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The Twenty-Fifth Amendment: Sections 3 and 4—Presidential Disability

The Twenty-Fifth Amendment, proposed by Congress in 1965 and ratified by the states in 1967, provides for presidential succession, vice presidential vacancies, and presidential disability. Presidential inability or disability is specifically covered in Section 3, whereby the President may declare a disability, and Section 4, whereby a disability is declared by the Vice President and a majority of the Cabinet or such other body as may be established by law.

Section 3: Presidential Declaration of Disability

Section 3 of the amendment covers circumstances in which a President is able to declare himself or herself “unable to discharge the powers and duties” of the office. When the disability is removed, the President reclaims the office by a declaration to that effect. Disabilities may include a sudden injury or illness or scheduled medical treatment that might leave the President less than fully aware or cognizant for some period of time. It may potentially cover other situations, such as absence from the country or a period of intense grief, for example, related to the loss of a loved one. Opinion as to whether a President could invoke Section 3 to concentrate on defense in a case of impeachment is divided. The President activates Section 3 by transmitting a written declaration to the President pro tempore of the Senate (President pro tem) and the Speaker of the House of Representatives (Speaker). For the duration of the disability, the Vice President discharges the President’s powers and duties as Acting President. When the President transmits “a written declaration to the contrary” to the President pro tem and the Speaker, he or she resumes the powers and duties of the office.

When Has Section 3 Been Activated?

This section has been activated three times under circumstances in which the President underwent general anesthesia for medical treatment. In 1985, President Ronald Reagan informally invoked the amendment when he was anesthetized during cancer surgery. President George W. Bush formally implemented Section 3 twice, in 2002 and 2007, while anesthetized for routine medical procedures.

Section 4: Contingent Disability

Section 4 of the Twenty-Fifth Amendment provides for instances of contingent presidential disability. It covers instances of presidential disability or inability that differ from, and arguably are more potentially complex and problematic than, those addressed in Section 3.

Some of the differences between the two sections should be noted. Section 3 can be activated only by the President, whereas the disability initiation element of Section 4 can be implemented only by the Vice President and either (1) a majority of the Cabinet, or (2) a majority of “such other body as Congress may by law provide.” This body will be identified in this publication as the Disability Review Body (DRB). Section 3 was designed to be invoked either in anticipation of presidential inability, or as a response to a disability, whereas Section 4 was intended by the amendment’s sponsors to be activated only in response to a presidential disability. Section 3 assumes that the President is fully aware and competent, and capable of declaring his disability, whereas Section 4 assumes that the President, for whatever reason, is unable or unwilling to declare an obvious disability, and that he or she cannot or will not step aside for its duration.

Section 4’s complexity and concern about its potential for misuse have raised questions among some observers that it could be implemented for political purposes. During debate on the amendment, its authors and proponents largely rejected such claims. They insisted the section was not intended to facilitate the removal of an unpopular or failed President, in support of which they cited checks and balances incorporated in the amendment that were designed to prevent abuse of the procedure. To date, Section 4 has not been implemented.

Section 4: Actions

Section 4 authorizes four potential procedures: (1) a joint declaration of presidential disability by the Vice President and a majority of the Cabinet or such other body (i.e., DRB) as Congress has established by law. When they transmit a written message to this effect to the President pro tem and the Speaker, the Vice President immediately assumes the powers and duties of the office as Acting President; (2) a declaration by the President that the disability invoked under the provisions set out above no longer exists. If the President’s declaration is not contested by the Vice President and the Cabinet or DRB within four days, then the President resumes the powers and duties of the office; (3) the Vice President and a majority of the Cabinet or DRB, acting jointly, may, however, contest this finding by a written declaration to the contrary to the aforementioned officers. As noted previously, this declaration must be issued within four days of the President’s declaration; otherwise, the President resumes the powers and duties of the office; (4) if this declaration is transmitted within four days, then Congress decides the issue. If Congress is in session it has 21 days to consider the question. If a two-thirds vote of Members present and voting in both chambers taken within this period disputes the President,

the Vice President continues as Acting President. If less than two-thirds of Members in both houses vote to confirm the President's disability, the President resumes the powers and duties of the office. Alternative actions—a decision by Congress not to vote on the question, a decision to vote to sustain the President's declaration, or passage of the 21-day deadline without a congressional vote—would also result in the President's resumption of the office's powers and duties.

