



# The President-Elect: Succession and Disability Issues During the Transition Period

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## Summary

Presidential transition is usually defined as the period and process that take place when one President prepares to leave office, due to retirement or failure to win reelection, and a successor prepares for inauguration. In modern times, the transition period begins immediately after the general election, which is held on Tuesday after the first Monday in November of every presidential election year, and concludes on the following January 20, when the new chief executive is sworn in. For the purposes of this report, the preceding period, which begins with the national party nominating conventions and concludes with the general election, is referred to as the presidential election campaign period. It should be noted that transition is not generally used to describe the period between the first and second terms of the Presidents who were elected to consecutive terms.

This report identifies and provides analysis of the procedures governing replacement of candidates for the office of President and Vice President during the presidential election campaign period, or replacement of a President- or Vice President-elect during the transition period. These procedures are determined by when they occur. Procedures applicable during the successive stages of the transition and election period are summarized below.

- **Before Election Day—During the Presidential Election Campaign Period.** Between the national party nominating conventions, which generally take place in August of the presidential election year, and general election day (November 6 in 2012), the two major parties' rules provide that replacement candidates would be chosen by their national committees should vacancies occur.
- **Between Election Day and the Meetings of the Electors.** At the general election, voters choose members of the electoral college, which formally selects the President- and Vice President-elect several weeks later (December 17 in 2012). Although the transmission period has begun, the political parties' rules still apply: replacement candidates would be chosen by the party national committee.
- **Between the Meetings of the Electors and Inauguration Day.** Most, though not all, authorities agree that the President- and Vice President-elect are chosen once the electoral votes are cast on the first Monday after the second Wednesday in December (December 17 in 2012). The electoral votes are counted and declared when Congress meets in joint session for this purpose, which is set by law for January 6 of the year following the election, but Congress occasionally sets a different date for the joint session. Since January 6 falls on a Sunday in 2013, it is likely that Congress will set a different date, possibly January 7 or 8. In recent years, the customary legislative vehicle calling for the joint session has been a Senate Concurrent Resolution, introduced in the newly assembled Congress by the Senate Majority Leader.
- **During the period between the date when electoral votes are cast and the January 20 inauguration,** the 20<sup>th</sup> Amendment to the Constitution provides for succession: if the President-elect dies, the Vice President-elect becomes President-elect. Although the 20<sup>th</sup> Amendment does not specifically address the issues of disability or resignation by a President- or Vice President-elect during this period, the words "failure to qualify" found in the amendment might arguably be interpreted to cover such contingencies.

- While the 20<sup>th</sup> Amendment does not address vacancies in the position of Vice President-elect, these would be covered after the inauguration by the 25<sup>th</sup> Amendment. In the event no person qualifies as President or Vice President, then the Presidential Succession Act (61 Stat. 380, 3 U.S.C. 19) would apply: the Speaker of the House of Representatives, the President pro tempore of the Senate, and duly confirmed Cabinet officers, in that order, would act as President.
- Since the terrorist attacks of September 11, 2001, observers have expressed concern that an incident during the presidential inauguration ceremony might lead to the death or disability of most or all officials in the line of presidential succession. One potential remedy for this situation would be for an official in the line of succession, such as the Speaker of the House of Representatives or the President pro tempore of the Senate, to be absent from the ceremony. Another might be for a Cabinet secretary-designate of the new Administration to be nominated by the incumbent President, confirmed by the Senate, and installed prior to the inauguration. A third would be for a Cabinet secretary from the outgoing Administration to remain in office until after the inauguration, and away from the ceremony. Due to a convergence of circumstances, this occurred in 2009: Defense Secretary Robert Gates was asked by President-elect Barack Obama to stay on in the new Administration in order to provide continuity in an important Cabinet office. Subsequently, the Obama transition team and the outgoing Administration of President George Bush agreed that, in order to secure continuity in the order of presidential succession, Secretary Gates would not attend the inauguration ceremony.

