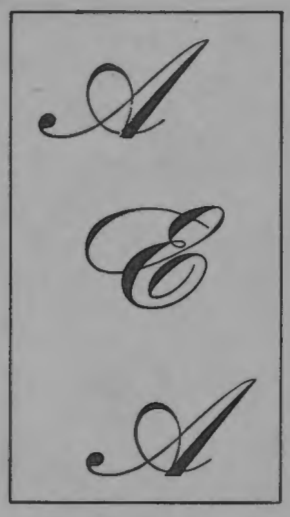

85th Congress - Second Session
Report No. 2 - March 31, 1958

BILL ANALYSIS

S.J. Res. 100; S.J. Res. 161; S. 238; H.J. Res. 38;
H.R. 6510; H.R. 10880 and others

Resolutions and Bills relating
to the inability of the President
to discharge the duties of his office

S.J. Res. 100 - Introduced by Senator Fulbright
S.J. Res. 161 - Introduced by Senators Kefauver, Dirksen and others
S. 238 - Introduced by Senator Payne
H.J. Res. 38 - Introduced by Rep. Frelinghuysen
H.R. 6510 - Introduced by Rep. Keating
H.R. 10880 - Introduced by Rep. Celler

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I. THE PROBLEM OF PRESIDENTIAL DISABILITY

The difficulties with which the Congress has been wrestling in the area of Presidential disability may be classified within three broad categories: First, what is the present state of the law; second, what is the most desirable method of handling the situation arising out of the disability of a President; and, third, how can this method be implemented.

II. BACKGROUND

A. The Present State of the Law

All authorities now agree that the original intent of the draftsmen of the Constitution was to have the Vice President exercise the powers and duties of the Presidency, in the case of the removal, death, resignation, or inability of the President, until the disability was removed or another President elected. In the event of the death, resignation, or inability of the Vice President, Congress was to declare which officer was to exercise the powers and duties of the Presidency until the Vice President's disability was removed or another President was elected.

These provisions were embodied in two entirely distinct paragraphs in the draft of the Constitution which was sent to the Committee on Style of the Constitutional Convention, to be put into clear and concise language. The Committee had no authority to make substantive alterations in the draft submitted to them. On September 4, 1787 the Committee on Unfinished Parts reported the following resolution to the Convention:

> "He shall be removed from his office on impeachment by the House of representatives, and conviction by the Senate, for treason or bribery and in case of his 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."1/

Shortly thereafter the Constitutional Convention submitted a draft of the Constitution to the Committee on Style which contained the resolution quoted above in Article X, Section 2, and the following provision as Article X, Section 1:

> "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."2/

The Committee, chaired by Gouverneur Morris, consolidated these two drafts into a single paragraph which was adopted as Article II, Section 1, paragraph

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1/ II Farrand, Records of the Federal Convention 495,575 (Yale, 1911), hereinafter cited by volume number and author's name only, e.g., II Farrand, III Farrand.

2/ Id. at 532, 573.

6 of the Constitution.[3] That paragraph reads as follows:

> "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."[4]

It may be seen that the Committee's work produced far more ambiguity than the drafts which were sent to it to be phrased in "clear and concise" language. Notwithstanding the confusion in the present wording of the Constitution, if the question was one of first impression, the paragraph under discussion might conceivably be bent, in view of its legislative history, to accommodate the original intent to the Framers.

On one crucial point, however, it would seem proper to suggest that this approach is no longer available. On the question of whether the "office" or merely the "powers and duties" of the Presidency devolve on the Vice President in the event of the removal, death, resignation, or inability of the President, the historical fact of seven Vice Presidents having become de jure Presidents after the death in office of their predecessors appears conclusive.

It cannot be argued that these seven Vice Presidents were usurping a power not granted to them by the Constitution. Leading Constitutional authorities of the day, including Daniel Webster, felt that on President Harrison's death Vice President Tyler became President.[5] During the illnesses of Presidents Garfield and Wilson the problem was discussed in considerable detail and apparently resolved in the same manner. On the occasions when the President's death did not provoke extended public discussion on Constitutional subjects, the Vice President has become President without serious reservations being raised by Constitutional authorities.

Moreover, the language of the Constitution itself lends considerable grammatical support to the view that the "office" devolves on the Vice President. It has been suggested that it is acceptable English usage to treat that grammatical unit used as a substantive immediately preceding the relative as its antecedent, in which case "the same" in Article II, Section 1, paragraph 6 refers to "the powers and

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3/ Other provisions bearing on this topic which were considered by various members of the Convention may be found in II Farrand 156, 172; III Farrand 625. The history of this section is discussed in detail in Silva, Presidential Succession 4-13 (1951).

4/ The last clause in the paragraph, as it originally came from the Committee on Style, read "or the period for chusing another president arrive." Madison crossed this out and wrote "a president be chosen." II Farrand 599. On September 15 the Convention changed the Committee's language to the present reading. II Farrand 626.

5/ II Curtis, Life of Daniel Webster 67 (1870). Silva, supra, Note 3 at 14, 24.

duties of the said office."[6] Unquestionably the rule of Latin grammar and the better English rule is that the last noun before the relative is its antecedent, in which case "the same" refers to "office." In any event, the historical and semantic arguments seem, except for their scholarly interest, to have been rendered moot by practice.

Although the Constitution appears to treat the case of a President's inability in the same fashion as it does the case of his death, the customary assumption of the office by the Vice President upon the death of the President has raised the question whether, in discharging the duties of the office in the event of the inability of the President, the Vice President has not superseded the President so that the President cannot again occupy the office for the remainder of the then current term.[7] There is nothing conceptually repugnant in the proposition that, even if the office devolves upon the Vice President, it can spring back to the President when his disability is removed. On the other hand, the legislative history of the disability provisions of the Constitution lends some credence to the theory that "officer" ("such officer shall act accordingly, until the disability be removed, or a President shall be elected") does not comprehend "Vice President."[8] This would mean that when both the President and the Vice President are disabled the officer designated by Congress acts as President until either of them is again capable; but that when and if "the office" devolves on the Vice President, he serves out the remainder of the then current term. This leads to the anomalous result that the Vice President can resume the office of the Presidency after a period of inability while the President cannot. This, more than one commentator asserts, makes no sense at all.[9]

Surely, the reason the entire Executive machinery of the United States Government practically came to a grinding halt during the prolonged illness of Woodrow Wilson was because of his conviction that not only did the Presidential "office" devolve, but that the President could not again assume his office once the devolution had occurred. This single instance of action (or, more appropriately, inaction) pursuant to the belief that the Presidential office is forfeited when the President is disabled is sufficiently compelling to force one to admit of a serious ambiguity on the point in the Constitution.

