

Birch Evans Bayh, Jr.
January 22, 1928 – March 14, 2019

STATEMENT BY THE FAMILY

Former United States Senator Birch Bayh (D-Ind.), author of the 25th and 26th Amendments to the U.S. Constitution and author of Title IX of the Higher Education Act, and one of the last surviving leaders of a heroic age in American progressive politics, died shortly after midnight at his home in Easton, Md. He was 91. He was surrounded by family. The cause of death was pneumonia, his family said. He is survived by his wife, Katherine “Kitty” Bayh (née Halpin), and two sons: former Indiana senator and governor Birch Evans Bayh III, known as Evan, and Christopher J. Bayh, an attorney and partner at Barnes & Thornburg in Indianapolis. He leaves four grandchildren.

FULL STATEMENT AND BIOGRAPHY

Former United States Senator Birch Bayh (D-Ind.), author of the 25th and 26th Amendments to the U.S. Constitution and author of Title IX of the Higher Education Act, and one of the last surviving leaders of a heroic age in American progressive politics, died shortly after midnight at his home in Easton, Md. He was 91. The cause of death was pneumonia, his family said.

The only person since the Founding Fathers to draft more than one amendment to Constitution, Senator Bayh devoted his life to championing the rights of all Americans – especially women, people of color, young people, and others whom history had too long pushed to the margins.

During his three terms representing Indiana in the Senate (1963-1981), Senator Bayh was a moving force behind some of the most successful and influential congressional legislation of the Twentieth Century. Deeply respected by colleagues in both parties for his idealism and integrity, he was also the architect of pathbreaking bipartisan initiatives that have fueled advances in American higher education, scientific innovation, and economic growth.

Arriving in Washington in the Kennedy years, the 34-year-old senator from Indiana stepped into the vanguard of efforts to secure civil rights for African Americans, co-sponsoring the landmark 1964 Civil Rights Act and 1965 Voting Rights Act. Later, as a member of the Senate Judiciary Committee, he led the successful efforts to defeat President Nixon’s nominations of two segregationist judges, Clement Haynsworth and G. Harrold Carswell, to the Supreme Court. The Leadership Conference on Civil Rights honored Senator Bayh with its highest award for “his unyielding dedication to human equality and civil freedom.”

At his death, Senator Bayh was the last surviving person to have cast a vote in the Senate for the Civil Rights Act of 1964, as well as the last surviving person to have served in the Senate during the administration of President John F. Kennedy, who campaigned for him in Indiana in 1962.

As early as 1965, the young senator began to address the undemocratic nature of the Electoral College, whose elimination he saw as the “next logical outgrowth of the persistent and inevitable movement toward the democratic ideal.” In 1969, Senator Bayh sponsored a constitutional amendment (the “Bayh-Celler Amendment”) that would have abolished the Electoral College in favor of direct popular vote in presidential elections. Despite passing by a large bipartisan margin in the House, and drawing support

from President Nixon, it failed in the Senate due to opposition by legislators from low-population states. Senator Bayh continued to advocate for elimination of the Electoral College until the end of his life.

Strengthening the Constitution

As Chairman of the Constitutional Subcommittee throughout his 18 years in the Senate, Senator Bayh was the principal architect of both the 25th and 26th Amendments. No other American since James Madison has drafted more than one successful constitutional amendment.

In the wake of President Kennedy's assassination, Senator Bayh addressed the Constitution's dangerously vague provisions for Presidential and Vice-Presidential succession. The resulting 25th Amendment (passed by Congress in 1965 and ratified in 1967) created a process for an orderly transition of power in the case of death, disability, or resignation of the President, and a method of selecting a Vice President when a vacancy occurs in that office. It proved its value only a few years later, when it guided the transfer of Presidential and Vice-Presidential power in the wake of President Nixon's resignation.

Senator Bayh's passionate belief in extending the civil rights of young Americans – a cause he had fought for since his earliest days as a state legislator – led him to spearhead efforts to lower the national voting age from 21 to 18. The resulting 26th Amendment was passed and ratified in 1971. At the stroke of a pen, it enfranchised 11 million Americans who previously had been considered old enough to die for their country in war but too young to vote for their president. In the half century since the amendment's passage, it has allowed countless others to participate in the political process.

In addition to these two successful Amendments, Senator Bayh also authored the Equal Rights Amendment, which would have barred discrimination on the basis of sex. It passed Congress but failed to be ratified by two-thirds of the states.

