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Presidential Disability: An Overview

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Summary

In the original document, Article II, section 1, clause 6 of the Constitution provided that, in the event of the President's "Inability to discharge the Powers and Duties" of his office, "the Same shall devolve on the Vice President." This language was superseded by the 25th Amendment to the Constitution, ratified in 1967. Although there were several instances of severe presidential disability between 1789 and 1967, no Vice President sought to assume the chief executive's powers and duties during this period. Sections 3 and 4 of the 25th Amendment currently govern cases of presidential disability. Under section 3, if the President declares (in a written declaration to the Speaker of the House of Representatives and the President *pro tempore* of the Senate) that he is disabled for any reason, the Vice President assumes his powers and duties as Acting President. Section 4 provides for cases in which the President may not be able to transmit a disability declaration. In these circumstances, the Vice President and the cabinet or "such other body as Congress may by law provide" (a disability review body) can, by majority vote, declare the President to be disabled. It also empowers the President to declare his disability ended, again by written declaration, and resume his powers and duties. If, however, the Vice President and a majority of either the cabinet or a disability review body, rule otherwise, then Congress decides the issue. A vote of two-thirds of both houses within 21 days is required to determine the President to be disabled and continue the disability; otherwise, he resumes his powers and duties. Neither section 3 nor section 4 has been invoked since the amendment was ratified. This report will be updated if events warrant. For information on sections 1 and 2 of the 25th Amendment, which provide for presidential succession, consult *Presidential and Vice Presidential Succession*, CRS Report 98-731 GOV.

Constitutional Provisions: 1789-1967

The Constitution's original provisions governing presidential disability or inability were inserted in the document late in the proceedings of the Philadelphia Convention of 1787, where the delegates approved the formula that appears in Article II, section 1:

> In Case of the Removal of the President from Office, or of his Death, Resignation, or *Inability to discharge the Powers and Duties of the said Office*, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or *Inability*, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, *until the Disability be removed*, or a President shall be elected [emphases added].

Constitutional historians note that the clause does not define disability or differentiate between it and inability, although contemporary dictionaries characterized the former as a complete lack of power, and the latter as lack of ability to do a certain thing.[1] Further, while specifying *who* acts as President in the event of presidential disability (the Vice President), the clause provides no guidance on how it would be invoked, by whom, or for what length of time, or on how a disability could be terminated or rescinded.[2]

The ambiguities inherent in the disability section may have contributed to its dormancy over the long period that elapsed between adoption of the Constitution and ratification of the 25th Amendment. During these 178 years, eight Presidents died in office and were succeeded by their Vice Presidents without serious incident, notwithstanding controversy as to whether the Vice President *acted* as President, or *became* the President under such circumstances.[3] In that same period, however, a number of Presidents suffered from disabling illnesses for varying periods, but no Vice President ever became Acting President during any one of these episodes. For instance, President George Washington was disabled for a month in 1790 by a near-fatal case of pneumonia. James A. Garfield lingered for 79 days after being shot by an assassin in 1881. Before Garfield's death, various plans were suggested for Vice President Chester A. Arthur to assume the powers and duties of the presidency, but none progressed beyond the talking stage. In 1893, Grover Cleveland secretly underwent two cancer surgeries performed on a yacht cruising Long Island Sound, and subsequently spent two months recuperating in Massachusetts.

Presidential disabilities of the 20th century are perhaps better known. On October 2, 1919, President Woodrow Wilson suffered a stroke from which he never fully recovered during the remainder of his term. The gravity of his illness was concealed from the press and public, and access to the President was strictly controlled. Vice President Thomas Marshall was excluded from political or executive duties throughout the period, and Secretary of State James Lansing was forced to resign when Wilson learned that he had convened the cabinet informally to deal with pressing questions.[4] Although Wilson's health improved, several measures were introduced in the 66th Congress providing for a

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[1] John D. Feerick, *From Failing Hands: The Story of Presidential Succession* (New York: Fordham University Press, 1965), pp. 44, 49.

