tempore, rather than any officer appointed by the Executive, should be made eligible to succeed to the highest office. Otherwise, a favorite of

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[3] Frederic A. Ogg and P. Orman Ray, Introduction to American Government (New York and London, 1942), p. 816; Robert Luce, Legislative Procedure (Boston and New York, 1922), pp. 243–244; Annals of Congress, vol. 3, 2d Cong., 1st–2d sess. (Washington, 1849), p. 10.

[4] Annals of Congress, vol. 3, 2d Cong., 1st–2d sess., p. 25.

[5] Ibid., pp. 30, 31, 33, 36.

[6] Ibid., pp. 217, 278.

[7] Ibid., pp. 280–281.

[8] Ibid., p. 281.

the President, and not the choice of the people, might become President. Such an eventuality would violate "the first principle of a full elective Government. The Senate are appointed by the people, or their Representatives, and hence * * * filling the vacancy would devolve with the greatest propriety on that body." Hillhouse apparently had reference to proposals—which were not reported in the sketchy debates—that Cabinet officers replace the Speaker and the President pro tempore as Presidential eligibles. Representative Hugh Williamson, a Federalist from North Carolina, disagreed with Hillhouse, and favored Sturges's motion to strike out the Speaker and the President pro tempore. He observed that the broad construction of the word "officer," as advocated by the proponents of section nine, would make it possible for any person in the Nation, whether Government employee or not, to fill Executive vacancies.[8]

On January 2, 1792, the Committee of the Whole negatived the motion to strike out the congressional leaders. Amendments having been made to the prior clauses of the bill, the entire bill, along with the amendments, was reported to the House. Mr. Williamson then renewed the Sturges motion, which was immediately divided. On the motion to strike out "the President of the Senate pro tempore," the vote was yeas 24, nays 27.[9] Among those supporting the motion were four Members who had been delegates to the Constitutional Convention: Abraham Baldwin, Thomas Fitzsimons, Hugh Williamson, and James Madison. The nays included the name of but one Member—Nicholas Gilman—who had served in the great Convention.[10] The question then being put on striking out the words "and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being," the vote was yeas 26, nays 25. The bill thereupon was tabled.

On January 6 the bill was recommitted to a committee of the whole House,[11] where, upon its reconsideration on February 9, the ninth section was struck out. A motion was then made to fill the blank with a provision by which the "senior Associate Judge" [Justice] would succeed to the Presidency in the event of Executive vacancies. An amendment to this proposition quickly followed, to the effect that the Secretary of State, rather than any member of the judiciary, should succeed. After a short debate, the details of which were not reported, the Committee rose without taking the question. The next day the House again resolved itself into a committee of the whole House and voted, 32 to 22, to substitute the Secretary of State for the congressional leaders as an eligible for the Presidency. This time Nicholas Gilman sided with his old Constitutional Convention colleagues.[12]

On the 14th of February 1792, the House, again resolved into a Committee of the Whole, resumed consideration of the bill, but did not even allude, according to the Annals, to the question of succession. The next day the bill, incorporating the provision for the succession of the Secretary of State, was read the third time and passed.[13] Several days later the bill, with various amendments, was returned to the Senate. To all of the proposed changes, save that pertaining to the ninth section, the Senate agreed. Determined to make the President pro tempore of the Senate and the Speaker of the House the only eligibles for Presidential succession in the event of simultaneous vacancies in the two highest executive offices, the Senate, on February 21, sent the bill back to the House. The same day that body, by a vote of 31 yeas to 24 nays, receded from its objectional amendment.[14]

Whereas the debates do not disclose the motives for the Senate's rejection of the House succession amendment, an extract from the writings of Fisher Ames does. The choleric Mr. Ames, a Federalist Representative from Massachusetts in the Second Congress, confessed in a letter to Thomas Dwight, dated February 28, 1792, that his Federalist brethren in the Senate had blocked the House amendment merely because they feared that Thomas Jefferson, Secretary of State, and the principal object of Federalist jealousy, might possibly slip into the White House by virtue of the indirect route provided by the amendment. Ames gleefully informed his friend that: "The Secretary of State is struck out of the bill for the future Presidency, in case of the two first offices becoming vacant. His

[8] Ibid., p. 282.
[9] Ibid., p. 302.
[10] U. S. Congress, 74th Cong., 2d sess., S. Doc. No. 232, the Constitution of the United States of America (Washington, 1938), pp. 31–35.
[11] Annals of Congress, op. cit., p. 315.
[12] Ibid., pp. 401–403.
[13] Ibid., pp. 405–406.
[14] Ibid., pp. 417–418.

friends seemed to think it important to hold him up as King of the Romans. The firmness of the Senate kept him out."[36]

Among those who voted for complying with the Senate's demand were two Members who had participated in the Constitutional Convention: Mr. Jonathan Dayton, who had previously refrained from voting upon the succession bill, and Mr. Thomas Fitzsimons, who had hitherto voted with Baldwin, Williamson, and Madison. The last three, along with Gilman, voted against the surrender to the Senate.[36]

The act became law on March 1, 1792. It is interesting to note that the revisers of the statutes, in embodying the act of 1792 in their compilation, refer to the presiding officer of the Senate as merely the "President of the Senate"—omitting the words "pro tempore."[37] The omission obscured the meaning of the law. As the Vice President is designated by the Constitution "President of the Senate," and as it is only in his absence or when he assumes the Presidency of the United States that the Senate is empowered by the Constitution to elect a President pro tempore for itself, the law, when referring to the latter, should have employed the full Constitutional designation. If the revisers had been interested only in brevity, one wonders why the words "for the time being," which followed "the Speaker of the House of Representatives," were retained.

That section nine of the Succession Act of 1792, or its peculiar interpretation in the Revised Statutes, remained valid for nearly a century may be attributed more to the fact that no occasion calling for the actuation of its provisions ever arose than to any lack of criticism of the section. Doubts as to its constitutionality, propriety, and efficacy were sounded from the first—in and out of Congress. James Madison, who had voted against the section in the House debates, revealed his views more succinctly in a letter to Edmund Pendleton, dated February 21, 1792. Madison asserted that "the bill certainly errs," and listed four objections to it:

"1. It may be questioned whether these are *officers* [President pro tempore and Speaker] in the Constitutional sense. 2. If officers, whether both could be introduced. 3. As they are created by the Constitution, they would probably have been there designated if contemplated for such a service, instead of being left to the Legislative selection. 4. Either they will retain their *Legislative* stations, and then incompatible functions will be blended; or the incompatibility will supersede those stations, and then those being the substratum of the adventitious functions, these must fail also. The Constitution says, Congress may declare *what officers*, etc., which seems to make it not an appointment or a translation, but an annexation of one office or trust to another office * * *."[38]

It was not until 1856 that the question of revising the act of 1792 was seriously considered. In that year the Senate Committee on the Judiciary reported that the act was entirely constitutional, including the provision for a special election, but pointed out that it was possible for neither congressional officer to be eligible for the Presidency, as each might lack the age and citizenship qualifications. The committee recommended, therefore, that in cases where both these officers were ineligible, the Chief Justice, provided he had not participated in any trial of the President, should succeed. Should this officer prove unqualified, the various Justices of the Supreme Court, according to the dates of their commissions, would be next in line for the Nation's highest honor. Nothing came of the committee's recommendations.[39]

For the next quarter-century the act of 1792 remained unchallenged. In 1881 the fight for revision was resumed, but it was not until after 5 years of heated debate that section 9 (or 146) was invalidated. On January 19, 1886, a new Presidential Succession Act was approved, whereby Cabinet officers, beginning with the Secretary of State, were designated Presidential successors.[40] Arguments similar to those advanced by the proponents of the long-awaited amendment have been summarized by two prominent American political scientists:

"Under it [the act of 1792], the presidency would devolve upon a person who had been sent to the National Capital to be not an executive but a legislator. It ight also bring the Government under the direction of a Chief Executive

[36] Seth Ames, ed., Works of Fisher Ames (Boston, 1854), vol. 1, p. 114.
[37] Annals of Congress, op. cit., pp. 417–418.
[38] Revised Statutes, sec. 146.
[39] Letters and Other Writings of James Madison, Fourth President of the United States (Philadelphia, 1865), vol. 1, p. 549.
[40] U. S. Congress, 54th Cong., 1st sess., S. Rept. No. 260.
[41] 3 U. S. Code, sec. 21.

belonging to a different party from that to which the President and Vice President had belonged. Still more serious, if both the President and Vice President should die during the interval between the expiration of one Congress and the meeting of the next, there might be no president of the Senate, and there certainly would be no Speaker of the House." [8]

Senator HOLLAND. What we are all concerned about seems to be two things. First, under the amendment of section 1 of the Succession Act to provide for an orderly succession that would be as fully representative as possible, and if not regarded as representative, then for machinery through which in an orderly way a representative President or Vice President, or both, could be chosen to fill the vacancy.

The second thing that comes up in connection with the discussion of Senator McMahon's proposed resolution is the matter of having flexibility under which we could have immediate action and succession in the event that everybody that was named under section 1 as now constituted or as amended should through modern catastrophe, which at least is possible, be wiped out by one common calamity.