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## Introduction

Presidential transition is generally defined as the period during which an incumbent President who is retiring or who has failed to win reelection prepares to leave office, while the incoming President-elect prepares for inauguration. In modern times, the transition period begins immediately after the general election, which is held on Tuesday after the first Monday in November of every presidential election year, and concludes on the following January 20, when the new chief executive is sworn in. For the purposes of this report, the preceding period, which begins with the national party nominating conventions, which are held in August of the election year, and concludes with the general election, is referred to as the presidential election campaign period.

This report examines succession procedures that apply during transition and the presidential election campaign period. It should be noted that the period between the first and second terms of the Presidents who have been elected to consecutive terms do not, however, generally fall under the definition of a presidential transition. For instance, the period between President Barack H. Obama's election to a second term on November 6, 2012, and his inauguration on January 20, 2013, is not a transition period as defined in this report.

Presidential transitions in the past half-century have generally been characterized by high levels of activity and frequent improvisation as the President-elect's team works to finalize personnel and policy arrangements for the incoming administration within a period of just over 10 weeks. The process takes on further significance and complexity when a new President replaces a retiring or defeated incumbent, or when political party control of the executive branch also changes.

Succession and disability procedures concerning the President-elect and Vice President-elect provide a potential complicating factor during the presidential election period and the transition. They are based on a combination of political party rules, federal law, and constitutional provisions, different elements of which apply during at different times during the whole period between the national conventions and inauguration of the incoming chief executive. Depending on circumstances, Congress could be called on to make succession-related decisions of national importance in questions of either the death or disability of a President- or Vice-President-elect.

## Candidate "Succession" During the Presidential Election Campaign Period

Vacancies in a national party ticket during the presidential election campaign period, which falls between the national nominating conventions and general election day, do not technically occur during the transition. Questions concerning the parties' procedures would likely be raised in these circumstances, however, since the death, disability, or resignation from the ticket of a major party nominee during the campaign could have a profound effect on the campaign, the election, and the ensuing transition period.<sup>1</sup>

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<sup>1</sup> Other political groups that gain ballot access in various states, such as the Libertarian or Green Parties, as well as independent presidential candidates, would provide their own procedures for filling vacancies during the presidential (continued...)

During the presidential general election campaign period, which extends roughly from mid-August to election day in November, the same party procedures as identified earlier in this report would apply. The national committees would designate a replacement candidate or candidates to fill any vacancy in the presidential or vice presidential nomination, or both. One difference between the parties is that members of the Democratic National Committee would vote *per capita* to replace the candidate, while the Republican National Committee would vote by state, with each state casting the same number of votes as the number of delegates assigned to it during the previous national convention.<sup>2</sup>

The most recent example of this procedure occurred in 1972, when Democratic vice presidential nominee Senator Thomas F. Eagleton resigned from the ticket on August 1. Presidential nominee Senator George McGovern selected former Ambassador R. Sargent Shriver to fill the vacancy, and on August 8, a special meeting of the Democratic National Committee confirmed the nomination.<sup>3</sup>

Another relevant precedent occurred in 1912, when Vice President James S. Sherman, President William H. Taft's running mate, died on October 30, just days before the November 5 general election. The Republican National Committee nominated Columbia University President Nicholas M. Butler a replacement, and all eight Republican electors voted for Butler. Given the election results, however, Sherman's death and the ensuing vacancy had no influence on the outcome of the election, and Butler's appointment proved to be non-controversial. Former President Theodore Roosevelt had quit the Republican Party was running as the candidate of his own Progressive Party, thus splitting the Republican vote. Consequently, Democratic nominee Woodrow Wilson won with a 41.8% plurality of the popular vote, but a very large electoral college majority of 435 electoral votes to 88 for Roosevelt and eight for Taft.<sup>4</sup>

## Succession Between General Election Day and the Meeting of the Electoral College

The first period in which succession procedures would be invoked in the event a President-elect or Vice President-elect<sup>5</sup> were to die or leave the ticket for any reason includes the time between the election and the date on which the electors meet in December to cast their votes.<sup>6</sup> Most commentators suggest that in this case the political parties would follow their long-established

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election campaign period and the transition.