[2] Ruth C. Silva, *Presidential Succession* (New York: Greenwood Press, 1968 (c. 1961)), pp. 85-110.

[3] For information on precedents established by the first vice presidential succession, see U.S. Library of Congress, Congressional Research Service, *Presidential and Vice Presidential Succession*, by Thomas H. Neale, CRS Report 98-731 GOV (Washington, Aug. 21, 1998).

[4] Michael Nelson and Margaret Jane Wyszomirski, "Removal of the President," in *Guide to the Presidency* , vol. 1 (Washington: Congressional Quarterly Inc., 1996), pp. 453-454.

disability declaration, while some argued that the Supreme Court should issue a writ of *mandamus*, directing the Vice President to act as President. Grave doubts as to the constitutionality of such measures deterred any concrete action, however.[5] Some historians assert that President Franklin D. Roosevelt was increasingly incapacitated by cardiovascular disease in the last years of his presidency, but, as with Wilson, this knowledge was suppressed due to wartime conditions.[6] Finally, President Dwight Eisenhower was incapacitated to some degree on three occasions: he was hospitalized for seven weeks in 1955, following a heart attack; in 1956, he underwent surgery to remove a benign intestinal obstruction; and, finally, in 1957, he suffered a mild stroke, but returned to work in less than a week.[7] To deal with these instances, Eisenhower reached an informal agreement with Vice President Nixon, under which the latter conducted most cabinet meetings and routine executive business during the chief executive's illness, but deferred to Eisenhower on substantive policy questions.[8]

The 25th Amendment: Conception, Passage, and Ratification

Following the death of President Roosevelt in 1945, the question of presidential succession was revisited, leading to the Presidential Succession Act of 1947 (61 Stat. 380), which inserted the Speaker of the House and the President *pro tempore* of the Senate into the line of succession after the Vice President, but ahead of the cabinet. President Eisenhower's illnesses stimulated further interest in the disability question, but it was the shocking assassination of President John F. Kennedy in 1963 that provided the catalyst for congressional action. Following the President's death, the nation was confronted with a lengthy vacancy in the vice presidency and concerns over the health of the new chief executive and his potential successors.[9] In this context, Senator Birch Bayh, Chairman of the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee, sought to remedy both the succession and the disability questions with a constitutional amendment, S.J. Res. 1, introduced in the 89th Congress on January 6, 1965. The measure, which enjoyed bipartisan support, was reported favorably by the Senate Subcommittee on Constitutional Amendments on February 1, 1965, and by the full Judiciary Committee on February 10. The primary objection in Senate floor debate concerned its detailed procedures for resolving presidential disability disputes. Some Senators questioned the wisdom of including such a level of detail within the amendment, preferring statutes that would be authorized by the amendment. Supporters of the Bayh

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[5]Silva, *Presidential Succession*, pp. 64-66.

[6]Kenneth R. Crispell and Carlos F. Gomez, *Hidden Illness in the White House* (Durham, NC: Duke University Press, 1988), pp. 74-85, 120-159. Although Roosevelt suffered from cardiovascular disease, the cause of death was cerebral hemorrhage.

[7]Feerick, *The Twenty-Fifth Amendment*, pp. 17-23.

[8]*Ibid*.

[9]The vice presidency was vacant for 14 months following the Kennedy assassination. Vice President Lyndon B. Johnson had suffered a heart attack in 1955; House Speaker John W. McCormack and Senate President *pro tempore* Carl T. Hayden were, respectively, 71 and 86 years old.

proposal prevailed, and the resolution was adopted on February 19, with only minor technical amendments, by a vote of 72 to 0.[10]

The House of Representatives began consideration of its version, H.J. Res. 1, with hearings before the full Judiciary Committee in early 1965. Here, again, debate centered on procedures by which a President could be declared disabled, and on subsequent disputes that might arise as to whether—and when—the period of disability was over. The committee reported its version of the amendment, incorporating changes indicated by these concerns, on March 24. The House passed its own amended version of the proposal on April 13, voting to substitute it for the Senate form. Conferees required two months to resolve differences between the competing amendments before the House approved the conference report by a voice vote on June 30, and the Senate concurred on July 6 by a vote of 68 to 5.[11]