Section 4: Actors

The Twenty-Fifth Amendment delegates specific roles in Section 4 to two people and three institutions: the President; the Vice President, including as Acting President; the Cabinet, the DRB, and Congress.

The Vice President

The Vice President is the indispensable actor in implementing a Section 4 declaration of presidential disability: the amendment's provisions can be invoked only on the Vice President's initiative or with the Vice President's agreement. The Cabinet or the DRB could petition the Vice President to initiate the process, but barring the Vice President's action, Section 4 cannot be implemented.

The President

The President's role under Section 4 is essentially reactive: the President may issue a declaration stating that he or she is no longer disabled at any time. The President, who retains office, but not the powers and duties as chief executive throughout a disability, can declare the disability to be ended at any time, and can do so any number of times. Neither Section 3 nor Section 4 can affect the President's tenure in office—barring death, resignation, or impeachment, a chief executive who is disabled for any length of time continues in office until the term expires.

The Cabinet and Disability Review Body

For the purposes of determining presidential inability under Section 4, the Cabinet consists of “the principal officers of the executive departments.” At present time, there are 15 such agency heads, listed in the order in which their departments were established: the Secretaries of State, the Treasury, and Defense; the Attorney General; and the Secretaries of the Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, Veterans Affairs, and Homeland Security. According to the House Judiciary Committee's 1965 report on the proposed amendment, “the acting head (of a Cabinet department) would be authorized to participate in a presidential disability determination. . . .” Senate debate on the Twenty-Fifth Amendment suggests, however, that inclusion of acting Cabinet officers as participants in a Section 4 ruling was questioned by some Senators.

Section 4 provides a potential alternative to the Cabinet: “such other body as Congress may by law provide”—the Disability Review Body (DRB). Congress has broad authority over the composition and duration of a DRB. During debate on the amendment, several options were considered: Congress could designate itself; retain the Cabinet but enlarge or shrink it; or include a mix of Members of Congress and distinguished public figures. Others have suggested Justices of the Supreme Court, physicians, and the Surgeon General as possible members. Congress could establish the body as a permanent institution or require reauthorization at regular intervals. The Amendment places a check on Congress by requiring that the DRB be created “by law,” and therefore subject to the full range of the legislative process before it was enacted, up to and including a presidential veto. Section 4 does not place a time constraint on creation of a DRB, which could be established at any time.

Congress

The scope of Congress's duties in a Section 4 disability declaration depends on the circumstances. Assuming an uncontroversial activation of Section 4 followed by the President's declaration of recovery, the only congressional duty would be for the Speaker and the President pro tem to receive the disability declaration from the Vice President and Cabinet (or DRB) and the President's subsequent undisputed declaration of recovery.

If, however, the Vice President and the Cabinet or DRB declare the President disabled, followed by the President's declaration that the disability has ended and that he or she plans to resume office, but the Vice President and the Cabinet or DRB dispute this declaration within four days, then, in the words of the amendment, “Congress shall decide the issue.” If Congress is in session on receipt of the declaration, it has 21 days to consider the question. If it is not in session, the amendment directs Congress to convene within 48 hours, which, if added to the 21-day window for consideration, comprises a theoretical maximum of 23 days.

If Congress determines by a two-thirds vote of the Members of both houses present and voting that the disability remains, the Vice President continues as Acting President. If the required two-thirds majority is not obtained within the specified time period, the President resumes the powers and duties of the office.

For additional information, please see CRS Report R45394, *Presidential Disability Under the Twenty-Fifth Amendment: Constitutional Provisions and Perspectives for Congress*.

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