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88TH CONGRESS }  
2d Session }

SENATE

{REPORT  
(No. 1017)

## CONSTITUTIONAL AMENDMENTS

REPORT  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
MADE BY ITS  
SUBCOMMITTEE ON CONSTITUTIONAL  
AMENDMENTS

PURSUANT TO

S. Res. 57

88th Congress, 1st Session, as extended

TOGETHER WITH

INDIVIDUAL VIEWS

18



APRIL 30 (legislative day, MARCH 30), 1964.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1964

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<sup>1</sup> On Aug. 23, 1963, the Honorable Quentin N. Burdick, of North Dakota, was appointed to the committee to fill the vacancy created by the death of the Honorable Estes Kefauver, of Tennessee.

## CONTENTS

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	Page
Committee memberships-----	II
Summary-----	1
Presidential inability:	
Legislative history-----	2
Purpose-----	2
Statement-----	2
The need for change-----	6
Method of change-----	6
Analysis-----	8
Conclusion-----	8
Recommendation-----	9
Appointment of Representatives:	
Legislative history-----	9
Purpose-----	9
Statement-----	9
Analysis-----	11
Conclusion and recommendations-----	12
Residence requirements for voting in Federal elections:	
Legislative history-----	13
Purpose-----	13
Statement-----	13
Analysis-----	17
Conclusion-----	18
Table existing requirements-----	19
Electoral college:	
Statement-----	20
Direct national election-----	21
Proportional system-----	21
District system-----	21
Perfection of present system-----	22
The unit rule system-----	22
The office of presidential elector-----	24
Contingent elections in the House of Representatives-----	25
Committee action-----	26
Equal rights of women:	
Legislative history-----	26
Statement-----	26
Eighteen-year-old voting:	
Legislative history-----	28
Statement-----	28
Repeal of 22d amendment:	
Legislative history-----	29
Statement-----	29
Individual views of Senator Kenneth B. Keating-----	30

## APPENDIX

Statistical tabulation of proposed constitutional amendments-----	31
Senate Resolution 57-----	33
Senate Joint Resolution 35, as reported by subcommittee-----	33
Senate Joint Resolution 36-----	34
Senate Joint Resolution 37-----	34
Senate Joint Resolution 12-----	35
Senate Joint Resolution 27-----	37
Senate Joint Resolution 45-----	38
Senate Joint Resolution 2-----	39
Senate Joint Resolution 38-----	39
Senate Joint Resolution 26-----	40



## CONSTITUTIONAL AMENDMENTS

APRIL 30 (legislative day, MARCH 30), 1964.—Ordered to be printed

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

### R E P O R T together with INDIVIDUAL VIEWS

[Pursuant to S. Res. 57, 88th Cong., 1st sess., as extended]

Senate Resolution 57, agreed to March 14, 1963, authorized the Committee on the Judiciary, or any duly authorized subcommittee thereof, to examine, investigate, and make a complete study of any and all matters pertaining to constitutional amendments under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdictions specified by rule XXV of the Standing Rules of the Senate. Pursuant to section 3 of said resolution, the Standing Subcommittee on Constitutional Amendments of the Committee on the Judiciary reports its actions and findings and recommendations as follows:

#### SUMMARY

During the 1st session of the 88th Congress, 29 joint resolutions proposing constitutional amendments were introduced in the Senate. Appended to this report is a tabulation of these proposals by number, sponsor, and subject matter, showing the action taken on each of them.

During the month of June 1963, the Subcommittee on Constitutional Amendments held hearings on 10 resolutions to amend the Constitution. These hearings related to various aspects of the nomination and election of President and Vice President and presidential inability. Seven of the resolutions concern the nomination and election of President and Vice President. This hearing was held on June 4, 1963, which was supplemental to hearings held on May 23, 36; June 8, 27, 28, 29, and July 13, 1961—87th Congress, 1st session.

Three of the resolutions concern presidential inability. Hearings were held on these resolutions on June 11 and 18, 1963. Both sets of hearings have been printed.

Thus, two volumes of hearings have been printed, with a cumulative total of 261 printed pages. Numerous witnesses as Senators, Representatives, governmental officers, professors of political science, and constitutional attorneys were heard. In addition, the record contains the views of nationally known experts throughout the country.

Five resolutions have been reported by the subcommittee to the full committee. Two of them (S.J. Res. 12 and S.J. Res. 27) were reported without recommendation. The remainder of these resolutions (S.J. Res. 35, S.J. Res. 36, and S.J. Res. 37) were reported favorably with written reports. The remaining resolutions were pending in the subcommittee when the 1st session of the 88th Congress ended.

A discussion of the principal areas of the subcommittee's activities, divided according to subject matter, follows:

#### PRESIDENTIAL INABILITY

Senate Joint Resolution 35, introduced by Messrs. Kefauver and Keating, and later sponsored by Mr. Dodd, was referred by the committee to the subcommittee on February 18, 1963. After the public hearing of June 11, 1963 (which encompassed the subject matter of S.J. Res. 28, a related resolution), the resolution with amendments was reported favorably to the full committee on June 25, 1963.

The purpose of Senate Joint Resolution 35, as reported by the subcommittee, is to authorize clearly the Vice President to exercise the powers and duties of the office of President at such times as the President is unable to perform such powers and duties, and to give the Congress the authority to enact legislation prescribing the method by which the commencement and the termination of any inability shall be determined.

#### STATEMENT

##### *The inability clause and its interpretation*

The Constitution of the United States, in article II, section 1, clause 6, contains provisions relating to the continuity of the executive power at times of death, resignation, inability, or removal of a President. This clause 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 act accordingly, until the Disability be removed, or a President shall be elected.

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

In case of his (the President's) removal as aforesaid, death, absence, resignation, or inability to discharge the

powers or duties of his office, the Vice President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.

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

While the Committee on Style was given no authority to change the substance of prior determinations of the Convention, it is clear that this portion of the draft which that committee ultimately submitted was a considerable alteration of the proposal which the Committee had received. The records of the Constitutional Convention do not contain any explicit interpretation of the provisions as they relate to inability. As a matter of fact, the records of the Convention contain only one apparent reference to the aspects of this clause which deal with the question of disability. It was Mr. John Dickinson, of Delaware, who, on August 27, 1787, asked:

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

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

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

This precedent of John Tyler has since been confirmed on 7 occasions when Vice Presidents have succeeded to the Presidency of the United States by virtue of the death of the incumbent President. Vice Presidents Fillmore, Johnson, Arthur, Theodore Roosevelt, Coolidge, Truman, and Johnson all became President initially in this manner.

The acts of these Vice Presidents, and the acquiescence in, or confirmation of, their acts by Congress have served to establish a precedent that, in one of the contingencies under article II, section 1, clause 6, that of death, the Vice President becomes President of the United States.

The clause which provides for succession in case of death also applies to succession in case of resignation, removal from office, or inability. In all four contingencies, the Constitution states: "the same shall devolve on the Vice President." Thus it is said that whatever devolves upon the Vice President upon death of the President, likewise devolves upon him by reason of the resignation, inability, or removal from office of the President (Theodore Dwight, "Presidential Inability, North American Review," vol. 133, p. 442 (1881)).

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

These considerations apparently moved persons such as Daniel Webster, who was Secretary of State when Tyler took office as President, to declare that the powers of the office are inseparable from the office itself and that a recovered President could not displace a Vice President who had assumed the prerogatives of the Presidency. This interpretation gains support by implication from the language of article I, section 3, clause 5, of the Constitution which provides that the Senate shall choose a President pro tempore—

In the absence of the Vice President, or when he shall exercise the *office* of President of the United States. [Italic supplied.]

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

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

covery, and because the President's condition prevented them from presenting the issue to him directly, the matter was dropped.

It was not until President Woodrow Wilson suffered a severe stroke in 1919 that the matter became of pressing urgency again. This damage to President Wilson's health came at a time when the struggle concerning the position of the United States in the League of Nations was at its height. Major matters of foreign policy such as the Shantung Settlement were unresolved. The British Ambassador spent 4 months in Washington without being received by the President. Twenty-eight acts of Congress became law without the President's signature (Lindsay Rogers, "Presidential Inability, the Review," May 8, 1920; reprinted in 1958 hearings before Senate Subcommittee on Constitutional Amendments, pp. 232-235). The President's wife and a group of White House associates acted as a screening board on decisions which could be submitted to the President without impairment of his health. (See Edith Bolling Wilson, "My Memoirs," pp. 288-290; Hoover, "Forty-Two Years in the White House," pp. 105-106; Tumulty, "Woodrow Wilson as I Know Him," pp. 437-438.)

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

On three occasions during the Eisenhower administration, incidents involving the physical health of the President served to focus attention on the inability clause. President Eisenhower became concerned about the gap in the Constitution relative to presidential inability, and he attempted to reduce the hazards by means of an informal agreement with Vice President Nixon. The agreement provided:

1. In the event of inability the President would—if possible—so inform the Vice President, and the Vice President would serve as Acting President, exercising the powers and duties of the office until the inability had ended.
2. In the event of an inability which would prevent the President from so communicating with the Vice President, the Vice President, after such consultation as seems to him appropriate under the circumstances, would decide upon the devolution of the powers and duties of the office and would serve as Acting President until the inability had ended.
3. The President, in either event, would determine when the inability had ended and at that time would resume the full exercise of the powers and duties of the office.

President Kennedy entered into a similar agreement with Vice President Johnson. Such informal agreements cannot be considered an adequate solution to the problem because (a) their operation would differ according to the relationship between the particular holders of the offices; (b) an agreement cannot give the Vice President clear authority to discharge powers conferred on the President by the Constitution, treaties, or statutes; (c) no provision is made for the situation in which a dispute exists over whether or not the President

is disabled. Former Attorneys General Brownell and Rogers as well as Attorney General Kennedy agree that the only definitive method to settle the problem is by means of a constitutional amendment.