No hint is given in the Constitution with respect to who is empowered to decide when the inability of the President exists, although it has been suggested that the decision belongs to the Vice President in the first instance by analogy to

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6/ Silva, Presidential Succession and Disability 21 Law and Contemp. Prob. 646, 654 n. 36 (1956).

7/ Remarks of Charles W. Jones, 13 Cong. Rec. 142-143, 191-193; Remarks of Abram J. Dittenhoefer, N.Y. Herald, p. 5, col. 1, Sept. 13, 1881; Theodore W. Dwight, Presidential Inability 133 No. Am. Rev. 436, 442-44, (Nov. 1881).

8/ There is no doubt that "officer" in the draft sent to the Committee on Style (see p. 1, supra) did not refer to the Vice President. Whether that Committee by changing the semicolon after "Vice President" to a comma intended to and was successful in making the limiting adverbial clause, "until the disability be removed", modify both of the preceding clauses is still a subject of speculation.

9/ Silva, supra, n. 6 at 654, citing a N.Y. Tribune editorial of Aug. 16, 1881.

the rule of law that where power is contingently granted, the one to whom the grant is made decides whether the contingency has occurred.[10] It is not clear whether "inability" is a juridical fact which, if it exists, whether determined by a court of law or otherwise, has the effect of automatically transferring "the powers" or "the office" of the Presidency to the person next in line of succession. It should be noted, however, that the language of the Constitution is mandatory and not permissive. "In case of ... his ... inability to discharge the powers and duties of the said office, the same shall devolve ... ." Neither is there any suggestion of the intent of the Framers on the question of whether, in the case of the removal, death, resignation, or permanent inability of the President, a special election should be held as soon as feasible.[11]

If the Constitution, together with its construction in practice, can be said to lay down any postulates from which we may proceed to further discussion, they are: (1) In the case of a vacancy in the Presidential office, the office devolves upon the Vice President; and (2) in the case of the subsequent or contemporaneous inability of the Vice President, an officer designated by Congress serves ad interim as acting President, and upon the termination of the disability he is automatically divested of this function. Even these conclusions can be asserted with only a timid certainty. As to the other latent ambiguities in the Presidential succession paragraph of the Constitution, it would seem not intemperate to remark that nothing is free from doubt.

Professor Corwin has neatly summarized the most pressing problems of Constitutional construction in this area by the following series of questions:

> Who is authorized to say whether a President is unable to discharge the powers and duties of his office? When he is unable to do so, does the said office become vacant? What is it to which the Vice-President succeeds when the President is disabled, or is removed or has died - to the "powers and duties of the said office," or to the office itself? Or does he succeed to the powers and duties when the President is disabled, and to the office when the President has vanished permanently from the scene? And what is the election referred to in the last clause? Is it the next regular presidential election or a special election to be called by Congress? Finally, suppose a vacancy were to exist in the presidency for some reason not mentioned above, as it would if the Electoral College, and then the House and Senate, respectively, failed to elect either a President or a

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10/ Statement of Everett S. Brown and Ruth C. Silva, in "Presidential Inability," Committee on the Judiciary, House Committee Print, 84th Cong., 2d Sess., January 31, 1956, p. 15 n. 61; Martin v. Mott, 12 Wheat. 19, 31-32 (1827); The Aurora v. U.S., 7 Cranch 382 (1813), Field v. Clark, 143 U.S. 649, 682-694 (1891); Hampton and Co., v. U.S. 276 U.S. 394, 405-410 (1928).

11/ See note 4 supra. On March 1, 1792 the Second Congress enacted the first Presidential Succession Act (1 Stat. 239), which passed succession to the President pro tempore of the Senate and then to the Speaker, further providing that if both of these offices were vacant, electors should be chosen to select a new President and Vice President. This indicates that this early Congress (and presumably subsequent ones, since the law remained unchanged until 1866) conceived that the Constitution empowered the legislature to provide for special elections.

Vice-President or if both President-elect and the Vice-President-elect died before their assumption of office - what provision does the Constitution make for such a situation?12/

Surely no speculations upon the meaning of Article II, Section 1, paragraph 6 can be considered definitive until the Supreme Court of the United States has rendered an opinion on the subject, but one senses several difficulties in the position that no Congressional action is needed until the Court interprets the present language of the Constitution. First, it is problematical that a case involving these questions could properly be put before the court.13/ Second, even if the occasion

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12/ Corwin, The President 53 (4th rev. ed. 1947).

13/ The following passage from the "Statement of the Attorney General on Presidential Inability" before the House Judiciary sub-committee on April 1, 1957 is helpful:

> "During President Garfield's illness, Theodore Dwight said that presidential inability is a judicial question and, therefore, should be determined in the Courts. In the past, the theory of justiciability has found some support among various members of Congress. On several occasions in the past, bills have been introduced to give the Supreme Court original jurisdiction to determine a President's inability. As noted before, a constitutional amendment would be necessary if this type solution were to be adopted for the following reasons: (1) The Supreme Court has already ruled that its original jurisdiction is limited to that set forth in the Constitution and cannot be enlarged by statute. (2) No Federal court can inquire on its own motion into the action of another branch of the Government. (3) It is doubtful that the courts could be given statutory authority to find a President disabled in an action for mandamus directing the Vice President to act as President. The courts can direct the performance of an executive act by proceeding in mandamus only in those cases in which an executive officer is to perform a ministerial function. The courts lack power to inquire as to how executive officers perform the duties in which they have discretion.
>
> "To say that the Courts do not now have equity jurisdiction to pass on a President's alleged inability does not mean that the courts might not ever pass on this question. Once the Vice President has exercised presidential power, it is possible that the issue might be properly raised in a case involving individual rights. For example, one who is prosecuted under a law signed by the acting President might question the validity of the law on the ground that the President was not disabled and thus the purported law was improperly signed. Another example, a litigent might attack the legality of an executive action alleging that the President was incapacitated at the time the action was taken. In such cases, the courts might decide that they may determine whether or not a President is disabled. I am inclined to think, however, that as the Constitution now stands the courts would decide that the Constitution submits the question to the Vice President's judgment alone and that they were bound by his decision. There would also be the question of whether the courts would look beyond the presumption of regularity of official action." (Original footnotes omitted). Department of Justice Press Release, April 1, 1957, pp. 19-20.

arose for an adjudication of the meaning of the paragraph under discussion, it is unlikely that any case would involve a square holding on each of the many uncertainties with which we are presently confronted. Third, the Court might very well decide that this entire subject was a "political question" and therefore beyond the function of the judiciary.14/ If the problems resulting from the confusion in the present language of the Constitution are deemed to be sufficiently grave to require clarification, it would seem imperative that some action be taken by the Congress.