Opening the Gates of Higher Education: Title IX

Senator Bayh co-authored and introduced Title IX of the Higher Education Act of 1965: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Thanks to these simple words, barriers and inequalities that seemed almost insuperable a few decades ago seem inconceivable to the young women of today.

Prior to this legislation, women students were denied equal opportunities under the law in academics; women applicants were routinely denied equal access to medical, law, and other graduate schools; and women athletes were denied equal participation in sports. Similarly, female faculty members were denied equal compensation and promotion. Today's rise of women in all academic disciplines and in sports at every level is, in many ways, a direct outgrowth of the landmark Title IX legislation.

"Senator Bayh wrote one of the most important pieces of civil rights legislation affecting higher education in the latter half of the 20th century," wrote NCAA president Mark Emmert in 2011. "Indeed, I have suggested to numerous audiences that Title IX is the Magna Carta for women in higher education. It has provided that which had previously been denied — opportunity."

"Birch Bayh was one of the most important Americans of the 20th century," said the athlete Billie Jean King, who worked alongside the senator on women's rights issues, in a statement released Thursday when she learned of his death. "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. Birch Bayh was a man of integrity, a leader with unquestionable character and an American treasure.”

Fueling Innovation: The Bayh-Dole Act

Together with his colleague Senator Robert Dole (R-Kans.), Senator Bayh was the author and co-sponsor of the Bayh-Dole Act (1980), a bipartisan initiative that *The Economist* has called “possibly the most inspired piece of legislation to be enacted in America over the past half-century.”

Bayh-Dole enables universities and businesses to gain ownership of federally funded inventions so they can be developed into new products, jobs, and businesses through partnerships with U.S. companies, thus benefiting the taxpaying public. It has energized the free-enterprise system, helping launch thousands of new high-tech companies; contributed hundreds of billions of dollars to the U.S. economy (by one estimate, \$1.18 trillion between 1996 and 2013 alone); created millions of new, high-paying jobs; and aided the development of dozens of new drugs and vaccines. The law is considered the international best practice for research-and-development partnerships between the public and private sectors.

Before the Act’s passage, despite billions of dollars invested in public-sector research each year, resulting discoveries were taken away from inventors by the federal government. Some 30,000 patents sat idle; not a single new drug had been developed while the government owned the invention. Bayh-Dole allowed our universities and federal laboratories to partner with American industry, not only unleashing the development of new inventions, but also spawning entirely new industries, such as biotechnology.

Other Legislative Achievements

- **Alternative fuels:** Almost half a century ago, with the country reeling from the 1973 oil crisis, Senator Bayh envisioned a future of clean, inexpensive alternative fuels and worked to initiate federal support for research and development of ethanol and other alcohol-based energy sources. As the first chairman of the National Alcohol Fuels Commission, he created the framework for grants, contracts, and tax incentives for alcohol fuel production. The United States now produces most of the world’s ethanol fuel (more than 16 billion liquid gallons annually), and nearly all of the gasoline sold in this country is blended with ethanol.
- **Disaster relief/FEMA:** After a lethal tornado swept through Indiana in 1965, Senator Bayh sponsored legislation granting emergency federal loans to disaster victims. In the succeeding years, he pushed to expand such assistance, laying the foundations for the Federal Emergency Management Agency (FEMA), which has rebuilt dozens of stricken American communities in recent decades. As chairman of the Special Subcommittee on Disaster Relief, he led the effort to unify disaster relief activities, establish communication centers, form emergency support teams, and secure federal aid for loans and reconstruction, as well as aid to farmers. Senator Bayh’s work culminated in the Disaster Relief Act of 1970, which he crafted and introduced and which was signed into law by President Nixon. Successor legislation established FEMA in 1979.
- **Infrastructure:** As chairman of the Transportation Subcommittee of the Senate Appropriations Committee in 1972, he directed the first funds toward a new subway system for the Washington, D.C., area, soon to become known as Metro.

- **Justice:** As chairman of the Select Committee on Intelligence in the 1970s, Senator Bayh drafted the Foreign Intelligence Surveillance Act, protecting citizens from eavesdropping by the federal government while strengthening the nation's intelligence-gathering capability. He also worked to reform the military justice system, defending the rights of the men and women who defend our country. Senator Bayh was the architect of the Juvenile Justice Act, which mandates the separation of juvenile offenders from adult prison populations; the legislation also established pivotal programs for the rehabilitation of juveniles.