The proposed amendment was circulated to the states on July 7, 1965. Although it enjoyed widespread support, state legislatures were not able to move rapidly, since many had adjourned for the year by the time the proposal was transmitted. Ratification by the necessary 38 states (three-fourths, as provided by the Constitution) required 19 months, and was completed on February 10, 1967, at which time the 25th Amendment became an operative part of the Constitution.

Sections 3 and 4: Procedures and Discussion

Sections 3 and 4 of the 25th Amendment establish procedures concerning disability of the President.[12] Section 3 is activated when the President transmits a written declaration that he is "unable to discharge the powers and duties of his office" to the President *pro tempore* of the Senate and the Speaker of the House of Representatives, thus providing for *voluntary* implementation of disability procedures. The Vice President then assumes these powers and duties as Acting President, and continues to serve until the President transmits another declaration to the same congressional officers stating that he is no longer disabled. Although nothing prohibits the President from stating a time certain for recovery of his powers and duties, the language of the amendment appears to *require* a revocation message to end the disability. The most obvious use of section 3 would be in the event a President was being treated for a serious illness, or, undergoing any sort of medical procedure that required anesthesia. In these circumstances, the Vice President, as Acting President, would temporarily exercise all the chief executive's powers; he would, however, lose his position as President of the Senate, as provided in the Constitution.[13] Opinions differ as to whether section 3 has ever been implemented. On July 13, 1985,

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[10] "Constitutional Amendment on Presidency," *Congressional Quarterly Almanac, 89th Congress, 1st Session, 1965*, vol. 21 (Washington: Congressional Quarterly Service, 1966), p. 578.

[11] *Ibid.*, pp. 580-581.

[12] Section 1 of the Amendment provides that the Vice President becomes President when the chief executive is removed from office, dies, or resigns. Section 2 provides that when the Vice Presidency is vacant, the President nominates a replacement, subject to confirmation by a majority vote of both houses of Congress.

[13] "The Senate shall chuse ... a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States." (Constitution, Article 1, section 3.

President Ronald Reagan informally transferred presidential powers to Vice President George Bush for several hours while he was undergoing cancer surgery. Although his actions generally followed procedures established in section 3, he specifically refrained from invoking the 25th Amendment, declining to set a precedent that might bind future Presidents.[14] Some experts, however, insist that President Reagan did, in fact, trigger section 3 by his actions, notwithstanding his own assertions.[15] Another unresolved question concerning this section is whether it could be appropriately used to cover a *political* disability on the part of a President. Succession and disability scholar John D. Feerick notes that President Richard Nixon was urged to step aside under section 3 in 1973 and 1974, in order to devote his full attention to defending himself against the Watergate-related charges that eventually led to his resignation.[16]

Section 4 is activated when either the Vice President and a majority of the cabinet, or the Vice President and a majority of "such other body as Congress by law may provide" (sometimes referred to as a disability review body), declare that the President is unable to discharge the powers and duties of his office. This constitutes *contingent* implementation of disability procedures, a process that could be initiated if the President were unable (or unwilling) to declare himself disabled. Section 4 further provides that the President resumes office when he transmits, to the President *pro tempore* and the Speaker, a declaration that no disability exists. If, however, the Vice President and a majority of the Cabinet, or the Vice President and a majority of the disability review body (if one has been established by law), declare to the contrary within four days of the President's declaration, Congress must decide the issue. If it is not in session, it must reassemble within 48 hours to consider the question, and it must render a decision within 21 calendar days. Only if a two-thirds majority of *both* houses of Congress votes to certify that the President is disabled does the Vice President continue as Acting President; otherwise, the President resumes his powers and duties.

