

The Twenty-Second Amendment has yet to be tested or applied. Commentary suggests, however, that a number of issues could be raised as to the Amendment's meaning and application, especially in relation to the Twelfth Amendment. By its terms, the Twenty-Second Amendment bars only the election of two-term Presidents, and this prohibition would not prevent someone who had twice been elected President from succeeding to the office after having been elected or appointed Vice President. Broader language providing that no such person "shall be chosen or serve as President . . . or be eligible to hold the office" was rejected in favor of the Amendment's ban merely on election.<sup>2</sup> Whether a two-term President could be elected or appointed Vice President depends upon the meaning of the Twelfth Amendment, which provides that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President." Is someone prohibited by the Twenty-Second Amendment from being "elected" to the office of President thereby "constitutionally ineligible to the office"? Note also that neither Amendment addresses the eligibility of a former two-term President to serve as Speaker of the House or as one of the other officers who could serve as President through operation of the Succession Act.<sup>3</sup>

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<sup>2</sup> H.J. Res. 27, 80th Cong., 1st Sess. (1947) (as introduced). As the House Judiciary Committee reported the measure, it would have made the covered category of former presidents "ineligible to hold the office of President." H.R. REP. NO. 17, 80th Cong., 1st Sess. at 1 (1947).

<sup>3</sup> 3 U.S.C. § 19. For analysis of the Twenty-Second Amendment and its applicability to the various scenarios under which a person can succeed to the office, see Bruce G. Peabody and Scott E. Gant, *The Twice and Future President: Constitutional Interstices and the Twenty-Second Amendment*, 83 MINN. L. REV. 565 (1999).