

= Twenty @-@ fifth Amendment to the United States Constitution =

The Twenty @-@ fifth Amendment (Amendment XXV) to the United States Constitution deals with succession to the Presidency and establishes procedures both for filling a vacancy in the office of the Vice President , as well as responding to Presidential disabilities . It supersedes the ambiguous wording of Article II , Section 1 , Clause 6 of the Constitution , which does not expressly state whether the Vice President becomes the President or Acting President if the President dies , resigns , is removed from office or is otherwise unable to discharge the powers of the presidency . The Twenty @-@ fifth Amendment was adopted on February 10 , 1967 .

= = Text = =

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 principal 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 .

= = Background = =

Article II , Section 1 , Clause 6 of the Constitution states :

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 .

That clause was unclear regarding Presidential succession and inability ; it did not state who had the power to declare a President incapacitated . Also , it did not provide a mechanism for filling a Vice Presidential vacancy prior to the next Presidential election . The vagueness of this clause caused difficulties many times before the Twenty @-@ fifth Amendment 's adoption :

In 1841 , President William Henry Harrison became the first U.S. President to die in office .

Representative John Williams had previously suggested that the Vice President should become Acting President upon the death of the President . John Tyler asserted that he had succeeded to the presidency , as opposed to only obtaining its powers and duties . He also declined to acknowledge documents referring to him as " Acting President " . Although he felt his vice presidential oath negated the need for the presidential oath , Tyler was persuaded that being formally sworn @-@ in would clear up any doubts about his right to the office . Having done so , he then moved into the White House and assumed full presidential powers . Tyler 's claim was not formally challenged , and both houses of Congress adopted a resolution confirming that Tyler was the tenth President of the United States , without any qualifiers . The precedent of full succession was thus established . This became known as the " Tyler Precedent " .

There had been occasions when a President was incapacitated . For example , following Woodrow Wilson 's stroke no one officially assumed the Presidential powers and duties , in part because the First Lady , Edith Wilson , together with the White House Physician , Cary T. Grayson , covered up President Wilson 's condition .

The office of Vice President had been vacant sixteen times due to the death or resignation of the Vice President or his succession to the presidency . For example , there was no Vice President for nearly four years after the death of Franklin D. Roosevelt .

President Dwight D. Eisenhower attempted to clarify procedures through a signed agreement with Vice President Richard Nixon , drafted by Attorney General Herbert Brownell Jr .. However , this agreement did not have the authority of a constitutional amendment .

All of these incidents made it evident that clearer guidelines were needed . There were two proposals for providing those guidelines .

= = = Keating ? Kefauver proposal = = =

In 1963 , Senator Kenneth Keating of New York proposed a Constitutional amendment which would have enabled Congress to enact legislation providing for how to determine when a President is disabled , rather than , as the Twenty @-@ fifth Amendment does , having the Constitution so provide . This proposal was based upon a recommendation of the American Bar Association in 1960 .

The text of the proposal read :

In case of the removal of the President from office or of his death or resignation , the said office shall devolve on the Vice President . In case of the inability of the President to discharge the powers and duties of the said office , the said powers and duties shall devolve on the Vice President , until the inability be removed . 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 be President , or , in case of inability , act as President , and such officer shall be or act as President accordingly , until a President shall be elected or , in case of inability , until the inability shall be earlier removed . The commencement and termination of any inability shall be determined by such method as Congress shall by law provide .

Senators raised concerns that the Congress could either abuse such authority or neglect to enact any such legislation after the adoption of this proposal . Tennessee Senator Estes Kefauver (the Chairman of the Senate Judiciary Committee 's Subcommittee on Constitutional Amendments) , a long @-@ time advocate for addressing the disability question , spearheaded the effort until he died of a heart attack on August 10 , 1963 . Senator Keating was defeated in the 1964 election , but Senator Roman Hruska , a Republican from Nebraska , took up Keating 's objections as a new member of the Subcommittee on Constitutional Amendments .

= = = Kennedy assassination = = =

The assassination of President John F. Kennedy showed the need for a clear way to determine presidential succession in the context of the Cold War . The new President , Lyndon B. Johnson , had once suffered a heart attack , and the next two people in line for the presidency were the 71

year old Speaker of the House John McCormack , and the 86 year old Senate President pro tempore Carl Hayden . Senator Birch Bayh succeeded Kefauver as Chairman of the Subcommittee on Constitutional Amendments and set about advocating for a detailed amendment dealing with presidential succession .

= = = Bayh ? Celler proposal = = =

On January 6 , 1965 , Senator Birch Bayh proposed S. J. Res. 1 in the Senate and Representative Emanuel Celler (Chairman of the House Judiciary Committee) proposed H. J. Res. 1 in the House of Representatives what became the Twenty @-@ fifth Amendment . Their proposal specified the process by which a President could be declared disabled , thereby making the Vice President an Acting President , and how the President could regain the powers of his office . Also , their proposal provided a way to fill a vacancy in the office of Vice President before the next presidential election . This was as opposed to the Keating ? Kefauver proposal , which neither provided for filling a vacancy in the office of Vice President prior to the next presidential election nor provided a process for determining presidential disability . In 1964 , the American Bar Association endorsed the type of proposal which Bayh and Celler advocated . On January 28 , 1965 , President Johnson endorsed S. J. Res. 1 in a statement to Congress .