#### THE NEED FOR CHANGE

The historical review of the interpretation of article II, section 1, clause 6, suggests the difficulties which it has already presented. The language of the clause is unclear, its application uncertain. The clause couples the contingencies of a permanent nature such as death, resignation, or removal from office, with inability, a contingency which may be temporary. It does not clearly commit the determination of inability to any individual or group, nor does it define inability so that the existence of such a status may be open and notorious. It leaves uncertain the capacity in which the Vice President acts during a period of inability of the President. It fails to limit the period during which the Vice President serves. It does not specify that a recovered President may regain the prerogatives of his office if he has relinquished them. It fails to provide any mechanism for determining whether a President has in fact recovered from his inability, nor does it indicate how a President, who sought to recover his prerogatives while still disabled, might be prevented from doing so. It also leaves unclear the extent of the authority of Congress to act.

The resolution of these issues is imperative if continuity of executive power is to be preserved with a minimum of turbulence at times when a President is disabled. The importance of an executive power capable of being exercised without appreciable interruption is greater today than ever before. The concern which was manifested on previous occasions when a President was disabled, is increased when the problem is weighed in the light of the increased importance of the office of the Presidency of the United States and to the world.

The growth, not only in the power and prestige of the office of the Presidency, but also in the demands which it makes upon the occupant of the office, imposes increased concern as to the health of the President and the exercise of the powers and duties of his office when his health will not permit him to continue their exercise, either temporarily or permanently. This increased concern has in turn manifested an intensified examination of the adequacy of the provisions relating to the orderly transfer of the functions of the Presidency. Such an examination is not reassuring. The constitutional provision has not been utilized because its procedures have not been clear. After 175 years of experience with the Constitution the inability clause remains an untested provision of uncertain application.

#### METHOD OF CHANGE

In previous instances in history when this question has arisen, one of the major considerations has been whether Congress could constitutionally proceed to resolve the problem by statute, or whether an enabling constitutional amendment would be necessary. As early as 1920, when the Committee on the Judiciary of the House of Representatives, 66th Congress, 2d session, considered the problem, Representatives Madden, Rogers, and McArthur took the position that the matter of disability could be dealt with by statute without an amendment to the Constitution, whereas Representative Fess was

of the opinion that Congress was not authorized to act under the Constitution, and that an amendment would first have to be adopted (hearings before the Committee on the Judiciary, House of Representatives, February 26 and March 1, 1920). Through the years, this controversy has increased in intensity among Congressmen and constitutional scholars who have considered the Presidential inability problems.

Those who feel that Congress does not have the authority to resolve the matter by statute claim that the Constitution does not support a reasonable inference that Congress is empowered to legislate. They point out that article II, section 1, clause 6, of the Constitution authorizes Congress to provide by statute for the case where both the President and Vice President are incapable of serving. By implication, Congress does not have the authority to legislate with regard to the situation which concerns only a disabled President, with the Vice President succeeding to his powers and duties. Apparently this is the proper construction, because the first statute dealing with Presidential succession under article II, section 1, clause 6, which was enacted by contemporaries of the framers of the Constitution, did not purport to establish succession in instances where the President alone was disabled (act of March 1, 1792, 1 Stat. 239).

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

In recent years, there seems to have been a strong shift of opinion in favor of the proposition that a constitutional amendment is necessary, and that a mere statute would not be adequate to solve the problem. The last three Attorneys General who have testified on the matter, Herbert Brownell, William P. Rogers, and Deputy Attorney General Nicholas deB. Katzenbach, have agreed an amendment is necessary. In addition, the American Bar Association, the State bar associations of New York and Nebraska, and the Bar Association of the City of New York, have recently passed resolutions stating that a constitutional amendment is necessary to solve the problem.

The most persuasive argument in favor of first amending the Constitution, before passing a Presidential inability statute, is that so many legal questions have been raised about the authority of Congress to act on this subject without an amendment that any statute on the subject would be open to criticism and challenge at the most critical time—that is, either when a President had become disabled, or when a President sought to recover his office. Under these circumstances, there is an urgent need to adopt an enabling amendment, so that Congress may proceed to resolve the problem by enacting a statute that cannot be questioned on constitutional grounds.

## ANALYSIS

The proposal recommended by the subcommittee is cast in the form of a constitutional amendment for the reasons which have been outlined earlier, the primary reason being to remove any doubt that Congress has the authority to enact legislation prescribing procedures to determine the "commencement and termination" of an inability.

Article II, section 1, clause 6, of the Constitution is unclear on two important points. The first is whether the "office" of the President or the "powers and duties of the said office" devolve upon the Vice President in the event of Presidential inability. The second is who has the authority to determine what inability is, when it commences, and when it terminates.

The first sentence would affirm the historical practice by which a Vice President has become President upon the death of the President, further extending the practice to the contingencies of resignation or removal from office. It separates the provisions relating to inability from those relating to death, resignation, or removal, thereby eliminating any ambiguity in the language of the present provision in article II, section 1, clause 6.

The second sentence makes it clear that it is not the "office" but the "powers and duties of the office" which devolve on the Vice President, in the time of Presidential inability. By establishing the title of Acting President, the proposal further clarifies the status of the Vice President during the period when he is discharging the powers and duties of a disabled President. In addition, it is made clear that the President may reassume the powers and duties of his office when his inability has ended.

The third sentence clarifies the authority of Congress to legislate on the subject of Presidential succession, both in the case of removal, death, or resignation, and also in a Presidential inability situation. The sentence states that, if both the President and Vice President have been eliminated by removal, death, or resignation, then Congress may declare "what officer shall then be President." If neither the President nor the Vice President is able to function because of inability, Congress may declare what officer shall "act as President \* \* \* until a President shall be elected, or \* \* \* until the inability shall be removed."

In the summer of 1963, after hearings on presidential inability had been concluded, it was the consensus of this subcommittee that Senate Joint Resolution 35 offered perhaps the best solution to the constitutional gaps cited earlier.

However, when an assassin's bullet claimed the life of President John Fitzgerald Kennedy on November 22, 1963, Members of the U.S. Senate and House of Representatives voiced renewed concern over Presidential inability and vacancies in the Office of Vice President. A variety of proposals to deal with these problems by amending the Constitution were introduced and referred to this subcommittee.

Because of the renewed concern of Members, because of the apparent widespread public interest in these problems, and because of the subcommittee's intense desire to find a reasonable solution that will be accepted by the Congress and the several States, it was decided to hold a new series of hearings during the 2d session of the 88th Congress.

The subcommittee decided not to concern itself with laws relating to Presidential succession. Congress is given the constitutional power

to determine the line of succession after the Vice President. The first succession law of 1792 placed the President pro tempore of the Senate first in line after the Vice President. The next succession law in 1886 placed the Secretary of State first in line after the Vice President. The third and current succession law, passed in 1947, placed the Speaker of the House of Representatives first in line after the Vice President. These adjustments in the lines of succession are made from time to time as the Congress, in its wisdom, sees fit.

The subcommittee therefore decided to confine its hearings to the vexing problems of the inability of a President and the difficulties presented whenever a vacancy exists—as it has 17 times in our history—in the Office of Vice President.

The subcommittee is helpful of finding a solution to these problems that will provide reasonable machinery to obviate the problems of inability and vacancies in the Vice Presidency without burdening the Constitution with procedural details. The subcommittee also will strive for a solution that will leave to the Congress, as representatives of the people, the ultimate determination in matters of inability and filling vacancies in the Vice Presidency.

#### APPOINTMENT OF REPRESENTATIVES

Senate Joint Resolution 36, introduced by Messrs. Kefauver and Keating, and later sponsored by Mr. Dodd, was referred by the full committee to the subcommittee on February 18, 1963. After the public hearing of June 11, 1963, the resolution was reported favorably to the full committee on June 25, 1963.

The purpose of Senate Joint Resolution 36 is to amend the Constitution to enable the Congress to function effectively in time of emergency or disaster. It authorizes the executive authority of each State to make temporary appointments to fill vacancies in its representation in the House of Representatives whenever such vacancies exceed one-third of the authorized membership of that body.

#### STATEMENT

When the Constitution was drafted, the ability to destroy people on a mass basis by use of weapons of war could not be foreseen. The Founding Fathers had no reason to assume that the membership of the House of Representatives might become so decimated overnight that it would be rendered incapable of exercising its constitutional functions in a time of crisis. Intending that Members of the House of Representatives should always represent the will of the people, the framers of the Constitution insisted that all vacancies in that body be filled by special elections.

With the advent of nuclear bombs and other weapons of mass destruction, vast areas can now be devastated almost instantaneously. We know that no system of defense is likely to be 100 percent effective. In any future war it is possible that the enemy will succeed in striking some of our civilian communities, including the Nation's Capital. These advances in the technique of destruction, coupled with the realities of the cold war, require reexamination of the ability of our representative government to function in time of national disaster.

Continuity of the Executive authority is protected by the act of June 25, 1948 (ch. 644, sec. 1, 62 Stat., p. 672), regulating Presidential

succession. As long as the House of Representatives is available to choose a Speaker, Presidential succession can be maintained. The judiciary could be reconstituted fairly readily by appointments by the Chief Executive. By virtue of the 17th amendment to the Constitution, vacancies in the Senate could be temporarily filled by appointments by the Governors of the respective States. But in the House of Representatives, temporary appointments are not authorized. Vacancies must be filled by special elections (U.S. Constitution, art. I, sec. 2), which require a minimum delay of 60 days even in normal times. In times of destruction and chaos caused by nuclear attack upon our shores, it might well be considerably longer before elections could properly be conducted in many congressional districts.

This inability to provide continuity of representation offers no great difficulty in ordinary times. But in periods of national emergency or disaster, it could well paralyze the functioning of representative government. As an Administrator of Civil Defense stated previously in support of this measure—

It would be difficult to overestimate the importance of Congress continuing to function in time of national emergency. The functions of the Congress become ever more important under such circumstances. The ability of the Congress to act swiftly is essential to the successful defense of the Nation.

