



# The Twenty-Fifth Amendment and Presidential Inability, Part 4: Early Congressional Action

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This Legal Sidebar post is the fourth in a seven-part series that discusses the [Twenty-Fifth Amendment to the Constitution](#). In an effort to ensure that the United States will always possess a functioning President and Vice President, the Twenty-Fifth Amendment seeks to promote the [prompt, orderly, and democratic](#) transfer of executive power. In particular, the Amendment establishes procedures for addressing presidential inability and vacancies that arise in the presidency or vice presidency. Because Congress may play a role in implementing the Twenty-Fifth Amendment, understanding the Amendment's history and drafting may assist Congress in its legislative activities.

This Sidebar post discusses early congressional action with respect to the issues of presidential inability and succession. Other Sidebars in this series discuss the Twenty-Fifth Amendment's [procedures](#); the framing of the [Presidential Succession Clause](#) at the [Constitutional Convention of 1787](#); the [history of presidential succession](#); and the Amendment's [drafting in Congress, implementation, and unresolved issues](#). Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#) and in [several CRS reports](#).

## Early Congressional Action

For more than a century before the Twenty-Fifth Amendment's ratification, Members of Congress periodically [raised concerns](#) about [ambiguities](#) in the Constitution's [Presidential Succession Clause](#). Congressional action on presidential inability acquired new urgency after President Dwight D. Eisenhower [suffered](#) a heart attack in 1955. Representative Emanuel Celler of New York, chairman of the House Judiciary Committee, and Senator Estes Kefauver of Tennessee, chairman of the Senate Judiciary Committee's Subcommittee on Constitutional Amendments, held hearings in the [House](#) and [Senate](#), respectively, on legislation to address presidential inability. The hearings explored several issues, including (1) how, if at all, to define presidential inability; (2) who should initiate the transfer of an incapacitated President's powers and duties to an Acting President; (3) who should determine presidential inability and its termination; and (4) whether an amendment to the Constitution on the subject was necessary or desirable.

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By early 1958, after President Eisenhower suffered a third illness in office, [many Senators had concluded](#) that a constitutional amendment was necessary. However, no proposal was considered on the House or Senate floors.

## The 88<sup>th</sup> Congress: Reaction to the Kennedy Assassination

President John F. Kennedy's assassination in November 1963 prompted [renewed congressional interest](#) in a constitutional amendment addressing presidential succession and inability. Lyndon B. Johnson's succession to the presidency, which left the vice presidency vacant for 14 months, also [highlighted](#) the Constitution's lack of a mechanism for filling vice presidential vacancies. At the time, Johnson's potential successors under the Presidential Succession Act, House Speaker John McCormack and Senate President pro tempore Carl Hayden, were [71 and 86 years of age](#), respectively.

In the 88<sup>th</sup> Congress, Senator Birch Bayh of Indiana [became](#) Chair of the Senate Judiciary Committee's Subcommittee on Constitutional Amendments after Senator Estes Kefauver's death. On December 12, 1963, Senator Bayh [introduced](#) S.J. Res. 139, a joint resolution proposing a constitutional amendment addressing presidential vacancy, vice presidential vacancy, and presidential inability. In statements on the Senate floor, Bayh [emphasized](#) the importance of ensuring that the nation would always possess a President "capable of making rational decisions and rational determinations" in an age of nuclear weapons. S.J. Res. 139, which [drew in part](#) upon earlier proposals and protocols developed by the Eisenhower Administration on the issue of presidential inability, was referred to the Senate Judiciary Committee.

In August 1964, the Senate Judiciary Committee [favorably reported](#) a revised version of the joint resolution. According to the committee's report, the draft amendment was intended to (1) separate constitutional rules on presidential succession, which involves a permanent vacancy, from rules on inability, which may be temporary; (2) specify who should determine presidential inability so that the President's powers and duties could be transferred promptly to the Vice President; (3) clarify that an incapacitated President may "resume the functions of his office upon recovery" if he had self-certified his inability; (4) provide that the Vice President serves only as Acting President during periods of presidential inability; and (5) provide rules for vice presidential succession. The Senate [approved](#) the joint resolution unanimously on September 29, 1964. However, the 88<sup>th</sup> Congress adjourned *sine die*—without a date to reconvene—without the House taking action on the proposed amendment.

## The 89<sup>th</sup> Congress: Committee Action and Initial Passage

On January 4, 1965, one day after the 89<sup>th</sup> Congress convened, President Lyndon B. Johnson [referenced](#) presidential succession and inability in his State of the Union Speech. Johnson noted that "[e]ven the best of government is subject to the worst of hazards." He promised to "propose laws to insure the necessary continuity of leadership should the President become disabled or die." On January 6, Senator Bayh [reintroduced](#) his presidential succession and inability amendment from the 88<sup>th</sup> Congress as S.J. Res. 1, and it was referred to the Senate Judiciary Committee. Representative Celler, again Chairman of the House Judiciary Committee, [introduced](#) identical legislation in the House as H.J. Res. 1.

The next month, the Senate Judiciary Committee [reported S.J. Res. 1 favorably](#) with amendments. According to the committee's report, one of the amendment's [key purposes](#) was to encourage the President to relinquish his powers and duties voluntarily in the event of inability by assuring that he could resume his office upon recovery in such circumstances. The committee [wrote](#) that a constitutional amendment was necessary because of uncertainty over whether Congress could achieve the committee's goals by legislation and a need to ensure presidential successors' legal and political legitimacy.

The House Judiciary Committee [favorably reported](#) H.J. Res. 1 with amendments that designated specific congressional officers to receive presidential inability determinations and specifically allowed the President to resume office upon recovery from a self-declared inability without challenge. The committee also [clarified](#) that only certain Cabinet-level officers should participate in presidential inability determinations unless Congress provided by law for a different body to exercise that function jointly with the Vice President. To prevent Congress from [indefinitely blocking](#) a healthy President from resuming office, the committee [specified](#) a 10-day deadline for Congress to assemble and decide disputes between the President and other relevant officials on the issue of presidential inability.

On February 19, 1965, the Senate [unanimously approved](#) the revised S.J. Res. 1. The House [approved](#) the revised H.J. Res. 1 as a substitute for the Senate joint resolution on April 13, 1965, by a vote of 368 to 29.

Click [here](#) to continue to Part 5.

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