

The Twenty-Fifth Amendment and Presidential Inability, Part 2: Federal Convention Debates

March 28, 2024

This Legal Sidebar post is the second 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 discusses the framing of the [Presidential Succession Clause](#) at the Constitutional Convention of 1787. Other Sidebars in this series discuss the Twenty-Fifth Amendment's [procedures](#); the [history of presidential succession](#); and 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](#).

Executive Succession in the Founding Era

When [declaring independence](#) from Great Britain in 1776, the United States rejected the rule of King George III and the British Parliament. The Constitution's Framers [departed](#) from the British tradition of constitutional monarchy by [vesting](#) the federal executive power in an elected President who would serve a four-year term and was subject to [impeachment](#) and removal from office. When designing the American presidency, the Framers confronted questions about who would discharge the President's duties if the President died, resigned, became unable to fulfill his responsibilities, or was removed from office.

The [Articles of Confederation](#) that preceded the Constitution did not create an independent executive branch, contemplate executive succession, or address presidential inability. However, [several Founding-era state constitutions](#) addressed gubernatorial vacancies or incapacities. Typically, these state constitutions provided that a subordinate officer (e.g., lieutenant governor) would temporarily assume the executive's powers and duties during a vacancy, absence, or inability. A few state constitutions [established procedures](#)

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LSB11132

for permanently filling vacancies in the governor's or lieutenant-governor's office until the next election. The Framers were likely aware of such executive succession laws when they drafted the Constitution.

Presidential Succession and Initial Debates at the Federal Convention

The delegates to the Constitutional Convention of 1787 discussed presidential succession and inability briefly during recorded debates. The two major blueprints for the national government offered at the Convention—the [Virginia Plan](#) and the [New Jersey Plan](#)—did not address either issue. However, New York delegate Alexander Hamilton's plan for the national government addressed vacancies in its highest executive office. The [Hamiltonian Plan](#), which did not receive serious consideration at the Convention, would have established a strong and centralized government headed by a national "governor" who would have served for life unless impeached and removed from office. Upon the national governor's death, resignation, or removal from office, his authorities would have been "exercised by the President of the Senate till a Successor be appointed."

Despite a lack of recorded debate on executive succession in the Convention's early months, on August 6, 1787, the Committee of Detail, which produced the Constitution's first draft, reported an initial version of the Presidential Succession Clause. The [draft Clause](#) provided that

[i]n case of [the President's] removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

The Succession Clause's first draft thus designated the President of the Senate as the President's "[provisional successor](#)" but did not specify whether a new President would be chosen before the next scheduled presidential election, explain how a new President would be chosen, or define presidential "disability."

On August 27, a few weeks after the Committee of Detail reported its draft, the Federal Convention delegates [briefly debated](#) the issues of presidential vacancy and inability. Delegate Gouverneur Morris of Pennsylvania objected to designating the "President of the Senate" as the President's provisional successor, suggesting the Supreme Court's Chief Justice should assume that responsibility. In a similar vein, Delegate James Madison of Virginia argued that the President of the Senate's exercise of presidential power might undermine the Constitution's checks and balances by allowing Congress to enact legislation without the serious threat of a presidential veto. However, Madison suggested that a "Council to the President" should discharge the President's powers and duties during a vacancy. Delegate Hugh Williamson of North Carolina contended that the Constitution should authorize Congress to enact laws specifying who would succeed to the presidency.

Finally, Delegate John Dickinson of Delaware, referring to the Succession Clause's "vague" designation of presidential "disability" as a circumstance that could result in the transfer of the President's powers to another individual, asked, "What is the extent of the term 'disability' and who is to be the judge of it?" None of the delegates offered a recorded response. Thereafter, the delegates unanimously agreed to postpone the Clause's consideration.

Finalization of the Presidential Succession Clause at the Federal Convention

The delegates to the Federal Convention reconsidered the draft Presidential Succession Clause less than two weeks before the Convention's end. The Brearley Committee on Leftovers, a group of 11 delegates who [met separately](#) to work out the details of the presidency and other thorny issues, reported a [revised Succession Clause](#) to the Convention on September 4. This draft, which designated the newly created office of the Vice President as the President's successor, provided that

in case of [the President's] removal as [previously indicated], death, absence, resignation or inability to discharge the powers or duties of his office the Vice President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.

On September 7, 1787, the delegates [approved](#) language authorizing Congress to determine by law who would act as President if both the President and Vice President were unable to discharge the powers and duties of the presidency. The Committee of Style, which prepared the Constitution's final draft, [combined](#) this newly approved language on simultaneous vacancy or inability with the Brearley Committee's language on presidential succession. As revised, the [final draft](#) of the [Succession Clause](#) in Article II, Section 1, Clause 6 of the original Constitution provided that:

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.

The original Constitution, ratified in 1788, thus provided for the Vice President to assume the President's powers and duties upon the President's removal, death, resignation, or inability. Congress was empowered to establish the line of succession to the presidency if both the President and Vice President were unable to discharge the powers and duties of the presidency. However, the original Succession Clause left many issues unresolved, including how to define presidential inability, who would determine such inability, and how such determinations would be made. As revised by the Committee of Style, the Clause did not definitively resolve the question of whether the Vice President would become President or merely exercise the President's powers and duties as "Acting President" during a presidential vacancy or inability. This omission later [resulted in debates](#) about whether the President could resume his office upon recovering from an inability if the Vice President had assumed the President's powers and duties.

Presidential Succession Laws

Article II's [Presidential Succession Clause](#) empowers Congress to establish the line of succession to the presidency in the event that the President and Vice President are unable to discharge the powers and duties of the presidency. Congress first exercised this power in the [Presidential Succession Act of 1792](#). The Act provided that the President pro tempore of the Senate would serve as Acting President until a new President was elected or the President's inability ended. If the President pro tempore's office was vacant, then the Speaker of the House would serve as Acting President.

Congress modified the line of presidential successors after the Vice President in the [Presidential Succession Act of 1886](#) by replacing congressional leaders with eligible heads of the Cabinet departments in the order of each department's creation. Several decades later, in the [Presidential Succession Act of 1947](#), Congress designated a new line of successors composed of (1) the Speaker of the House; (2) President pro tempore of the Senate; and (3) eligible Cabinet secretaries in the order of each executive department's creation. Despite these legislative efforts—and various [amendments to the Constitution](#) that touched upon presidential succession—the nation often grappled with difficult questions about presidential vacancy and inability before the Twenty-Fifth Amendment's ratification. In addition, the original Presidential Succession Clause did not specifically address vice presidential succession.

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