What would be the consequences if an atomic attack left the House of Representatives to function without a majority of its Members? Any Member might suggest the absence of a quorum. Parliamentary precedents indicate that it would be ruled that a majority of the living Members would constitute a quorum, but this still might not enable the House to function. It is likely that any catastrophe which killed a large number of Representatives would also incapacitate so many that the House could not muster a majority of surviving Members. It is important too that in such critical times the efficiency and representative character of the Congress be preserved. Vital legislation would be needed quickly and any disfranchisement of substantial portions of our Nation would be undesirable for many reasons. It may be suggested that the Chief Executive would step into the breach and act without legislative sanction in the national interest as he perceived it at such a time. But this might not give the same national unity as a President supported by a fully constituted Congress and there need be no departure from constitutional representative government if precautionary steps are taken in advance of atomic catastrophe. There is no reason why vacancies in the House, where revenue measures must originate, should not be filled with the same dispatch as those in the Senate. This amendment is a precautionary step which is comparable to civil defense measures and stepped-up military preparedness. It is not born of hysteria, but represents a readiness to continue the orderly processes of government in all events. Its speedy adoption will demonstrate to the enemies of freedom that America is prepared governmentally, as well as militarily, if they choose to precipitate World War III.

The subject matter of this resolution has been before the Senate since the 81st Congress when Senator William Knowland introduced Senate Joint Resolution 145 along the same lines. In the 82d Congress, public hearings were held on Senate Joint Resolution 59. In

the 83d Congress, public hearings were held on Senate Joint Resolution 39, which passed the Senate by a vote of 70 to 1 on June 4, 1954. In the 84th Congress, public hearings were held on Senate Joint Resolution 8, and this resolution, as amended, passed the Senate by a vote of 76 to 3 on May 19, 1955. During the 85th Congress, Senate Joint Resolution 157 was introduced, but no action was taken on it. In the 86th Congress, Senate Joint Resolution 39 passed the Senate 70 to 18 on February 2, 1960, although two additional articles were added to the resolution on the floor of the Senate.

In the 87th Congress, Senators Kefauver and Keating introduced Senate Joint Resolution 123, which was similar in substance to Senate Joint Resolution 39, the resolution sponsored by Senator Knowland which passed the Senate in the 83d Congress, and Senate Joint Resolution 85, which was introduced in the 86th Congress by Senator Keating. Senate Joint Resolution 123 was approved in a report by the Attorney General, and the subcommittee recommended to the Committee on the Judiciary that the joint resolution be reported favorably to the Senate. The Judiciary Committee reported Senate Joint Resolution 123 favorably to the Senate, but no further action was taken with regard to it during the 87th Congress.

During the present Congress, Senators Kefauver and Keating introduced Senate Joint Resolution 36, which is identical to Senate Joint Resolution 123 of the 87th Congress. Hearings were deemed unnecessary because of the clear and immediate need for action, the extensive hearings and debate in previous Congresses, and the overwhelming support which the proposal has received in the past. The Subcommittee on Constitutional Amendments considered the matter on June 25, 1963, and unanimously recommended to the Committee on the Judiciary that it report Senate Joint Resolution 36 favorably and without amendment.

#### ANALYSIS

The power to appoint Representatives arises only when the vacancies in the House exceed one-third of its authorized membership. The present membership of the House being 435, 146 vacancies would have to exist before this extraordinary power could be invoked. The number of vacancies could exist for several days, but as appointments are made by the Governors pursuant to this amendment, the number of vacancies naturally will diminish. On the date that the vacancies total less than 146, the time limit on this power begins to run. From that date, the Governors have 60 days within which to make the temporary appointments or the authority lapses and the office must be filled by election. If within the 60-day period, additional vacancies arise from any cause, they also may be filled by gubernatorial appointment. After the number of vacancies drops below 146, if it arises above that figure again, the power to appoint again comes into existence.

Appointments made pursuant to the authority are temporary in nature. Article I, section 2, of the Constitution, will still mandatorily require that a Governor issue writs of election when vacancies occur in the representation of his State in the House of Representatives. This amendment, by specific reference, emphasizes this requirement, so that, depending upon conditions in the various States, the appointee's term should be limited to from 50 to 90 days.

Although the amendment is designed for disaster-type situations, the text of the resolution contains no reference to emergency or disaster. Such specification would raise such questions as the determination and proclamation of a disaster, whether only vacancies caused by the disaster should be filled by appointment, and the particular vacancies resulting from the disaster. These problems are not presented because the power to appoint is brought into being by a factual condition which will be readily ascertainable; namely, the existence of 146 vacancies in the House of Representatives. Nevertheless, the very existence of so many vacancies in the House of Representatives presupposes a disaster and surely cannot occur short of some catastrophic occurrence. The maintenance of a large number of vacancies as a prerequisite to use of the appointive power assures that it will only be used in the event of a disaster and prevents any possibility of abuse.

Any catastrophe which produces the operative number of vacancies will probably be accompanied by breakdowns in communications, disorder, and confusion in both State and Federal Governments, and vacancies in other public offices. Nevertheless, it is desirable that some procedure be devised by which the executive authorities of the various States will be notified that their appointive power has come into being. Section 2 of the article authorizes Congress to enact legislation establishing some such procedure. However, the constitutional authority for the temporary appointments will never depend upon whether any particular notification procedure has been followed. It thus avoids the pitfalls of trying to provide constitutionally for all the difficulties which might prevent a specified mode of notification from being carried out.

Should unforeseen difficulties arise as a result of this grant of authority, the House of Representatives will continue to act as the final arbiter by reason of its constitutional authority to be the judge of the qualifications of its own Members (U.S. Constitution, art. 1, sec. 5).

#### CONCLUSION AND RECOMMENDATIONS

It is the fervent hope of the subcommittee that the authority granted in this resolution need never be used. However, with our knowledge of the tremendous destructive power of thermonuclear weapons, it would be the height of folly to leave a constitutional gap of this nature in a representative government such as ours. When whole cities may be obliterated in a split second, the Congress cannot ignore, should it have any inclination to do so, the realities of this danger. The time for action to erase a defect in our Constitution, which could not have been contemplated at the time of its adoption, is at hand. Let us hope it is not overdue.

In view of the current international crisis, the subcommittee believed that approval of this resolution is more appropriate and more needed than at any time in its previous legislative history. The United States is making every effort and sparing no expense to demonstrate to our enemies that we are determined to resist them and to defend freedom at all costs. While calling for personal sacrifice and increased military preparation, the subcommittee was of the opinion that we should not at the same time ignore this unnecessary loophole in our Constitution. In the opinion of the subcommittee, swift approval of this resolution by the Congress will demonstrate

that America is preparing governmentally, as well as militarily, to defend itself if our enemies choose to precipitate world war III.

As a constitutional amendment, this measure must secure the approval of two-thirds of both Houses of Congress and the ratification by the legislatures of three-fourths of the several States. Since this action may be somewhat time consuming, and time is of the essence here, the subcommittee believes that this legislation should be approved promptly by the Senate.

#### RESIDENCE REQUIREMENTS FOR VOTING IN PRESIDENTIAL ELECTIONS

Senate Joint Resolution 37, introduced by Messrs. Kefauver and Keating, was referred by the committee to the subcommittee on February 18, 1963. On June 25, 1963, it was reported favorably by the subcommittee to the full committee.

#### PURPOSE

The purpose of the proposed amendment is to amend the Constitution to enable persons who have moved across State lines or from one election district to another within States, to nevertheless vote in presidential elections if they are otherwise qualified. It limits the maximum residence requirement which a State may impose for voting in presidential elections at 90 days. It also provides that a person who does not meet a residence requirement may nevertheless vote in a presidential election if such person is otherwise qualified to vote therein and would also have been qualified to vote in the presidential election at the place from which he moved, except for the fact of changing residence.

#### STATEMENT

The problem of disfranchisement of our mobile population from voting for the Nation's Chief Executive is a serious one. According to Census Bureau figures 19,800,000 American adults moved in 1961. Of these, 13.2 million moved within their counties, 6.6 million moved from county to county, and 3 million from State to State. This mobility of our population and its free movement from one State to another is a desirable and necessary feature of 20th century America, and all indications are that this is an increasing trend. However State residence requirements for voting have not kept pace with this fact of modern life in America. Three States require 2 years of residence before a person can vote for President. Thirty-five States require 1 year and 12 call for 6 months. Appended is a table showing the residence requirements of all the States. Furthermore, within each State, persons may lose their right to vote in all elections merely because they have changed their county or precinct of residence. Three States require that the voter shall have resided in the county of his residence for 1 year, and eight require 6 months' residence. Precinct requirements vary widely, ranging from 30 days or a few months to 1 year.

The victims of these outmoded residence requirements include many of our citizens who are best equipped to exercise the right of voting. They are educators, lawyers, clergymen, and executives of interstate businesses. A General Electric Co. spokesman reported that 6 percent of its executive personnel were disfranchised in the

1960 presidential election because they had been shifted from one State to another in the company's organization. Interstate businesses engaged in manufacturing or distribution shift managers, salesmen, and other executives constantly. Others who are penalized by outmoded residence requirements are those who act in the best American tradition who have the initiative to pull up stakes and move to take advantage of new opportunities.

In a survey of the 1952 election, 12 percent of the people who had not voted said they were disfranchised by residence requirements. Studies by V. O. Key estimated in 1958 that residence requirements probably excluded more than 5 percent of the potential electorate from exercising the ballot. The American Heritage Foundation has estimated that 8 million adult American citizens were barred from the ballot box in the 1960 elections by inability to meet State, county, or precinct residence requirements. It is significant that Idaho, the State which had the highest voter-participation figure in the Nation in 1960 (80.7 percent) is also a State of relatively moderate residence requirements (6 months in State, 30 days in county).

It is frequently complained that too many eligible citizens who are able to vote do not exercise their precious privilege at the ballot box. It is shameful at the same time to continue a system of arbitrary restrictions which preclude millions of our best citizens from participating in the choice of their President. Apart from the possible effects of this upon election results, it is certain to produce apathy and bitterness in such people toward the Government which cheats them of their democratic birthright because they have changed their residence. The American people do not wish this evil to be continued. The American Heritage Foundation, which has a program to modernize residence requirements for voting, reports widespread editorial and popular support for relief of our mobile population's disfranchisement. The need for action is clear.

