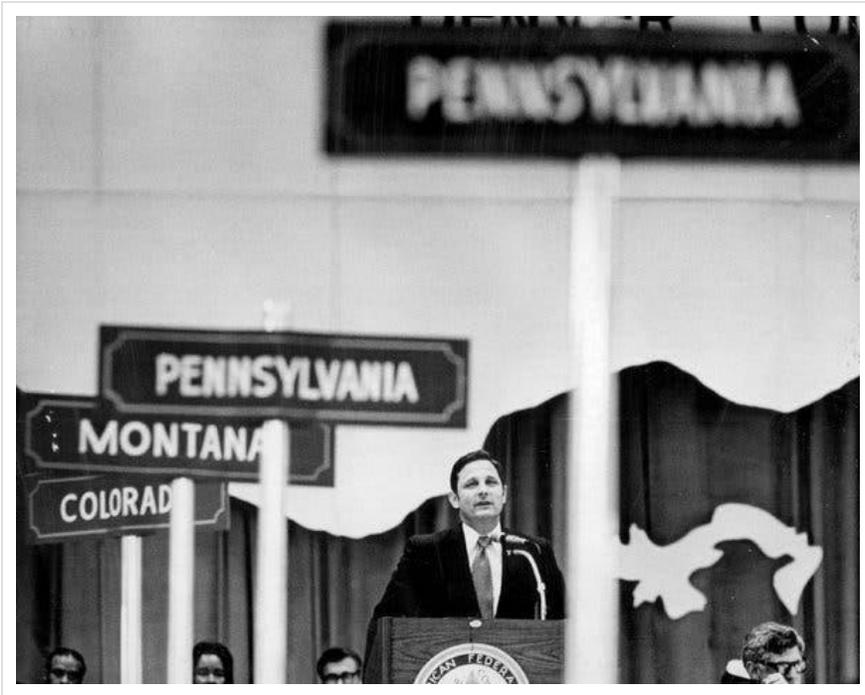


## ***Birch Bayh, 91, Dies; Senator Drove Title IX and 2 Amendments***



Senator Birch Bayh addressed a convention of the American Federation of State, County and Municipal Employees in Denver in 1970. Credit...Bill Wunsch/The Denver Post, via Getty Images

By Adam Clymer, March 14, 2019

Birch Bayh, the liberal former senator from Indiana whose work in Congress had an enduring impact on American life — in protecting women from sex discrimination in education, guaranteeing 18-year-olds the right to vote and providing for the removal of a sitting president — died on Thursday at his home in Easton, Md. He was 91.

The cause was pneumonia, the family said in a statement announcing his death.

Mr. Bayh, a Democrat who served in the Senate from 1963 to 1981, drove some of the most historic legislation of his era. He was [the principal architect](#) of two constitutional amendments: [the 25th](#), which dealt with presidential disability and vice-presidential vacancies, and [the 26th](#), which gave 18-year-olds the vote in both state and federal elections.

He was a chief Senate sponsor of the failed Equal Rights Amendment, which would enshrine in the Constitution protections against discrimination on the basis of sex. He pushed through another amendment that would have abolished the Electoral College and had presidents elected by direct popular vote, lining up strong support in the Senate but failing in the end to muster enough votes to send it to the states for ratification.

And he championed [Title IX](#), drafting the language for that landmark federal legislation, which barred sex discrimination at schools and colleges and greatly expanded sports programs for women.

Title IX brought him his greatest satisfaction, Mr. Bayh said — even though, as he acknowledged, many others were involved in its passage, notably Representatives [Edith Green](#) of Oregon and [Patsy Mink](#) of Hawaii.

Image



Mr. Bayh in 1965, the year a constitutional amendment he had championed, the 25th, was passed by Congress. It gave the president the authority to nominate a new vice president and provided for the removal of a sitting president. Credit...Henry Griffin/Associated Press

“I’d say probably this had a more profound impact on more Americans than anything else I was able to do,” he said in a telephone interview for this obituary in 2010.

Title IX, an amendment to education legislation passed in the 1960s as part of President Lyndon B. Johnson’s Great Society programs, was developed while Congress was considering the [Equal Rights Amendment](#) .

Title IX, which barred discrimination against women by institutions receiving federal aid, was seen as a fast track to equality in education while the broader

amendment made its way more slowly through state legislatures. (The Equal Rights Amendment ultimately died in 1982 after failing to get the approval of 38 state legislatures.)

In 1972, in a speech on the Senate floor, Mr. Bayh said: “One of the great failings of the American educational system is the continuation of corrosive and unjustified discrimination against women. It is clear to me that sex discrimination reaches into all facets of education — admissions, scholarship programs, faculty hiring and promotion, professional staffing and pay scales.”

He added, “Because education provides access to jobs and financial security, discrimination here is doubly destructive to women.”