He suggested one course of action and others have been suggested. I wonder if anybody has thought of the matter of referring the choice in the event of any sudden catastrophe of that kind to a new college or agency, which we might refer to as the College of the Governors.

The governors are selected by the people of the various States and have been recently selected. They certainly can speak with some authority in regard to the point of view of the people whom they do represent.

It would be a small group and would be a flexible group. They are used to working together through the Governors' Conference, and they know each other. In the event of a real catastrophe or calamity—considering only that aspect of the thing now—I just wanted to throw out the suggestion that we might possibly consider availing ourselves of the services of the governors in the event of that.

The CHAIRMAN. A college of governors?

Senator HOLLAND. Something of that sort because it gives flexibility, speed of action, and pretty close tie-in with the people because they have, of course, been selected recently, each of them, by the people of their respective States.

If you wanted to make it a little more thoroughly representative, you might include with the governors the presiding officers of the two houses of the legislature—or the one house in the case of one State—to sit with them.

Certainly in that way you would get a highly representative opinion speaking for the people of each of the 48 States. I have no amendment to suggest. I am just mentioning that.

Senator FULBRIGHT. As opposed to the electoral college, I think they would be more representative. The electors in my State—I don't know about the others—their election is a very perfunctory matter.

Senator HOLLAND. You would have that advantage, and then you would also have the advantage of speed of action, flexibility, small size of group, and the ability of the group to work together because they are finding it necessary to work together very closely.

Senator KNOWLAND. Would you have any objection—just thinking out loud on this thing—to have the governors cast votes commensurate with their vote in the electoral college?

[8] Ogg and Ray, op. cit., p. 348.

Senator HOLLAND. No; I think you want to preserve the weight of the various States as it is in the electoral college. That could be done.

Senator MCMAHON. The only objection I can think of—right offhand it sounds plausible and I don't say it is a valid objection—in that event you are likely to have a change in the basic policy within the 4-year period. That may be a good thing. It might be a thing we would want to do. I am not arguing the pros and cons of it, but that could come about where it would not come about with the electors.

Senator HOLLAND. From my somewhat recent experience with the governors as a group, watching them work, I found them exceedingly nonpartisan. We have a custom, for instance—or had a custom—in successive years of having a chairman from one party and then from the other party, regardless of how the balance may be among the States as to the number of governors.

Senator GREEN. Do you think they would be nonpartisan when it came to the selection of a President?

Senator HOLLAND. No; but I think they would be highly patriotic and not be partisan to the point of selecting anybody who would be inferior.

Senator MCMAHON. My idea goes to the philosophical concept of keeping basic policy for 4 years. I was interested in your statement about the nonpartisanship of the body, which Senator Green questions, as to whether it would go so far if the majority of them were Democrats that they would pick a Republican as the President.

I am reminded of the Tilden-Hayes contest when they went to the Supreme Court and they had two and two and let four of them choose the fifth, and they chose the fifth, and we all know what happened.

Senator HOLLAND. I just called attention to the fact that this machinery, as set up, would be functioning only in time of terrible national disaster, and I can't think of any group that would be more calculated either to act with good judgment or to act with sound patriotism than that group.

Senator KNOWLAND. It would be easier to get them together to function than the electors.

Senator GREEN. Is your proposal supplementary to the present law?

Senator HOLLAND. My suggestion would be.

Senator GREEN. Otherwise, it would be in time of national calamity.

Senator HOLLAND. My suggestion would be to make it applicable only to cover the case where all the persons designated in the line of succession were removed quickly by a common disaster. That was the thing we were speaking about; particularly when we considered your resolution.

Senator HAYDEN. It seems to be a just criticism that the Speaker of the House and President pro tempore of the Senate do not occupy executive positions. They are not necessarily qualified to be an executive. Your plan has the merit that men who have been exercising executive authority would be called upon to select a Chief Executive of the United States.

Senator HOLLAND. I would bet they would select a good man and they would be functioning only in such a condition as we have been talking about—in time of great disaster—and party politics would

play a very small part and whoever came out would have the backing of all 48 men.

Senator GREEN. But it doesn't meet the occasion which brought about all these various bills and that was the President's letter where he wished to have removed the necessity of a President choosing his own successor. It has nothing to do with that.

Senator HOLLAND. It has nothing to do with the amendment of the Succession Act, section 1 of the Succession Act, at all, and I suggest it only to be used in the event of removal summarily of everyone in the line of succession.

The CHAIRMAN. One of the members of the press has requested me to ask if under the college of governors it would be the plan to give Georgia two votes.

Senator HOLLAND. I will bet that the other 47 would come out with as sound a solution of that as anybody has offered as yet.

The CHAIRMAN. Is there anything further?

If there is no objection, we will meet at 10:30 tomorrow morning.

(Whereupon, at 11:40 a. m. the committee adjourned until 10:30 a. m., Wednesday, March 12, 1947.)

SUCCESSION TO THE PRESIDENCY

WEDNESDAY, MARCH 12, 1947

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The committee met, pursuant to recess, at 10:30 a. m., in room 104–B, Senate Office Building, Senator C. Wayland Brooks (chairman) presiding.

Present: Senators Brooks (chairman), Wherry, Hickenlooper, Knowland, Lodge, Jenner, Bricker, Hayden, Green, and Holland.

The CHAIRMAN. The committee will come to order.

Senator Wherry, will you tell us what you have to say about your proposed bill?

STATEMENT OF HON. KENNETH S. WHERRY, UNITED STATES SENATOR FROM THE STATE OF NEBRASKA

Senator WHERRY. Mr. Chairman, I am not sure just what the mechanics should be here. I have a right, I understand, to modify my bill or amend the bill that I have introduced, prior to its consideration. At any rate, if it takes a motion I would like to move to substitute, as my own amendment, S. 564 entitled "Committee Print" in parentheses, which bill is in italics. This is to be substituted for the original S. 564 bill before the committee for consideration. If the committee desires to accept it as a committee amendment, I have no objection.

I would like to also ask you to take up the committee print and turn to page 2; and on line 10, after the words "shall continue to act," strike out "until a President shall be elected in the manner prescribed by law, and". That is unnecessary and was supposed to have been deleted when they made the committee print.

Another word should be corrected, and that is on page 4, line 4, where it says "During the period that any individual serves". The word "serves" should be changed to "acts". I use the word "acts" all the rest of the way, but somehow that got in there.

The CHAIRMAN. Without objection, we will consider your substitute.

Senator LODGE. May I ask what the difference is between the two?

Senator WHERRY. I will explain that to you in my statement.

Senator HAYDEN. Why not have the substitute printed in the record, and then we will have it before us.

Senator WHERRY. Is there any question about that?

The CHAIRMAN. No. It may be printed in the record at this point.

(S. 564 (committee print) is as follows:)

[Committee print, March 12, 1947]

[S. 564, 80th Cong., 1st sess.]

A BILL To provide for the performance of the duties of the office of President in case of the removal, resignation, or inability both of the President and Vice President

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (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 Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(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 subsection.

(b) If, at the time when under subsection (a) a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) shall continue to act until the expiration of the then current Presidential term, except that—

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d) (1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b), 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 the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

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

(e) Subsection (a), (b), and (d) shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Rrepresentatives at the time the powers and duties of the office of President devolve upon them.

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

(g) Sections 1 and 2 of the Act entitled "An Act to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President", approved January 19, 1886 (24 Stat. 1; U. S. C., 1940 edition, title 3, secs. 21 and 22), are repealed.

Amend the title so as to read: "A bill to provide for the performance of the duties of the office of President in case of the removal, resignation, death, or inability both of the President and Vice President."

Senator WHERRY. On February 11, I introduced S. 564, a bill to provide for the performance of the duties of the Office of President in

case of the removal, death, resignation, inability, or failure to qualify both of the President and Vice President.

In such event, the bill provides that the Speaker of the House of Representatives shall, upon his resignation as Speaker and Representative in Congress, act as President until the disability be removed or a President or Vice President qualifies.

If there is no Speaker or the Speaker fails to qualify as acting President, the bill provides that the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, discharge the powers and duties of the Office of President until the expiration of the then current Presidential term.

If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to discharge the powers and duties of the Office of President, then the bill provides that the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, or the Secretary of Labor, in the order named, shall discharge the powers and duties of the Office of President.

The bill provides that the taking of the oath of Office by any of the Secretaries designated, shall constitute his resignation from office.

The original bill introduced by me—I am speaking about the original bill, S. 564—is identical with the bill that passed the House in the Seventy-ninth Congress, not the bill that was introduced by Congressman Sumners but the bill that passed the House.

The committee print that I have asked to substitute for S. 564 makes the following changes:

It reinstates the provision originally in the Sumners bill requiring the Speaker, before accepting office as President, to resign as Speaker and Representative in the House. The bill that passed the House took out that provision and left him the Speaker as well as the acting President.

I do this to comply with the Constitutional provision that no Member of the House or Senate shall hold any other Federal office.

The commitee print also changes the bill so that once a Speaker qualifies or a President pro tempore qualifies, he can only be displaced by a President or Vice President.

