

Republican Research Committee

Republican Conference

U.S. House of Representatives

Washington, D.C. 20515

MARTHA PHILLIPS
DIRECTOR



MEMORANDUM

Summary of Congressional Action on the 25th Amendment provisions regarding a vacancy in the Office of Vice President.

1964

S.J. Res 139 was reported by the Senate Judiciary committee August 13, 1964. It was passed by a voice vote (with nine Senators present) on September 28, 1964, and upon a motion by Sen. Stennis, repassed on September 29 by a 65-0 roll call vote.

The original S.J. Res 139 had contained a 30-day time limit within which the President had to nominate a Vice President. As reported to the Floor, there was no time limit, and S.J. Res 139 Sec. 2 was identical to Sec. 2 of the 25th Amendment.

SENATE DEBATE, September 28, 1964 (pages 22982-23002):

Bayh - p. 22988: Sec. 2 would provide for "a continuity of program and cooperation with the President, and...would enable the voice of the people to be heard.

Ervin - p. 22988: raised the question of different parties controlling the White House and Congress. "...whereas the White House might be controlled by the other political party and, as a result of vesting the power solely in the Congress, there would be friction between the person designated as Vice President and the President, and also a lack of continuity of the administration in case the person selected by the Congress to be Vice President should be a member of the other political party."

Bayh - p. 22988: agrees with Ervin's point -- when present succession law was passed, Rayburn would have been next in line of succession to Truman. "But by the time the law was enacted by Congress, there had been a change, and a Republican, Joseph W. Martin, Jr., was Speaker of the House, so there would have been a change of continuity. The people, by voting in an election, should be the ones to decide a change of policy and a change of direction in our Government, not some illness, some assassin's bullet, or some other unfortunate situation which would remove a President from the scene."

"...we know very well that one of the major problems which could confront us would arise when a name was submitted to Congress, if the Congress were controlled by the opposite party, whether Republican or Democratic. The party in the majority might tend to delay or play politics with the nomination. ...at a time of national crisis the public would not tolerate the playing of politics in the choice of a Vice President."



Monroney - p. 22990: advocated a Second Vice Presidential office.

Fong - p. 22993-4: spoke in favor of the Resolution. Importance of the Vice Presidency -- "The security of our Nation demands that the office of the Vice President should never be left vacant for long..." Noted several reasons why it was a good idea for the President to be the one to nominate the new Vice President.

Bible - p. 22994: speaks in favor of Sec. 2..."confirmation by a majority of Congress...it is virtually assured that the Vice President will continue to be a man in whom the President has full confidence and a man of the same political party and political philosophy. At the same time, congressional confirmation gives the people of the United States a voice through their elected representatives.

Church - p. 22997: preferred to have the President nominate a panel of from two to five candidates so that the role of Congress might be more significant.

Javits - p. 22999: preferred to have the Congress elect the Vice President from among members of Congress and the Cabinet, with the President having veto power.

Hart - p. 22300

Pearson - p. 22300

Passage - p. 23002 (voice vote)

September 29, 1964: Stennis - p. 23019 - called for record vote so that the record will show that two-thirds of the Senate was present and voting for the proposed amendment, with a quorum present.

1965

SENATE HEARINGS - January 29, 1965 - Judiciary Committee (105 pages)

Text of S.J. Res. 1, 6, 15, 25, 28 - pages 1-5

Katzenbach, Hon. Nicholas deB., Attorney General-designate - page 11-12 discusses filling Vice Presidential vacancy. Supports section 2.

President Johnson - Message to Congress, regarding Sec. 2 - page 13-14.

Senator Fong - pages 30-32 - supports S.J. Res. 1 - makes no specific mention of section 2.

Senator Hruska - page 34 - voices full agreement with section 2.

Folsom, Hon. Marion B., Chairman, Committee for Economic Development - pages 46-57. Page 48: advocates joint session of the two Houses, with approval by a majority of all Senators and Representatives present and voting. Joint session corresponds to voting strength in the electoral college, action would be more expeditious, and disagreement between the two Houses would be prevented.



Chart - page 57 - "Occasions on which the President and the Speaker of the House of Representatives or the President pro tempore of the Senate were of opposite parties."

Lewis F. Powell, Jr., President of American Bar Association - page 58-63. Statement regarding filling of the Vice Presidency - page 59, 62.

