



Office of the Attorney General
Washington, D. C.

FEB 18 1965

Honorable Birch Bayh
United States Senate
Washington, D. C.

Dear Senator Bayh:

I understand that recent newspaper reports have raised some question as to whether I favor the solution for the problem of presidential inability embodied in S.J. Res. 1, or whether I prefer a constitutional amendment which would empower Congress to enact appropriate legislation for determining when inability commences and when it terminates.

Obviously, more than one acceptable solution to the problem of presidential inability is possible. As the President said in his message of January 28, 1965, S.J. Res. 1 represents a carefully considered solution that would responsibly meet the urgent need for action in this area. In addition, it represents a formidable consensus of considered opinion. I have, accordingly, testified twice in recent weeks in support of the solution embodied in S.J. Res. 1 and H.J. Res. 1.

My views on the particular question here involved were stated on January 29, 1965, before the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, as follows:

"In my testimony during the hearings of 1963, I expressed the view that the specific procedures for determining the commencement and termination of the President's inability should not be written into the Constitution, but instead should be left to Congress so that

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the Constitution would not be encumbered by detail. There is, however, overwhelming support for S.J. Res. 1, and widespread sentiment that these procedures should be written into the Constitution. The debate has already gone on much too long. Above all, we should be concerned with substance, not form. It is to the credit of S.J. Res. 1 that it provides for immediate, self-implementing procedures that are not dependent on further Congressional or Presidential action. In addition, it has the advantage that the States, when called upon to ratify the proposed amendment to the Constitution, will know precisely what is intended. In view of these reasons supporting the method adopted by S.J. Res. 1, I see no reason to insist upon the preference I expressed in 1963 and assert no objection on that ground."

I reaffirmed these views with the same explicit language in my prepared statement delivered on February 9, 1965, before the House Judiciary Committee. In view of the above, there should be no question that I support S.J. Res. 1.

Sincerely,
Nicholas Katzenbach
Nicholas Katzenbach
Attorney General

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