Senator GREEN. Would you prefer not to be interrupted?

Senator WHERRY. No, that is all right.

Senator GREEN. What do you mean by "qualify"; taking the oath of office voluntarily?

Senator WHERRY. The qualifications run not only to the provisions of the Constitution as originally adopted but also include the provision that is in the twentieth amendment.

The twentieth amendment brings up the word "qualify." Failure to qualify is one of the things that is provided in the twentieth amendment which was not in the original Constitution and thus not considered in connection with the Act of 1792.

Senator GREEN. Then you would want to include all the other qualifications for being a President or being elected a President?

Senator WHERRY. If there is any reason in the world why a Speaker does not qualify, then the succession would go to the next Speaker if he had been elected; and if he failed to qualify, then it would go to the President pro tempore.

Senator GREEN. Is that set out in the bill?

Senator WHERRY. Yes. Now you have to do that——

Senator GREEN. But in the meantime he would have resigned both as Speaker and as Represenative?

Senator WHERRY. That is the chance he has to take, because you can't have a man holding two offices, that is, be President and Speaker.

Senator HOLLAND. He wouldn't resign, of course, if he wasn't the requisite age or if he hadn't been born in the United States.

Senator WHERRY. There might be some men that might not want to resign, but if he fails to qualify, it would go to the President pro tempore. And my bill provides that once the Speaker takes over, he cannot be supplanted by anyone except the President and the Vice President; and once the President pro tempore takes over, he cannot be supplanted by anyone except the President and the Vice President.

Senator GREEN. Then the contest would be thrown into the House.

Senator WHERRY. No, there wouldn't be any contest.

Senator GREEN. You say if a Speaker did not qualify, then the next person appointed Speaker in his place——

Senator WHERRY. For example, a Congressman might be elected, and there might be some question as to whether or not he qualifies—there are many reasons why he might not. In the meantime, if they have elected another Speaker, he would be in the line of succession in the event a President should die; and if he fails to qualify, then it goes to the President pro tempore. For that reason the bill accomplishes what I want to do, and that is to make the Speaker always the man that is to be the Acting President.

Senator GREEN. I understand the purpose, but is it accomplished? Because a man as Speaker might resign, and then find he was incapable of taking the office of President, somebody might dig up something in his past.

Senator WHERRY. Then he had better not resign. If he does resign to take up the office of President and cannot qualify, and subsequently a new Speaker is elected and he can ascend to the Presidency, he steps in and the other man is out.

Senator GREEN. Suppose the Speaker doesn't want to be President?

Senator WHERRY. Then he does not qualify and it goes to the next Speaker.

Senator GREEN. Does he have to resign as Speaker?

Senator WHERRY. Certainly not.

Senator GREEN. Then there would not be any next Speaker.

Senator WHERRY. I didn't get your question.

Senator GREEN. Suppose the President died, President Truman died, and the Speaker did not want to be President.

Senator WHERRY. Then it would go to the President pro tempore.

Senator LODGE. On that point——

Senator WHERRY. I think if you will let me continue with this statement, you are bringing up exactly what we are going to talk about.

Senator LODGE. My question relates exactly to the point Senator Green brought up, and you have had one interruption and this relates to that interruption.

You spoke of a case in which the Speaker resigned as Speaker in order to become President, and then could not qualify. Can you give an illustration, a specific illustration?

Senator WHERRY. That isn't necessary. I can give you some, and will in these remarks, but the point is that to keep the Speaker always the first choice to become the Acting President—we want to give him the opportunity.

Now the provision in this bill provides that if the occasion demands and we need a Speaker for an Acting President, he shall resign. Now you have to do that first. The reason I have already given, that is, in order to get over the constitutional hurdle that he can't hold two offices. If he resigns and for any reason does not qualify—he might resign and not know, for example, that he was not born in the United States or that he is not of the qualified age, he could hold the office of a Congressman, but he could not be a President.

Senator LODGE. That is the point. It seems to me he would always know, would he not?

Senator WHERRY. Then he would not resign.

Senator LODGE. He would certainly know if he was born abroad.

Senator WHERRY. If he knows he is not qualified, he wouldn't resign. In that case it will go to the President pro tempore of the Senate.

Senator LODGE. I am trying to imagine a case in which he resigned, not knowing that he would not qualify.

Senator WHERRY. I don't imagine he would resign if he did not know that he would qualify; but if he does resign and cannot qualify, then it would pass on to the President pro tempore. I can't imagine a case, myself.

Senator LODGE. Then he would be out of luck.

Senator WHERRY. I don't think he would ever do it. You are raising a remote case. But if he did do such a thing, the provision for succession is here.

Senator LODGE. I see. Thank you.

Senator WHERRY. You are welcome; and I would be glad to have any questions, I didn't mean that I wouldn't, but the statement covers these things.

This bill amends the act of 1886 so as to bring the line of succession first to the Speaker of the House, where I think it belongs.

The reason for this is obvious in that the Speaker of the House is elected as a Member of the House every 2 years from his district, and in turn elected by the House of Representatives as Speaker. Thus, next to the President and Vice President he is closer, I think, to the people than any other elected officer.

And it should be pointed out that in the event of the death of the Speaker, who is acting as President, a succeeding Speaker, if he qualifies, continues to succeed as Acting President of the United States so that wherever possible you will always have the officer who is closest to the people acting as President. I have stated before, the speaker is closer than any other elected officer called upon to discharge the duties as Acting President. Only where there is no Speaker or the Speaker fails to qualify does the bill provide for the extension of succession to the President pro tempore of the Senate.

But, once the President pro tempore qualifies—and this is a change I have in the bill—then the President pro tempore is not supplanted by a Speaker. He is only supplanted by a President or Vice President of the United States.

Now the reason for that is obvious, because if a Speaker fails to qualify and it becomes the opportunity for the President pro tempore to succeed as Acting President, we require him to resign as not only President pro tempore but as a Senator, and he ought to have the protection, at least, if he does that and qualifies as Acting President, that a Speaker doesn't supplant him during the unexpired term for which he serves as President of the United States.

Senator GREEN. Are you assuming in this bill that the Speaker of the House and the President pro tempore of the Senate are officers within the meaning of the Constitution?

Senator WHERRY. Not only do I assume that, but I make them officers in this bill.

Senator GREEN. Well, if they are not now, under the Constitution, how could you make them officers by this bill?

Senator WHERRY. I think they are officers, but I also make them officers in this bill.

Senator GREEN. How could you if they are not already under the Constitution?

Senator WHERRY. That is my interpretation of it. That has been argued since 1792.

Senator GREEN. I understand the first point, you might think they were; but how could you make them officers by this bill?

Senator WHERRY. By naming them as the officers who succeed. We designate that this is the way it shall be when we pass the bill.

Senator GREEN. My point is——

Senator WHERRY. I don't make them officers in the sense of the constitutional definition, because I can't legislate what is required in the Constitution. I will say, Senator Green, that in 1856—I don't believe I mention that in this statement—the Senate Judiciary Committee went over the complete history of this; and they brought back finding, a report to the Senate full committee, and also to the Senate, that they felt that the Members of the House and the Senate were constitutional officers.

Senator GREEN. I am familiar with that.

Senator WHERRY. Secondly, we have some cases in point that I think substantiate that.

I will also say for the benefit of Senator Fulbright's resolution that they also considered that a special resolution would be held constitutional in the event you wanted to go that way. I don't think there is a hurdle there, but I do think there is a hurdle in a President pro tempore or a Speaker holding the office of Speaker or President pro tempore and also Acting President at the same time. I think that is not constitutional.

Senator GREEN. Would you mind explaining why you think you could change the Constitution by this bill, and make the Speaker and the President pro tempore officers?

Senator WHERRY. I don't think you are changing the Constitution by this bill.

Senator GREEN. That is assuming they are officers under this bill; but assuming the contrary, you said this would make them officers.

Senator WHERRY. The only way you can amend the Constitution is to amend the Constitution. I know that, and so do you.

Senator GREEN. Certainly.

Senator WHERRY. But after approximately a hundred years of congressional interpretation, a very competent Senate Judiciary Committee brought in the report in they felt we were officers. I could ask you why we are not officers, and you couldn't answer the question for many reasons. I think there are just as many reasons to say we are officers as that we are not.

Senator GREEN. But my point is, how could you change it either way by this bill?

Senator WHERRY. The only way you can change the Constitution is by the provisions by which the Constitution can be changed.

Senator GREEN. But not by this bill.

Senator WHERRY. You have your own opinion of that.

All the research in the world would not help you out on that.

Senator GREEN. No; the Supreme Court has not decided it.

Senator WHERRY. The Supreme Court in the case of *Lamar* v. *U. S.*, which I later intend to cite, covers it.

May I proceed?

The CHAIRMAN. Yes.

Senator WHERRY. Recently there has been a revival of interest in legislation relating to the Presidential succession. This interest was brought to a focal point by the message of the President to the Congress on June 19, 1945, which reads as follows:

To the Congress of the United States:

I think that this is an appropriate time for the Congress to reexamine the question of the Presidential succession.

