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Presidential Elections: Vacancies in Major-Party Candidacies and the Position of President-Elect

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Summary

What would happen in 2016 if a candidate for President or Vice President were to die or leave the ticket any time between the national party conventions and the November 8 election day? What would happen if this occurred during presidential transition, either between election day and the December 19, 2016, meeting of the electoral college; or between December 19 and the inauguration of the President and Vice President on January 20, 2017? Procedures to fill these vacancies differ depending on when they occur.

During the Election Campaign—Between the National Party Nominating Conventions and the Election. After the conventions, which are usually held in July or August, and election day, November 8 in 2016, political party rules apply. For the Democrats, the Democratic National Committee would select a replacement; for the Republicans, the Republican National Committee would select replacement, or it could reconvene the national convention to perform this task.

Between the Election and the Electoral College Meeting. On election day, voters choose members of the electoral college, which formally selects the President- and Vice President-elect several weeks later (December 19 in 2016). Although the transition has begun, party rules still apply: a replacement candidate would be chosen by the national committees of either party, or by a reassembled Republican National Convention.

Between the Electoral College Meeting and Inauguration. The balance of scholarly opinion holds that the President- and Vice President-elect are chosen once the electoral votes are cast. The electoral votes are counted and declared by a joint session of Congress, held January 6 of the year following the election, although Congress occasionally sets a different date for the joint session.

During this period, succession is covered by the 20th Amendment to the Constitution: if the President-elect dies, the Vice President-elect becomes President-elect. Although the amendment does not specifically address the issues of disability, disqualification, or resignation during this period, its language, “failure to qualify,” could arguably be interpreted to cover such contingencies. Vacancies in the position of Vice President-elect are not mentioned in the 20th Amendment; they would be covered after the inauguration by the 25th Amendment.

If no person qualifies as President *or* Vice President by inauguration day, then the Succession Act (3 U.S.C. 19) applies: 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.

Following the events of September 11, 2001, concern about the possibility of terrorist attacks at the inauguration led to proposals to safeguard the line of presidential succession during the swearing-in ceremony, especially during a change of administrations. Most involve a “designated survivor,” a constitutionally eligible successor who would stay away from the ceremony in order to safeguard continuity in the office of the President. One option would be for an elected official in the line of succession, such as the Speaker of the House of Representatives or President pro tempore of the Senate, to be absent from the ceremony. During a change of administrations, a Cabinet secretary of the new administration could be confirmed by the Senate and installed *prior* to the inauguration, or a Cabinet secretary from the outgoing administration could remain in office until *after* the inauguration. In either case, the designated survivor would be absent from the ceremony. Related precautions have been taken since the presidential inauguration of 2009. In that year, Defense Secretary Robert M. Gates, a George W. Bush appointee who remained in office in the Barrack H. Obama Administration, did not attend the inauguration ceremony. In 2013, Veterans Affairs Secretary Eric Shinseki stayed away from the swearing-in.

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Introduction

Presidential succession in the United States is governed by the 25th Amendment to the Constitution, which provides that the Vice President “shall become President” should the incumbent chief executive die, resign, or be removed from office. The new President then nominates a successor Vice President, subject to confirmation by a majority vote of both houses of Congress.

In the event there is neither a President nor a Vice President, the Presidential Succession Act provides that the Speaker of the House of Representatives, the President pro tempore of the Senate, and duly-confirmed Cabinet officers, in order of the seniority of their departments, would be eligible to act as President.¹

These provisions apply at all times when a duly-sworn President or Vice President holds office, but additional factors enter the equation during presidential election years. The three-to-four month period of the presidential general election campaign, from the national party conventions through election day, and the 10-week transition period, from election day to the January 20 inauguration, present a different range of succession issues concerning presidential and vice presidential nominees during the campaign and the President- and Vice President-elect during the transition. This situation is further complicated in elections when 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. It should be noted, however, that the period preceding the inauguration of Presidents who have been elected to a second consecutive term does not 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, was not a transition period as defined in this report.