It may be conceded that this problem would be best handled at the local level if that solution were available as a reasonable alternative. But this is not being effectively done. Organizations of State officials have been conscious of this problem and working toward solutions at the State level for a number of years. The General Assembly of States, an organization serviced by the Council of State Governments, has been working for corrective action at the State level since 1952, when it recommended that the organization concern itself with absentee voting legislation which would prevent the loss of voting rights for persons who moved from one State to another. The National Association of Secretaries of State in its 1953 convention approved a proposal based upon Connecticut legislation which would permit former residents of a State to vote there for President and Vice President by absentee ballot until they become qualified under the residence requirements of their new domicile. In 1955, the Committee of State Officials on Suggested State Legislation approved as a part of its program a draft act along the same lines.

In 1956, the 84th Congress urged the States to take corrective action by reciprocal agreements. House Concurrent Resolution 94, sponsored by Representative Curtis of Massachusetts, passed the House of Representatives, June 30, 1955, and the Senate agreed to the

resolution on January 16, 1956. By its terms, the Congress expressed itself as favoring and recommended to the States—

the consideration of appropriate legislation to enable a person to vote for President and Vice President when such person would be eligible to vote but for the fact that he had moved from one State to another and had not yet fulfilled the residence requirements of such State to which he had moved (70 Stat. 84).

However, despite 9 years of efforts by Congress and these organizations of State officials, only a handful of States have taken corrective action. They are California, Connecticut, Missouri, Ohio, Vermont, and Wisconsin. Legislation adopted in Connecticut in 1953 allows a voter moving from the State to vote by absentee ballot for a 24 months' period after he has moved, provided he does not become a qualified voter at his new residence. Vermont adopted a similar measure in 1957. Wisconsin adopted a different approach in 1954 by providing that a person who does not meet its residence requirement shall nevertheless be entitled to vote in presidential elections if he was either a qualified voter in another State immediately prior to moving to Wisconsin, or would have been eligible in such other State had he remained there until such election, and provided further that he is otherwise qualified except for the residence requirement. The new voter need only move to Wisconsin in time to register at least 10 days before election. (The Wisconsin law is the model for sec. 2 of S.J. Res. 37.) In 1958, California and Missouri adopted constitutional amendments relaxing requirements for new residents to 54 days in California and 60 days in Missouri. In 1959, Ohio adopted similar legislation setting the residence period at 40 days. In 1960, the Oregon constitution was amended by referendum to authorize its legislature to permit otherwise qualified new residents to vote in presidential elections.

While these States are to be commended for modernizing their residence requirements, the smallness of their number is not encouraging. However, the committee does not believe that the slowness of corrective action by the States is due to any desire to perpetuate artificial and unfair residence restrictions to bar otherwise qualified voters from the polls. The residence requirements of virtually all States are contained in their State constitutions. Amendments to State constitutions are generally slow, cumbersome, and expensive procedures, and it is believed that this explains the inertia of a majority of States. Legislation passed by the New Jersey Legislature in 1960, similar to the Connecticut model, was vetoed by the Governor upon advice that it violated the New Jersey State constitution. This resulted in adoption of a resolution by the New Jersey Association of County Boards of Election petitioning the Congress to adopt such legislation as would be binding on each State and uniformly permit voters who move across State lines to vote in presidential elections.

Residence qualifications for voting generally serve but two legitimate purposes: (1) to allow the voter to become acquainted with local problems and candidates, and (2) to prevent election frauds and double voting. The first should be immaterial in national presidential

elections. The second purpose will not be handicapped by this amendment.

There should be no fear that the short period will open new ways to election frauds or double voting. A person has but one residence at a given time and the date of presidential elections is uniform throughout the country. Residence is a fact to be determined in the administration of all election laws, regardless of the period for which it must have existed. The great majority of States have county residence requirements applying to all elections which are as short as this 90-day requirement for State residence and the latter can be enforced just as well, and in the same manner, as county residence requirements.

The proposed amendment would immediately become a part of the supreme law of each State. It would also provide a uniform system throughout the country. The present pattern of varying and conflicting approaches by the States to the problem, even if continued, could not produce the desired solution. For instance, a qualified voter now moving from Connecticut to Wisconsin may vote in either State, by absentee ballot in Connecticut or in Wisconsin by virtue of its special residence requirement. But a voter moving from Wisconsin to Connecticut is disqualified under the laws of both States. Amendment to the U.S. Constitution is thus the simplest, fastest, and most effective means of dealing with this problem.

During the 87th Congress, Senator Kefauver introduced Senate Joint Resolution 14 and Senator Keating introduced Senate Joint Resolution 90 on this subject. Senate Joint Resolution 14 would have set at 1 year the maximum residence period for voting in presidential elections and would also have required States to allow a person moving therefrom to vote by absentee ballot for a period of 2 years if the voter had not become qualified in another State, the latter provision being modeled after the Connecticut statute mentioned above. Senate Joint Resolution 90 simply set the maximum residence period at 90 days. These proposals were included in the hearings conducted by the Subcommittee on Constitutional Amendments on the Federal Elections System during May, June, and July, 1961. The chairmen of both the Republican and Democratic National Committees supported the objective of both resolutions, along with political scientists and representatives of civic organizations. The executive director of the American Heritage Foundation suggested a combination of the two proposals, a short-residence requirement with some additional provision securing the vote to those who move within its period.

On August 3, 1961, the Subcommittee on Constitutional Amendments considered Senate Joint Resolution 14 and Senate Joint Resolution 90 and agreed that some proposal along the lines just mentioned should be reported favorably. This resulted in Senate Joint Resolution 128, which was introduced on August 28, 1961, by Senator Keating and Senator Kefauver. It incorporated the 90-day period proposed by Senator Keating. Instead of the Connecticut approach, which would have required the States to establish special absentee balloting procedures for voters moving away, the new resolution instead adopted the Wisconsin approach, mentioned above, which enables the otherwise qualified citizen to vote in the State to which he moves. On September 1, 1961, the Subcommittee on Constitutional Amendments recommended to the Committee on the Judiciary

that it report Senate Joint Resolution 128 favorably and without amendment, but the Committee on the Judiciary did not do so during the 87th Congress.

In the 88th Congress, Senators Kefauver and Keating introduced Senate Joint Resolution 37, which is identical to Senate Joint Resolution 128 of the 87th Congress. Since extensive hearings were conducted on this subject during the 87th Congress, the Subcommittee on Constitutional Amendments was of the opinion that no further hearings need be had, and it has recommended to the Committee on the Judiciary that it report Senate Joint Resolution 37 favorably and without amendment.

#### ANALYSIS

Section 1 of the proposed amendment would establish 90 days as the maximum period of residence which may be imposed by any State or the District of Columbia as a qualification for voting in presidential elections. It applies to State, county, or precinct residence requirements. However, it leaves the State free to require lesser periods of residence.

Section 2 is designed to allow voting by persons who move into a State prior to an election but still cannot meet its residence requirement. For instance, a 90-day period will not meet the needs of persons who move on September 1, a popular moving date, before a November election. This section is patterned after Wisconsin's law (sec. 9.045, West's, Wisconsin Statutes Annotated), which allows a person to vote in Wisconsin who does not meet its residence requirement but is otherwise qualified and who has moved from a State where he was qualified to vote or would have been so qualified had he remained there until election. (The latter provision protects the person who becomes of voting age after moving.) The effect of section 2 is to make the provisions of the Wisconsin law a part of the supreme law of the land and thus a part of the laws of each State and the District of Columbia. However, it also applies to movements within a State, from county to county, or precinct to precinct, if the only impediment to a person's voting is the residence requirement of such a subdivision. However, to take advantage of section 2, the voter must be otherwise qualified, except for residence, under the laws of both States. After 90 days of residence (or any lesser period which a State may provide), he will be required to meet only the voting qualifications of the State of his new residence.

This leaves the States free to enact such reasonable rules and regulations as may be necessary to administer their voting laws, including the residence qualification, and protect their elections from fraud. The article applies only to "residents" in the established meaning of the word, not to transients or persons temporarily in the State. In Wisconsin, for instance, the new voter taking advantage of the waiver of residence provision must submit a certified statement from the municipal clerk of his former residence as to his qualifications and must present an affidavit certifying his qualifications from two freeholders in the Wisconsin precinct where he seeks to vote. Of course, special ballots in addition to the special procedures will be required, but this is a hardship which has been voluntarily undertaken in at least six States and it is not believed that it will unduly burden

election officials in other States. Registration laws would not be affected and the States could still require the voters be registered within a reasonable period in advance of an election so that proper investigation for possible fraud can be conducted. State penal statutes for fraudulent voting practices will continue to be enforceable and unlawfully cast ballots would be subject to challenge.

The committee wishes to emphasize that these provisions apply only to elections for presidential and vice-presidential electors. It does not apply to local and State elections, elections of Congressmen and Senators, or to presidential primaries. It is recognized that acquaintance with local problems and candidates over some period may be logical and desirable for these other elections, but the President of the United States is the representative of all the people of the United States and it is extremely unlikely that a person's change of residence will, or should, have any effect upon their choice of President.

#### CONCLUSION

The time has come to correct the increasing problem of disfranchisement of mobile American citizens. It is a national shame that 8 million adult Americans are barred from the ballot box at presidential elections merely because they have shifted their place of residence. Senate Joint Resolution 37 offers a uniform, simple and effective means of dealing with the problem. It is urged that the Congress give it prompt approval in order that it may be submitted to the States for ratification as soon as possible.

