

PRESIDENTIAL VACANCY, DISABILITY, AND INABILITY

TWENTY-FIFTH AMENDMENT

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SECTION 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SECTION 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SECTION 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the

Vice President and a majority of either the principle officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

PRESIDENTIAL SUCCESSION

The Twenty-fifth Amendment was an effort to resolve some of the continuing issues revolving about the office of the President; that is, what happens upon the death, removal, or resignation of the President and what is the course to follow if for some reason the President becomes disabled to such a degree that he cannot fulfill his responsibilities? The practice had been well established that the Vice President became President upon the death of the President, as had happened eight times in our history. Presumably, the Vice President would become President upon the removal of the President from office. Whether the Vice President would become acting President when the President became unable to carry on and whether the President could resume his office upon his recovering his ability were two questions that had divided scholars and experts. Also, seven Vice Presidents had died in office and one had resigned, so that for some twenty per cent of United States history there had been no Vice President to step up. But the seemingly most insoluble problem was that of presidential inability—Garfield lying in a coma for eighty days before succumbing to the effects of

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an assassin's bullet, Wilson an invalid for the last eighteen months of his term, the result of a stroke—with its unanswered questions: who was to determine the existence of an inability, how was the matter to be handled if the President sought to continue, in what manner should the Vice President act, would he be acting President or President, what was to happen if the President recovered. Congress finally proposed this Amendment to the States in the aftermath of President Kennedy's assassination, with the Vice Presidency vacant and a President who had previously had a heart attack.

This Amendment saw multiple use during the 1970s and resulted for the first time in our history in the accession to the Presidency and Vice-Presidency of two men who had not faced the voters in a national election. First, Vice President Spiro Agnew resigned on October 10, 1973, and President Nixon nominated Gerald R. Ford of Michigan to succeed him, following the procedures of § 2 of the Amendment for the first time. Hearings were held upon the nomination by the Senate Rules Committee and the House Judiciary Committee, both Houses thereafter confirmed the nomination, and the new Vice President took the oath of office December 6, 1973. Second, President Richard M. Nixon resigned his office August 9, 1974, and Vice President Ford immediately succeeded to the office and took the presidential oath of office at noon of the same day. Third, again following § 2 of the Amendment, President Ford nominated Nelson A. Rockefeller of New York to be Vice President; on August 20, 1974, hearings were held in both Houses, confirmation voted and Mr. Rockefeller took the oath of office December 19, 1974.¹

¹For the legislative history, *see* S. Rep. No. 66, 89th Cong., 1st Sess. (1965); H.R. Rep. No. 203, 89th Cong., 1st Sess. (1965); H.R. Rep. No. 564, 89th Cong., 1st Sess. (1965). For an account of the history of the succession problem, *see* R. SILVA, *PRESIDENTIAL SUCCESSION* (1951).