<sup>2</sup> *Republican Party Rules*, 2008, as amended August 5, 2010, Rule No. 9, and *The Charter and Bylaws of the Democratic Party of the U.S.*, as amended August 20, 2010, Article Three, Section 1(c).

<sup>3</sup> *Congressional Quarterly Almanac*, 92<sup>nd</sup> Congress, 2<sup>nd</sup> Session, 1972 (Washington: Congressional Quarterly, 1972), p. 1050.

<sup>4</sup> *Congressional Quarterly's Guide to U.S. Elections*, 4<sup>th</sup> ed. (Washington: CQ Press, 2001), vol. I, pp. 666, 749, 774.

<sup>5</sup> It should be noted that there actually is no President- or Vice-President elect until after the electoral votes have been cast. The apparent winners are, during this first period, still the nominees of their parties. The use of the titles "President-elect" and "Vice President-elect," is a universally-honored courtesy that anticipates the ultimate status of the candidates who won an apparent majority of electoral votes.

<sup>6</sup> "The electors ... shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment...." 2 U.S.C. 7.

rules, by which their national committees designate a substitute nominee.<sup>7</sup> In the event of the presidential nominee's death, it might be assumed that the vice presidential nominee would be chosen, but neither of the major parties requires this in its rules. Further, it is assumed that the electors, who are predominantly party loyalists, would abide by the national party's decisions. Given the unprecedented nature of such a situation, however, confusion, controversy, and a breakdown of party discipline among the members of the electoral college might also arise, leading to fragmentation of the electoral vote.<sup>8</sup> For instance, an individual elector or group of electors might justifiably argue that they were nominated and elected to vote for a particular candidate, that the death or withdrawal of that candidate released them from any prior obligation, and that they were henceforth free agents, able to vote for any candidate they chose.

The historical record does not provide much guidance as to this situation. Horace Greeley, the 1872 presidential nominee of the Democratic and Liberal Republican Parties, died on November 29 of that year, several weeks after the November 5 election day. As it happened, 63 of the 66 Greeley electors voted for other candidates, and Congress declined to count the three cast for Greeley on the grounds that electoral votes for a dead person were invalid.<sup>9</sup> Even so, the question as to the validity of the Greeley electoral votes was of little concern, since the "stalwart" or "regular" Republican nominee, Ulysses S. Grant, had won the election in a landslide, gaining 286 electoral votes.

A final consideration during both the presidential election campaign period and the first part of the transition originates with the electoral college. While the party national committees may appoint a replacement to fill any vacancy in a presidential or vice presidential candidacy, they might not be able to guarantee that all electors would vote as instructed. Many constitutional scholars regard presidential electors as free agents, able to vote as they please, notwithstanding pledges or other commitments to support the candidates of the party that nominated them.<sup>10</sup> It is possible that individual electors, or groups of electors, might choose to ignore the instructions of the party national committee to support a replacement candidate in these circumstances. On the two previous occasions when candidates died during this period, party electors voted as instructed when the college convened. The potential for faithless might be greater, however, in the event of a closely contested election, or disputes over the national committee's choice of a replacement candidate or candidates.

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<sup>7</sup> See *Republican Party Rules*, 2008, as amended August 5, 2010, Rule No. 9, available at [http://www.gop.com/images/legal/2008\\_RULES\\_Adopted.pdf](http://www.gop.com/images/legal/2008_RULES_Adopted.pdf); and *The Charter and Bylaws of the Democratic Party of the U.S.*, as amended August 20, 2010, Article Three, Section 1(c), at [http://www.democrats.org/about/democratic\\_national\\_committee](http://www.democrats.org/about/democratic_national_committee).

<sup>8</sup> U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Presidential Succession Between the Popular Election and the Inauguration*, hearing, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., February 2, 1994 (Washington: GPO, 1995), pp. 12-13.

<sup>9</sup> U.S. Congress, House of Representatives, *Counting Electoral Votes. Proceedings and Debates of Congress Relating to Counting the Electoral Votes for President and Vice President of the United States*, 44<sup>th</sup> Cong. 2<sup>nd</sup> sess., Misc. Doc. No. 13 (Washington: GPO, 1877), pp. 363-380.