B. Methods of Handling Disability

In the public discussions and in the various drafts of proposed legislation and Constitutional amendments submitted to Congress, several alternative plans have been suggested for efficiently effecting a transfer of functions from the President to the Vice President in the event of the inability of the President. Many of these plans vary only in details and, generally speaking, they can be classified into a limited number of categories.

Most of the plans provide for four separate functions to be performed by one or more agencies. These functions are (1) initiating action to determine inability; (2) determining inability; (3) initiating action to determine that the disability has been removed; and (4) determining that the disability has been removed. Almost all plans provide that, at least in the case of Presidential inability "the powers and duties," and not "the office," devolve on the Vice President or on the officer designated in the Presidential Succession Act; while in the case of a vacancy in the Presidential office, "the office" itself devolves. Such a provision would appear necessary unless paragraph 6 of Section 1 of Article II is to be repealed since, to all intents and purposes, the experience of seven successions has rendered the devolution of the office, in the case of the President's death, the law of the land.15/

It has been suggested that the President declare himself disabled and also declare when the disability has been removed. Such a provision would appear to be inadequate. There is a school of thought that believes "inability," as used in the Constitution, to refer only to intellectual incapacity. This view has been disparaged16/ but certainly, at the very least, "inability" is meant to apply to mental as well as physical inability.17/ Thus, in the most serious cases where the Executive functions should be transferred the President might well be unable even to declare his own inability. To leave the function of determining his own ability to discharge the duties of his office to the President exclusively, under these circumstances, is unrealistic. There seems to be no similar problem in permitting the President to declare that his disability has been removed, although there may be practical objections to permitting the President to initiate action to determine that his disability has been removed while charging some other agency with the responsibility of making the actual determination, since that procedure would put the judgment of

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14/ Learned Hand discusses the refusal of the Supreme Court to take jurisdiction over "political questions" in The Bill of Rights 15ff. (Harvard 1958).

15/ Corwin, supra note 12 at 54.

16/ Silva, supra note 6 at 658.

17/ Perhaps the absence of the President from United States soil is "inability" in the Constitutional sense. See, Corwin, supra note 12 at 55, 346 n. 49.

the President in dispute among persons whom he may have appointed to office. This would be true, for example, if members of the Cabinet served on the determining commission. The practical result might well be that the President's decision was determinative and the commission's only an echo.

Similar considerations militate against leaving the determination of inability to the Cabinet or a commission composed primarily of Cabinet members. An interesting suggestion has been made by analogy to the English procedure for turning the prerogatives of the Sovereign over to a Regent during the former's inability. By the Regency Act of 1937 (1 Edw. 8 & 1 Geo. 6, ch. 16) any three of the following can initiate and determine the existence of a royal inability: the spouse of the Sovereign; the Lord Chancellor; the Speaker of the House of Commons; the Lord Chief Justice; and the Master of the Rolls. No one is better able to know the President's condition than his wife, but one can only speculate upon what results would follow from placing a Constitutional duty upon her to share this knowledge with the world. This suggestion must of necessity be viewed against the historical background of Woodrow Wilson's illness when his wife was principally responsible for concealing the extent of his infirmity from other officials of the government as well as for exercising whatever functions of the Presidency were exercised during that period.18/

It has been suggested that initiating action be taken by the Vice President and the determination of inability be made by a commission. The lesson of history argues against this approach. When the question of the President's inability has arisen in the past, the Vice President has been reluctant to take any action at all for fear of being charged with disloyalty or usurpation.19/ Moreover, even if he did act, his own interest in the matter would inevitably cast doubts upon the objectivity of his performance. The fact that the actual determination of inability is to be lodged in some agency other than the Vice President would not seem to meet these practical difficulties, if the determination cannot be made without some affirmative action on the part of the Vice President.

In those plans which contemplate a commission to determine inability, the composition of such a commission is variously determined. Insofar as any provision is made for Justices of the Supreme Court to serve on such an agency, the letter of Chief Justice Warren to Representative Keating, expressing the reluctance of the Justices to participate in any plan of this type, appears to be determinative.20/ Membership by Cabinet officers could conceivably place them in the embarrassing position of Secretary Lansing whose resignation was forced by President Wilson after

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18/ See, Statement of The Attorney General, supra note 13 at 8-9.

19/ The judgment of historians is that this was the attitude of Vice President Arthur at the time of President Garfield's illness and of Vice President Marshall during President Wilson's incapacity.

20/ The letter under date of January 20, 1958 characterizes as "insurmountable" the following objections to Justices serving on such a commission: "It has been the belief of all of us that because of the separation of powers in our Government, the nature of the judicial process, the possibility of a controversy of this character coming to the Court, and the danger of disqualification which might result in lack of a quorum, it would be inadvisable for any member of the Court to serve on such a commission."

his recovery, because he felt that Lansing's efforts to keep the Government running amounted to disloyalty.[21] The likelihood of such drastic retribution being taken in the future would be somewhat more remote if it were made clear that the Presidential office was not forfeited, as Wilson believed,[22] when the Vice President, or another, discharges the functions of the office of the President during the latter's inability.

It has been suggested that Congress itself make the determination. Two objections, in addition to the obvious separation of powers problem, are instantly apparent. Such a procedure might be too cumbersome in times of extreme crisis, even assuming that the Congress was in session when the crisis developed, and the duty of determination does not lend itself to extended debate by a numerous assemblage. Further, it is conceivable that the notoriety which sometimes attends the deliberations of Congress would not be the most appropriate atmosphere within which to resolve the delicate problems attendant upon a President's inability. The suggestion that Congress initiate action and that the determination of inability be made by some other agency is subject to the same objections.

In summary, it appears that no single proposal thus far advanced can be considered as the ideal method for transferring the powers and duties of the President in the case of his inability. Nevertheless, someone has to initiate action. This is a less embarrassing duty if it is merely ministerial. It becomes ministerial when the preconditions to its exercise are clearly spelled out. The difficulty with such an approach is that if the language defining the preconditions is precise enough to render the duty ministerial, it may be too narrow to encompass unforeseen contingencies. The answer then would seem to be to place the initial responsibility upon some person individually. Thus a Cabinet officer, the Vice President, or a Congressional party leader, especially one of a party different from that of the President, should not be selected exclusively, but might each have the power independently to initiate a determination. This solution would also solve the difficulties which would arise if a major catastrophe disabled both the President and the only person empowered to initiate a determination of his inability.