## CONSTITUTIONAL AMENDMENTS

19

*Residence requirements for voting in presidential elections*

State	Requirements			
	State	County	Election district, precinct, or ward	Township, municipality, town, or city
Alabama.....	2 years.....	1 year.....	3 months <sup>1</sup> .....	
Alaska.....	1 year.....		20 days <sup>2</sup> .....	
Arizona.....	do.....	30 days.....	30 days.....	
Arkansas.....	do.....	6 months.....	do.....	
California.....	do <sup>3</sup> .....	3 months <sup>4</sup> .....	54 days.....	
Colorado.....	do.....	do <sup>4</sup> .....	15 days.....	
Connecticut.....	do.....			
Delaware.....	do.....	3 months.....	30 days.....	
Florida.....	do.....	6 months.....		
Georgia.....	do.....	do.....		
Hawaii.....	do.....		3 months.....	
Idaho.....	6 months.....	30 days.....		
Illinois.....	1 year.....	3 months <sup>4</sup> .....	30 days.....	
Indiana.....	6 months.....		do.....	2 months <sup>5</sup> .....
Iowa.....	do.....	2 months <sup>6</sup> .....		
Kansas.....	do.....		30 days.....	30 days.....
Kentucky.....	1 year.....	6 months.....	2 months <sup>4</sup> .....	
Louisiana.....	do.....	1 year.....	3 months.....	4 months <sup>7</sup> .....
Maine.....	6 months.....	3 months <sup>8</sup> .....		3 months.....
Maryland.....	1 year.....	6 months.....	6 months <sup>4</sup> .....	
Massachusetts.....	do.....			6 months <sup>4</sup> .....
Michigan.....	6 months.....			30 days.....
Minnesota.....	do.....		30 days.....	
Mississippi.....	2 years.....		1 year <sup>9</sup> .....	
Missouri.....	1 year <sup>10</sup> .....	2 months <sup>6</sup> .....	2 months <sup>6</sup> .....	
Montana.....	do <sup>10</sup> .....	30 days.....		
Nebraska.....	6 months.....	40 days.....	10 days.....	
Nevada.....	do.....	30 days.....	do.....	
New Hampshire.....	do.....		6 months.....	
New Jersey.....	do.....	2 months <sup>6</sup> .....		6 months.....
New Mexico.....	1 year.....	3 months <sup>4</sup> .....	30 days.....	15 days <sup>11</sup> .....
New York.....	do.....	4 months.....	do.....	
North Carolina.....	do.....		do.....	
North Dakota.....	do.....	3 months <sup>4</sup> .....	do <sup>1</sup> .....	
Ohio.....	do <sup>12</sup> .....	40 days <sup>4</sup> .....	40 days.....	
Oklahoma.....	do.....	6 months.....	30 days.....	
Oregon.....	6 months.....		(13).....	
Pennsylvania.....	1 year <sup>14</sup> .....		2 months.....	
Rhode Island.....	do.....			
South Carolina.....	2 years <sup>11</sup> .....	1 year.....	4 months.....	
South Dakota.....	1 year.....	3 months <sup>4</sup> .....	30 days.....	
Tennessee.....	do.....	do.....		
Texas.....	do.....	6 months.....	6 months.....	
Utah.....	do.....	4 months.....	2 months <sup>6</sup> .....	
Vermont.....	do.....			
Virginia.....	do.....	6 months.....	30 days.....	3 months.....
Washington.....	do.....	3 months <sup>4</sup> .....	do.....	6 months.....
West Virginia.....	do.....	2 months <sup>6</sup> .....		
Wisconsin.....	do <sup>16</sup> .....		10 days.....	
Wyoming.....	do.....	2 months <sup>6</sup> .....	do.....	

<sup>1</sup> Otherwise qualified electors who have moved to a new precinct in the same county, town, or city may vote in their old precincts.

<sup>2</sup> In election district.

<sup>3</sup> New residents in the State may vote for President and Vice President only, after 54 days of residence.

<sup>4</sup> 90 days.

<sup>5</sup> No elector who has changed his residence from one county, precinct, or town to another loses his right to vote in his former county, precinct, or town until he acquires voting residence in the new one.

<sup>6</sup> 60 days.

<sup>7</sup> Municipality.

<sup>8</sup> "Plantation."

<sup>9</sup> Ministers and wives may vote after 6 months' residence.

<sup>10</sup> New residents in the State may vote for President and Vice President only, after 60 days of residence.

<sup>11</sup> In city of 4th class.

<sup>12</sup> 40-day residence requirement when voting for President and Vice President.

<sup>13</sup> Voter must reside in precinct in which he registers.

<sup>14</sup> 6 months if previously an elector or native of the United States.

<sup>15</sup> Public school teachers and spouses may vote after 6 months' residence.

<sup>16</sup> 10-day precinct residence requirement when voting for President and Vice President.

### THE ELECTORAL COLLEGE

The present system for election of President and Vice President is embodied in article II, section 1, and the 12th amendment (1804) of the Constitution. It provides that they shall be chosen by electors appointed by each State in the manner directed by its legislature, each State to have a number of electors equal to the total of its Senators and Representatives. The 23d amendment now gives the District of Columbia the number of electors to which it would be entitled if it were a State, but in no event more than the least populous State. The electors for each State must meet separately in their respective States and ballot separately for the President and Vice President, at least one of whom shall not be an inhabitant of their State. A majority vote of all electors is necessary for election to each office. Absent a majority, the House of Representatives elects the President from the three candidates receiving the largest number of votes. In such an election, each State casts but a single vote, a majority of the State congressional delegation thus controlling the vote of a State. A majority of votes is necessary to elect, and in the absence of such a majority the Vice President acts as President. In the absence of a majority of vice-presidential electoral votes, the Senate elects the Vice President from the two highest candidates by a simple majority vote.

The foregoing is the entire constitutional foundation for the election of the most important political office in the world. In considering the various pending proposals on the electoral college it is seen that each is a careful attempt to correct the inequities and dangers of the present outmoded relic. It has been said of the present system:

Originally adopted as a compromise, the electoral college resulted from a distrust of the people and conditions of geography and communications which no longer exist. Despite its confusion and uncertainties, by sheer luck it has managed in most instances to elect a President who reasonably reflected the choice of a majority of the people. But this good fortune has lulled us into inaction after each election and the system has continued from one election to the next. Every 4 years the electoral college is a loaded pistol pointed at our system of government. Its continued existence is a game of Russian roulette. Once its antiquated procedures trigger a loaded cylinder, it may be too late for the needed corrections.

We cannot assume that U.S. Presidents for the space age can continue to go into office in the oxcart furnished by the electoral college.

This subject produced the greatest interest of all those included in the subcommittee's hearings. There are many separate resolutions, sponsored by numerous Senators, which would change in some way the constitutional method of electing the President. These proposals may be divided generally among the following basic plans:

1. Direct national election.
2. The proportional system.
3. The district system.
4. Perfection of present system.

(1) *Direct national election* would effect the greatest change in the present system. The electoral college (meaning the individual electors) and the electoral votes of the States would be totally abolished. Instead, the President would be elected directly by nationwide popular vote. This plan requires a majority of the total popular vote for election and provides for a runoff election among the top two candidates in the event none receives a majority in the first instance. Under the plan a plurality of the total popular vote would be sufficient for election.

In 1934, a proposal for direct national election was defeated 59 to 29 in the Senate. In 1950, when the Senate approved the proportional system, a floor amendment proposing direct national election was defeated 63 to 28. In 1956, when the Senate again considered the proportional system, a similar amendment was defeated 66 to 17.

(2) *Proportional system*.—Some pending resolutions are based on the so-called Lodge-Gossett plan which would retain electoral votes but divide each State's electoral votes among the candidates in proportion to their shares of its total popular vote. Presidential electors are abolished and the people in each State would vote directly for the candidates for President.

The proportional allocation of each State's electoral votes is carried to the nearest thousandth. Forty percent of the total number of electoral votes is necessary for election, in the absence of which election is by majority vote of a joint session of the House and Senate. Voting qualifications in each State are the same as those for electing the most numerous branch of its legislature.

Some resolutions differ from Lodge-Gossett plan in that a plurality of electoral votes is sufficient for election and the proportional division of each State's electoral votes is computed beyond one-thousandth if a more detailed calculation would change the result.

Other resolutions add to Lodge-Gossett a provision that the places and manner of holding elections in each State shall be regulated by its legislature. They also contain provisions for nomination by primary elections.

The Lodge-Gossett plan passed the Senate in 1950 by a vote of 65 to 27. In the House a motion to suspend the rules for its consideration was defeated 210 to 134. This plan was favorably reported by the Senate Judiciary Committee again in 1955. Before it came to a vote, its principal sponsors offered a compromise substitute by which each State would choose between the proportional system or the district system. When the substitute amendment was agreed to by a vote of only 48 to 37, the principal sponsors moved to recommit the resolution to the Committee on the Judiciary.

(3) *District system*.—This plan retains the electoral college but changes the method of choosing electors. Two electors from each State are to be elected by plurality of the popular vote from the State at large. All additional electors are to be elected from single-elector districts. Unlike recent proposals of the district system (Mundt-Coudert), the districts will not necessarily correspond to congressional districts. Separate presidential elector districts are to be established independently by the States under a requirement that they be compact, contiguous in territory, and contain, as nearly as practicable, equal populations within each State. A majority of electoral votes continues to be necessary for election in the electoral college, in the absence of which election is by a joint session of the House and Senate.

Except for the 1955 Senate vote, which offered each State the choice between the proportional and district plans, no constitutional amendment proposing a district system has been brought to a vote in either House since 1826. Prior to that date, some form of district system was considered in both Houses but never received the requisite two-thirds vote of either.

(4) *Perfection of present system.*—This plan proposes to perfect the present system as it is generally expected to function. It would eliminate the individual presidential electors and allow the people in each State to vote directly for President and Vice President. The electoral votes of each State would be awarded automatically to the candidate winning a plurality of its popular vote.

As is indicated by the number and variety of proposals, the hearings held by the subcommittee disclosed widespread dissatisfaction with present constitutional methods but considerable disagreement as to the aspects of the present system which should be changed and the form which any change should take.

The unit rule system.—The first point of controversy is whether to continue the present practice of awarding a State's entire electoral vote to the candidate who receives the most popular votes. Most supporters of this State-unit system concede that it operates to the advantage of the most populous States. But they contend that this only gives urban voters a compensating power for other features of our present Federal-State political structure which favors rural interests. The malapportionment of many State legislatures in favor of rural voters and the composition of the House of Representatives are cited as operating to the disadvantage of urban interests.

Those who would change the State-unit rule are sharply divided among the district, proportional, and direct election proposals.

This division is reflected in a poll conducted of the opinions of political scientists. A questionnaire was mailed to 766 heads of college political science departments. Of the 254 who responded, 46.9 percent favored the proportional system, 34.2 percent favored direct national election, and 16.2 percent supported the district plan.

