

The 25th amendment of the united states constitution



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Abstract

This paper explores ten website articles that go in depth on the rules set within the Twenty-Fifth Amendment of the United States Constitution, why the Amendment was joined to the Constitution, changes to the Amendment made by the Supreme Court, and current issues involving the Twenty-Fifth Amendment. The varying website articles accurately depict how the Twenty-Fifth Amendment grew to become joined to the Constitution and how the Amendment is still prevalent in today's society. Other articles, however, depict impacting changes made by the Supreme Court since ratification of the Amendment. This paper examines accurate research about the Twenty-Fifth Amendment to suggest that all Amendments should be reviewed in order to fully understand how the United States Constitution is prevalent to the lives of citizens in the United States.

The Historical Context of the Twenty-Fifth
United States Constitution

Amendment of the

It was on February 10, 1967 that the state of Nevada and the state of Minnesota made the Constitution's Twenty-Fifth Amendment officially known to existence, solving unexplained concerns regarding presidential succession, dating back to the Founders' time.(NCC Staff., 2018)The death of President John F. Kennedy on November 22, 1963 is what finally pushed the United Congress to advance towards a constitutional change that would forever impact future presidencies. It is undoubtedly true that the assassination of John F. Kennedy created the occasional acts of chaos within

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the Federal Government the same afternoon he was assassinated. Vice President at the time was Lyndon Johnson, of which had known health issues, and the next two people in line for the presidency were 71-year-old John McCormack (the Speaker of the House) and Senate Pro Tempore Carl Hayden, who was 86 years old. (NCC Staff., 2018) Lyndon Johnson was sitting in the same vehicle as John F. Kennedy at the time of the assassination, and there were inaccurate reports from spectators claiming that Lyndon Johnson was also wounded in the event of John F. Kennedy's assassination. After the country had finally come to terms with the assassination of John F. Kennedy, Lyndon Johnson made absolute certain roughly two hours after John F. Kennedy's death, his taking over oath of office was accurately documented so the nation knew the constitutional change had taken place. (NCC Staff, 2018) The sudden death of the President immediately advanced into a heated argument about the constitutional change, of Lyndon Johnson taking oath of office, in Congress in 1963. Although, technically speaking, the Constitution did not directly state how a Vice President were to become President if the current President died, resigned or was unable to perform the office's duties. In 1841, the major neglect to find a solution to this issue became apparent when William Henry Harrison, the newly elected President, died roughly a month after being elected. After the completely unexpected death of William Henry Harrison, Vice President John Tyler decided to settle the ongoing political debate regarding succession. " There was a question in Congress about what powers Tyler had and what he should be called (Acting President, President or Vice President). Tyler settled the debate by asking a local judge to administer the presidential oath, and he fought all attempts by his many political foes to treat him as anything but the legitimate President

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of the United States.” (NCC Staff, 2018) Throughout the following years, presidential successions occurred after the deaths regarding six more presidents, totaling to eight deaths of presidents before the clarification and ratification of the Twenty-Fifth Amendment. There were specifically two cases where the offices of both the President and the Vice President nearly became vacant simultaneously.

To further understand the ratification of the Twenty-Fifth Amendment and how the amendment is still present in today’s society, the Constitution should be read for clarification. This paper examines why the Twenty-Fifth Amendment was included in the Constitution, changes to the Amendment made by the Supreme Court over time, and current issues involving the Amendment today.

The Constitution Review

Approved by Congress on July 6, 1965, ratified by the States on February 10, 1967, and certified by President Lyndon Johnson on February 23, 1967, the Twenty-Fifth Amendment of the United States Constitution would forever address the presidency or vice-presidency in the occurrence that the president and or vice president dies, resigns or becomes incapacitated or disabled. “ The Twenty-Fifth Amendment seeks to answer a series of questions raised by the original Constitution’s treatment of presidential and vice-presidential vacancies and presidential disability.” (Kalt, B. C., & Pozen, D., n. d.)

The Twenty-Fifth Amendment contains four sections, all of which explaining what shall happen in the House if any of the scenarios were to occur.

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Section 1 of the Amendment states that in case of the removal of the President from office or of his death or resignation, the Vice President shall become President.(U. S. Const. amend. XXV § 1)

Section 2 states whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.(U. S. Const. amend. XXV § 2)

Section 3 states whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties required for office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.(U. S. Const. amend. XXV § 3)

Lastly, Section 4 whenever the Vice President and the majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President. " Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or

of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.” (U. S. Const. amend. XXV § 4)

“ Invoking the 25th Amendment has always been controversial, especially Article 4, which allows for removal of a president who is deemed incapacitated by any kind of illness—including mental illness—or injury.” (Editors, 2018) Reasoning behind the ratification of the Amendment, changes made by the Supreme Court to the Amendment over time, and current issues regarding the Amendment will be further examined below.

Reasoning Behind Ratification.

Prior to the ratification of the Twenty-Fifth Amendment of the United State Constitution, the rules regarding succession to the Presidency were constitutionally lacking in explanation. The Constitution did not specifically state whether or not the Vice President would become President or become Acting President in the event that the President were to depart, resign, be

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removed from office or come to be disabled. Due to lack of clarification, some Presidents and their Vice Presidents took matters into their own hands to draft agreements for administering Presidential succession and, in some cases, inability. Before the Amendment was put into place, a total of eight Presidents, William Henry Harrison (1841), Zachary Taylor (1850), Abraham Lincoln (1865), James A. Garfield (1881), William McKinley (1901), Warren G. Harding (1923), Franklin D. Roosevelt (1945), John F. Kennedy (1963), had died while holding office. Clearly, this was a social issue that needed clarification considering the circumstances of the seat of the President being left vacant as well as many other conditions.