The suggestion that some type of commission make the actual determination of inability seems to have received the most support from respected authorities. Such a commission probably should be empowered to make its own rules. If it will not be subject to any effective review, the composition of its membership becomes the most crucial task facing the legislative draftsman. No proposal advanced to date has made any attempt to establish standards for the commission's action or to define the extent of the inability required before the commission can divest the President of his power. It has not unreasonably been suggested that the Framers knew what they were doing and that "inability" being a relative term no attempt at definition should now be attempted, although John Dickinson got no satisfaction when he asked his colleagues in the Constitutional Convention what was the extent of "disability" as they had used that term in the paragraph under discussion. Nor have

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21/ The President is reported to have said to his trusted Secretary: "Tumulty, it is never the wrong time to spike disloyalty. When Lansing sought to oust me, I was upon my back. I am on my feet now and I will not have disloyalty about me." Tumulty, Woodrow Wilson As I Knew Him 445 (1921).

22/ Wilson wrote in his Congressional Government 240 ff., (1885), that the importance of the Vice President lies in the fact that he may cease to be Vice President.

any of the bills and resolutions introduced into the Congress provided for the determination that the "office" devolves in the case of a "permanent" disability, a suggestion which has been put forward on the grounds that it is particularly in such a contingency that the Vice President will need all of the legal and moral buttressing the structure of the government can give him. No serious solution has been suggested for the problem presented by a commission's failure to act to restore a President's power after the disability has been removed. How far recovered must the President be and what is the minimum constitutional standard of ability required for the Chief Executive? These questions remain to be considered by the draftsmen, if, indeed, precision in this connection is desirable and attainable. Surely, in the absence of standards, it is difficult to see how a court could ever mandamus the commission to act. Perhaps it is desirable to have no judicial review in this area but, if this is so, it would seem that it should be expressly stated in the text of the legislation or the Constitutional amendment decided upon.

The majority of the proposals which provide for a commission to determine inability also suggest that the same method be utilized to determine when the disability has been removed. Clearly no such determination can, or should, be made without the concurrence of the President himself. But to subject the President's judgment of his own qualification to resume the duties of his office to administrative review could result in untoward and damaging discussion demeaning to the prestige of the Presidency. To permit the President himself to be the sole judge of the removal of his disability would not only avoid these unfortunate contingencies, but would also put an effective check upon the commission, as well as alleviating doubts about possible violations of the Constitutional doctrine of separation of powers raised by the use of a commission, especially if it is created by or composed of members of Congress, for the purpose of policing the President's health, -- a purpose which may be more appropriately regarded as an executive function or, insofar as it involves construction of "inability" and "disability" as presently used in the Constitution, as a duty of the judiciary.

C. Implementing the Proposal - Constitutional Amendment or Legislation

Whether the chosen plan can be implemented by legislation or only by an amendment to the Constitution is a problem the solution to which turns, in the first instance, upon the language of the disability clause itself. The significant portion reads as follows: ". . . the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President . . .." A study of the ancestry of this clause is revealing. In the draft referred by the Constitutional Convention to the Committee on Style the language used was: "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. . . ."

This is persuasive evidence that Congress, under the disability clause, has no power to do anything except declare the order of Presidential succession after the Vice President. One body of opinion holds that this must be true by application of the rule of legal construction, inclusio unius, exclusio alterius.[23] It therefore

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23/ 3 Willoughby, The Constitutional Law of the United States 1467-1468 (1929); Butler Presidential Inability, 133 No. Am. Rev. 428, 431-433 (1881); Daugherty, Presidential Succession Problems, 42 Forum 523, 525 (1909); Davis, Inability of the President, S. Doc. 308, 65th Cong., 3d Sess. 13-15 (1918); Lavery, Presidential Inability, 8 A.B.A.J. 13-17 (1922); See, U.S. v. Harris, 106 U.S. 629, 635-636 (1883); 3 Story, Commentaries on the Constitution §1243 (1833).

follows, if this view be correct, that the vast majority of the suggested proposals can be effected only by a Constitutional amendment. Moreover, if in the case of something less than a vacancy in the Presidency the "office" is not meant to devolve, one would suspect hesitancy on the part of Constitutional lawyers in suggesting that, in view of the uncertainty in the law at present, Congress alone could effect the temporary transfer of the power to veto legislation and make appointments.

Professor Corwin, along with several other learned students of the subject whose views were solicited by the House Judiciary Committee, suggests that Congress has the power to accomplish a definitive plan respecting Presidential inability by legislation under the "necessary and proper" clause.[24/] Although he is a Constitutional eminence of no mean repute, his reasoning on this point may be open to challenge. Moreover, as to the problems previously discussed which are the result of latent ambiguities in and the grammatical and practical construction of the language of Article II, Section 1, paragraph 6, it would seem unusual to suggest that the Constitution can be clarified and construed by Congressional legislation. Such clarification and construction would, in effect, amend the Constitution by unconstitutional means. Because the Constitution implies that the same result follows in the case of inability as in the case of death, it would appear that there is no sure way of providing that "the powers and duties" and not "the office" devolve on the Vice President in the case of inability, short of a Constitutional amendment. Furthermore, it may not be inaccurate to say that one cannot be wholly sanguine about having accomplished the desired result until the source of the confusion, viz., paragraph 6, has been repealed and replaced.

Since there is so much doubt respecting the legal result in many conceivable contingencies, it is entirely understandable (and undoubtedly justifiable) that the draftsmen who have set their minds and pens to clarifying the difficulties have spun their theories in detail. This has resulted in a number of proposed Constitutional amendments which are longer than many of the present articles of the Constitution. Some even seek to give Constitutional status to provisions about the salary of the members of the inability commission. Surely the history of Constitutional draftsmanship and the uncertainties attendant upon even the most highly regarded proposals dictate the necessity of keeping the missal as pure as possible.

In this fashion, the Constitution will be unencumbered by less than basic directions and Congress will not have to put the ponderous processes of Constitutional amendment into motion every time it discovers that its experimental formulae for effecting an orderly transferral of Executive power have not achieved their maximal objectives.[25/]

24/ Corwin, supra note 12 at 55.

25/ For brief but comprehensive discussions of the various problems involved in the question of Presidential inability, see, Corwin, The President, 53-59 (1957) - Professor Corwin's footnotes should not be overlooked; Silva, Presidential Succession and Disability, 21 Law & Contemp. Prob. 646-662 (1956). The various documents published by the Committee on the Judiciary of the House of Representatives also contain a wealth of material.