* * *

Birch Bayh's Life and Career

Birch Evans Bayh, Jr., was born on January 22, 1928, in Terre Haute, Indiana. He grew up on his grandparents' farm and served in the U.S. Army in Europe just after World War II, from 1946 to 1948. While stationed with the occupying forces, he taught struggling German families to grow their own vegetables from seeds that he had ordered from home. A brief profile in *Reader's Digest* of the 20-year-old private, headlined "G.I. Ambassador," gave Bayh his first moment in the national spotlight.

After his military service, Bayh graduated from Purdue University with a degree in Agriculture and later earned a J.D. from Indiana University's School of Law. He excelled in sports, competing as a Golden Gloves boxer in college and taking part in two Major League Baseball tryouts before launching his political career.

In 1952, Bayh married Marvella Hern, a 19-year-old Oklahoman whom he had met when she won first place in a nationwide "rural youth speech contest" in which he was also competing. Although also a straight-A student and class president, she had been denied admission to the University of Virginia because she was a woman. Bayh often said that this was a major influence on his fight for women's equal rights in education. Marvella Bayh died of cancer in 1979, at the age of 46. In 1981, Senator Bayh married Katherine "Kitty" Halpin, a news executive, who survives him.

Bayh was elected to the Indiana General Assembly at the age of 26 and was elected Speaker at the age of 30. In 1962, at the age of 34, he was elected to the U.S. Senate. That narrow victory, over a much older three-term incumbent, was propelled by tireless grassroots campaigning, by the support of the popular President Kennedy, and by a relentlessly catchy jingle, "Hey, Look Him Over!" (to a tune borrowed from the musical "Wildcat") that taught voters to pronounce his unusual last name, rhyming "our kind of guy" with "last name is Bayh." Senator Bayh's early mentors in Washington included both Vice President Lyndon Johnson, a Democrat, and Senate Minority Leader Everett Dirksen, a Republican — a fact he often pointed to in later years as a relic of a different, less partisan era in American politics.

For more than four decades, throughout Bayh's entire career in government, he continued to manage the growing of corn and soybeans on his family farm in Shirkieville, Indiana. Of all the public honors he received in the course of his life, he was perhaps proudest of his victory in the 1944 Campbell Soup Tomato Growing Contest, a statewide competition for the best and largest tomato in Indiana.

In 1976, Senator Bayh sought the Democratic presidential nomination. Depicted as too liberal in his support of women's rights, abortion rights, and gun control, he withdrew from the race after a poor showing in the Iowa caucus behind the eventual nominee, Jimmy Carter. During his brief bid, Senator Bayh became the first major-party presidential candidate to court LGBTQ voters, attending a campaign event in a New York City gay bar — and drawing ridicule from the mainstream press for doing so.

With his boyish good looks, unpretentious manner, and cheerful demeanor, Senator Bayh won friends across the political spectrum. He was a star of the Senate baseball team in the 1960s and 1970s, and was known at Washington dinner parties for sitting down at the piano at the end of the evening.

Senator Bayh formed a special bond with Senator Edward Kennedy (D-Mass.) after a shared tragedy in June 1964. The two men were in a small plane on their way to a political convention — together with Marvella Bayh, Kennedy aide Ed Moss, and pilot Ed Zimny — when they crashed in a storm. Moss and Zimny were killed, and Kennedy left trapped in the wreckage with a fractured spine, broken ribs, and collapsed lung. Bayh rescued his friend from the plane and, together with Marvella, went to flag down a passing car for help. “The plane could have exploded into a fireball at any moment, and Birch was risking his own life to try to save those of us still in the plane,” Kennedy later wrote. “He showed courage and compassion that I’ll never forget.”

After leaving the Senate in 1981, Senator Bayh continued to fight for the principles he had championed there. From 1984 to 1994, he was the founding chairman of the National Institute Against Prejudice and Violence, which laid groundwork for federal and state hate-crime laws across the country. He became a partner at the law firm of Venable LLP and continued working tirelessly for causes like Electoral College reform and the defense of Title IX protections. In 2006, after retiring to the Eastern Shore of Maryland, he became a senior fellow at Washington College’s Starr Center for the Study of the American Experience, where he mentored and taught undergraduates.

In addition to his wife Kitty, he is survived by two sons: former Indiana senator and governor Birch Evans Bayh III, known as Evan, and Christopher J. Bayh, an attorney and partner at Barnes & Thornburg in Indianapolis. He leaves four grandchildren.