The witnesses at the subcommittee's hearings in the 87th Congress were also widely divided. Of the witnesses other than sponsors who testified in person or submitted special statements, the district system was supported by Prof. Bower Aly of the University of Oregon; Prof. W. J. Evans of Mississippi State University; J. Harvie Williams, secretary, American Good Government Society; Lucius Wilmerding, the National Association of Manufacturers; and Chairman William E. Miller of the Republican National Committee. Former President Harry S. Truman submitted a statement proposing a district system utilizing congressional districts.

The proportional system was supported by Ed Gossett, president, American Good Government Society; Prof. Kenneth Kofmehl of Purdue University; Prof. Paul J. Piccard of Florida State University; Oregon Governor Mark O. Hatfield; and Fred G. Sherrill, of Los Angeles, Calif.

Direct national election was supported by Prof. Paul T. David of the University of Virginia, Prof. Ralph G. Goldman of Michigan State University, Prof. Avery Leiserson of Vanderbilt University, and Prof. David B. Truman of Columbia University. (Professor Piccard's first preference is direct national election. He supported the proportional plan as a feasible compromise.)

Retention or perfection of the present State-unit system was supported by Nicholas deB. Katzenbach, Deputy Attorney General; Democratic National Chairman John M. Bailey; Dean Stephen K. Bailey of the Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University; and Gus Tyler, director, Political Department, International Ladies' Garment Workers' Union. (Mr. Tyler's preference is direct national election.)

However, there is more common ground among proponents of the district, proportional, and direct election plans than is generally realized. Despite the fact that the district and proportional plans would retain the States' electoral votes and direct election would totally eliminate them, and despite some fundamental differences between the district and proportional plans, there are several objectives which would be accomplished by the adoption of any one of the three plans.

Giving each State a minimum of three electoral votes regardless of population was originally intended to federalize presidential elections and prevent the larger States from dictating the choice. Despite this, the more populous urban States have come into dominance because of the operation of the unit rule.

In a statement submitted for the subcommittee's hearings in the 87th Congress, former President Truman says:

The electoral college was first devised to protect the small States from dominance by the larger States, as for example, Delaware and Rhode Island from being dominated by Virginia and New York.

The problem we face today is that of the emergence of the big cities into political overbalance, with the threat of imposing their choices on the rest of the country.

Former President Hoover sounded a similar note in writing to Senator Kefauver concerning the subcommittee's hearings:

Your subject is important. It confronts the same difficulties as were met by the Founding Fathers—that is, to prevent domination by a few large States.

The large States are generally the so-called pivotal States which may go either way. Presidential candidates understandably emphasize their campaigns in these States because of the large blocks of electoral votes which may be won by the slightest margin in popular votes. The district, proportional, and direct election plans all would reduce the power of these States. All would split them as electoral units and prevent a State's entire weight from being thrown to one candidate. Whether expressed in popular votes or electoral votes, each of the three plans would divide the elective strength of such States between the principal candidates.

It is also charged that the present system unduly favors the "swing votes" of minority groups in these pivotal States. They may hold the balance of power and be able to tip the State's popular vote plurality, and hence its entire electoral vote, to the candidate who best appeals to them. By splitting the unit votes of the pivotal States, the district, proportional, and direct election plans would each eliminate the basis of power of such bloc votes.

The disfranchisement in each State of voters who are in the minority is another principal objection. Millions of popular votes are not

reflected in the national electoral vote totals merely because they were exceeded in their States. Again, the proportional, district, and direct national election systems would all meet this inequity to some degree. The proportional system and direct national election would each insure that all minority votes in each State are counted in the national total. The district system would accomplish a similar result in the majority of States, particularly in the more heavily populated ones, depending upon whether its use splits the State's electoral vote—which is not to be expected in all States.

The tendency of both parties to ignore so-called sure States where one party has a clear majority would be affected by all three proposals. The minority party's strength in a previously sure State would always be reflected in the national totals under the proportional and direct national election systems. Under the district system the minority could capture electoral votes wherever it could win one or more districts despite losing the State at large.

One other factor should be mentioned. The possibility of a minority President (one who obtains a majority of the electoral votes even though an opponent receives more popular votes) is a characteristic of the present system which causes much concern. We have had three such Presidents, in 1824, 1876, and 1888. (On 11 other occasions, the President received less than a majority of the total popular vote but outpolled his nearest opponent.) Although the district and proportional plans may differ in their effect on this possibility, any proposal which preserves the electoral votes of the States necessarily perpetuates the possibility of a minority President. In fact the constitutional purpose of the three-electoral-vote minimum is to insure that mere numbers of votes cannot determine the Presidency. Only direct national election will fully remedy this.

This points up the fact that the so-called popular vote is a fiction. It will continue to be a fiction so long as the people do not vote nationally, but vote instead by State units, and so long as they vote for tickets of electors instead of for the candidates themselves. This is illustrated by the 1960 election in Alabama, where most Democratic voters cast their ballots for a ticket of five Kennedy electors and six unpledged electors (who eventually voted for Senator Byrd). It is impossible to apply the popular vote concept to this situation. It is therefore impossible to compute popular vote totals for the candidates in Alabama or the Nation in 1960.

The practical effects of the various proposals on these and other characteristics of the present system are analyzed objectively and at length in a recent study by the staff of the subcommittee.

Aside from the question of changing the unit rule system, there is considerably greater agreement in the proposed amendments. There are two other aspects of the present constitutional system which most proposals would correct and there is little disagreement as to the form which the corrections should take. These are (1) the office of presidential elector and (2) the contingent election in the House of Representatives when no candidate has a majority of the electoral votes.

#### THE OFFICE OF PRESIDENTIAL ELECTOR

Under present constitutional provisions, the elector is free to exercise his independent judgment in voting, regardless of whether he is instructed by State law or has given a pledge, or whether his own

name was even on the ballot. This power to frustrate the popular will has seldom been used, but its continued existence is unnecessary under any system.

In 1960, Henry D. Irwin, a Republican presidential elector in Oklahoma, voted for Senator Byrd in the electoral college. Mr. Irwin was a member of the regular Republican ticket and was expected to vote for Vice President Nixon. On July 13, 1961, Mr. Irwin testified at length at the subcommittee's hearings. He revealed that his action resulted from a movement of substantial proportions designed to utilize the independence of electors in order to control the results of the election. The subcommittee received evidence that a similar movement had already been launched to subvert the 1964 election.

The 1960 election also saw in two States the appointment of unpledged electors for the first time since the early days of the Nation. Votes were cast and recorded in the electoral college for persons who were not even candidates. Not only is this permitted by present constitutional provisions, but it is actually a return to the operation of the system as contemplated by the Founding Fathers. Voters place the choice in such electors and do not know for whom they may be voting for President. If unpledged electors were to hold the balance of power in a close election, they could personally control the outcome by voting for either major candidate or they could throw the election into the House of Representatives by voting for a third person.

A third defect in the present constitutional status of electors is the absolute power which each State legislature has over their appointment. The U.S. Supreme Court held long ago that present constitutional provisions give to each State legislature a "plenary power" over the appointment of presidential electors. Each legislature can appoint the electors itself, as was done frequently in early years. Also, each legislature can vary its State's elective method from one election to the next. In 1892, the Michigan Legislature adopted a district system for that one election in order to split the State's electoral vote and thus salvaged five electoral votes for the candidate of the party in control of the legislature. The subcommittee heard testimony that a similar course was considered in one State in 1960. In another State legislature, there was a movement after the election to suspend the State's election laws and appoint independent electors.

All pending proposals would eliminate the possibility of independent or unpledged electors. All would impose uniform systems which could not be varied from State to State or from one election to the next. Proposals of the proportional system and those which retain the State unit rule totally eliminate the elector as an intermediary between the voter and the actual election. Electoral votes are retained but are awarded automatically according to the popular vote. The district system provides that the people choose electors but an amendment has been filed by its sponsors which requires that electors pledge their votes in advance. Direct national election obviously solves these problems also since it eliminates both electors and electoral votes.

#### CONTINGENT ELECTIONS IN THE HOUSE OF REPRESENTATIVES

When the electoral college fails to produce a majority for one candidate, the Constitution places the election in the House of Representatives with the delegation of each State having one vote.

Two Presidents have been elected in this manner, in 1800 and 1824. Each State's vote is determined by the majority of its delegation. In the event a State delegation is evenly split, the State would lose its vote. It is obviously unfair to give the 3-member delegation of Nevada or Alaska the same voice as the 43-member delegation of New York. The opportunity for a deadlock and third party balance of power is also apparent. Most pending proposals would correct this inequity by substituting election by a joint session of the House and Senate with each Member having one vote. This would give each State the same relative weight that it has in the electoral college.

On June 25, 1963, the subcommittee in executive session discussed the seven proposals on the electoral college which were pending before it. This consideration finally focused itself into a choice between Senate Joint Resolution 12 and Senate Joint Resolution 27. The proponents of each of these resolutions disagree with each other on basic theory and their positions are not reconcilable. This division of opinion on the electoral college reform plans traces itself all the way back to the first plan and the early days of the Lodge-Gossett bills. Consequently, the subcommittee was unable to agree on either of these resolutions. Neither one could command a majority vote. The impasse was resolved by reporting both bills to the full committee without recommendation with an explanation of the subcommittee's action.

#### EQUAL RIGHTS OF WOMEN

On February 18, 1963, Senate Joint Resolution 45 was introduced by Senator McGee for himself and 33 other Senators. This proposal is designed to secure equal rights for men and women and would forbid denial or abridgement of equality of rights under the law on account of sex. In the 87th Congress a similar bill, Senate Joint Resolution 142, was approved by the subcommittee, the full committee, and the Senate (cf., S. Rept. 2192, 87th Cong., 2d sess.). Legislation along these lines has been before the Congress since adoption of the 19th amendment to the U.S. Constitution first prohibited denial of voting rights on account of sex. The pending resolution would complete the movement for legal equality for women. Like the 14th and 19th amendments, the prohibitions of the proposed amendment would be directed against acts of the States and the United States. It would not apply to acts of individuals. Proponents of the amendment maintain that it is particularly designed to establish equality of treatment under laws touching upon employment.

#### STATEMENT

The United Nations Charter, to which the United States is a signatory, states in the preamble, as one of its objectives, the reaffirmation of faith in the equal rights of men and women. As a signatory to this charter, the United States has subscribed to its principles, including those expressed in the preamble. Supporters of this amendment contend, however, that this Nation has not kept pace with other nations, including Egypt, Burma, Greece, Japan, Western Germany, and Pakistan, all of which have given constitutional equality to women.