III. COMMENTS ON VARIOUS PROPOSALS

S.J. Res. 100: (Sen. Fulbright) The intent of this proposal, to place the responsibility for determining Presidential inability upon a majority of the full Supreme Court, seems to be obsolete in view of the opinion which the Justices expressed in the letter of Chief Justice Warren to Representative Keating. The proposal does not clarify the problem of whether the "office" or the "powers and duties" devolve when there is a vacancy in the Presidency since Article II, Section 1, paragraph 6 would remain in effect. Furthermore, action is to be initiated by a majority of both houses of Congress by resolution, which many feel, might prove to be so cumbersome as to be unworkable. The determination that the disability has been removed is effected in the same way, viz., a resolution from both houses of Congress transmitted to the Supreme Court, for determination. The President's opinion of his ability to resume his functions is given no Constitutional effect.

S.J. Res. 134: (Sen. Kefauver) This proposed Constitutional amendment would repeal Article II, Section 1, paragraph 6. It clarifies the problem of devolution by providing that in the case of removal, death, or resignation the Vice President succeeds to the "office" while in the case of a disability, as determined by a committee, composed of the Chief Justice, the Cabinet, and the majority and minority leaders of the House and Senate, only the "powers and duties" devolve. A principal difficulty with this proposal is that the Vice President is given the power to initiate the determination of inability and the power to proclaim that the inability has been terminated. The fact that six members of the committee may also initiate action and that a majority of the committee can determine that the disability has been removed mitigates the seriousness of this provision. It has been argued that it is unwise to make the initial responsibility turn on the decision of a group as large as this.

S.J. Res. 141: (Sen.O'Mahoney) Although the President may declare his own inability, if he is unable to do so, the determination is to be made by a joint resolution of Congress. Again, this has been objected to on the grounds that it is too cumbersome and also raises a serious Constitutional problem of separation of powers, a distinction which the Framers were careful to preserve in other sections of the Constitution. Of course, since this is meant to take effect as an amendment to the Constitution, the implementation of this proposal would not technically be subject to the charge of unconstitutionality by definition. The proposal that the Acting President can proclaim that the disability has been removed seems slightly disingenuous, since the person in that position would be placed in a dilemma, i.e., whether to take this action sooner than was desirable for fear of being charged with usurpation, or whether to delay in taking the action because of the obvious personal interest which he has. The President is given no voice in determining whether or not he is capable of being restored to his Constitutional powers.

S.J. Res. 144: (Sen. Bridges) This proposed Constitutional amendment also distinguishes between removal, death, or resignation, in which case the "office" devolves, and inability, in which case the "powers and duties" only devolve. It provides that Congress may determine inability, as well as the

fact that it has been terminated, by resolution. It also provides that Congress may by law determine how these functions are to be performed and the determinations to be made. It would seem that a simple provision giving Congress the power to provide by law for these matters would be sufficient as long as the power to determine the order of succession and the distinction in the devolution of the "office" and the "powers and duties" is retained, since the proposed amendment contemplates the repeal of Article II, Section 1, paragraph 6.

S.J. Res. 161: (Sen. Kefauver; Sen. Dirksen)

This Constitutional amendment provides that in the event of the President's removal, death or resignation "the Vice President shall become President for the unexpired portion of the then current term." If the President declares his inability in writing, the "powers and duties" of the Presidency "shall be discharged by the Vice President as Acting President." If the President does not declare his own inability, the Vice President, "if satisfied that such inability exists," may assume the "powers and duties" as Acting President upon the written approval of a majority of the heads of the executive departments. Similar provisions are made for the termination of inability, except that in this case, Congress is given a part in determining such termination where the President and Vice President are in disagreement. The Resolution is silent as to Article II, Section 1, paragraph 6 of the Constitution.

S. 238: (Sen. Payne)

This proposed legislation deals only with inability and not with removal, death, or resignation. It does not solve the Constitutional ambiguity relating to devolution, but seeks by legislation to provide that the "powers and duties" devolve on the Vice President upon a determination of inability, even though the Constitution makes no distinction in these cases. The experience of seven Vice Presidents having succeeded to the "office" at the time of a President's death has, to all intents and purposes, foreclosed any alternative construction of the language on the subject in the Constitution. The apparent intent of this proposal is to place the determination of inability upon the President or upon a panel of civilian medical specialists appointed by the Chief Justice. The Chief Justice has declared his unwillingness to participate in this determination and, under the circumstances, his function under the proposed bill will have to be given to some other federal official of high standing. In addition, the question of whether or not such a serious and important duty as determining Presidential inability should be given to persons not otherwise holding positions of responsibility under the Constitution must be considered. The responsibility for initiating the determination may be made by the President in writing to Congress or the Vice President in writing to the Chief Justice. If the President were unable to perform this function, the objections already noted with respect to the Vice President's role would apply. The bill also specifically refers to "physical inability" and makes no mention of, and seems to preclude, its applicability to mental inability. This may have been only a drafting omission, but it seems a sufficiently serious defect to be remedied before further consideration of the bill by Congress. The President alone, in writing to Congress, has the power to declare that his disability has been removed.

H.J. Res. 38: (Rep. Frelinghuysen) This proposal contemplates a Constitutional amendment which repeals and replaces paragraph 6 of Section 1 of Article II. It makes the usual distinction between the devolution of the "office" in the case of removal, death, or resignation and of the "powers and duties" in the case of inability. The action to initiate the determination of inability may be made by the President or by two-thirds of each house of Congress. Critics object that the Congressional alternative is too cumbersome to be effective in times of imminent crisis, even assuming that Congress were in session. The determination of inability is made by the President himself or, if Congress initiates, by the Supreme Court. This provision would seem to be obsolete by virtue of Chief Justice Warren's letter to Representative Keating, as is the provision that the Supreme Court, on the request of the President, will make the determination whether or not he is able to resume his duties.

H.J. Res. 293: (Rep. Celler) This proposal seeks through a Congressional resolution to solve the problem of making the distinction between the "office" devolving, in the case of a vacancy in the Presidency and the "powers and duties" devolving in the case of the President's inability. The initiating action is to be taken by the President or the Vice President and the determination of inability is to be made in the same way. This is subject to the general objection, should the President be incapable of determining his own inability, that the burden of action, with all its embarrassing consequences, is placed upon the person having the largest personal interest in the determination. Also, since it is still unclear whether the distinction in devolution can be made by legislation, critics argue that the President might be reluctant to take any such action, assuming he were able, for fear that the Constitution in its present wording subjects the office to forfeit when the Vice President suceeds to the functions of the Presidency. The President resumes his duties upon his own announcement of his ability and intention to do so.

H.J. Res. 294: (Rep. Keating) This proposal seeks to amend the Constitution to make clear that the "office" devolves, in case of a vacancy in the Presidency and the "powers and duties" devolve, in the case of inability. Initiating action is taken by the President or the Vice President, who is subject to the previously discussed pressures and possible embarrassments incident to that function if the President himself is unable or unwilling to assume the responsibility. The determination of inability is made by a majority of the Cabinet. This procedure has been objected to on the grounds that under most conditions, it might simply be an echo of the President's wishes, assuming that he was capable of having any desires on the subjects. The inability is terminated by the President on his own motion.