The question is of great importance now because there will be no elected Vice President for almost 4 years.

The existing statute governing the succession to the office of President was enacted in 1886. Under it, in the event of the death of the elected President and Vice President, members of the Cabinet successively fill the office.

Each of these Cabinet members is appointed by the President, with the advice and consent of the Senate. In effect, therefore, by reason of the tragic death of the late President, it now lies within my power to nominate the person who would be my immediate successor in the event of my own death or inability to act.

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

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

The Speaker of the House of Representatives, who is elected in his own district, is also elected to be the presiding officer of the House by a vote of all the Representatives of all the people of the country. As a result, I believe 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.

Under the law of 1792, the President pro tempore of the Senate followed the Vice President in the order of succession.

In this bill we reverse them, but the theory, the principle is the same.

The President pro tempore is elected as a Senator by his State and then as Presiding Officer by the Senate. But the Members of the Senate are not as closely tied in by the elective process to the people as are the Members of the House of Representatives. A completely new House is elected every 2 years, and always at the same time as the President and Vice President. Usually it is in agreement politically with the Chief Executive. Only one-third of the Senate, however, is elected with the President and Vice President. The Senate might,

therefore, have a majority hostile to the policies of the President and might conceivably fill the Presidential office with one not in sympathy with the will of the majority of the people.

Some of the events in the impeachment proceedings of President Johnson suggested the possibility of a hostile Congress in the future seeking to oust a Vice President who had become President, in order to have the President pro tempore of the Senate become the President. This was one of the considerations, among several others, which led to the change in 1886.

No matter who succeeds to the Presidency after the death of the elected President and Vice President, it is my opinion he should not serve any longer than until the next congressional election or until a special election called for the purpose of electing a new President and Vice President. This period the Congress should fix. The individuals elected at such general or special election should then serve only to fill the unexpired term of the deceased President and Vice President. In this way there would be no interference with the normal 4-year interval of general national elections.

I want to make it clear that the President in his message stated that if the Congress cares to, they can provide a special election. This bill that I present does not provide for a special election.

I recommend, therefore, that the Congress enact legislation placing the Speaker of the House of Representatives first in order of succession in case of the removal, death, resignation, or inability to act of the President and Vice President. Of course, the Speaker should resign as a Representative in the Congress as well as Speaker of the House before he assumes the office of President.

I want to point out again that in the bill that passed the House similar to the one I introduced, that provision was taken out; and when I introduced the bill I wasn't careful enough to examine it, I took the original bill which was introduced which made that provision, and that is why I want to correct it.

If there is no qualified Speaker, or if the Speaker fails to qualify, then I recommend that the succession pass to the President pro tempore of the Senate, who should hold office until a duly qualified Speaker is elected.

And there I change it again, I say if the President pro tempore once qualifies, then he should continue through the unexpired term, even though a Speaker might qualify after the President pro tempore has taken the office.

If there be neither Speaker nor President pro tempore qualified to succeed on the creation of the vacancy, then the succession might pass to the members of the Cabinet as now provided, until a duly qualified Speaker is elected.

If the Congress decides that a special election should be held, then I recommend that it provide for such election to be held as soon after the death or disqualification of the President and Vice President as practicable. The method and procedure for holding such special election should be provided now by law, so that the election can be held as expeditiously as possible should the contingency arise.

In the interest of orderly, democratic government, I urge the Congress to give its early consideration to this most important subject.

HARRY S. TRUMAN.

THE WHITE HOUSE, *June 19, 1945.*

To carry ou the recommendations of the President's message, Representative Hatton W. Sumners of Texas, chairman of the House Committee on the Judiciary, introduced H. R. 3587. No hearings were held but the bill was reported to the House on June 27, 1945. It came up for consideration and passage on June 29, 1945.

It will be noted that the President's message recommends a change in the act of 1886, to place the succession essentially where it was under the act of 1792, which was the first law on the subject except that the

Speaker first succeeds. In order to understand the several problems involved, it may be helpful to trace the history of that part of the Federal Constitution which provides for succession to the office of President. Article II, section 1 (par. 5), of the Constitution of the United States, which provides for such succession, reads as follows:

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

Senator KNOWLAND. Might I interrupt right at this point? I think there is no problem involved, as I see it, in the case of either the death or the resignation of the President or the person who shall be acting as President. But I would like you to explore a little here—and it is true in other legislation that has been introduced—what happens in the case of the inability of the President to act? Does the Speaker in that case, in order to become acting President, have to resign his office as Speaker of the House, or does the President pro tempore of the Senate have to resign his office as President pro tempore of the Senate in order to become acting President, during the incapacity of the occupant of the White House to perform his functions; and then what happens if the incapacity is removed? You could have that situation with a stroke or something, where a President obviously would be unable to perform the duties of the Presidential office, and it might continue for 6 months or a year, and then he might become well and be able to resume his position as President of the United States. What then?

Senator WHERRY. That raises one of the most difficult questions you have to answer in the passage of this legislation: When is there an inability or disability? When can't someone serve?

To begin with, it would be quite a test upon the Speaker, if we had a Speaker, or upon the President pro tempore. They certainly would not want to resign if they thought the disability was only temporary. We have had two cases where that came up, but didn't have to be handled. One was in the long incapacity of President Garfield, who was shot and who lingered for nearly a year. In fact, just a few days more and it would have been over the period when his murderer could have been brought to justice. During the last 3 months he was at death's door. Then, also, in the case of President Wilson; you will remember he was for a long time ill prior to the expiration of his term of office. But in both cases they continued to act as President, and that decision was not made.

I can conceive, however, of a case of temporary insanity caused by some illness, or a stroke, where they might linger for months, where they would not be physically qualified to serve.

Senator BRICKER. Who would determine that disqualification?

Senator WHERRY. The only way I can see is that it would have to be the one upon whom the duties of the acting President would fall in the event——

Senator HICKENLOOPER. How could he determine that?

Senator WHERRY. By resigning his office and taking the office of the acting President, with the understanding that if the President recovers he will accede again to the Presidency.

Senator HICKENLOOPER. Who will he have that understanding with?

Senator HOLLAND. The Supreme Court is the only way that that could be done.

Senator WHERRY. Finally, yes; it is a constitutional question.

Senator KNOWLAND. You would have two people, otherwise, holding Presidential office, with considerable confusion.

Senator WHERRY. There would be no confusion in this bill, because we provide that when the disability is removed, whoever is acting as President is supplanted by the President and the Vice President of the United States only.

Senator KNOWLAND. I didn't mean to interrupt you, but I think it is a question.

Senator WHERRY. I have got that covered later on in my remarks.

Senator HICKENLOOPER. You would have a man who was unquestionably legally elected as President. You would only have two ways, in the case of disability, as I see it, two general ways, in which his inability to act could be determined—either by his own statement and declaration that he was unable to act, that would undoubtedly establish that fact; or secondly, as Senator Holland says, by a judicial review and finding of the fact of inability to act.

Senator BRICKER. How are you going to raise that judicial review, though?

Senator HICKENLOOPER. I don't know how, but that would be the only authoritative source other than the man's own statement. Otherwise you would have a man who was duly elected and a man who had resigned an office and became a claimant. What authority would the claimant have unless you had some forum or some yardstick by which to measure that inability? I think probably it is a situation that we may never have to meet.

Senator WHERRY. Well, that is the point I was going to conclude with.

Senator HOLLAND. We certainly have jurisdiction to entertain a petition that would throw the issue into the Court.

Senator WHERRY. Mr. Chairman, that can be argued from now to doomsday. The way to raise it is, of course, the way suggested by Senator Holland. But in this bill we do provide that if a President pro tempore or a Speaker does resign and becomes Acting President, he does it with the full knowledge that if the disability is removed, he is supplanted by the President or the Vice President of the United States.

The CHAIRMAN. Is it also possible under your bill that if the disability is apparently temporary, and the Speaker did not choose to resign and the President pro tempore did not choose to resign, that then it could go to a Cabinet member?

Senator WHERRY. Certainly. If they don't qualify, it could pass right on down.

The CHAIRMAN. If it was only one of those apparent temporary disabilities, they probably would not want to resign their office.

Senator WHERRY. I bring that up. There is the third way that the Senator didn't mention. If the President pro tempore and the

Speaker felt it was only temporary, they would not have to qualify. Then the President could appoint the Secretary of State.

The CHAIRMAN. It would fall to him automatically.

Senator WHERRY. By the law we are making. If we pass this, this is an automatic succession.

I don't believe that question will ever confront us—it has happened twice in all the history of the country, and itwas settled satisfactorily without a judicial determination; and I think from a practical standpoint that if the Speaker of the House or the President pro tempore felt that it was a temporary disability, there would be no question but what they would wait and see what happened.

Senator KNOWLAND. In the two cases where it happened, in the case of Garfield and in the case of Woodrow Wilson, there was a Vice President serving who obviously, if the disability was removed, would continue to occupy the office of Vice President of the United States. So it was not a question of resigning a job.