For the purposes of this report, “presidential election campaign” refers to the period between the national party nominating conventions, traditionally held in July or August of the election year, and election day, the Tuesday after the first Monday in November, which falls on November 8 in 2016. In modern times, the transition period is considered to start immediately after the general election, and extends through January 20 of the following year. The first part of the transition period extends from election day through the meeting of the electoral college, which, for the 2016 election, takes place on December 19. During this period, with few exceptions, the winning candidates are known on the basis of the popular vote tally and the projected electoral vote results. They are “heirs apparent,” the de facto President- and Vice President-elect. The transition’s second phase begins when the electors cast their votes and the electoral vote is announced. At this point, the balance of scholarly opinion holds that the candidates who received a majority of electoral votes actually become the President- and Vice President elect.

This report examines succession procedures that apply to major party nominees for President and Vice President during the presidential election campaign and the first phase of the transition period, and for President-elect and Vice President-elect during the second phase of the transition period.

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, as noted previously, a new

¹ (3 U.S.C. 19), at <https://www.gpo.gov/fdsys/pkg/USCODE-2006-title3/html/USCODE-2006-title3-chap1-sec19.htm>.

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 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 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 the death, disability, or resignation of a President- or Vice President-elect.

Filling Candidate Vacancies During the Presidential Election Campaign

Vacancies in a major national party ticket during the presidential election campaign, which extends roughly from the party nominating conventions through election day in November, are covered by the rules of the political parties. Although it might be assumed that the vice presidential candidate would succeed in the event of a vacancy in the presidential nomination, in fact, both major parties provide for replacement by their respective national committees.² Procedures established by the Democratic and Republican parties are detailed below.

Democratic Party Procedures

The Charter and By-Laws of the Democratic Party provide that vacancies on the presidential ticket would be filled by a special meeting of the Democratic National Committee (DNC). Voting in the DNC would be per capita by individual members; a majority of members present and voting would be necessary to nominate a successor candidate.³

Republican Party Procedures

The Rules of the Republican Party provide that vacancies on the presidential ticket could be filled either by the Republican National Committee (RNC), or by the national convention, which could be reconvened at the call of the committee. Voting in the RNC would be by state, with the three committee members in each state delegation casting the same number of votes as the number of delegates assigned to it during the previous national convention; a majority of the votes cast would be necessary to nominate a successor candidate.⁴

Precedents: Filling Vacancies in the Party Ticket in 1912 and 1972

The most recent example of filling a vacancy in a major party presidential ticket occurred in 1972, when the Democratic vice presidential nominee, Senator Thomas F. Eagleton, resigned from the ticket on August 1. The party's presidential nominee, Senator George McGovern,

² Other parties, such as the Libertarians or Greens, as well as independent presidential candidates, would provide their own procedures for filling vacancies during the presidential election campaign period and the transition.

³ Democratic National Committee, *The Charter and By-Laws of the Democratic Party of the United States*, ByLaws, Article II, sections 7(c), 8(d), at <https://www.democrats.org/organization/the-democratic-national-committee>.

⁴ Republican National Committee, *Republican Party Rules*, Rule No. 9, at <https://www.gop.com/rules-and-resolutions/>.

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.⁵

An earlier precedent occurred in 1912, when Vice President James S. Sherman, Republican 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 to replace Sherman, and all eight Republican electors subsequently voted for Butler. Sherman's death and the ensuing vacancy had no influence on the outcome of the election, and Butler's appointment proved to be noncontroversial because Taft came in last in the three-way presidential election: former President Theodore Roosevelt had quit the Republican Party to run 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.⁶

Succession Between Election Day and the Meeting of the Electoral College: Party Rules Still Apply

Presidential transitions are generally considered to begin immediately after election day.⁷ Throughout the first phase of transition, which lasts through the meetings of the electoral college,⁸ the winning candidates are considered to be the next President and Vice President, but their status is informal and presumptive. 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, during this first period, are still the nominees of their parties. The use of the titles "President-elect" and "Vice President-elect" is a time-honored courtesy that anticipates the ultimate status of the candidates who won an apparent majority of electoral votes.