H.J. Res. 295: (Rep. Celler) This proposal is identical to H.J. Res. 293 except that it seeks to implement its provisions by a Constitutional amendment rather than a Congressional resolution.

H.J. Res. 296: (Rep. Cole) This proposal seeks by legislation to establish a commission, any three members of which, or the President, can initiate action, and not less than five members of which, or the President, may determine

the latter's inability. The proposal draws its constitutional authority from a questionable interpretation of clause 5 [sic] of Section 1, Article II of the Constitution which assumes that Congress under that provision has authority to legislate generally with respect to Presidential inability. Moreover, it would seem to compound the ambiguity with respect to devolution by providing that the powers and duties devolve "as provided in clause 5 [sic] of Section 1 of Article II of the Constitution." No one knows, at this point, what that paragraph provides with respect to the devolution of powers and duties. Another difficulty is that while the inability may be determined either by the commission or by the President's own proclamation, it is unclear whether the President can terminate an inability declared by the commission even though it is expressly provided that the commission cannot terminate an inability determined by the President.

H.J. Res. 309: (Rep. Cole) This proposal seeks to amend the Constitution by adding a single sentence. Very simply it contemplates that Congress may by law provide for the case of the inability (and the removal of the disability) of the President or the Vice President "or any other person on whom the powers and duties of the office of President shall have devolved" to discharge the powers and duties of the office. It may be that such a provision is sufficient to clear up all of the difficulties in this area of Presidential inability. One difficulty with the proposed amendment is that it is only by implication that it amends Article II, Section 1, paragraph 6 to provide for the devolution of the "powers and duties", rather than the "office", in the case of inability. It should be noted that if this amendment is adopted, the present inability paragraph in the Constitution cannot be repealed since H.J. Res. 309 does not confer any authority on the Congress to declare the order of succession.

H.J. Res. 334: (Rep. Keating) This resolution proposes a Constitutional amendment by which the "office" would devolve in the case of removal, death, or resignation and the "powers and duties" in the case of inability. The President or three members of a commission initiate action, and the President, or six members of the commission after seeking competent medical advice, determine inability. In view of Chief Justice Warren's letter to Representative Keating, the provision for the members of the Supreme Court serving on the commission will have to be changed. The President notifies the commission in writing when, in his opinion, the disability has been removed, and the commission after seeking competent medical advice makes the final determination. This, like many other proposals, gives rise to the possibility of the President's decision being indelicately challenged, especially in view of the fact that the commission seeks outside medical advice. This means, in effect, that private physicians will be called upon to rule whether or not the President is correct in his opinion that he is fit to resume the functions of his office. As in many other proposals, no indication is given of the weight which the commission is to accord the findings of the "competent medical advice" they are enjoined to seek.

H.J. Res. 490: (Rep. Brooks) This resolution proposes an amendment to the Constitution making the customary distinction in the devolution of the "office" in the case of removal, death, or resignation and of the "powers and duties" in the case of inability. With respect to inability, initiating action may

be taken by the President or any two members of the commission and the determination of inability is made by at least five members of the commission after seeking competent medical advice. In addition to the commission determining that the disability has been removed in the same fashion as it determines inability, the President may resume the powers by declaring that the disability has terminated. On the whole, this proposal seems to be subject to fewer objections than many others drafted along the same lines. It might, however, be better to repeal Article II, Section 1, paragraph 6 and to include an authorization to Congress to declare the order of succession.

H.J. Res. 525: (Rep. Curtin) All of the comments applicable to H. J. Res. 490 are equally applicable here except that some alternative provisions seem necessary in view of the fact that two of the members of the commission sought to be established are Justices of the Supreme Court.

H.R. 6510: (Rep. Keating) This bill proposes to establish a commission to decide inability. The President or three members of the commission may initiate action. At least seven members of the commission, after seeking competent medical advice, make the determination of inability and in the same manner make the determination that the disability has been removed, after receipt of a communication from the President that he conceives himself capable of resuming his duties. The fact that one cannot be sure that the devolution problem can be solved by legislation, the presence of two Justices of the Supreme Court on the commission, and the possibility that the President may be overruled on his opinion that he is unable to discharge the duties of his office or that the disability has been removed, it is argued, all cast doubt on the soundness of this proposal.

H.R. 7352: (Rep. Burdick) This proposal suggests legislation dealing only with the inability problem and provides that the "duties" shall devolve when inability has been determined. Regardless of the merits of the proposal, it apparently seeks to create one of the most cumbersome of all suggested procedures. The determination of inability and of the termination of inability is to be made by a majority of a quorum (two-thirds) of a council consisting of the Governors of the several states. Even more cumbersome is the procedure for initiating action which requires at least twelve Governors to inform the Chairman of the Council that "they have sufficient cause to believe that the President is unable to perform his duties." It seems reasonable to suppose that if the President were disabled, by the time that this information had permeated the country to an extent sufficient to cause reasonable belief in the minds of twelve Governors, any action they might thereafter take would have been dangerously delayed. It should be noted also that only five more Governors than is necessary to take the initiative are required to make the determination.

H.R. 9903: (Rep. Brooks) This proposal suggests legislation to deal only with inability. It establishes a commission, two members of which may initiate action, to make the determination either of inability or that it has terminated. The President performs no function at all either with respect to initiating action or making the determination. For that reason, it

seems to be somewhat inadequate. It is necessary to note that in this proposal, as in many others suggesting both legislation and Constitutional amendments where a commission is provided, the Vice President is named as the Chairman of the Commission without a vote. He is also given the power to convene the commission upon receipt of the "cause to believe" communications from the requisite number of commissioners. There would appear to be no problems of embarrassment in these proposals since in this regard the Vice President's functions are clearly ministerial.

H.R. 10880: (Rep. Celler): This proposal seeks by legislation to resolve the devolution problem in the case of a vacancy in the office and in the case of inability. In the case of inability, either the president or three members of the commission may take the initiative and either the President or three members of the commission may make the determination. In determining whether or not the inability continues to exist either the President, or the commission may act in the same manner. This proposal is unusual in that the same number of persons are required to act initially as are required to make the determination. It is also unusual because of its provision that, of the eight members of the commission, the Vice President, the Speaker of the House and the President pro tempore of the Senate have no vote. The Secretary of State and the majority and minority leaders of the House and Senate are the only persons given that privilege.

As Congress' Easter recess approaches, S. J. Res. 161 and H. R. 10880 seem to be the dominant proposals. The Joint Resolution is generally thought to enjoy Administration Sponsorship and, as was noted earlier, it has bipartisan support in the Senate. Representative Celler's bill seems to have strong backing in the House of Representatives.