Herbert Brownell, ABA - discussion of Vice Presidential vacancy - page 64.

Bar Association statement - page 70

Justice Michael Musmanno, Supreme Court of Pennsylvania - page 79-81 - the importance of the Vice Presidency, need to fill the office speedily.

Senator Pearson - page 101-102 - favors section 2.

Senator Ervin - page 104 - supports S.J. Res. 1.

Senator Javits - page 105 - supports legislation.

Senator Thurmond - page 105 - prefers S.J. Res. 25, which would have electoral college choose new Vice President.

SENATE DEBATE - February 19, 1965 (pages 3264-3286)

Dirksen - p. 3265-68: substitute which provides that if the President is removed from office, dies, or leaves the office, the office of President shall devolve on the Vice President -- remaining questions are left for Congress to decide.

Hruska - p. 3269: supports Dirksen substitute

Ervin - p. 3269: opposes Dirksen substitute. "The Dirksen amendment makes no attempt to provide for the election of a Vice President in case a Vice President succeeds to the Office of President, or is removed from office by impeachment."

Bayh - p. 3271: opposes Dirksen substitute because, inter alia, it does not provide for making sure there is always a Vice President, something specifically requested in the President's message.

Dirksen substitute defeated on roll call vote - p. 3272 (12 yeas - 60 nays)

Thurmond substitute: p. 3272

Regarding section 2, provides for voting for the new Vice President by the Electors.if no candidate receives a majority of all electoral votes, then the Senate would choose a new Vice President in accord with the provisions of the 12th Amendment.



Stennis - p. 3273: supports S.J. Res 1.

"Surely no one can question the fact that a constitutional amendment is necessary in order to provide for the selection of a new Vice President whenever there is a vacancy in that office. Congress would clearly be assuming authority not granted by the Constitution if it were to attempt to provide for such a contingency by legislation. And yet, who can question the necessity of insuring that this Nation will never be without both a President and Vice President?"

Bayh - p. 3274: opposes Thurmond substitute -- people of the United States would accept a decision made by Congress but would wonder "what in the world was being perpetrated upon them if we brought in members of the electoral college whom they did not know from Adam." Amendment rejected on a voice vote - p. 3274.

Long - p. 3275: discussion of timing of Congressional action on vice presidential nomination when White House and Congress are controlled by different parties. "To put the matter in context, if Richard Nixon had become President and had sent to Congress the nomination to make Everett Dirksen Vice President, the Democrats in Congress would have been in a position to say, "After all, Everett is a wonderful fellow. I suppose if we have to have a Republican Vice President, we could not find a better man. But, if we can take our time, perhaps Sam Rayburn can become President."

Pastore - p. 3275: raises possibility of a filibuster without any limitation as to time for debate and could defeat the very purpose of this constitutional amendment.

Bayh - p. 3275: true, but very little different from the customary constitutional requirements of advise and consent which the Senate has had over Executive appointments; ...during the period to which the Senator referred, the President was of one party and the Congress was of another, there was very little discussion and refusal on the part of the legislative branch to accept the appointments of the President.

Bass - p. 3275: more problems would exist if when the Senate refused to confirm the President's nomination, one of our "own people" would get the job next.

Bayh - p. p. 3275: "I have more faith in the Congress acting in an emergency in the white heat of publicity, with the American people looking on. The last thing Congress would dare to do would be to become involved in a purely political move."

Pastore, Harris, Ervin, Bayh - p. 3276-77: debate regarding an amendment to require immediate action on Presidential inability or Vice Presidential nominations by the Senate.

Pastore - p. 3277: "We should not have the issue come up and have someone say, "let us refer it to committee," because the committee could hold hearings, and we would accept that as immediate consideration. I want to keep Congress in continuous session on this point. I want 100 Senators on the floor and 435 Representatives on the floor of the House until they have decided this important question, because it is vitally important. I say we must not transact any other business until we have decided this question (on inability and Vice Presidential confirmation).

Bayh - p. 3277: "I do not believe there is any more urgency in deciding this problem than there is when the House and the Senate must decide the question of who the President and Vice President shall be under the terms of the 12th Amendment.



Bayh - p. 3279: amendment requiring immediate action does not apply to section 2 -- "I do not believe we need to grind everything to a halt to decide who the Vice President is."

