

The Twenty-Fifth Amendment and Presidential Inability, Part 1: Introduction

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This Legal Sidebar post is the first in a seven-part series that discusses the [Twenty-Fifth Amendment to the Constitution](#). In an effort to ensure that the United States will always possess a functioning President and Vice President, the Twenty-Fifth Amendment seeks to promote the [prompt, orderly](#), and [democratic](#) transfer of executive power. In particular, the Amendment establishes procedures for addressing presidential inability and vacancies that arise in the presidency or vice presidency. Because Congress may play a role in implementing the Twenty-Fifth Amendment, understanding the Amendment’s history and drafting may assist Congress in its legislative activities.

This Sidebar post provides an overview of the Twenty-Fifth Amendment’s procedures. Other Sidebars in this series discuss the [history of the Presidential Succession Clause](#) and [presidential succession](#), as well as the Amendment’s [drafting in Congress](#), [implementation](#), and [unresolved issues](#). Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#) and in [several CRS reports](#).

Overview

Ratified in 1967, the Twenty-Fifth Amendment clarifies and supplements the [Presidential Succession Clause](#) in Article II of the Constitution by (1) confirming that the Vice President becomes President when the latter dies, resigns, or is removed from office as a result of impeachment proceedings; (2) requiring the President, with Congress’s approval, to fill a vice presidential vacancy; and (3) establishing mechanisms for transferring an incapacitated President’s powers and duties to the Vice President. The Supreme Court has not definitively interpreted the Amendment, and legal scholars [continue to debate](#) its provisions on presidential inability.

[Section 1](#) of the Twenty-Fifth Amendment provides that if the President dies, resigns, or is removed from office as a result of impeachment proceedings, then the Vice President “shall become President.” Section 1 was intended to clarify, consistent with [long-established historical practice](#), that the Vice President immediately succeeds to the presidency in such circumstances instead of serving as the “Acting President.” In 1974, Section 1 resulted in Vice President Gerald Ford’s succession to the presidency when President Richard Nixon resigned under threat of impeachment for his role in the [Watergate scandal](#).

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Section 2 of the Twenty-Fifth Amendment provides for filling a vice-presidential vacancy that occurs during a President's term of office. The original [Presidential Succession Clause](#) did not address vice presidential vacancies. From the beginning of President George Washington's first term in 1789 to the Twenty-Fifth Amendment's ratification in 1967, the vice presidency [was vacant](#) for more than 37 years cumulatively because of the officeholder's death, resignation, or succession to the presidency. In the event of a vacancy, Section 2 requires the President to nominate a new Vice President to take office for the remainder of the President's term after confirmation by a majority vote in [each chamber](#) of Congress. Section 2 of the Twenty-Fifth Amendment was [invoked](#) twice during the 1970s to fill vice-presidential vacancies resulting from Vice President Spiro T. Agnew's and President Nixon's resignations. (President Nixon's resignation occasioned the use of Section 2 because Vice President Gerald Ford succeeded Nixon, resulting in a vice presidential vacancy.)

Sections 3 and 4 of the Twenty-Fifth Amendment [address](#) circumstances in which the President is unable to discharge his powers and responsibilities under the Constitution. Prior to the Amendment's ratification, at least two Vice Presidents [declined](#) to assume an incapacitated President's powers and duties because of legal uncertainty as to whether the President could reclaim them upon recovery. [Section 3](#) allows an incapacitated President—or a President who [anticipates](#) becoming incapacitated—to relinquish his powers and duties voluntarily by sending 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 them. Thereafter, until the President communicates that he is again able to discharge his responsibilities, the Vice President serves as Acting President. (The vice presidency does not become vacant while the Vice President serves as Acting President. However, the President pro tempore of the Senate [would presumably serve](#) as President of the Senate during that time.) Since the Twenty-Fifth Amendment's ratification, a few Presidents have [invoked](#) Section 3 to transfer their powers and duties to the Vice President temporarily while undergoing medical procedures.

[Section 4](#), which has never been invoked, is perhaps the most controversial of the Twenty-Fifth Amendment's provisions. This section allows the Vice President and a majority of the "principal officers of the executive departments"—understood by the Amendment's [framers](#) and [Supreme Court](#) to refer to the [Cabinet secretaries](#)—or, alternatively, the Vice President and a majority of another body that Congress designates by law in place of the Cabinet, to initiate the transfer of an incapacitated President's powers and duties to the Vice President. Section 4 might be invoked when the President is [unable or unwilling](#) to declare that he is incapacitated. To invoke Section 4, the Vice President and a majority of the relevant body must send a written declaration to the President pro tempore of the Senate and the Speaker of the House of Representatives stating that the President is unable to discharge his office's powers and duties. Following this declaration, the Vice President immediately [assumes](#) such powers and duties as Acting President.

If the President subsequently declares in writing to the relevant congressional presiding officers that he is again able to fulfill his responsibilities, then he "shall resume the powers and duties of his office" unless the Vice President (who [continues to serve as](#) Acting President) and a majority of the appropriate body transmit a contrary written notice within four days. If the Vice President and appropriate body transmit such a notice, Congress [must assemble](#) within 48 hours to determine who will discharge the President's duties. Unless Congress determines within 21 days of receiving the Vice President and relevant body's declaration (or, if Congress is not in session, 21 days of when it is [required to assemble](#)) "by two-thirds vote of [both Houses](#) that the President is unable to discharge the powers and duties of his office," the President [resumes](#) his responsibilities. The Twenty-Fifth Amendment's framers [appear to have understood](#) that the Vice President would continue to serve as Acting President while Congress decides the issue of presidential inability.

On the other hand, if Congress timely determines that the President is unable to fulfill his duties, then the Vice President [continues to discharge them](#) as Acting President. Some of the Twenty-Fifth Amendment's

framers [suggested that](#) the President can thereafter submit additional notices of recovery, hypothetically triggering the congressional decisionmaking process an indefinite number of times.

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