<sup>10</sup> See Neal R. Peirce and Lawrence D. Longley, *After the People Vote: The Electoral College in American History and the Direct Vote Alternative*, rev. ed. (New Haven, CT: Yale U. Press, 1981), pp. 96-101. For information on state and political party provisions relating to electors, see "Statutory Instructions" in U.S. Congress, Senate, Committee on Rules and Administration, *Nomination and Election of the President and Vice President of the United States, 2008*, 111<sup>th</sup> Congress, 2<sup>nd</sup> session, S. Doc. 111-15 (Washington, GPO: 2010), pp. 347-428.

## Succession Between the Electoral College Vote and the Electoral Vote Count by Congress

The second period during which succession procedures would be invoked in the event a President-elect or Vice President-elect were to die or leave the ticket occurs between the time the electors vote and Congress counts the electoral votes. Presidential electors meet in their respective states<sup>11</sup> to cast their votes on the first Monday after the second Wednesday in December in the year of the presidential election, which falls on December 17 in 2012. Federal law<sup>12</sup> sets January 6 of the following year as the date on which Congress convenes in joint session to count the electoral vote and declare the results.<sup>13</sup>

The succession process during this period would turn on the issue of when the candidates who received an electoral vote majority actually become President-elect and Vice President-elect. The results of the electoral college are publicly known, but are the candidates who won a majority of electoral votes actually “elect” at this point, or do they attain this position only after the electoral college returns have been counted and declared by Congress on January 6? Some commentators doubt that there would be a President- and Vice President-elect before the results are certified. They maintain that this contingency would lack clear constitutional or statutory direction.<sup>14</sup>

Others, however, assert that once a majority of electoral votes has been cast the winning candidates immediately become the President- and Vice President-elect, even though the votes have yet to be officially counted or the results declared.<sup>15</sup> If this is the case, then Section 3 of the 20<sup>th</sup> Amendment would apply as soon as the electoral votes were cast: namely, if the President-elect dies, then the Vice President-elect becomes the President-elect. This point of view receives strong support from the language of the 1932 House committee report accompanying the 20<sup>th</sup> Amendment. Addressing the question of when there is a President-elect, the report stated:

It will be noted that the committee uses the term “President elect” in its generally accepted sense, as meaning the person who has received the majority of electoral votes, or the person who has been chosen by the House of Representatives in the event that the election is thrown into the House. It is immaterial whether or not the votes have been counted, for the person becomes the President elect as soon as the votes are cast.<sup>16</sup>

The 20<sup>th</sup> Amendment does not specifically address the question of vacancies created by situations other than death of the President or Vice President-elect, including disability or their resignation, during this period. Section 3 of the amendment, however, authorizes Congress to “by law provide

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<sup>11</sup> The 12<sup>th</sup> Amendment requires the electors to meet separately in their states. The Philadelphia Constitutional Convention set this requirement to deter the “cabal, intrigue, and corruption” they feared might occur if the electors convened in one place. See Alexander Hamilton, “The Method of Electing the President,” in *The Federalist*, Number 68 (Cambridge: Belknap Press of Harvard University Press, 1961), p. 441. See also, John C. Fortier, ed., *After the People Vote: A Guide to the Electoral College*, 3<sup>rd</sup> ed. (Washington: American Enterprise Institute, 2004), pp. 24-25.

<sup>12</sup> 3 U.S.C. § 15.

<sup>13</sup> Since January 6 falls on Sunday in 2013, Congress will likely set a different date for joint session, possibly Monday, January 7, or Tuesday, January 8.

<sup>14</sup> *Presidential Succession Between the Popular Election and the Inauguration*, pp. 39-40.

<sup>15</sup> *Ibid.*, p. 12.

<sup>16</sup> U.S. Congress, House, *Proposing an Amendment to the Constitution of the United States*, report to accompany S.J.Res. 14, 72<sup>nd</sup> Cong., 1<sup>st</sup> sess., Rept. 345 (Washington, GPO: 1932), p. 6.



for the case wherein neither a President elect nor a Vice President elect shall have qualified....” This contingency is considered in the next section of this report.