Bayh/Bass exchange - p. 3281: regarding the immediate action of the Senate on Vice Presidential nominations - Bass favors, Bayh opposes.

Ervin - p. 3281: regarding immediate action: (Bass) is afraid that when the Vice President's office is vacant, Members of the House who are anxious to get their Speaker in the Presidency will "sit still" on the nomination until the President dies. God help this nation if we ever get a House of Representatives, or a Senate, which will wait for a President to die so someone whom they love more than their country will succeed to the Presidency."

Amendment rejected on voice vote - p. 3282.

Vote on final passage - 72 Yeas, 0 Nays

HOUSE REPORT - Judiciary Committee - March 24, 1965 (Rept. 89-203)

Pages 10-12 deal with the Vice Presidency. Sixteen times the U. S. has been without a Vice President for periods totaling 37 years. The Vice Presidency has grown in importance. A Constitutional amendment is needed to legitimize the assumption of office by a Vice President and the selection of a new Vice President in case that office becomes vacant. A person designated by Congress according to previous procedures for the succession cannot carry out the Vice President's responsibilities as President of the Senate. Filling the Vice Presidential vacancy permits the person next in line to become familiar with the problems he will face should he become President.

Additional views - Hutchinson - (p. 17-21)

The language in Section 2 might be construed, under pressure, sometime in the future to call for a joint convention of both Houses as a way to dilute the vote of Senators. The language should be changed to call for a majority vote in EACH House instead of a majority vote of BOTH Houses.

A recorded vote could be required by one-fifth of those present.

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A new president would be under terrible pressure to appoint a new Vice President -- it would be better to provide that the holder of some other office automatically succeed to the Vice Presidency.

"The resolution overlooks the possibility of a Presidential inability at a time when there is no Vice President, which might occur soon after a new President succeeded to office and before he nominated a new Vice President. How could the machinery of section 4 work then? Under the language of that section, it would appear essential that there be a Vice President to trigger the machinery of that section."

Dissenting views - Mathias - (p. 22-23)

Opposes the power of the President to nominate his heir as being in conflict with the basic principles of the Republic, the philosophy of the Constitution which tends to disperse, rather than to centralize, power.



The Presidency has always been considered an elective office,...this will change it.

Congressional confirmation of a vice-presidential nominee would be only a mild check...and a mere formality in a period of national emotional stress ..i.e. November, 1963.

A presidential nominee chooses a running mate who is electable, and accountable to the head of the ticket. A sitting President, may indeed hesitate in seeking a vigorous and aggressive Vice President.

HOUSE DEBATE - p. 7931-7969: April 13, 1965

Horton - p. 7943: "In the case of a vice-presidential vacancy, no more time should elapse in filling that post than now prevails when it is necessary for the Vice President to assume the Presidency. Therefore, we need procedures that are immediate, uncomplicated, and self-implementing...H.J. Res 1 does the job.

Legislative history on separate vote of EACH House - p. 7944: colloquy between Whitener and Celler.

Stafford - p. 7945: spoke in support of the bill, no specific mention of section 2.

Hutchinson - p. 7945-46: argued in favor of resolving the question of Vice Presidential succession via a statute rather than a Constitutional amendment because a statute could be more easily changed if this should become necessary later on.

- p. 7946: more discussion of "in each House" (Hutchinson's proposed language) versus "of both Houses" (amendment language)-response by Celler indicating that the phrase has been interpreted by the Supreme Court to mean "a separate vote in each separate House."

- p. 7946: indicated preference for elevating the Speaker of the House to the Vice Presidency rather than putting the burden on the new President who himself had been so recently elevated because of the death of the President.

- recognized that "some difficulty" might occur if the Speaker were of a different party than the new President, but pointed out that as far as the Constitution is concerned, the only function of the Vice President is to preside over the Senate, all other functions being established by statute. "If there were a situation in which the Vice President and the President could not get along, perhaps even if they were of the same party...I daresay that changes in the statutory functions of the Vice President would be made...and he might be relegated to simply presiding over the Senate."

McClory - p. 7946: stated that there is substantial agreement on section 2.