IV. ANALYTICAL TABLE

Number of Bill and Proponent	Form of Proposal		Who Initiates Action on Inability	Who Makes Determination of Inability	Definition of Inability	Order of Succession	Term of Succession	What Devolves? Office or Powers and Duties	How is Inability Terminated
S. J. Res. 100 Sen. Fulbright	Constitutional Amendment		Both Houses of Congress by majority vote (V.P. or Pres. pro tem. and Speaker can call Cong., if not in session)	Majority of full Supreme Court	"unable, by reason of physical or mental disability, to discharge the powers and duties of his office"	V.P. then according to succession provided by law	Until end of Presidential term unless earlier determination that inability no longer exists	Powers and Duties	In same manner as Inability determined, i.e., Congressional Resolution and vote of Supreme Court
S. J. Res. 141 Sen. O'Mahoney	Constitutional Amendment		Pres. or any member of Cong.	Pres. or Cong. by resolution	"unable to discharge the powers and duties of his office"	V.P. or person next in line of succession	Either (1) end of then current term, or (2) Acting Pres. proclaims inability no longer exists, or (3) Cong. determines inability no longer exists	Powers and Duties	Acting Pres. proclaims or Cong. resolves inability no longer exists
S. J. Res. 134 Sen. Kefauver	Constitutional Amendment (repeals paragraph 6 of § 1 of Art. II)	PERM	-	-	"removal . . . death or resignation"	V.P.	Until end of then current term	Office	-
		TEMP	V.P. or 6 members of committee	Majority of committee, Members: C.J. (no vote); maj. and min. leaders of H. and Sen.; the Cabinet.	C'tee votes on: "Is the President unable to discharge the powers and duties of his office?"	V.P. then as Cong. may by law provide	Either: (1) end of current term, or (2) inability determined no longer to exist	Powers and Duties	V.P. proclaims or maj. of C'tee votes "no" on: "Does the inability of the President to discharge the powers and duties of his office continue to exist?"
S. J. Res. 144 Sen. Bridges	Constitutional Amendment (repeals paragraph 6 of § 1 of Art. II)	PERM	-	-	"removal . . . death or resignation?	V.P.	Remainder of predecessor's term	Office	-
		TEMP	Any member of Cong. or as Cong. may by law provide	Cong. by resolution or as Cong. may by law provide	"inability . . . to discharge powers and duties of his office"	V.P. then as Cong. may by law provide	Until there is a person chosen and qualified according to law and available	Powers and Duties	Cong. by resolution or as Cong. may by law provide
S. J. Res. 161 Sens. Kefauver, Dirksen et al.	Constitutional Amendment	PERM	-	-	"removal . . . death or resignation"	V.P. then as Cong. may by law provide	Remainder of predecessor's term	Office	-
		TEMP	Pres. in writing, V.P. upon written approval of majority of head of Exec. Depts.	Pres. in writing, V.P. upon written approval of majority heads of Exec. Depts.	"unable to discharge the powers and duties of his office."	V.P. then as Cong. may provide	Until inability terminated or Presidential term ends	Powers and Duties	Announcement by Pres. that inability has terminated. If V.P. with written approval of a majority of heads of the Exec. Depts. disagrees with Pres. then Cong. resolves the issue.
S. 238 Sen. Payne	Legislation		Pres. in writing to Cong. or V.P. in writing to C.J. of Sup. Ct.	Pres. or unanimous panel of 3 to 5 civilian medical specialists appointed by C.J.	"physical inability to discharge the powers and duties of his office"	V.P. or appropriate officer in line of succession	duration of such physical inability	Powers and Duties	Pres. in writing to Cong.

Number of Bill and Proponent	Form of Proposal		Who Initiates Action on Inability	Who Makes Determination of Inability	Definition of Inability	Order of Succession	Term of Succession	What Devolves? Office or Powers and Duties	How is Inability Terminated
H. J. Res. 38 Rep. Frelinghuysen	Constitutional Amendment (repeals paragraph 6 § 1 of Art. II)	PERM	-	-	"removal . . . death or resignation"	V.P. then as Cong. may by law provide	-	Office	-
		TEMP	Pres. or 2/3 of each house of Congress (V.P. can call Sen. and Speaker, can call House, if not in session)	Pres. himself or Supreme Court if Cong. initiates	"unable to discharge the powers and duties of his office"	V.P. then as Cong. may by law provide	Until Pres. resumes duties	Powers and Duties	Sup. Ct., on request of Pres., determines he is able to resume duties
H. J. Res. 293 Rep. Celler	Legislation	PERM	-	-	"removal . . . death or resignation"	V.P.	-	Office	-
		TEMP	Pres. or V.P. or person next in line of succession	Pres. or V.P. or person next in line of succession by announcement to both Houses of Cong.	When person deciding is "satisfied" that person then discharging duties of office is "unable"	V.P. then according to succession provided by law	Until Pres. resumes duties (no provision for one other than Pres. resuming duties)	Powers and Duties	Announcement by Pres. of ability and intention to resume duties
H. J. Res. 294 Rep. Keating	Constitutional Amendment	PERM	-	-	"removal . . . death or resignation"	V.P.	"unexpired portion of the then current term"	Office	-
		TEMP	Pres. or V.P.	Pres. or Majority of Cabinet	-	V.P.	Until inability terminated	Powers and Duties	Declaration in writing by Pres. that his inability is terminated
H. J. Res. 295 Rep. Celler	Constitutional Amendment	PERM	Identical with H. J. Res. 293						
		TEMP							
H. J. Res. 296 Rep. Cole	Legislation		Any three Members of the "Commission" or Pres.	Not less than five members of the "Commission" which consists of V.P. (no vote); Speaker; Pres. pro tem of Sen.; Sec./St.; Sec./Treas.; Sec./Def.; Maj. Leaders of H. and Sen.; Min. leaders of H. and Sen. or Pres. by proclamation	"unable to discharge the powers and duties of his office"	V.P. then according to succession provided by law	Until inability terminated	Powers and Duties "as provided in clause 5 [sic] of section 1 of Article II of the Constitution"	In same manner as inability determined, i.e., action initiated by any three members of Commission followed by vote of not less than five members or Pres. by proclamation (Commission cannot terminate inability determined by Pres. but not clear whether Pres. can terminate inability declared by Commission)