Senator WHERRY. But in this particular case you could pass it on to the Secretary of State if the President pro tempore or the Speaker did not care to resign and there were no Vice President. So from a practical point of view this settles it. But I do admit that that is the most difficult constitutional question to answer, I think, of all of them, because who is going to determine the inability of anyone?

Senator LODGE. It has never been settled at any time in our history.

Senator HICKENLOOPER. We have a precedent in our State where at one time we had a governor who became very ill, and really physically disabled, and by his own declaration he absented himself for almost a year. He acknowledged his physical inability to perform the duties of office, as I remember, and designated the lieutenant governor to take over the job, and no question was raised about it. But that was not a question of mental disability. His mental ability under the circumstances was sufficient, but he put it upon the basis of his physical inability to perform the duties of his office.

Senator WHERRY. That was a question of where a man made his own declaration. Here we provide by statute the line of succession. First it goes to the Speaker; if he fails to qualify for any reason—say he didn't want to do it—then it goes to the President pro tempore. If he fails to qualify for any reason, then it goes to the Secretary of State.

The CHAIRMAN. That doesn't completely answer that question, which I agree is difficult to answer here. We have a similar situation in Illinois, where the Lieutenant Governor and the Governor, although of the same party, were at very great odds; and the Governor was ill, and he stayed in the mansion and they called it government by cabinet. They didn't let anybody in to see him. But they issued releases from him, and orders, out of the capitol; and finally he died, and it was then quite generally known that he hadn't been competent for some months. But he did not admit he wasn't competent, his cabinet wouldn't let him admit it, and they ran the government as a government by cabinet; which might be done pretty much in this instance unless you finally decide how the question can be raised, who can settle the question. But that is beside the point in this bill, I think.

Senator WHERRY. I agree with that a hundred percent. The only final way you can judge the disability of a person would be either for those who are favorable to the individual, or those who are opposed, to raise the question. Then you would have to have a judicial determination of it. I imagine that is the only way you can get over that constitutional question.

But for all practical purposes, I think from a legislative point of view that this would handle the situation better than any bill I know of that has been introduced. With that thought in mind, I made that succession that way.

Going back to my statement, I had read to you article II, section 1 (par. 5) of the Constitution. Like most of the provisions of the Federal Constitution, that paragraph was the result of compromises in the Constitutional Convention, as will appear from the following excerpts from the report of James Madison on the Federal Convention of 1787, that had to do with this succession bill. I hope some of you feel this isn't too dry, but it represents a lot of work, and it gives quite a lot of the foundation on how the Congress passed the act of 1792.

The Convention met on Monday, May 14, 1787, adjourned over until Friday, May 25, when seven States were convened, and elected George Washington President of the Convention.

On Tuesday, May 29, Mr. Randolph introduced the "Virginia resolution," one of which reads as follows:

7. *Resolved*, That a national executive be instituted; to be chosen by the national legislature for the term of —; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made, so as to affect the magistracy existing at the time of increase or diminution; and to be ineligible a second time; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Federation.

Later the same day, Mr. Charles Pinckney introduced his plan for a Constitution, Article VIII of which read, in part, as follows:

* * * In case of his removal, death, resignation, or disability, the President of the Senate shall exercise the duties of his office until another President be chosen. And in case of the death of the President of the Senate, the Speaker of the House of Delegates shall do so.

On Friday, June 1, in debate on Resolution 7 (Virginia resolutions), the matter of succession did not arise, as there was then no unanimity as to the number of persons who should comprise the Executive.

On Wednesday, June 13, Mr. Gorham reported the following resolutions:

* * * * * * *

9. *Resolved*, That a National Executive be instituted, to consist of a single person; to be chosen by the National Legislature, for a term of seven years; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time; and to be removable on impeachment and conviction of malpractice or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the National Treasury.

On Friday, June 15, Mr. Patterson laid before the Convention the "New Jersey Plan," Resolution 4 of which provided for a multiheaded executive for —— years; ineligible for a second term, removable by Congress on application of a majority of State Executives; and so forth, but no mention was made of a successor.

In the debates which followed, Hamilton proposed—June 18—in his plan:

IV. The Supreme Executive authority of the United States to be vested in a Governor, to be elected to serve during good behaviour; the election to be made by Electors chosen by the people in the Election Districts aforesaid * * *.

V. On the death, resignation, or removal of the Governor, his authorities to be exercised by the President of the Senate until a successor be appointed.

In the ensuing debate on Federal versus State government, the question seems not to have arisen at all, and it was not until July 19 that the Convention reached a discussion of the appointment of an Executive. However, there was no discussion of a successor.

On July 6—Thursday—the proceedings "since Monday last" were unanimously referred to the Committee of Detail; and the Convention adjourned until Monday, August 6. Resolution 12, so referred, provided for "a National Executive, to consist of a single person." There was no mention of a successor.

On August 6, Mr. Rutledge delivered the report of the Committee on Detail. Article X, section 1 read as follows:

The Executive power of the United States shall be vested in a single person. His style shall be "The President of the United States of America", and his title shall be, "His Excellency". He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

(NOTE.—Article V, section 4 provided: "The Senate shall choose its own President and other officers.") Article V, section 4 was agreed to August 9.

The last part of section 2 of said article X read as follows:

* * * He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

On Monday, August 27, in Convention, article 10, section 2, being resumed—quoting from Madison's notes:

Mr. Gouverneur Morris objected * * * to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

Mr. Madison adds, as a ground of objection, that the Senate might retard the appointment of a President, in order to carry points whilst the revisionary power was in the President of their own body; but suggested that the executive powers during a vacancy be administered by the persons composing the Council to the President.

(NOTE.—At this time, provision had been made for selection of the President "by ballot by the Legislature".—Article X, section 1).

Mr. Williamson suggested that the Legislature ought to have power to provide for occasional successors; and moved that the last clause of Article 10, Section 2, relating to a provisional successor to the President, be postponed.

Mr. Dickinson seconded the postponement, remarking that it was too vague. What is the extent of the term "disability" and who is to be the judge of it?

The postponement was agreed to, nem con.

On August 31, such parts of the Constitution as had been postponed, and such parts of reports as had not been acted upon, were referred to a committee of a member from each State; which committee, in Convention, made a partial report on September 4—Tuesday—including a proposal for addition to article 10, section 1, as follows:

After the word "Excellency", in Section 1, Article 10, to be inserted: "He shall hold his office during the term of four years, and together with the Vice President,

chosen for the same term, be elected in the following manner, viz:" (Here follows the "electoral system" provisions and the choice of one out of five by the Senate, in the event there was no majority in the Electoral College).

"Section 3. The Vice President shall be *ex officio* President of the Senate, except when they sit to try the impeachment of the President; in which case the Chief Justice shall preside, and excepting also when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president pro tempore. . . ."

There followed a debate on the manner of choosing a President and Vice President, but nothing concerning the "succession."

On Friday, September 7—again quoting from Madison's notes:

In Convention—The mode of constituting the Executive being resumed—

Mr. Randolph moved to insert, in the first section of the Report (having to do with electors) made yesterday, the following:

"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 the time of electing a President shall arrive."

Mr. Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute "until such disability be removed, or a President shall be elected".

Mr. Gouverneur Morris seconded the motion, which was agreed to.

It seemed to be an objection to the provision, with some that, according to the process established for choosing the Executive, there would be difficulty in effecting it at other than the fixed period; with others, that the Legislature was restrained in the temporary appointment to "*officers*" of the *United States*. They wished to be at liberty to appoint others as such.

With regard to their feeling that there would be difficulty in effecting it at other than the fixed period, I think that is the reason right now that mechanically it would be unwise to have special elections. You would have to go out and change the primary laws of 48 States. You would have the confusion if a President died immediately after he was installed and you had to have a special election; or, if you go along to within a year from the end of his term, you would have the same confusion. So they were raising the same points then that we raise now.

On the motion of Mr. Randolph, as amended, it passed in the affimative, aye—6; no—4; divided—1.

On the same day the Convention took up the third section: "The Vice President shall be ex officio President of the Senate."

There was discussion as to whether the Vice President should also be President of the Senate. Mr. Gerry opposed having any Vice President. Mr. Morris pointed out that if there were no Vice President, the President of the Senate would be temporary successor, which would amount to the same thing.

On the question, shall the Vice President be ex officio President of the Senate, the vote was: aye—8; no—2; absent—1.

On September 12, the draft for the Constitution, submitted by Dr. Johnson, provided for a 4-year term for President and Vice President, and that:

. . . the Congress may by law provide for the case of removal, death, resignation or inability of both 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 the period for choosing another President arrive. (Article II, Section 1.)

On September 15, when article II, section 1 was discussed the words "or the period for choosing another President arrive" were changed

to "or a President shall be elected," conformably to a vote of the 7th of September.

Those were excerpts from Mr. Madison's notes on the preliminary debates.

Now we come to the act of 1792, enacted in the Second Congress, which provides that the Vice President pro tempore—President pro tempore of the Senate—was the first in order of succession and the Speaker of the House, second, and that is the way we continued for a hundred years. There had been some discussion of making Cabinet members the first successors, beginning with the Secretary of State who at that time was Thomas Jefferson. However, this move was blocked by Alexander Hamilton, then Secretary of the Treasury, who was bitterly opposed to Jefferson and his policies. Hamilton's recommendations prevailed and the act of 1792 which was in effect for almost a century, placed the President pro tempore of the Senate as first in line of succession followed by the Speaker and the Cabinet members in their rank.