Mathias - p. 7950: Sec. 2 would change the Vice Presidency from an elective office (as it was established in the Constitution) to an appointive office like ambassador or judge. "Neither the people nor their direct representatives will be choosing the Vice President." The analogy between Sec. 2 and the presidential nominee's selection of a vice-presidential candidate in a national convention are false: a nominee looking for support may have very different motivations from a President choosing the man who might not only be his Vice President but will be his heir apparent, and who under the provisions of this constitutional amendment will have certain powers to depose him.

Donohue - p. 7952: "The resolution before us does offer, after the deepest committee study and extended consultation with recognized experts, an equitable and practical mechanism by which the Vice President can be replaced in case of the vacancy of his office from any cause."



Bennett - p. 7953: spoke in favor of the bill.

Fuqua - p. 7954: spoke in favor of the bill and section 2.

Rodino - p. 7954-55: summarizes section 2 and states, "The requirement of congressional confirmation is an added safeguard that only fully qualified persons of the highest character and national stature would ever be nominated by the President."

Fascell - p. 7955: spoke in favor of the bill.

Randall - p. 7956: "We have listened very carefully to debate in which it is suggested that section 2, permitting the President to name his own Vice President subject only to confirmation of both Houses, would lead to "dynasty." Although our bill contained this section at the time of drafting, we had no such thing in mind, and we have no such thing in mind today. The only reluctance we have at all to this section is the fact that it changes the line of succession and might give the appearance...that it downgrades the House of Representatives and was an affront to the Speaker. Certainly no one intended or does intend now that this section should have that connotation."

Pucinski - p. 7959: offered amendment to strike out section 2 - feared it would make ratification difficult - thinking ahead to possibility of a cabal or palace intrigue - a Vice President and cabinet could declare President unable to discharge his office, elevate the Vice President and choose a new Vice President. Favored the present succession to the Speaker of the House. After a great tragedy, there would not be much debate on the Vice President.

Dingell - p. 7960: supported Pucinski amendment - Section 2 is a slap at the House members and their elected leadership.

"Let me point out that men like Sam Rayburn, the gentleman from Indiana, Charlie Halleck, the gentleman from Massachusetts, Joe Martin, the gentleman from Michigan, Gerry Ford, and men like our present beloved Speaker, the gentleman from Massachusetts, John McCormack, are far more able to assume the high Office of the Presidency than were many of the People who had been selected by the electors of this Nation. They are more able to assume the High Office of the Presidency and to give effective leadership to this Nation than are many who can be selected by the hurdy-gurdy processes, and the hurly-burly processes of a convention and campaign. These are men who have proven their worth by long service to our country, by their experience, by wise decisions in time of stress. These are the men who are most capable and most suited by training and temperament, and who have the respect of their peers, to give to the Government and to the Nation a good government.

...This is a device to permit a President to begin an orderly chain of successors through an appointive device, and to effectively deny the citizens of the Nation to decide who will serve in the highest office of the land.

O'Hara - p. 7961: supports Pucinski amendment because section 2 downgrades the Speaker of the House.

Ichord - p. 7961: supports Pucinski amendment; Speaker of the House should remain in his current position in the line of succession.

Gross - p. 7962: supports Pucinski amendment

(Pucinski amendment defeated on division - 44-140) -- page 7963.

Mathias - p. 7963: offered amendment to substitute a new section 2: when the Vice President or both President and Vice President were disabled or removed from office,



Congress would declare what official would act as President. This official would then act accordingly until disability was removed or a President elected - amendment defeated on voice vote.

Gross - p. 7966: offered amendment calling for a recorded vote in each House of the Vice President's confirmation- defeated on division 92-102, defeated on tellers 115-130.

Gerald Ford - p. 7967: spoke in favor of the resolution.

Roll Call - p. 7968: 368-29 (36 not voting)
Nays included: Buchanan, Dent, Dorn, Fountain, Gonzalez, Gross, Hays, Henderson, Hutchinson, Ichord, Mathias, Passman, Patman, Teague (Tex.), White, Williams.

Conference Report - June 30, 1965 - Rept. 89-564
There was no disagreement regarding section 2.

CONFERENCE REPORT - House - June 30, 1965 - p. 15212-15216 - accepted on voice vote.
No debate.

Senate - July 6, 1965 - p. 15583-15596.
No debate on vice presidential nomination. Conference report accepted 68-5 (five Nays: included Mondale, Tower)