



# The Twenty-Fifth Amendment and Presidential Inability, Part 7: Issues for Congress

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This Legal Sidebar post is the last 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 issues for Congress related to the Twenty-Fifth Amendment. Other Sidebars in this series discuss the Twenty-Fifth Amendment’s [procedures](#); the framing of the [Presidential Succession Clause](#) at the [Constitutional Convention of 1787](#); the [history of presidential succession](#); and the Amendment’s drafting in [Congress](#) and [implementation](#). Additional information on this topic is available at the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#) and in [several CRS reports](#).

## Issues for Congress

Although the Twenty-Fifth Amendment has helped to ensure the prompt and orderly transition of executive power on [several occasions](#), various commentators have [observed](#) that the Amendment does not address all contingencies. In 2012, a Fordham University Law School Clinic on Presidential Succession [identified](#) several potential challenges:

- “Inability of the President when there is a vacancy in the office of Vice President”;
- “Dual inability of the President and Vice President”;
- “Inability of the Vice President”; and
- “Inability of a statutory successor while acting as President.”

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For instance, if the Vice President were unable to discharge his duties, then a President who anticipates becoming incapacitated **might refrain** from invoking Section 3 to “transfer his powers even briefly to an unable Vice President.” Vice-presidential inability **would also prevent** executive branch officials from invoking Section 4 because any presidential inability determination requires the Vice President’s participation. Furthermore, under Section 1, an incapacitated Vice President would **automatically succeed** to the presidency in the event of a presidential vacancy, but federal law does not specifically provide for an official to serve as Acting President for the duration of the new President’s inability.

Because Article II’s **Presidential Succession Clause authorizes** Congress to enact legislation addressing dual inability or vacancy scenarios, some scholars have **recommended** that Congress authorize a disabled President (or Acting President) to transfer his powers and duties to a statutorily designated successor, who would serve as Acting President in the absence of a healthy Vice President. Some commentators have **also suggested that** Congress empower a statutory successor, acting in conjunction with a majority of the Cabinet or other congressionally created body, to determine whether the President (or Acting President) is unable to fulfill his duties when there is no functioning Vice President. Other commentators **have argued** that Article II’s Succession Clause and the Presidential Succession Act implicitly permit the officer designated as “next in line” to the presidency to determine presidential and vice-presidential inability in the absence of a healthy Vice President.

Members of Congress and academics have also debated the meaning of “presidential inability” for purposes of Sections 3 and 4 of the Twenty-Fifth Amendment. Congressional hearings and debates suggest that the Amendment’s framers **intentionally left** the terms “inability” and “unable” ambiguous so that future decisionmakers would retain flexibility to address unforeseen contingencies that prevent the President from fulfilling his constitutional responsibilities. The Amendment’s **legislative history suggests** that physical or mental inability, whether temporary or permanent, **could qualify** as an “inability” under either section. However, as one commentator has **observed**, the Amendment’s framers did not intend for the notion of “presidential inability” to encompass “unpopularity, incompetence, impeachable conduct, poor judgment, [or] laziness.” As a practical matter, because the Supreme Court **has been reluctant** to decide questions textually committed to other branches of government, the ultimate discretion to define presidential “inability” might rest with the President, as provided in Section 3, or with the Vice President, Cabinet, and Congress, as provided in Section 4.

Other **approaches** consider how Congress implements the Twenty-Fifth Amendment. For example, some policymakers and legal scholars have looked at whether Congress should exercise its **Section 4 powers** to create a “disability review body” to evaluate presidential inability in conjunction with the Vice President. Such a panel, which **could be** of limited duration, **would displace** the Cabinet’s default role in making that determination. At least some of the Twenty-Fifth Amendment’s framers **wanted to give** Congress the **flexibility** to provide for another group of officials—which might include Cabinet members—to participate with the Vice President in determining presidential inability if experience had shown this to be **“desirable.”** However, although a disability review body **might prove useful** if the President fired (or threatened to fire) Cabinet secretaries who voted to transfer his powers to the Vice President under Section 4, some commentators have **expressed concerns** that evaluation of presidential inability by officials outside of the executive branch could violate separation-of-powers principles. It also **appears** that the President **could veto** legislation establishing another body to evaluate presidential inability, subject to potential congressional override.

The Twenty-Fifth Amendment’s framers were aware of the Amendment’s potential shortcomings. During House floor debates on the draft Twenty-Fifth Amendment, House Judiciary Committee Chairman Emanuel Celler echoed many Members’ views when he **remarked** that “[n]o bill can be perfect” but that the Amendment was a “well-rounded, sensible, and efficient approach toward a solution of a perplexing problem—a problem that has baffled us for over 100 years.”

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