On February 19 , the Senate passed the amendment , but the House passed a different version of the amendment on April 13 . On April 22 , it was returned to the Senate with revisions . There were four areas of disagreement between the House and Senate versions :

- the Senate official who was to receive any written declaration under the amendment
- the period of time during which the Vice President and Cabinet must decide whether they disagree with the President 's declaration that he is fit to resume his duties
- the time before Congress meets to resolve the issue between the President , Vice President , and the Cabinet
- the time limit for Congress to reach a decision

On July 6 , after a conference committee ironed out differences between the versions , the final version of the amendment was passed by both Houses of the Congress and presented to the states for ratification .

= = Proposal and ratification = =

The Congress proposed the Twenty @-@ fifth Amendment on July 6 , 1965 , and the amendment was ratified by the following states :

The following states have not ratified the amendment :

North Dakota
Georgia
South Carolina

Just six days after its submission , Nebraska and Wisconsin were the first states to ratify the amendment . On February 10 , 1967 , Minnesota and Nevada were the 37th and 38th states to ratify , respectively . On February 23 , 1967 , in a ceremony in the East Room of the White House , General Services Administrator Lawson Knott certified the amendment 's adoption .

= = Effect = =

= = Section 1 : Presidential succession = = =

Section 1 codified the " Tyler Precedent " regarding when a President is removed from office , dies , or resigns . In any of these situations , the Vice President immediately becomes President .

= = Section 2 : Vice Presidential vacancy = = =

Prior to the Twenty @-@ fifth Amendment 's adoption , a Vice Presidential vacancy remained until the start of the next presidential term . The Vice Presidency has been vacant several times due to death , resignation , or succession to the Presidency . Often these vacancies lasted for several years .

Under Section 2 , whenever there is a vacancy in the office of Vice President , the President nominates a successor who becomes Vice President if confirmed by a majority vote of both Houses of the Congress .

= = = Section 3 : Presidential declaration = = =

Section 3 provides that when the President transmits a written declaration to the President pro tempore of the Senate and the Speaker of the House of Representatives , stating that he is unable to discharge the powers and duties of the Presidency , and until the President sends another written declaration to the aforementioned officers declaring himself able to resume discharging those powers and duties , the Vice President serves as Acting President .

= = = Section 4 : Vice Presidential ? Cabinet declaration = = =

Section 4 is the only part of the amendment that has never been invoked . It allows the Vice President , together with a majority of either " the principal officers of the executive departments " (i.e. , the Cabinet) or of " such other body as Congress may by law provide " , to declare the President disabled by submitting a written declaration to the President pro tempore of the Senate and the Speaker of the House of Representatives . As with Section 3 , the Vice President would become Acting President .

Section 4 is meant to be invoked if the President 's incapacitation prevents him from discharging the duties of his office and he does not provide a written declaration to that effect . The President may resume exercising the Presidential duties by sending a written declaration to the President pro tempore and the Speaker of the House .

Should the Vice President and Cabinet believe the President is still disabled , they may within four days of the President 's declaration submit another declaration that the President is incapacitated . The Congress must then assemble within 48 hours if not in session . The Congress then has 21 days to decide the issue . If within the 21 days allotted two @-@ thirds of each House of Congress vote that the President is incapacitated , Section 4 states that the Vice President would " continue " to be Acting President . Should the Congress resolve the issue in favor of the President , or if the Congress makes no decision within the 21 days allotted , then the President would " resume " discharging all of the powers and duties of his office . The use of the words " continue " and " resume " imply that the Vice President remains Acting President while Congress deliberates .

However , the President may again submit a written declaration of recovery to the President pro tempore and the Speaker of the House . That declaration could be responded to by the Acting President and the Cabinet in the same way as stated earlier . The allotted 21 @-@ day Congressional procedure would start again .

= = Invocations = =

The Twenty @-@ fifth Amendment has been invoked six times since its ratification . The first three times were applications of Sections 1 and 2 in the context of scandals surrounding the Nixon Administration . The latter three were applications of Section 3 in connection to the President 's undergoing a medical procedure requiring general anesthesia .

= = = Appointment of Gerald Ford as Vice President (1973) = = =

On October 12 , 1973 , following Vice President Spiro Agnew 's resignation two days earlier ,

President Richard Nixon nominated Representative Gerald Ford of Michigan to succeed Agnew as Vice President .

The United States Senate voted 92 ? 3 to confirm Ford on November 27 and , on December 6 , the House of Representatives did the same by a vote of 387 ? 35 . Ford was sworn in later that day before a joint session of the United States Congress .