Mr. Bayh, left, with his friend and colleague Senator Edward M. Kennedy in 1971 while serving together on the Senate Judiciary Committee. Mr. Bayh had been on a small chartered plane with Mr. Kennedy in 1964 when it crashed. Mr. Kennedy broke his back, and Mr. Bayh had pulled him from the wreckage. Credit...Bob Daugherty/Associated Press

Billie Jean King, the former tennis star and a strong advocate for women's equality in sports, said in a statement, "You simply cannot look at the evolution of equality in our nation without acknowledging the contributions and the commitment Senator Bayh made to securing equal rights and opportunities for every American."

Mr. Bayh, a farmer and lawyer, had been speaker of the Indiana General Assembly when he was elected to the Senate in 1962, upsetting the three-term incumbent in that seat, [Homer E. Capehart](#). As a freshman senator Mr. Bayh was made chairman of the Senate Judiciary's [subcommittee on constitutional amendments](#), a post he would hold for almost two decades.

## Lines of Succession

His first successful amendment, the 25th, emerged after President John F. Kennedy was assassinated in 1963 and Johnson, then the vice president, succeeded him to the White House. The transition left no sitting vice president, and the next two in line of succession were the speaker of the House, John W. McCormack, who was 71, and the Senate president pro tempore, Carl Hayden, who was 86.

In 1964, the Senate passed an amendment put forth by Mr. Bayh permitting a president to nominate a new vice president if that office became vacant (as happened with Johnson's succession). But the House, led by Mr. McCormack, would not consider the measure while he remained next in line.

Then, in 1965, after Johnson had been elected and Hubert H. Humphrey had become vice president, both chambers passed the amendment.



Mr. Bayh in 1971, the year another amendment he had sponsored in the Senate, the 26th, was ratified by the states, giving 18-year-olds the vote. Credit...Associated Press

Besides clarifying the line of succession and giving the president the power to nominate a new vice president, the measure explained the process by which the vice president would be named acting president if the president was unable to perform his or her official duties. It also detailed how disputes about a president's ability to discharge official powers would be resolved.

The amendment was ratified by the states in 1967. It was first put to use in 1973, when Spiro T. Agnew resigned as vice president and was succeeded by Gerald R. Ford. It was invoked again in 1974, when President Richard M. Nixon resigned and Ford succeeded him. Ford chose Nelson A. Rockefeller as vice president.

More recently, the prospect of an unprecedented use of the amendment — to remove a sitting president found to be unfit for office — has been raised off and on by critics of President Trump.

Mr. Bayh's championing of voting rights for 18-year-olds led originally, in 1970, to an ordinary law passed in the midst of the Vietnam War. The Supreme Court, however, soon reduced its scope, ruling that Congress could legislate the age of voting only for federal offices. Mr. Bayh and others in Congress responded with the 26th Amendment, subject to the approval of the states.

And the states, facing the onerous prospect of maintaining separate voter rolls for federal and state offices, ratified the amendment in record time — in 10 weeks. It became part of the Constitution on July 1, 1971.

Image



Mr. Bayh in March 1976 while seeking the Democratic presidential nomination. His campaign never caught on, and he withdrew from the race that month. Credit...Charles Harrity/Associated Press

Mr. Bayh was also the sponsor in the Senate of the amendment that would have abolished the Electoral College and provided for the election of the president and vice president by direct popular vote. A similar House measure passed, but in 1970 a joint resolution failed to gain the necessary two-thirds vote in the Senate, coming up short by just a handful of votes despite Mr. Bayh's lobbying on both sides of the aisle.

He also promoted amendments to give the District of Columbia full representation in Congress; declare that Americans had an inalienable right to "a decent environment"; and [lower the minimum-age requirements](#) for serving in the House (to 22 from 25) and the Senate (to 27 from 30).

On the Judiciary Committee, he led the opposition to two of Nixon's Supreme Court nominees, Clement F. Haynsworth and G. Harrold Carswell. In 1969, the Democratic-controlled Senate rejected Judge Haynsworth, in large part as payback for Republicans' filibustering the 1968 nomination of Abe Fortas to be chief justice. Judge Carswell was rejected after it was revealed that he been an acknowledged believer in white supremacy and, as a federal prosecutor in Florida, had transformed a public golf course into a private, whites-only club.

## **A Plane Crash in the Fog**

Perhaps the most dramatic moment in Mr. Bayh's life took place away from the Senate. He was traveling with his friend, Senator Edward M. Kennedy of Massachusetts, to a Democratic convention there on June 19, 1964. Mr. Bayh was scheduled to be the keynote speaker, and Kennedy was to be nominated for

his first full term. (Kennedy had entered the Senate through a special election to fill the seat left vacant when his brother John became president.)