Opponents of the legislation caution against the amendment, noting that the ramifications of a general statement to apply across the entire

system of our jurisprudence are complex and perplexing. As to the United Nations Charter, they point to chapter 1, article 2, section 7, wherein it is stated:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state \* \* \*.

Resolutions containing this proposal were reported by the Committee on the Judiciary in the 80th, 81st, 82d, 83d, 84th, 86th, and 87th Congresses. In the 81st and 83d Congresses, the equal rights proposal passed the Senate with an amendment, but was not acted upon by the House of Representatives. In the 86th Congress, Senator Hayden proposed and the Senate adopted the same floor amendment which had been agreed to by the Senate in previous Congresses. The language of this amendment is as follows:

The provisions of this article shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex.

Past debates and hearings have shown disagreement among women's organizations concerning the benefits which this amendment would bring to their sex. The desirability of equality is almost unanimously conceded. The method of carrying such into effect has created the areas of disagreement.

There remain many well-known vestiges of ancient rules of law which treat women as inferiors. In many States, a woman cannot handle or own separate property in the same manner as her husband. In some States, she cannot engage in business or pursue a profession or occupation as freely as can a member of the male sex. Women are classified separately for purposes of jury service in many States. Community-property States do not vest in the wife the same degree of property rights as her husband enjoys. The inheritance rights of widows differ from those of widowers in some States. Restrictive work laws, which purport to protect women by denying them a man's freedom to pursue employment, actually result in discrimination in the employment of women by making it so burdensome upon employers. Such protective restrictions hinder women in their competition with men for supervisory, technical, and professional job opportunities.

The subcommittee has considered carefully the amendment which was added to this proposal on the floor of the Senate in the 81st, 83d, and 86th Congresses. Its effect was to preserve "rights, benefits, or exemptions" conferred by law upon persons of the female sex. This qualification is not acceptable to women who want equal rights under the law. It is under the guise of so-called "rights" or "benefits" that women have been treated unequally and denied opportunities which are available to men.

Just as equal protection of the law under the 14th amendment is not a mathematical equality, this amendment does not contemplate that women must be treated in all respects the same as men. Nor does it mean that all legal differentiation of the sexes will be abolished. *Equality* does not mean *sameness*. *Equal* rights does not necessarily mean *identical*-rights. For instance, a law granting maternity benefits to women would not be an unlawful discrimination against men. As a grant to mothers, it would be based on a reasonable classification despite its limitation to members of one sex.

Nor would the amendment mean that criminal laws governing sexual offenses would become unconstitutional. The public has such an interest in relations between the sexes that the conduct of both sexes is subject to regulation under the police power apart from any considerations of unequal treatment or protective status.

In the past, it has been suggested that this amendment would require equal treatment of men and women for purposes of compulsory military service. This is no more true than that all men are treated equally for purposes of military duty. Differences in physical abilities among all persons would continue to be a material factor. It could be expected that women will be equally subject to military conscription and they have demonstrated that they can perform admirably in many capacities in the Armed Forces. But the Government would not require that women serve where they are not fitted just as men with physical defects are utilized in special capacities, if at all.

The subcommittee wishes to emphasize one additional fact. The proposed amendment would confirm equal rights under law for both men and women. In instances where laws are burdensome to men solely because of their sex, they would benefit from the amendment. For instance, alimony laws probably could not favor women solely because of their sex. However, a divorce decree could award support to a mother if she was granted custody of children. This would be incidental to the children's support. Matters concerning custody and support of children properly should be determined solely with a view to the welfare of the children, without favoritism to either parent solely because of sex.

Both major political parties have repeatedly supported this proposal in their national party platforms.

The subcommittee has been in continuous study of the equal rights amendments. Correspondence and interviews with the nationally known experts and exemplary organizations in this field have been conducted throughout the session. All the preparatory work has been done, and it is anticipated that the subcommittee will report out favorably this resolution in the 2d session of the 88th Congress.

#### 18-YEAR-OLD VOTING

Two proposals pending in the Subcommittee on Constitutional Amendments would lower the voting age to 18. They are Senate Joint Resolution 2 (by Mr. Randolph) and Senate Joint Resolution 38 (by Messrs. Keating and Kefauver).

Each resolution provides simply that the voting rights of citizens of the United States who are 18 years of age or older shall not be denied or abridged on account of age by the United States or by any State. Thus, they would apply to all State and Federal elections.

Similar resolutions were included in the hearings conducted by the subcommittee during the 1st session of the 87th Congress.

#### STATEMENT

There is a difference of opinion on this question of lowering the voting age by constitutional amendment both as to substance and form.

Some support the objective of lowering the voting age to 18, believing that young people are as well qualified to vote at 18 as at 21.

Some believe the question should be left with each individual State to accomplish this result through local action rather than imposing it on the entire Nation by amendment to the U.S. Constitution.

Some feel that the age should remain at 21.

Some feel that the rising level of education in our country justified uniform extension of the franchise to 18-year-olds.

The executive favors lowering the age to 18 which was evidenced by the late President's support for 18-year-old voting for the District of Columbia. The executive, however, took the position that the matter should be left for separate determination by each State.

The last time the Senate considered 18-year-old voting was in the 83d Congress, when a proposed constitutional amendment was approved by a vote of 34 to 24, five votes short of the required two-thirds majority.

A test of current Senate sentiment may have occurred on September 19, 1961, when the Senate voted on the Presidential Elections Code for the District of Columbia. The bill reported from the District of Columbia Committee had set the voting age at 18. An amendment establishing the voting age at 21 was agreed to by a vote of 38 to 36.

The subcommittee decided not to act on the voting age resolutions and instead decided to continue its staff studies. It is apparent that there is no unanimity of agreement on this problem, nor at the present time is there an unusual amount of interest throughout the country.

#### REPEAL OF 22D AMENDMENT

Senate Joint Resolution 26, which was introduced by Messrs. Kefauver and Long of Missouri, proposes that the 22d amendment to the Constitution be repealed. This would remove the two-term limitation upon the President.

#### STATEMENT

In the 87th Congress the subcommittee considered a similar resolution (S.J. Res. 15) on August 3, 1961. The opinion was expressed that there was not sufficient public interest to justify action at that time. There is a definite feeling among most members of the subcommittee that more experience should be gained with the operation of the 22d amendment before its repeal is considered. In the 87th Congress the subcommittee voted to recommend to the full Committee on the Judiciary that this resolution (i.e., S.J. Res. 15 of the 87th Cong.) be postponed indefinitely. The subcommittee's recommendation was adopted by the full committee on January 31, 1962.

The subcommittee decided not to take action on Senate Joint Resolution 26 preferring to hold it in the committee pending additional studies and correspondence with known constitutional authorities. Rather, it is contemplated that the subcommittee staff digest the existing voluminous materials and make a subcommittee report for the future use of the committee and the Senate.

## INDIVIDUAL VIEWS OF MR. KEATING

I concur in the report but with this one additional observation.

As one who for many years had been deeply concerned with the problem of Presidential inability, I had thought that at last we were well on our way toward a workable and acceptable solution when on June 25, 1963, this subcommittee unanimously reported favorably to the full committee a proposed amendment (S.J. Res. 35) sponsored by the late Senator Kefauver, Senator Dodd, and myself. At the time of this writing, Senate Joint Resolution 35 is on the agenda of the full committee and ripe for action.

It is an unquestionable fact that the assassination of President John F. Kennedy on November 22, 1963, generated both in and out of Congress renewed concern over Presidential inability. But the events of that tragic day in American history certainly cannot be said to have added any new dimensions to the underlying constitutional problem which had not already been fully considered. For over 175 years before President Kennedy was assassinated, and in the few months since, the original constitutional silences on Presidential inability—the silences that spell a grave potential danger to the stability and continuity of the American Presidency as an institution—have remained absolutely the same. President Kennedy's death, therefore, did not give rise to the problem but only underlined its long-recognized importance.

This elementary fact is stressed as but a caveat. The legal spadework has been done. A consensus has been reached—as of June of last year, in fact. I very much regret that, rather than galvanizing the Congress into completing action on Senate Joint Resolution 35, President Kennedy's assassination apparently has triggered a surfeit of proposals on inability which can only serve the purpose of further delay and of trafficking with the danger of losing our past consensus without replacing it with one that is demonstrably superior.

It is ever so much more important, in my judgment, to take action in the field of inability than in respect to changing the line of Presidential succession or otherwise dealing with a vacancy in the Vice Presidency. For the succession problem at least has been provided for in the act of 1947, and although it is not in my view the best solution that can be devised, it is nevertheless unrealistic to suppose that a change can be worked in the present session of the Congress. The inability enigma, however, demands immediate attention, and I think it would be most unfortunate if the further hearings on the subject which are now in progress were to result in either protracted delay or in dissipating the widespread agreement on Senate Joint Resolution 35 that had previously been reached.

KENNETH B. KEATING.