= = = Succession of Gerald Ford to Presidency (1974) = = =

President Richard Nixon resigned on August 9 , 1974 , resulting in Vice President Gerald Ford succeeding to the office of President . Gerald Ford is the only person ever to be Vice President , and later President , without being elected to either office .

= = = Appointment of Nelson Rockefeller as Vice President (1974) = = =

When Gerald Ford became President , the Vice Presidency became vacant . On August 20 , 1974 , after having previously considered Melvin Laird and George Bush , President Ford nominated former New York Governor Nelson Rockefeller to succeed him as Vice President .

On December 10 , 1974 , Rockefeller was confirmed 90 ? 7 by the Senate . On December 19 , 1974 , Rockefeller was confirmed 287 ? 128 by the House and sworn into office later that day in the Senate chamber .

= = = Acting Presidents = = =

= = = = George H. W. Bush (1985) = = = =

On July 12 , 1985 , President Ronald Reagan underwent a colonoscopy , during which a pre @-@ cancerous lesion called a villous adenoma was discovered . Upon being told by his physician (Dr. Edward Catto) that he could undergo surgery immediately or in two to three weeks , Reagan elected to have it removed immediately .

That afternoon , Reagan consulted with White House counsel Fred Fielding by telephone , debating whether to invoke the amendment and , if so , whether such a transfer would set an undesirable precedent . Fielding and White House Chief of Staff Donald Regan recommended that Reagan transfer power and two letters doing so were drafted : the first letter specifically invoked Section 3 of the Twenty @-@ fifth Amendment ; the second only mentioned that Reagan was mindful of this provision . At 10 : 32 a.m. on July 13 , Reagan signed the second letter and ordered its delivery to the appropriate officers as required under the amendment .

Books such as The President Has Been Shot : Confusion , Disability and the 25th Amendment , by Herbert Abrams , and Reagan 's autobiography , An American Life , argue President Reagan 's intent to transfer power to Vice President Bush was clear . Fielding himself adds :

I personally know he did intend to invoke the amendment , and he conveyed that to all of his staff and it was conveyed to the VP as well as the President of the Senate . He was also very firm in his wish not to create a precedent binding his successor .

= = = = Dick Cheney (2002 ; 2007) = = = =

On June 29 , 2002 , President George W. Bush underwent a colonoscopy and chose to invoke Section 3 of the amendment , temporarily transferring his powers to Vice President Dick Cheney . The medical procedure began at 7 : 09 a.m. EDT and ended at 7 : 29 a.m. EDT . Bush woke up twenty minutes later , but did not resume his presidential powers and duties until 9 : 24 a.m. EDT after the president 's doctor , Richard Tubb , conducted an overall examination . Tubb said he recommended the additional time to make sure the sedative had no aftereffects . Unlike Reagan 's 1985 letter , Bush 's 2002 letter specifically cited Section 3 as the authority for the transfer of power .

On July 21 , 2007 , President Bush again invoked the amendment in response to having to undergo a colonoscopy , temporarily transferring his powers to Vice President Cheney . President Bush invoked Section 3 at 7 : 16 a.m. EDT . He reclaimed his powers at 9 : 21 a.m. EDT . As happened in 2002 , Bush specifically cited Section 3 when he transferred the Presidential powers to the Vice President and when he reclaimed those powers .

= = Considered Section 4 invocations = =

There are two documented instances in which invocation of Section 4 of the Twenty @-@ fifth Amendment was considered , both of which involved the 40th President of the United States , Ronald Reagan .

= = = 1981 : Reagan assassination attempt = = =

Following the attempted assassination of Ronald Reagan on March 30 , 1981 , Vice President George Bush did not assume the presidential powers and duties as Acting President . Reagan was unable to invoke Section 3 , because he was in surgery . Bush did not invoke Section 4 , because he was on a plane returning from Texas . Reagan was out of surgery by the time Bush arrived in Washington . In 1995 , Birch Bayh , the primary sponsor of the amendment in the Senate , wrote that Section 4 should have been invoked .

= = = 1987 : Reagan 's alleged incapacity = = =

Upon assuming the role of White House Chief of Staff in 1987 , Howard Baker was advised by his predecessor 's staff to be prepared for a possible invocation of the Twenty @-@ fifth Amendment due to Reagan 's perceived laziness and ineptitude .

According to the PBS program American Experience ,

What Baker 's transition team was told by Donald Reagan 's staff that weekend shocked them . Reagan was ' inattentive , inept , ' and ' lazy , ' and Baker should be prepared to invoke the 25th Amendment to relieve him of his duties .

Reagan biographer Edmund Morris stated in an interview aired on the program ,

The incoming Baker people all decided to have a meeting with him on Monday , their first official meeting with the President , and to cluster around the table in the Cabinet room and watch him very , very closely to see how he behaved , to see if he was indeed losing his mental grip .

Morris went on to explain ,

Reagan who was , of course , completely unaware that they were launching a death watch on him , came in stimulated by the press of all these new people and performed splendidly . At the end of the meeting , they figuratively threw up their hands realizing he was in perfect command of himself .