## Succession Between the Electoral Vote Count and Inauguration

During this period, provisions of the 20<sup>th</sup> Amendment would cover several aspects of succession. As mentioned previously, Section 3 of the 20<sup>th</sup> Amendment provides for succession in the case of the death of the President-elect, providing that the Vice President-elect becomes President-elect. Further, a Vice President-elect who succeeds under these circumstances would have the authority, after his or her inauguration, to nominate a replacement Vice President under the provisions of Section 2 of the 25<sup>th</sup> Amendment.

Moving beyond death of a President-elect, the 20<sup>th</sup> Amendment does not appear to specifically cover such other circumstances as resignation from the ticket, disability, or disqualification of either the President- or Vice President-elect. In the case of a President-elect, however, if the language of the amendment were interpreted so that the aforementioned circumstances constituted a “failure to qualify,” then the vice President-elect would act as President “until a President shall have qualified.”<sup>17</sup> Under this construction, a Vice President-elect could arguably act as President until a disabled President-elect regained health, or, if the President-elect had resigned from the ticket, failed to regain health, or subsequently died from the effects of a disability, the Vice President might serve as acting President for a full four-year term.

The death, disability or departure of the Vice President-elect is not specifically covered by the 20<sup>th</sup> Amendment, but in this circumstance, the President would nominate a successor after being inaugurated, again in accordance with Section 2 of the 25<sup>th</sup> Amendment.

Finally, the 20<sup>th</sup> Amendment empowers Congress to provide by law for instances in which “neither a President elect nor a Vice President elect shall have qualified.” Such legislation would declare “who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.” The Presidential Succession Act of 1947 (the Succession Act) as amended (61 Stat. 380, 3 U.S.C. 19) implements this authority, providing that if, “by reason of death, resignation, removal from office, inability, or *failure to qualify* [emphasis added], there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.”<sup>18</sup> The act further extends the order of succession to the President pro tempore of the Senate and the secretaries of the principal executive departments (the President’s Cabinet).<sup>19</sup> It should be noted that persons acting as President under the Succession Act would

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<sup>17</sup> 20<sup>th</sup> Amendment, Section 3, clause 2 (emphasis added): “If a President shall not have been chosen before the time fixed for the beginning of his term, *or if the president elect shall have failed to qualify*, then the Vice President elect shall act as President until a President shall have qualified....”

<sup>18</sup> For additional information on the Presidential Succession Act and other aspects of presidential succession, please consult CRS Report RL34692, *Presidential Succession: Perspectives, Contemporary Analysis, and 110th Congress Proposed Legislation*, by (name redacted).

<sup>19</sup> Under the Succession Act, the President pro tempore of the Senate would, like the Speaker, have to resign from the presidency pro tempore and the Senate in order to act as President. Similarly, the cabinet appointment of any secretary (continued...)

continue to do so only until a qualified individual higher in the order of succession is able to act. In this instance, the higher qualified official then supplants the lower.<sup>20</sup>

## **Post-9/11 Succession Issues**

Concern about succession during the transition period has increased since the terrorist attacks of September 11, 2001, and centers primarily on presidential succession under the Succession Act. The President-elect and Vice President-elect will both be covered by Secret Service protection throughout the transition period,<sup>21</sup> but contemporary concerns include a mass terrorist attack during or shortly after the presidential inaugural. While there would be a President, Vice President, Speaker, and President pro tempore during this period, who would step forward in the event an attack removed these officials? This question takes on additional importance since the cabinet, an important element in the order of succession, is generally in a state of transition at this time. The previous administration's officers have traditionally resigned by January 20, while the incoming administration's designees are usually in the midst of the confirmation process. Further, only cabinet officers who hold regular appointments and who have been duly confirmed by the Senate are eligible to act as President under the Succession Act. It is possible to envision a situation in which not a single cabinet officer in the incoming administration will have been confirmed by the Senate under these circumstances, thus leaving succession an open issue should the Speaker and the President pro tempore also be unavailable.