Potential Challenges to Party Succession Rules

If a vacancy happens in either position during this period, most commentators suggest that the political parties would follow their long-established rules, as detailed earlier in this report. 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.⁹ For instance, an individual elector or group of electors might justifiably argue that they were nominated and elected to vote for a particular

⁵ *Congressional Quarterly Almanac, 92nd Congress, 2nd Session, 1972* (Washington: Congressional Quarterly, 1972), p. 1050.

⁶ *Congressional Quarterly's Guide to U.S. Elections*, 4th ed. (Washington: CQ Press, 2001), vol. I, pp. 666, 749, 774.

⁷ For additional information on presidential transitions, please consult CRS Report RS22979, *Presidential Transition Act: Provisions and Funding*, by Henry B. Hogue.

⁸ "The electors ... shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment," a date which falls on December 19 in 2016. The electors meet in their respective states.

⁹ U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on the Constitution, *Presidential Succession Between the Popular Election and the Inauguration*, hearing, 103rd Cong., 2nd sess., February 2, 1994 (Washington: GPO, 1995), pp. 12-13.

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 balance of opinion among constitutional scholars is that presidential electors are free agents, able to vote as they please, notwithstanding pledges or other commitments required by the state parties or state law to support the candidates of the party that nominated them.¹⁰ While the party national committees may thus appoint a replacement, they might not be able to guarantee that all electors would vote as instructed, particularly in the event of a closely contested election, or disputes over the national committee's choice of a replacement candidate or candidates.

Precedent: Death of Horace Greeley in 1872

The historical record provides little guidance for this situation: only once in the nation's history has a presidential candidate died between the election and meeting of the electors. Horace Greeley, the 1872 presidential nominee of the Democratic and Liberal Republican Parties, died on November 29 of that year, 24 days after the election, but six days before the December 5 meeting of the electors. The Democratic National Committee did not meet to name a replacement candidate—63 Greeley electors voted for other candidates, while three voted for Greeley. When the joint session of Congress convened to count the electoral votes on February 12, 1873, the three Greeley votes were not recorded, “the said Horace Greeley having died before the votes were cast.”¹¹ Even so, the question as to the validity of Greeley's 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.

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 states¹² 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 19 in 2016. Federal

¹⁰ 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*, 111th Congress, 2nd session, S. Doc. 111-15 (Washington, GPO: 2010), pp. 347-428.

¹¹ “Counting the Electoral Votes,” *Congressional Globe*, 42nd Congress, 3rd session, part 2 (February 12, 1873), p. 1299. See also 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*, 44th Cong. 2nd sess., Misc. Doc. No. 13 (Washington: GPO, 1877), pp. 363-380.

¹² The 12th 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*, 3rd ed. (Washington: American Enterprise Institute, 2004), pp. 24-25.

law¹³ 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.¹⁴

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.¹⁵

The balance of scholarly opinion, however, holds 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.¹⁶ If this is the case, then Section 3 of the 20th 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 20th Amendment, which arguably settles the question. Addressing the issue 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.*¹⁷

The 20th 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 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 20th Amendment would cover several aspects of succession. As mentioned previously, Section 3 of the 20th 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 25th Amendment.

¹³ 3 U.S.C. § 15.

¹⁴ Congress occasionally sets a different day for the electoral vote count, particularly if January 6 falls on a Sunday. This occurred most recently in 2013, when Congress set January 4 for the electoral count session.

¹⁵ *Presidential Succession Between the Popular Election and the Inauguration*, pp. 39-40.

¹⁶ *Ibid.*, p. 12.