Throughout the years, and especially during the times when a Vice President was called upon to take over the duties of the Presidency, bills were introduced in the Congress to provide for amendment or revisions of the act of 1792, but it was not until 1886 that a new succession law was enacted. This act, now in effect, provides for succession by the Secretary of State, Secretary of the Treasury and the other members of the Cabinet in the order of their rank.

Many of the questions which arose during the recent debate in the House and which will probably be injected into any Senate debate which may follow, were thoroughly discussed in the Congress in 1856, which I told you about a few moments ago, and in 1885 and 1886, when the present act was enacted. The discussion in the Senate at that time is too lengthy to be inserted in this memorandum, but excerpts and quotations from that debate may help to clarify the questions which are arising in connection with present proposals to change the line of succession to the Presidency.

On December 15, 1885—Forty-ninth Congress, first session—the bill, S. 471, to provide for the performance of the duties of the office of President in case of the removal, death, resignation, or inability both of the President and Vice President, came up. Consideration was put over, but Senator Hoar gave "briefly" the purpose of the bill, from which discussion the following is abstracted:

The bill provides for two changes in the existing law. First, it substitutes for the President pro tempore of the Senate and the Speaker of the House as the officers upon whom the duties of President and Vice President, the members of the Cabinet in the order of their official seniority—the order in which the various departments were created, except that the head of the Department of Justice, which is the last Department created by law, is continued in his old place as Attorney General, ranking the heads of the Departments created since the original establishment of the Cabinet. That is the first change proposed in the existing law.

Second, the bill as reported from the committee provides that the officer who shall be called upon to act as President in the case of a vacancy in the office of President and Vice President or in case of inability, shall continue so to act during the term for which the

President and Vice President had been elected, and abrogate the provisions of law providing for an election in the interval.

Continuing with Senator Hoar's discussion:

Certainly the present arrangement, which devolves the office of the President of the United States in any contingency upon the President of the Senate (pro tempore) or Speaker of the House, is a most awkward and inconvenient one. It was adopted originally in opposition to the opinion of Mr. Madison and in opposition to the opinion of the first House of Representatives, of which he was the leader. It was adopted as the result of a continuance of the old controversy in the convention which framed the Constitution of the United States, of the struggle for the equality of the small States in the Government as against the claim that the powers of the Government should be wielded by the people of the different States in proportion to their population. The scale was turned, however, in favor of the adoption of the existing principle by the jealousy entertained toward Mr. Jefferson by the leading Federalists of the first Administration; and undoubtedly but for the apprehension of the growing public influence of Thomas Jefferson and of the political opinions of which he was the representative, the provision would have been made in the First Congress (the Act of 1792 was passed in the Second Congress) that the Secretary of State should succeed to the executive function in case of a vacancy.

The present arrangement is bad, (now he is talking about the Act of 1792—I want to give you both sides of the question) first because during a large portion of the term there is no officer in being who can succeed. That was the case during the whole of the last vacation after the expiration of the last Congress.

I would like to say there that that is true and would be true under my bill if it were not for the fact that since 1901 we have elected the President pro tempore to serve at the pleasure of the Senate. He is a continuing officer. So there would be no vacation period in which we would not have an officer who would succeed to the Presidency, and has not been since 1901. So the argument made hereby Senator Hoar would not apply now. I checked that with Mr. Watkins, the Parliamentarian, this morning, and he verifies my statement in that regard.

Senator GREEN. Would that apply to the Speaker of the House?

Senator WHERRY. He says that the Speaker of the House is elected continuously for the term of the Congress in which he is elected.

Senator GREEN. What happens when the Congress adjourns?

Senator WHERRY. It doesn't make any difference.

Senator KNOWLAND. When the Congress ends, he is through?

Senator WHERRY. Yes. You might have a situation where, before the next term of Congress, no Speaker having been elected, in the House of Representatives they would have no one to qualify during that interim period. In that case the President pro tempore would be eligible. There would be only one time when you would have a President pro tempore ineligible, and that would be in a situation such as existed with Senator McKellar, when he was President pro tempore and his 6-year term expired. You might run into that again, but that is the only time in the period of our existence that that thing has happened. You see then we didn't have a Vice President, and Senator McKellar was elected President pro tempore and his 6-year term expired and he couldn't preside as President pro tempore because that ended with his senatorial term. But that is the only case I know of, Senator Green, and that has happened only once in the history of the United States. It is interesting, but that is true.

Of course under my bill if the President pro tempore did not qualify, then the Cabinet members hold over until they are reappointed. The

custom is to resign, but they hold over until the President appoints a new Cabinet. So the succession would be complete under this bill.

Senator Hoar continued:

It is inconvenient, also, because it would be almost impossible for the President of the Senate (pro tempore) to continue to perform the functions of his office, which is the principal office, to which the Presidency of the United States is made a mere adjunct or appendix in the contingency which is provided for by law.

Now this part of the debate hinges upon the fact that under the act of 1792 the President pro tempore did not resign and neither did the Speaker. I don't agree with that; I think that they cannot hold two offices and that they have got to resign.

Senator Hoar went on to say:

Nothing can be conceived more awkward, more repugnant to our sense of propriety, than for the President of the United States to sit in the chair of the Senate and preside over and listen to discussions in regard to his own nominations, voting upon them himself as an equal in the Senate, and presiding over and listening to the severe criticism of Executive policy which in times of high party antagonism must always be heard in this Chamber, and ought to be always heard in this Chamber.

There followed a discussion on the advisability of the President pro tempore of the Senate or the Speaker presiding both as President of the United States and as Speaker or President of the Senate; lists the Presidents pro tempore of the Senate and the Speakers of the House, as well as the Secretaries of State; and the point was made that the latter are much better known and more outstanding men. There was also a discussion of the advisability of repealing the Revised Statutes relating to holding of special elections, other than at a 4-year interval, calling attention to the difficulty that would result from having elections in "off" years.

The immediate occasion for this bill, which has given it its prominence in public estimation, although it has passed the Senate once or twice when there was no such contingency—the immediate occasion of this bill is the impression upon the public mind of the grave and serious necessity for casting new safeguards about the life of the President of the United States. It is clear, as I said just now in another connection, that the security against the attempts on the life of the President by any political criminal in a time of great public excitement, when persons are maddened and crazed as the feeble mind of Guiteau was by a political quarrel, or a person who persuades himself that he is performing the part of a Brutus by ridding the country of a tyrant, who is sand—will be much greater under this bill than under existing law. But if the principal adviser, the principal leader and exponent of the policies and principles of the party that elected the existing President is to succeed to the office, and so in turn his other Cabinet advisers, that motive is entirely gone. And it is not a man, it is under the theory of our Constitution a principle of political conduct for which the people of the United States declare when they elect a President and Vice President; and that is continued in the provisions of this bill.

The bill went over until the next day, when general discussion was had. There is a history of the legislation, including a history of their reasons which produced the act of 1792, the first Act on Succession, which was superseded by the act of 1886, then under discussion. Senator Maxey's speech goes into the reasons behind the law of 1792—namely, Hamilton's dislike for Jefferson, then Secretary of State. Point is also made by Senator Maxey that neither the President pro tempore of the Senate, nor the Speaker of the House of Representatives, is an "officer" of the United States. And usually they refer to the Blount case to prove that point.

In the Blount case; there was a Senator Blount elected from the State of Tennessee, impeached by the House and tried by the Senate, and the impeachment proceedings were not concurred in because the Senate felt that they should not take jurisdiction, that the Senator was not an officer of the Federal Government. I believe that is a correct statement of the facts.

The CHAIRMAN. May I interject there? It went also on another point and that was that in the section of the Constitution that provided for impeachment it designated specifically that the President, the Vice President or "civil" officers were subject to impeachment; whereas another section of the Constitution provided that each House shall make its own rules and may punish its members. And by counsel for Senator Blount it was very forcibly presented that that was the reason, not that he wasn't an officer, but that he wasn't a civil officer and that he shouldn't have been tried under the impeachment provisions as a civil officer when there was another provision of the Constitution by which each House could punish their own Members.

Senator GREEN. What was the distinction? If he was not a civil officer, what kind of an officer was he?

The CHAIRMAN. He was an officer of the legislature, he was an officer of the Government.

Senator GREEN. What is the distinction between that and a civil officer? I am asking for information only.

The CHAIRMAN. Why should they say "civil" officers if they meant all officers, and why should they in another section of the Constitution provide for each House punishing their Members, if they wanted them impeached?

Senator GREEN. Unless "civil" officer was to distinguish it from a military officer.

The CHAIRMAN. It might have been that, or else it might have been to distinguish from a legislative officer.

Senator WHERRY. That point is raised later on in my remarks. I was only giving the quotation on the point raised by Mr. Maxey. I am glad you brought it up because it clarifies what I expect to state later.