# APPENDIX

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*Proposed constitutional amendments introduced in Senate during 1st sess., 88th Cong.*

[Tabulated by number and chronologically]

Resolution No.	Sponsors	Subject matter	Date introduced	Hearings conducted	Reported by sub-committee
S.J. Res. 1.....	Mrs. Smith.....	Election of President and Vice President.....	Jan. 14, 1963	X.....	
S.J. Res. 2.....	Mr. Randolph.....	18-year-old voting.....	do.....		
S.J. Res. 8.....	Mr. McGee.....	Election of President and Vice President.....	do.....	X.....	
S.J. Res. 12.....	Messrs. Mundt, Thurmond, McClellan, Hruska, Morton, Fong, Boggs, Stennis, Prouty, and Goldwater.....	do.....	do.....	X.....	X. <sup>1</sup>
S.J. Res. 13.....	Mr. Smathers.....	do.....	do.....	X.....	
S.J. Res. 16.....	Messrs. Talmadge, Byrd of Virginia, Robertson, Johnston, Hill, Sparkman, Eastland, Stennis, Ellender, Long of Louisiana, and Simpson.....	State control of public schools.....	Jan. 15, 1963		
S.J. Res. 24.....	Mr. Kefauver.....	Election of President and Vice President.....	Jan. 23, 1963	X.....	
S.J. Res. 25.....	do.....	Presidential and vice-presidential primary elections.....	do.....		
S.J. Res. 26.....	Messrs. Kefauver and Long of Missouri.....	Repeal of 22d amendment.....	do.....		
S.J. Res. 27.....	Mr. Kefauver.....	Election of President and Vice President.....	do.....	X.....	X. <sup>1</sup>
S.J. Res. 28.....	do.....	Presidential inability.....	do.....	X.....	
S.J. Res. 29.....	Messrs. Curtis and Byrd of Virginia.....	Balancing of budget.....	do.....		
S.J. Res. 35.....	Messrs. Kefauver and Keating.....	Presidential inability.....	Feb. 5, 1963	X.....	X. <sup>2</sup>
S.J. Res. 36.....	do.....	Emergency appointment of Representatives.....	do.....		
S.J. Res. 37.....	do.....	Residence requirements for voting.....	do.....		X. <sup>2</sup>
S.J. Res. 38.....	do.....	18-year-old voting.....	do.....		

*Proposed constitutional amendments introduced in Senate during 1st sess., 88th Cong.—Continued*

[Tabulated by number and chronologically]

Resolution No.	Sponsors	Subject matter	Date introduced	Hearings conducted	Reported by sub-committee
S.J. Res. 42.....	Mr. Thurmond.....	Establishment of Court of Union.....	Feb. 14, 1963		
S.J. Res. 43.....	do.....	Process of amending Constitution.....	do.....		
S.J. Res. 45.....	Mr. McGee, Mrs. Smith, Messrs. Bayh, Beall, Bible, Boggs, Brewster, Burdick, Cooper, Dodd, Eastland, Engle, Fong, Fulbright, Gruening, Hartke, Hickenlooper, Humphrey, Inouye, Kuchel, Long of Missouri, McCarthy, Miller, Morse, Moss, Mundt, Nelson, Randolph, Ribicoff, Simpson, Smathers, Stennis, Talmadge, Tower, Williams of Delaware, and Young of North Dakota.	Equal rights for men and women.....	Feb. 18, 1963		
S.J. Res. 54.....	Mr. Tower.....	Balancing of budget.....	Feb. 28, 1963		
S.J. Res. 62.....	Mr. Metcalf.....	4-year term for House and 8-year term for Senate.....	Mar. 19, 1963		
S.J. Res. 73.....	Mr. Keating.....	Election of President and Vice President.....	Apr. 26, 1963	X	
S.J. Res. 82.....	Messrs. Williams of New Jersey, Humphrey, and Pell.....	Voting requirements for presidential, vice-presidential, and congressional elections.....	May 16, 1963		
S.J. Res. 84.....	Messrs. Hruska and McClellan.....	Presidential inability.....	May 28, 1963	X	
S.J. Res. 114.....	Messrs. Keating, Carlson, Clark, Cooper, Javits, Kuchel, Morton, Proxmire, and Scott.....	Item veto.....	Aug. 28, 1963		
S.J. Res. 138.....	Mr. Javits.....	Election of Vice President.....	Dec. 12, 1963		
S.J. Res. 139.....	Messrs. Bayh, Bible, Burdick, Long of Missouri, Moss, Pell, and Randolph.....	Presidential inability and succession to Presidency and Vice-Presidency.....	do.....		
S.J. Res. 140.....	Mr. Keating.....	Executive Vice President and legislative Vice President.....	Dec. 19, 1963		
S.J. Res. 142.....	Mr. Pell.....	Extension of franchise for District of Columbia.....	Dec. 20, 1963		

<sup>1</sup> Reported without recommendation.<sup>2</sup> Reported favorably.

[S. Res. 57, 88th Cong., 1st sess.]

RESOLUTION

*Resolved*, That the Committee on the Judiciary, or any duly authorized subcommittee thereof, is authorized under sections 134 (a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdictions specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to constitutional amendments.

SEC. 2. For the purposes of this resolution the committee, from March 1, 1963, to January 31, 1964, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than \$1,600 than the highest gross rate paid to any other employee; and (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government.

SEC. 3. The committee shall report its activities and findings, together with its recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1964.

SEC. 4. Expenses of the committee, under this resolution, which shall not exceed \$54,423, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

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[Confidential Committee Print No. 2, July 13, 1963]

[S.J. Res. 35, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States relating to cases where the President is unable to discharge the powers and duties of his office

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

“ARTICLE —

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

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

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[S.J. Res. 36, 88th Cong., 1st sess.]

JOINT RESOLUTION To amend the Constitution to authorize Governors to fill temporary vacancies in the House of Representatives

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

**"ARTICLE —"**

"SECTION 1. On any date that the total number of vacancies in the House of Representatives exceeds one-third of the authorized membership thereof, and for a period of sixty days thereafter, the executive authority of each State shall have power to make temporary appointments to fill any vacancies, including those happening during such period, in the representation from his State in the House of Representatives. Any person temporarily appointed to fill any such vacancy shall serve until the people fill the vacancy by election as provided for by article I, section 2, of the Constitution.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

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[S.J. Res. 37, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States relative to residence requirements for voting in presidential elections

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

**"ARTICLE —"**

"SECTION 1. No citizen of the United States who is otherwise qualified to vote in any election held in any State or in the District constituting the seat of Government of the United States for the purpose, in whole or in part, of choosing electors of President and Vice President

shall be denied the right to vote for such electors in such election because of any residence requirement of such State or such District, as the case may be, if such citizen has resided in such State (or the political subdivision thereof with respect to which the requirement applies), or in such District, as the case may be, for a period of at least ninety days preceding such election.

"SEC. 2. Any citizen of the United States who has been a resident of a State, or any political subdivision thereof, or the District constituting the seat of the Government of the United States for a lesser period than that required for voting in an election for electors of President and Vice President, and who is otherwise qualified to vote in such election, shall nevertheless be entitled to vote in such election, if he was either eligible to so vote in another political subdivision of the same State, or in another State, or in such District, immediately prior to his change of residence, or if he would have been eligible to so vote if he had continued to reside in such place until such election."

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[S.J. Res. 12, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States providing for the election of the President and Vice President

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

"ARTICLE—

"SECTION 1. Each State shall choose a number of electors of President and Vice President equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be chosen an elector.

"The electors to which a State is entitled by virtue of its Senators shall be elected by the people thereof, and the electors to which it is entitled by virtue of its Representatives shall be elected by the people within single-elector districts established by the legislature thereof; such districts to be composed of compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in the Congress; and such districts when formed shall not be altered until another census has been taken. Before being chosen elector, each candidate for the office shall officially declare the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor. In choosing electors of President and Vice President the voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that the legislature of any State may prescribe lesser qualifications with respect to residence therein.

"The electors shall meet in their respective States, fill any vacancies in their number as directed by the State legislature, and vote by signed ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, excluding therefrom any votes for persons other than those named by an elector before he was chosen, unless one or both of the persons so named be deceased, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors chosen; and the person having the greatest number of votes for Vice President shall be the Vice President, if such a number be a majority of the whole number of electors chosen.

"If no person voted for as President has a majority of the whole number of electors, then from the persons having the three highest numbers on the lists of persons voted for as President, the Senate and the House of Representatives, assembled and voting as individual Members of one body, shall choose immediately, by ballot, the President; a quorum for such purpose shall be three-fourths of the whole number of the Senators and Representatives, and a majority of the whole number shall be necessary to a choice; if additional ballots be necessary, the choice on the fifth ballot shall be between the two persons having the highest number of votes on the fourth ballot.

"If no person voted for as Vice President has a majority of the whole number of electors, then the Vice President shall be chosen from the persons having the three highest numbers on the lists of persons voted for as Vice President in the same manner as herein provided for choosing the President. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

"SEC. 2. The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President or a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 3. This article supersedes the second and fourth paragraphs of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution and section 4 of the twentieth article of amendment to the Constitution. Except as herein expressly provided, this article does not supersede the twenty-third article of amendment.

"SEC. 4. Electors appointed pursuant to the twenty-third article of amendment to this Constitution shall be elected by the people of such district in such manner as the Congress may direct. Before being chosen as such elector, each candidate shall officially declare the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor. Such electors

shall meet in the district and perform the duties provided in section 1 of this article.

"SEC. 5. This article shall take effect on the 1st day of July following its ratification."

[S.J. Res. 27, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President

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

"ARTICLE —

"SECTION 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The office of elector of the President and Vice President, as established by section 1 of article II and the twelfth article of amendment to this Constitution, is hereby abolished. The President and Vice President shall be elected by the people of the several States and the District constituting the seat of government of the United States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that the legislature of any State may prescribe lesser qualifications with respect to residence therein. The electors in the District shall have such qualifications as the Congress may prescribe. The places and manner of holding such election in each State shall be prescribed by the legislature thereof. The place and manner of holding such election in the District shall be prescribed by the Congress. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. The District shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State.

"Within forty-five days after such election, or at such time as Congress shall direct, the official custodian of the election returns of each State and the District shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State or the District for all persons for President, which lists he shall sign and certify and transmit

sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State and the District shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computation, fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes. If no person has at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

"The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall be have devolved upon them, and for the case of death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 2. This article shall take effect on the 10th day of February next after one year shall have elapsed following its ratification."

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[S.J. Res. 45, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States relative to equal rights for men and women

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

"ARTICLE —

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex. Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States.

"SEC. 3. This amendment shall take effect one year after the date of ratification."

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[S. J. Res. 2, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States, extending the right to vote to citizens eighteen years of age or older

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

"ARTICLE —

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

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[S.J. Res. 38, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States granting to citizens of the United States who have attained the age of eighteen the right to vote.

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

"ARTICLE —

"The right of citizens of the United States, who have reached the age of eighteen years, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.

## CONSTITUTIONAL AMENDMENTS

[S.J. Res. 26, 88th Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution to repeal  
the twenty-second article of amendment to the Constitution

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

“ARTICLE —

“SECTION 1. The twenty-second article of amendment to the Constitution of the United States is hereby repealed.

“SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress.”