¹⁷ U.S. Congress, House, *Proposing an Amendment to the Constitution of the United States*, report to accompany S.J.Res. 14, 72nd Cong., 1st sess., Rept. 345 (Washington, GPO: 1932), p. 6. Emphasis added.

Moving beyond death of a President-elect, the 20th 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.”¹⁸ 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 20th Amendment, but in this circumstance, the President would nominate a successor after being inaugurated, again in accordance with Section 2 of the 25th Amendment.

Finally, the 20th 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.”¹⁹ 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).²⁰ It should be noted that persons acting as President under the Succession Act would 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.²¹

Post-9/11 Succession Issues

Concern about succession during the transition increased following 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,²² but contemporary concerns also include a mass terrorist attack during or shortly after the presidential inaugural. While there would be a President, Vice

¹⁸ 20th 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....”

¹⁹ 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 Thomas H. Neale, available upon request.

²⁰ 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 of an executive department acting as President would be automatically vacated. 3 U.S.C. 19(d)(3).

²¹ 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.

²² 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.

President, Speaker, and President pro tempore during this period, who would be eligible to succeed 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.

The Inauguration Ceremony: A “Designated Survivor”

One safeguard for a situation such as that described above 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, traditionally delivered in person by the President before a joint session of Congress, offers a precedent in this case. In order to 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 1984.²³ 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.²⁴

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 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 alternatives focusing on the Cabinet could also reduce 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.²⁵

²³ On January 12, 2016, Homeland Security Secretary Jeh Johnson was the cabinet officer designated to be away from the Capitol during President Obama's State of the Union Address. The American Presidency Project, “Cabinet Members Who Did Not Attend the State of the Union Address,” at http://www.presidency.ucsb.edu/sou_cabinet.php.

²⁴ Senate President pro tempore Orrin R. Hatch was the Member of Congress designated to be away from the Capitol for the 2016 State of the Union Address. Rebecca Shabad, “Who Was Selected to Be This Year's Designated Survivor for the State of Union?” CBS News, January 12, 2016, at <http://www.cbsnews.com/news/who-was-selected-to-be-this-years-designated-survivor-for-the-state-of-the-union/>.

²⁵ Here, too, the Secretary would arguably avoid being present at the inaugural ceremony.

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, 2017.

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 10-week transition period.

Precedents: Gates, 2009; Shinseki, 2013

In 2008, events transpired that produced a designated survivor from the Cabinet. 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.²⁶ 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 was intentional: 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 20th.”²⁷

The Obama Administration continued this practice in 2013, when Secretary of Veterans Affairs Eric Shinseki was assigned the role of designated survivor during the presidential inaugural ceremony in that year.²⁸

Concluding Observations

Succession procedures during the presidential election campaign period and the transition are governed by 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 prior to the meetings of the electoral college, and all were successfully addressed by party rules. It may be assumed that party rules would be adequate to provide for some future

²⁶ Karen DeYoung and Michael D. Shear, “Obama Names Team to Face a Complex Security Picture,” *Washington Post*, December 2, 2008, p. A1, A10.

²⁷ “Gates to be Designated Successor on Inauguration Day,” CBS News, January 19, 2009, at http://www.cbsnews.com/8301-503544_162-4734750-503544.html.

²⁸ “Why a Designated Survivor Was Needed for Obama's Speech,” National Constitution Center, *Constitution Daily*, February 13, 2013, at <http://blog.constitutioncenter.org/2013/02/why-was-a-designated-survivor-needed-for-obamas-speech/>.

incident, although an extremely volatile post-election political climate or 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 20th and 25th 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, attention focused largely on the potential for a 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, including (1) expedited confirmation of one of the incoming cabinet officers; (2) retention of one or more cabinet officer from the outgoing administration until the succession has been secured; and (3) ensuring that a duly-confirmed cabinet officer is not present at the inauguration or its attendant public ceremonies.

Successful implementation of either cabinet option would, as noted earlier, depend on reasonable levels of good will and cooperation between a retiring President and the incoming chief executive, 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. 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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