After voting for final passage of the 1964 Civil Rights Act, the two senators rushed to National Airport, where a small chartered plane was ready to take them to Westfield, Mass. But the airport in Massachusetts was fogged in, and the plane crashed when the pilot tried to make an instrument landing.



Mr. Bayh, who championed Title IX, which barred sex discrimination at schools and colleges and greatly expanded sports programs for women, celebrated its 40th anniversary at a gathering in 2012 with Valerie Jarrett, left, a senior adviser to President Barack Obama, and Billie Jean King. Credit...Manuel Balce Cenet/Associated Press

The pilot and a Kennedy aide were killed, and Kennedy's back was broken. Mr. Bayh and his wife, Marvella, were shaken up but managed to climb out of the crashed plane. Fearing a fire from aviation fuel, Mr. Bayh went back to the plane and dragged Kennedy to safety through a hole in the fuselage.

After a brief campaign for president in 1971, which he ended when Marvella Bayh had surgery for breast cancer, Mr. Bayh tried again in 1976. He was one of 12 Democrats who sought the nomination.

Mr. Bayh sought to establish himself as a liberal alternative to the centrist Jimmy Carter, but [Morris K. Udall](#) of Arizona took on that mantle instead and battled, unsuccessfully, against Mr. Carter throughout the primaries.

The Bayh campaign never caught on. It was troubled by poor fund-raising and a style described by Charles Mohr of The New York Times as “juvenile, corny.” His campaign theme song, to the tune of “Hey, Look Me Over,” began: “Hey, look him over, he’s your kind of guy./His first name is Birch and his last name is Bayh.” He dropped out of the race in March.

[Birch Evans Bayh Jr.](#) was born on Jan. 22, 1928, in Terre Haute, Ind., to Leah (Hollingsworth) Bayh, a high school teacher, and [Birch Bayh Sr.](#), a former head basketball coach and athletic director at what is now Indiana State University and a longtime specialist in physical education. Birch Jr. had a younger sister, Mary Alice.



Mr. Bayh in 2006. In 2010, he said in an interview that his greatest satisfaction came from the passage of Title IX, the landmark federal legislation that barred sex discrimination at schools and colleges and greatly expanded sports programs for women. Credit...Michael Conroy/Associated Press

A product of public schools, he graduated from Purdue University in 1951 and from the Indiana University School of Law in 1960. Marvella (Hern) Bayh, his first wife, [died in 1979](#) at 46.

He is survived by a son from that marriage, Birch Evans Bayh III, a former governor of Indiana and senator from that state who is known as Evan; and two grandchildren. He is also survived by his second wife, Katherine (Halpin) Bayh, known as Kitty, and their son, Christopher.

After leaving the Senate, Mr. Bayh was chairman of a commission on presidential disability sponsored by the Miller Center at the University of Virginia and the founding chairman of the [National Institute Against Prejudice and Violence](#), a nonprofit organization.

He also became the subject of a sexual-assault accusation in 2016 by a technology journalist, Xeni Jardin, who said in a series of tweets that he had groped her in the 1990s in the back seat of a car in the presence of unidentified male colleagues of hers. News websites, including Vox, [reported the allegation](#) at the time, but Mr. Bayh did not respond publicly. Ms. Jardin repeated the accusation to The Times on Wednesday, saying that Mr. Bayh had been trying to pull her onto his lap as she got into the car. Reached by email on Thursday, a Bayh family spokesman did not comment on the accusation.

## **Title IX: A Continuing Cause**

Mr. Bayh stayed involved with Title IX long after he was defeated for reelection in 1980 by Dan Quayle, the future vice president under George H. W. Bush. While Title IX was not particularly controversial when enacted, arguments over it deepened through the years. Mr. Bayh spoke publicly on the issue, served on commissions that weighed its impact and acted as a lawyer in lawsuits concerning it while a partner in the Washington office of Venable LLP.

“If I took the whole panoply of inequality and absolute criminal activity against women,” he said in the 2010 interview, “I think the most egregious conduct — where the most damage was done by the way they were treated — was in

education. Many of the premier institutions wouldn't let women in. Others had quotas. Others would let women in but would confine them to the 'women's' curriculum."

He credited his first wife with inspiring him to take up the cause. After meeting Marvella Hern at a national speech contest, which she won, he learned that she had wanted to enter the University of Virginia in 1951 but was told that "women need not apply." (She attended Oklahoma State University instead.)

"So," he said, "I got a cram course on something I knew absolutely nothing about."

His education on the issue led to his memorable speech on the Senate floor two decades later. In it he derided the "stereotype of women as pretty things who go to college to find a husband, go on to graduate school because they want a more interesting husband, and finally marry, have children and never work again."

"The desire of many schools not to waste a 'man's place' on a woman stems from such stereotyped notions," he said. But, he added, "the facts absolutely contradict these myths about the 'weaker sex,' and it is time to change our operating assumptions."