The CHAIRMAN. I just wanted you to know that in the case counsel for Blount raised that question and, I think, very forcibly presented it. It didn't hinge on the assertion or claim that he wasn't an officer, but that he wasn't included in the group that could be impeached but was included within the provision of the Constitution that Members of both Houses could remove their own Members.

Senator WHERRY (continuing). Senator Maxey also discussed the question of the meaning of the language "or a President shall be elected," and concludes that it was the intent of the framers of the Constitution to have 4-year elections and not byelections.

Senator Beck received permission to insert in the record a paper by Mr. Murphy (the Reporter of the Senate) compiled in 1881, after the assassination of President Garfield, which gives the history of the controversy in the Constitutional Convention and also a story of what happened in the Second Congress, when the act of March 1, 1792, was passed. This act was title III, Revised Statutes, sections 146, 147, 148, and 149.

Mr. Murphy's report also goes into the Blount case, as follows:

In 1798, the House of Representatives exhibited articles of impeachment against William Blount, who had been a Senator from Tennessee. Mr. Blount presented by demurrer the point that a Senator was not a civil officer of the United States, and the Senate, sitting as a court of impeachment, negatived resolutions declaring that a Senator was a civil officer of the United States, and therefore liable to impeachment. This has ever since been considered a decision that a Senator was not a civil officer within the impeaching power of the Constitution, and I presume the same reasoning would apply to a Representative. * * *.

Mr. Murphy continues:

If a Senator or Representative is not a "Civil officer of the United States" within the impeaching clause of the Constitution, how can he be an "officer of the United States" capable of being designated to perform the functions of acting President of the United States in any contingency?

Senator Morgan, continuing the debate, argued that the Speaker of the House and the President pro tempore of the Senate were ineligible, because they are not "officers" of the United States. He also called attention to the fact that a person taking the Presidency by succession takes it for the remainder of the 4-year term for which the original President for that term was elected.

On December 17 the Senate resumed consideration of the bill S. 471 when Senator Evarts made this observation:

Now was it not a very precise way used by the framers of the Constitution when they said that all Congress could do was to declare what officer should fill the place? Did they not mean an officer of the United States? They certainly could not name an officer of a State, much less an officer of a foreign state. An officer of the United States unquestionably was meant; and then, having in their minds that Congress should not meddle with the constitution of the Presidency, they saw when they limited it to an officer of the United States that they excluded a Senator and a Representative, (that was his position) because in the same Constitution, using the same phrase, not pointed to any particular circumstance of this kind, there was this provision touching the question of who could by possibility and who could not by possibility be an officer of the United States:

"And no person holding any office under the United States shall be a member of either House during his continuance in office."

You have not only shut out the two Houses from meddling with the Presidency, but you have shut out the members of the two Houses from any possible succession, because they can not ever be officers of the United States. * * *

Senator Evarts continued his discussion with his argument against the Speaker or President pro tempore assuming the Presidency by stating that they could not discharge their respective duties as well as the Presidency, because of the obvious embarrassment and the further fact that as legislators they were not impeachable, and as President they would be; that is, that acting as President pro tempore or Speaker, they would be embarrassed by the votes they would have to cast. There seems to have been no provision for their resignations from their offices, upon being called to the Presidency.

The bill, S. 471, passed without a record vote on December 17, 1885.

Once again they argued this question which was fully discussed in the report of the Senate Judiciary Committee of 1856, which analyzed this bill. They went clear back to the beginning and brought in a unanimous report that a Congressman and Senator were officers of the United States and as officers they came within the constitutional provision. There are debates there that you can read far into the night for weeks, if you want both sides of the question.

S. 471 came up in the House on December 18, 1885, under unanimous consent, was objected to, and then came up for reference on

January 5, 1886. It came to the floor from the Committee on Election of President and Vice President, when that committee was called on January 13, 1886. There were insufficient numbers of the majority and minority committee reports, so the bill went over until the next day, January 14.

The debate followed much along the same lines as in the Senate, but a speech by Representative Peters answers the allegations in the Senate that because of the Blount case a Senator or Representative was not an "officer" of the United States.

Said Mr. Peters, in part:

> I submit, however, that the decision in the Blount case is not in point. A Senator or a Representative may not be an officer of the United States, but a President pro tempore of the Senate is something more than a Senator of the United States. A Speaker of the House of Representatives is something more than a member of the House. These positions are created by the Constitution.

It might be observed that the positions of Senator and Representative are also "created by the Constitution."

Following Mr. Peters was Mr. Seney, who gave arguments for the pending legislation. He based his talk on the temporary character of both offices of President pro tempore and Speaker of the House, and that they might both be vacant in event of a President's death during a recess of Congress. That, of course, was prior to the changes that were made in 1901.

The debate was continued on January 15, 1886, and passed that afternoon by a vote of 146 to 119, with 59 not voting.

Now coming up to the Seventy-ninth Congress, which is when the Sumners bill was passed, as mentioned previously in this statement, H. R. 3587 passed the House on June 29, 1945. There were other bills pending before the House, but the discussion in the Committee of the Whole on June 29 dealt almost exclusively with H. R. 3587. This bill as reported to the House provided, among other things, for an interim election in event the Speaker was called to act as President at a time more than 90 days preceding the next regular election. There was considerable debate on the floor concerning the constitutionality of this provision, and it was finally stricken from the bill as it passed the House. That is the original Sumners bill that went in, recommended by the committee on the floor.

In its present form, H. R. 3587 provides that:

> * * * 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 Speaker of the House of Representatives shall act as President until the disability be removed, or a President shall be elected.

The bill further provides that if the Speaker should be called upon to act as President because of the failure of a President-elect and Vice President-elect, then he is to act only until a President or Vice President qualifies. In the event there is no Speaker at the time of such a vacancy or if he fails to qualify as Acting President, then the President pro tempore of the Senate is to discharge the powers and duties of the President until the expiration of the then current Presidential term, but not after a qualified and prior entitled individual is able to act, and the House made the President pro tempore eligible to go in there when he qualified. I take that part as to prior entitled individual qualifying out in my bill.

Senator GREEN. Why did you take it out?

Senator WHERRY. Because if the Speaker does not qualify, we want someone from the Congress to step in and be Acting President. So I chose the President pro tempore. Furthermore, if you are going to require the President pro tempore to resign—they don't require the Speaker to resign authough I think you should require him to resign. I think we should do it not only with the Speaker, but I think if we impose upon the President pro tempore the question of resignation, and he decides to do so, that he shouldn't be supplanted by a Speaker who does become qualified after the President pro tempore takes over the Acting Presidency. I think it is only fair.

The CHAIRMAN. Can it be provided that his oath of office as Acting President constitutes resignation?

Senator WHERRY. I thought that over. That is a question that might have to be looked into by the committee. I first amended the bill to provide exactly what you say, thinking that the time between when the man would resign and the time he would take his oath of office might be an interim period in which the Speaker might pass out of the picture.

The CHAIRMAN. We had that close split-second question with the Governor of West Virginia appointing his successor, and it was a very close decision in the senate, and I don't think it has been settled yet. So if it can be done I would think that the oath of office might—if it constitutionally and legally can be done—that the administration of the oath constitute resignation. Then there would be no lapse.

Senator LODGE. Perhaps a personal note at that point would be of interest. When I resigned from the Senate I resigned with one hand and got my orders to go the service with the other. Worth Clark, President pro tempore of the Senate, was on my right, and an officer of the War Department was over here on my left. So there was no interim period of time there.

Senator WHERRY. The President pro tempore is always qualified. He is elected for 6 years. If you say "until he takes the oath of office," and if there is trouble in electing a Speaker after the Congress convenes, you will have the President pro tempore always available. The question you raise is answered by the President pro tempore being available, in case the Speaker becomes unavailable for any disability, or is not qualified during that interim period. You always have that to rely upon. The only difference would be that it might deprive a Speaker from being Acting President, and I am for the Speaker being the President because he is closer to the people, instead of the President pro tempore. But there isn't anything lacking in the legislation to provide for the circumstance that you mentioned might arise.

Senator GREEN. What is your idea as to what would happen where the President pro tempore dies when the Congress is not in session?

Senator WHERRY. Dies while the Congress is not in session?

Senator GREEN. Yes.

Senator WHERRY. Then you would have a vacancy until a new President pro tempore is elected, but in that case you would simply go to the Secretary of State.

Senator GREEN. I understood you to say several times that there might not be a Speaker of the House always, but that there was always a President pro tempore of the Senate?

Senator WHERRY. If I said that, that is an excessive statement and I would like the record to show a correction. What I meant to say is that the office of President pro tempore continues during his election for 6 years, and in that respect he is more permanent than a Speaker. In other words, a President pro tempore is elected President pro tempore at the pleasure of the Senate.

Senator GREEN. But they could be changed every week.

Senator WHERRY. If you wanted to, but if you changed them every week you would not have a new President every week.

Senator GREEN. But you wouldn't have a President pro tempore every week if the Congress was not in session.