One safeguard would be for some official or officials in the line of presidential succession not to attend the presidential inauguration ceremony. The State of the Union Message, customarily delivered by the President in person before a joint session of Congress, offers a precedent in this case. In order ensure continuity in the presidency, one member of the President's cabinet, often referred to as the "designated survivor," has not attended this event since at least 1984.<sup>22</sup> This practice took on additional urgency following the terrorist attacks of 2001, and it is widely assumed that since that time, the designated survivor has been conducted to a secure location in order to guarantee continuity in the executive branch. In the interest of legislative branch continuity, beginning at least in 2004, Congress has similarly designated one or more Senators and Representatives (usually representing both political parties) who do not attend the State of the Union session.<sup>23</sup> The Speaker of the House and the President pro tempore of the Senate would arguably be the appropriate candidates for this role: they are, respectively, first and second in the order of succession following the Vice President, ahead of members of the President's cabinet. In order to guarantee executive continuity, either the Speaker or the President pro tem could arrange to be absent during the President's inauguration and other attendant public ceremonies. There is

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of an executive department acting as President would be automatically vacated. 3 U.S.C. 19(d)(3).

<sup>20</sup> 3 U.S.C. 19(d)(2). For instance, if the President pro tempore of the Senate were serving, he or she could be superseded if the Speaker of the House qualified for the position.

<sup>21</sup> U.S. Secret Service, "Protective Mission," at <http://www.secretservice.gov/protection.shtml>. Secret Service protection also extends to major presidential and vice presidential candidates, beginning 120 days prior to the general election.

<sup>22</sup> Ed O'Keefe, "State of the Union: Tom Vilsack to Serve as Cabinet's Designated Survivor," *Washington Post*, January 24, 2012, at [http://www.washingtonpost.com/blogs/federal-eye/post/state-of-the-union-tom-vilsack-to-serve-as-cabinets-designated-survivor/2012/01/24/gIQA8WnhOQ\\_blog.html](http://www.washingtonpost.com/blogs/federal-eye/post/state-of-the-union-tom-vilsack-to-serve-as-cabinets-designated-survivor/2012/01/24/gIQA8WnhOQ_blog.html).

<sup>23</sup> Alan Fram, "Four to Miss Bush Speech Due to Security," AP Online, January 21, 2004. Available at <http://www.highbeam.com/doc/1P1-89589949.html>.

no legal requirement that they be present at the swearing in; moreover, the absence of one of these officials would make it possible to avoid hurdles associated with early confirmation of one of the incoming administration's cabinet nominees, as detailed later in this report.

Two related alternatives could eliminate the possibility of a gap in the line of presidential succession under these circumstances. First, one or more incumbent cabinet officers of the outgoing administration might be retained in office (and, away from the inaugural ceremonies) at least until after the President- and Vice-President elect have been safely installed. Alternatively, one or more cabinet officers of the incoming administration could be nominated by the incumbent President, confirmed, and installed in office before the January 20 inauguration.<sup>24</sup> One advantage conferred by these related proposals would center on the fact that cabinet secretaries, unlike elected officials, do not serve set terms of office which expire on a date certain. Further, while the President-elect cannot submit cabinet nominations until assuming office, there is no legal impediment to prevent the outgoing incumbent from submitting any or all of his successor's nominations to the Senate after it convenes at the opening of the new Congress, which will take office on or after January 3, 2013.

Both the retention of incumbent cabinet secretaries pending Senate confirmation of their successors, or, alternatively, the pre-inaugural nomination and confirmation of one or more cabinet secretaries of the incoming administration would depend on reasonable levels of good will and cooperation between the incumbent President and his successor, and between the political parties in the Senate. Moreover, the latter option would arguably impose a sizeable volume of confirmation-related business on the newly-sworn Senate during the short period between January 3 and January 20, or, possibly, the Senate in the previous Congress during the ten-week transition period.