Section 4 is intended, as one source puts it, to provide for "a sick president who refuses or is unable to confront his disability. Put another way, this section was basically framed to apply to a president who is disabled but unwilling to step aside."[17] Another study suggests, "it is the type of provision which theoretically might have been used in the last months of the Wilson and the Franklin D. Roosevelt presidencies."[18] Several of its "fine print" provisions deserve comment. First, it should be noted that the Vice President is the indispensable actor in section 4: it cannot be invoked without his agreement.

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[14] "Letter to the President Pro Tempore of the Senate and the Speaker of the House on the Discharge of the President's Powers and Duties During His Surgery, July 13, 1985," *Public Papers of the Presidents of the United States, Ronald Reagan, 1985, Book II* (Washington: GPO, 1988), p. 919; Kenneth W. Thompson, "Presidential Disability, Succession, and the Twenty-fifth Amendment," in James P. Pfiffner and R. Gordon Hoxie, eds., *The Presidency in Transition* (New York: Center for the Study of the Presidency, 1989), pp. 434-435.

[15] Feerick, *The Twenty Fifth Amendment*, pp. xvi-xvii.

[16] *Ibid.*, p. 198.

[17] White Burkett Miller Center, Commission on Presidential Disability and the 25th Amendment, *Report of the Miller Center Commission on Presidential Disability and the Twenty-fifth Amendment* (Charlottesville, VA: The Center, 1988), p. 16.

[18] Thompson, "Presidential Disability, Succession, and the Twenty-fifth Amendment," p. 441.

Second, the amendment's wording, "the principal officers of the executive departments or such other body as Congress may by law provide" refers in the former case to the cabinet, but only to those members who are the heads of departments, thus excluding such cabinet-rank officials as the U.S. Trade Representative and the Ambassador to the United Nations. According to Feerick, the legislative history is unclear as to whether *acting* department heads were intended to participate in a disability decision.[19] Third, the use of the construction either/or when referring to the cabinet and the "other body" strongly indicates that, if Congress were to establish such a body, it would supplant the cabinet for the purposes of invoking section 4. Finally, the language of the amendment clearly requires the approval of *both* the Vice President *and* a majority of the cabinet, or, alternatively, the Vice President and the "other body," to declare a section 4 presidential disability. Other points concern the disability review body itself: the form it would take (Feerick suggests that Congress could designate itself, expand or restrict membership of the cabinet, or combine the cabinet with other officials);[20] the legislative vehicle used to create one (either a joint resolution or a bill, both requiring presidential approval, since the body must be created "by law"); and whether it would be appropriate for Congress to establish one in advance of an anticipated disability.

Section 4's complexity, and its potential for an involuntary finding of presidential disability, has troubled some observers: "... during consideration of the 25th Amendment, Congress considered a number of possible horror story scenarios."[21] It can be argued that the section provides opportunities for political mischief by a disloyal Vice President and cabinet, or congressional usurpation of executive prerogatives. It can be further suggested that Section 4, like the impeachment process, is so powerful, and so fraught with constitutional and political implications, that it would never be used, except in the most compelling circumstances, since its invocation might well precipitate, *ipso facto*, a constitutional crisis. On the other hand, Senator Bayh and other crafters of the amendment included powerful checks to deter abuse: the President's ability to challenge a section 4 declaration of disability; the requirement of a timely decision by Congress; and, ultimately, the need for a two thirds vote in both houses to sustain a section 4 finding of disability by the Vice President and the cabinet or disability review body. As one study concluded, "Because the Amendment deals with unpredictable human frailties, it is not a perfect solution, but few exist in constitutional history. The task is to make the most of what the Amendment encompasses. Success depends on the good judgment and good sense of our leaders and the citizenry."[22]

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[19]Feerick, *The Twenty-Fifth Amendment*, pp. 202-203.

[20]*Ibid.*, p. 206.

[21]Miller Center, *Report of the Miller Center Commission*, p. 3.

[22]Thompson, "Presidential Disability, Succession and the Twenty-fifth Amendment," p. 443.

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