Number of Bill and Proponent	Form of Proposal		Who Initiates Action on Inability	Who Makes Determination of Inability	Definition of Inability	Order of Succession	Term of Succession	What Devolves? Office or Powers and Duties	How is Inability Terminated
H. J. Res. 309 Rep. Cole	Constitutional Amendment	Full text of operative section: "The Congress may by law provide for the case of the inability (including removal of disability) of the President, or the Vice President, or any other person on whom the powers and duties of the office of President shall have devolved, to discharge the powers and duties of that office."							
H. J. Res. 334 Rep. Keating	Constitutional Amendment	PERM	-	-	"removal . . . death or resignation	V.P.	Unexpired portion of the then current term	Office	-
		TEMP	Pres. or 3 members of Commission	Pres. or 6 members of Commission after seeking competent medical advice. Commission consists of V.P. (no vote); C.J. of Sup. Ct.; Senior A.J. of Sup. Ct.; Speaker; Maj. leaders of H. and Sen.; Min. leader of H.; Sec/St.; Sec/Treas.; A.G.	"unable to discharge the powers and duties of the Office"	V.P. then according to succession provided by law	Until disability removed	Powers and Duties	Pres. notifies Ch. of Commission and Commission, after obtaining medical advice, decides whether Pres. is able
H. J. Res. 490 Rep. Brooks	Constitutional Amendment	PERM	-	-	"removal . . . death or resignation	V.P.	Unexpired portion of then current term	Office	-
		TEMP	Pres. in writing or any two members of Commission	Pres. or at least 5 members of Commission after seeking competent medical advice. Members: V.P. (no vote); Sec/St.; Speaker; Maj. and Min. leaders of H. and Sen.	"unable to discharge properly the powers and duties of his office"	Individual next in line of succession	Until disability no longer exists	Powers and Duties	Pres. in writing or Commission in same manner as inability determined
H. J. Res. 525 Rep. Curtin	Constitutional Amendment	PERM	-	-	"removal . . . death or resignation"	V.P.	Unexpired portion of then current term	Office	-
		TEMP	Pres. or 2 members of Commission	Pres. or at least 5 members of Commission after seeking competent medical advice. Members: C.J.; Senior Assoc. J.; Sec/St.; Sec/Treas.; Speaker; Maj. leader of Sen.; Min. leaders of H. and Sen.	"unable to discharge properly the powers and duties of the Office"	Individual next in line of succession	Until disability no longer exists	Powers and Duties	Pres. or Commission in same manner as inability is determined
H. R. 6510 Rep. Keating	Legislation	Pres. or 3 members of Commission		At least 7 members of the Commission after seeking competent medical advice. (N.B. not Pres. when he initiates) Members: V.P. (no vote); C.J.; senior Assoc. J. of Sup. Ct.; Speaker; Maj. leader of Sen.; Min. leaders of H. and Sen.; Sec/St.; Sec/Treas.; A.G.	"unable to discharge the powers and duties of the Office"	Individual next in line of succession	Until disability has been removed	Powers and Duties	Pres. in writing to Commission which then makes determination in same manner as for inability

Number of Bill and Proponent	Form of Proposal	Who Initiates Action on Inability		Who Makes Determination of Inability	Definition of Inability	Order of Succession	Term of Succession	What Devolves? Office or Powers and Duties	How is Inability Terminated
H. R. 7352 Rep. Burdick	Legislation	Pres. or one-fourth of Council		Majority of 2/3 (quorum) of Council consisting of Governors of the several states	"unable to discharge the powers and duties of the Office"	Individual next in line of succession	Until able to reassume the powers and duties of the office	Duties	Pres. writes to Council and they make determination in same manner as for inability
H. R. 9903 Rep. Brooks	Legislation	2 members of Commission		At least 5 members of Commission after seeking competent medical advice. Members: V.P. (no vote); Sec/St.; Speaker; Maj. and Min. leaders of H. and Sen.	"unable to discharge properly the powers and duties of the Office"	Individual next in line of succession	Until disability no longer exists	Powers and Duties	In same manner as inability is determined
H. R. 10880 Rep. Celler	Legislation	PERM	-	-	"removal . . . death or resignation"	V.P.	Until expiration of President's term	Office	-
		TEMP	Pres. or 3 members of Commission	Pres. or at least 3 members of Commission. Members: V.P. (no vote); Speaker (no vote); Pres. pro tem. of Sen. (no vote); Sec/St.; Maj. and Min. leaders of H. and Sen.	"unable to discharge the powers and duties of his Office"	V.P. then individual next in line of succession	Until Pres. able to reassume powers and duties	Powers and Duties	Pres. or Commission in same manner as determination of inability

V. QUESTIONS RAISED BY THE PROPOSALS

1. If a proposal seeks to amend the Constitution, does it repeal Article II, Section 1, paragraph 6? And, if so, has the power of Congress to declare order of succession been retained?

2. Does the "office" devolve in cases of removal, death, or resignation?

3. Do "powers and duties" only devolve in cases of disability?

4. Does the successor to either the "office" or the "powers and duties" serve for the remainder of the then current unexpired term? Until a special election? Until disability is removed if less than a vacancy in the office has occurred?

5. Does the President forfeit his office in case of inability?

6. Can the agency which initiates action do so immediately? If a person, is he subject to embarrassment or political pressure in performing this function by virtue of his office?

7. Is the procedure for determining inability too cumbersome to work expeditiously?

8. Is inability defined? Does the Commission have a free rein or are its actions circumscribed by standards? And, if so, can a court mandamus it to act?

9. Does the procedure for restoring the President's powers to him permit or encourage discussions damaging to the prestige of the office?

10. Does the proposal, if a Constitutional amendment, clutter up the Constitution with details more properly the subject of legislation?

BILL ANALYSES RELEASED DURING 85TH CONGRESS, SECOND SESSION

Subject	Bill Nos.	Authors	AEA Report No.
Trinity Joint Development			1
	H.R. 6997	Rep. Scudder	
	H.R. 7407	Rep. Utt	
	H.R. 10005	Rep. Gubser	

STUDIES RELEASED DURING 85th CONGRESS

Title	Author
AUTOMATION, Its Impact on Economic Growth and Stability	Almarin Phillips Associate Professor Graduate School of Business Administration University of Virginia
LEGAL IMMUNITIES OF LABOR UNIONS	Roscoe Pound Former Dean Harvard University Law School
THE REGULATION OF NATURAL GAS	James W. McKie Associate Professor of Economics and Business Administration Vanderbilt University
POST-WAR WEST GERMAN AND UNITED KINGDOM RECOVERY	David McCord Wright William Dow Professor of Economics and Political Science McGill University
THE ECONOMIC ANALYSIS OF LABOR UNION POWER	Edward H. Chamberlin David A. Wells Professor of Political Economy Harvard University
AGRICULTURAL SURPLUSES AND EXPORT POLICY	Raymond F. Mikesell W.E. Miner Professor of Economics University of Oregon