In 2008, events transpired to produce just this situation. On December 1 of that year, President-elect Barack H. Obama announced that incumbent Secretary of Defense Robert M. Gates would be retained in his position for an indefinite period as part of the incoming President's national security team.<sup>25</sup> It was widely assumed that the incoming chief executive took this action to ensure continuity in the Defense Department at a time when the nation was engaged in two overseas military campaigns—Iraq and Afghanistan. It was subsequently announced on January 19, 2009, that Secretary Gates would not attend the presidential inauguration ceremonies. Contemporary press accounts reported that this to be an intentional action: Bush Administration Press Secretary Dana Perino stated that, “[i]n order to ensure continuity of government, Defense Secretary Robert Gates has been designated by the outgoing Administration, with the concurrence of the incoming Administration, to serve as the designated successor during Inauguration Day, Tuesday, January 20<sup>th</sup>.”<sup>26</sup> These two actions provided the insurance that a duly sworn cabinet officer was in place at the time of the inauguration ceremony.<sup>27</sup>

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<sup>24</sup> Here, too, the secretary would arguably avoid being present at the inaugural ceremony.

<sup>25</sup> Karen DeYoung and Michael D. Shear, “Obama Names Team to Face a Complex Security Picture,” *Washington Post*, December 2, 2008, p. A1, A10.

<sup>26</sup> “Gates to be Designated Successor on Inauguration Day,” CBS News, January 19, 2009, at [http://www.cbsnews.com/8301-503544\\_162-4734750-503544.html](http://www.cbsnews.com/8301-503544_162-4734750-503544.html).

<sup>27</sup> The most recent prior instances of cabinet officers who carried over from one presidential administration to another occurred in 1989, when Treasury Secretary Nicholas F. Brady and Attorney General Richard Thornburgh, both of whom were nominated and confirmed during the Ronald Reagan administration, remained in office into the administration of George H. W. Bush.

## Concluding Observations

Succession procedures during the presidential election campaign period and the transition are governed by a party rules, federal law, and constitutional requirements. Candidates have been replaced only three times in the nation's history, in 1872, 1912, and 1972; each of these instances occurred during the election campaign period, and all were successfully addressed by party rules. Presumably they would do so again if party rules were applied to some future incident, although the prospect of a faithless elector or electors might introduce complicating factors, as noted previously in this report. With respect to the transition period itself, the 20<sup>th</sup> and 25<sup>th</sup> Amendments have anticipated most potential contingencies, and could be implemented to address a succession issue during the period between the meetings of the electoral college and inauguration of the President.

In the Post-9/11 environment, however, attention has shifted from the prospect of the death, disability, or resignation of a candidate or the President- or Vice President-elect to the potential for a successful terrorist incident that might result in the death or disability of a number of persons in the line of presidential succession, particularly during the public inauguration ceremonies. One option to ensure executive continuity would be for either the Speaker of the House or the President pro tempore of the Senate to be absent from the ceremony. Others involve the President's Cabinet: expedited confirmation of one of incoming cabinet officers, retention of one or more cabinet officer from the outgoing administration, and ensuring that a duly confirmed cabinet officer does not attend the inauguration or its attendant public ceremonies.

Successful implementation of the two cabinet options, as noted earlier, would depend on reasonable levels of good will and cooperation between the incumbent President and his successor, as well as between the political parties in the Senate. With respect to the former, the 2008-2009 transition offers positive examples for the future. Following a strongly contested presidential election, transition from the George W. Bush administration to that of Barack H. Obama was described in the press as "smooth," and the representatives of the two Presidents were reported to be "cooperating to an unprecedented extent."<sup>28</sup> Further, as noted earlier, the independent and joint decisions of both administrations ensured that a senior cabinet officer would be in place, and in a safe place, during the public inauguration of President Obama. These two developments arguably suggest a precedent for consideration of succession issues in future presidential transitions.

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<sup>28</sup> "Obama-Bush Transition Called Smooth," UPI.com, November 9, 2008, at [http://www.upi.com/Top\\_News/2008/11/09/Obama-Bush-transition-called-smooth/UPI-20571226242368/](http://www.upi.com/Top_News/2008/11/09/Obama-Bush-transition-called-smooth/UPI-20571226242368/).

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