Senator WHERRY. If you elected a new President pro tempore it would be almost instantaneous. How could it be otherwise, unless a man dies? If you are not in session and the President pro tempore dies, and you don't have a Speaker—that probably would never arise, that situation, because the death of those two men would be rather remote. But if it should happen then we provide that the Secretary of State qualifies.

Here is another thing that is different in this bill from the House bill. If a Secretary takes over he cannot be supplanted by a Secretary who is a grade above him. He is supplanted by either the President, the Vice President, the Speaker, or the President pro tempore. That certainly takes care of the situation.

The CHAIRMAN. Do you wish to complete your statement before it is necessary to adjourn to the floor?

Senator WHERRY. I would be glad to. I realize that it is very difficult in an hour and a half to present this question. I have tried to boil it down and bring up both sides of the question so that the committee would be informed. If you have to wade through all this history and dig it out, it is quite a job.

Senator GREEN. It has been under discussion for 50 years, and as a Nation we seem to wobble back and forth.

Senator WHERRY. We didn't wobble for a hundred years.

Senator GREEN. We are talking about wobbling in a shorter interval now.

Senator WHERRY. That is because we have no Vice President and there is an emergency, and it has always been an emergency that brought this matter up for discussion.

Senator GREEN. To make it clear, the difference between the present law and what you propose is this—I am sorry to use illustrations because I don't think temporary politics should enter into it; this is permanent legislation without regard to who is in control of the Presidency or the Senate or the House—but if President Truman should die today General Marshall, as Secretary of State, would become President; is that correct?

Senator WHERRY. That is right.

Senator GREEN. Then suppose that this law were in effect, in that event Representative Martin, as Speaker of the House, would become President.

Senator WHERRY. If he could qualify.

Senator GREEN. Yes; and if not, then Senator Vandenberg would become President?

Senator WHERRY. That is right. And if he couldn't qualify it would go to General Marshall, and if he couldn't qualify it would go to the Secretary of the Treasury, and then right on down the line.

Senator GREEN. Suppose that Congress adjourned next June and the President died the day after Congress adjourned, then who would become President?

Senator WHERRY. Joseph Martin.

Senator GREEN. And if for any reason he was unavailable?

Senator WHERRY. Then Senator Vandenberg.

Senator GREEN. But if both of them died?

Senator WHERRY. Then it would go to Secretary Marshall and he would be the Acting President only until the President or Vice President or Speaker or President pro tempore qualified. But the difference between my bill and the Sumners bill is that we don't permit the Speaker to come in and take over when a President pro tempore once qualifies. That is the difference in the bills.

Senator GREEN. The difference is that the Secretary of State would only hold temporarily?

Senator WHERRY. He does under the Truman plan.

Senator GREEN. But the Speaker of the House or the President pro tempore of the Senate, once sworn in, would hold for the balance of the term?

Senator WHERRY. No, that isn't exactly it. It first goes to the Speaker, and if he qualifies, all right. If there is another Speaker elected during the time that the first Speaker doesn't qualify, he would succeed. But in the event there is no Speaker who is able to qualify then it goes to the President pro tempore. If the President pro tempore once qualifies, he is not supplanted by a Speaker of the House of Representatives.

Senator LODGE. He remains for the duration of the unexpired term?

Senator WHERRY. Yes. I think that is fair. Now the House is going to disagree with us on that. The House bill requires that the Speaker doesn't have to resign. The language in their bill on page 2 provides that when the individual can qualify, meaning that the Speaker can come in——

Senator KNOWLAND (interposing). Even a month later?

Senator WHERRY. Yes. My bill requires a Senator to resign—to give up as President pro tempore. My theory is that as long as they all are elected officers I would much rather it would go to the Speaker first; then to the President pro tempore as next closest to the Speaker, maybe. But in the event neither one of them is available, then go down through the line we have now, and they act as President only until either the President, Vice President, the Speaker, or the President pro tempore qualifies. In that order they can supplant the Secretary of State.

Senator KNOWLAND. You speak of the line we have now. I think you add the Secretaries of Commerce and Labor, who are not in there now; do you not?

Senator WHERRY. Yes, sir; that is right. I name each one in the bill. That is why I think they are officers. Senator Green doesn't agree.

Senator GREEN. I didn't express any opinion myself as to whether they were officers or not. I was simply trying to get your position.

Senator WHERRY. I have a great admiration for your ability and you know that, Senator Green.

Senator GREEN. Thank you.

Senator HOLLAND. This just occurred to me while you were talking, and maybe there is a simple answer for it. Does the present law apply equally to Cabinet members regardless of whether they have actually been confirmed? That is, does it apply to appointees during a recess?

Senator WHERRY. I believe I have covered that in the committee print of my bill, wherein, beginning at line 20, page 3, the following appears:

(c) Subsection (a), (b), and (d) shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) shall apply only to *officers appointed, by and with the advice and consent of the Senate*, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of the President devolve upon them.

Now I agree with President Truman completely on the main principles of his letter, because I think he is correct.

I should like to complete my prepared statement.

The CHAIRMAN. If you will do so.

Senator WHERRY. H. R. 3587 further provides that succession after the President pro tempore shall devolve upon the Secretaries of the Cabinet in the order of their rank. However, any person in the line of succession taking the powers and duties of Acting President shall relinquish them after a Speaker of the House is qualified.

The debate in the House on June 29 was confined largely to the specific provisions of H. R. 3587 but it also brought out the several constitutional questions which have complicated the matter of Presidential succession since the first debates were held in the Constitutional Convention of 1787. In discussing whether or not the Speaker of the House and the President pro tempore of the Senate are "officers" of the Federal Government, the famous Blount case was referred to. That case, which was an impeachment of William Blount, a former United States Senator from the State of Tennessee, in 1797, established the rule, which was undisputed for many years, that a Senator was not such a civil officer of the United States as to be liable to impeachment by the House of Representatives.

Those who argued in the House on June 29 that the Speaker and President pro tempore of the Senate are not such "officers" as are eligible to succeed to the Presidency, based their argument on the holding in the Blount case. In opposition to this stand, however, attention was called to the case of *Lamar* v. *United States* (241 U. S. 102), which holds that a Member of the House of Representatives of the Congress of the United States is an officer acting under the authority of the United States, within the meaning of the United States Criminal Code, section 32, making criminal the false impersonation of such officer with intent to defraud. In this case the defendant had contended that he could not be guilty under this Federal act, prohibiting impersonation of a Federal officer, because a Member of the House (whom he had sought to impersonate) was not a Federal officer. The Court, however, decided otherwise, stating:

Guided by these rules, when the relations of Members of the House of Representatives to the Government of the United States are borne in mind, and the

nature and character of their duties and responsibilities are considered, we are clearly of the opinion that such members are embraced by the comprehensive terms of the statute. If, however, considered from the face of the statute alone, the question was susceptible of obscurity or doubt—which we think is not the case—all ground for doubt would be removed by the following considerations:

(a) Because prior to and at the time of the original enactment in question the common understanding that a member of the House of Representatives was a legislative officer of the United States was clearly expressed in the ordinary, as well as legal, dictionaries. (See Webster, verbo "office"; Century Dictionary verbo "officer"; 2 Bouvier's Law Dictionary, 1897 ed. 540, verbo "legislative officers"; Black's Law Dictionary, 2d ed., p. 710, verbo "legislative officer.")

(b) Because at or before the same period in the Senate of the United States, after considering the ruling in the Blount case, it was concluded that a Member of Congress was a civil officer of the United States within the purview of the law requiring the taking of an oath of office. (Congressional Globe, 38th Cong., 1st sess., pl. 1, pp. 320-331.)

(c) Because also in various general statutes of the United States at the time of the enactment in question a Member of Congress was assumed to be a Civil officer of the United States, Revised Statutes, Secs. 1786, 2010, and subdivision 14 of Sec. 563.

(d) Because that conclusion is the necessary result of prior decisions of this court, and harmonizes with the settled conception of the position of members of state legislative bodies as expressed in many state decisions.

It will be seen that there is considerable weight of arument on both sides of this question and that a solution might be made by positive legislative statement that the Speaker and the President pro tempore are "officers of the United States" and, as such, eligible to succession to the Presidency.

The House struck from the bill the provision for a special interim election on the ground that such a procedure would require amendment of the election laws of all of the 48 States, and in many cases, of their constitutions. The debate also shows that the Members felt that should the Presidency within a short space of time pass first to the Vice President and then to the Speaker that to call a special election would subject the country to so severe a shock that both the economical and political life of the country would be imperiled.

That completes my prepared statement, and I would like to devote whatever time remains to pointing out the difference between my bill and these other three or four bills that have been introduced.

Take Senator Green's resolution—that is a study and I am not averse to a study, we have been arguing this for 150 years, but when you get through you will have about the same facts before you as you have now.

The CHAIRMAN. May I interrupt you to say that when we sit down in committee to discuss these various bills we will have a chance to go into all these differences, and if you don't mind saving your comments in that respect until that time, we will close this hearing so that we can get over to the Senate.

Senator WHERRY. It is perfectly agreeable to me to take that matter up in committee session.

The CHAIRMAN. Then I will declare the hearings on these bills closed.

(Whereupon, at 11:50 a. m., the hearing was closed.)

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