Changes Made by Courts.

In the year 1982, in the *Nixon v. Fitzgerald* case, the Supreme Court decided that a President or a former President has absolute immunity from liability based on his official acts of Congress. Absolute immunity can be defined as, “the right to be free from the consequences of a suit’s results, and from the burden of defending oneself altogether.” (US Legal, Inc., n. d.) Absolute immunity contrasts with qualified immunity, which only applies if the officer’s activities are within the scope of his or her office, are in objective good faith, and do not violate clearly established statutory or constitutional rights of which a reasonable person would be aware. (US Legal, Inc., n. d.)

Also, under the Twenty-Fifth Amendment, the President could be declared “disabled” and removed from office against his will by the Vice President acting together with a majority of the Cabinet. (Aftergood, S., 2018) This change was invoked by the Supreme Court after the occurrence of

Presidents both voluntarily and temporarily declaring themselves disabled on three separate occasions in 1985, 2002, and 2007. (Aftergood, S., 2018)

Alternatively, in 1981, John Hinkley, Jr. attempted assassination of President Ronald Raegan by using a . 22 revolver with exploding bullets. John Hinkley, Jr. fired a shot into Raegan's limo which then ricocheted into Ronald Raegan's chest. While Raegan was out of office and in surgery for getting shot in the lung (and almost the heart), " there was a great deal of confusion at the upper levels of government. In the most notable incident, Secretary of State Alexander Haig told the press that " I am in control here in the White House, pending return of the vice-president," under the mistaken belief that the chain of command placed him in charge." (H., 2009) This occurrence had occurred after the ratification of the Twenty-Fifth Amendment, and the Amendment had not been invoked in this particular case, even though the Amendment clearly stated that in the event the President is unable to perform his duties, the President shall appoint the Vice President as Acting President.

Current Issues Regarding the Amendment

An anonymous writer for the Op-Ed article published in the New York Times wrote back in September of 2018 that there were " early whispers" between President Trump's advisors about trying to remove Donald Trump from presidency by invoking Section 4 of the Twenty-Fifth Amendment of the United States Constitution. (Michael, 2018) To restate, section 4 of the Twenty-Fifth Amendment states that, " whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President

pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.” (Kalt, B. C., & Pozen, D., n. d.) As stated in the article, such a move would be unprecedented and nobody wanted to participate in precipitating a constitutional crisis. (Michael, 2018). The topic is still causing a huge controversy between Trump opponents, though, as there is also talk about removing the president under the impeachment process. “ A president can be impeached by a simple majority in the House and removed from office by a two-thirds vote in the Senate. Removal under the 25th Amendment requires a two-thirds vote in both chambers.” (Michael, 2018)

Alternatively, in Paris, France on December 1, 2015, President Barack Obama was also at risk of having the Twenty-Fifth Amendment used against him. Supposedly, President Obama had given a speech of which without the assistance of the teleprompter, his speech could only be described only as “ halting.” It was impossible to count the number of times he seized up, able to deaden the silence with only a drawn-out “ uh,” “ um” or “ ahhh.” (Hurt, C., 2015) The speech presented by President Obama was reportedly not the same soaring speaker whose words inspired millions in 2008. “ This is a broken-down man who has lost the only gift he ever had.” (Hurt, C., 2015) It was also reported that anyone who bothered to listen to President Obama speak to the reporters in Paris in 2015, “ would reasonably conclude it is high time to start drawing up the papers to transmit to Congress for his removal.” (Hurt, C., 2018) It was made clear that President Obama could not speak

encouragingly without the help of a teleprompter, and made the people start to wonder if he was unfit to be in office and high time to have the Vice President appointed as President.

Lastly, before Barack Obama ran for President, George W. Bush was the President. During George W. Bush's term, he had two occurrences where he was unable to perform his duties in office during his two-term tenure. (Kranz, M., 2017) The first occurrence happened on June 29, 2002 when George W. Bush invoked the 25th Amendment and allowed Vice President at the time, Dick Cheney, as Acting President on his behalf for two hours and five minutes. The second occurrence took place roughly five years later on June 21, 2007, when George W. Bush again named Dick Cheney as Acting President for two hours and fifteen minutes. In both occurrences, George W. Bush, like Ronald Reagan, had undergone colon-related procedures, but his were of a much more harmless nature. To make matters simpler, the procedures George W. Bush undertook were routine colonoscopies. (Kranz, M., 2017)

Conclusions Involving the Twenty-Fifth Amendment

In order to gain a complete understanding of the Twenty-Fifth Amendment of the United States Constitution, as well as the current events involving the consideration of invoking the Amendment, it is necessary to review the Constitution itself in its entirety and reference previous court cases involving the use of the Amendment. Since the ratification, Supreme Court changes, and the current events reviewed, it can be seen that the Twenty-Fifth Amendment still does not clearly state what qualifies as an inability to serve as President. Yet, according to Jay Berman, a Bayh aid who assisted working

on the amendment, stated that the unclearness was an intentional action. The Twenty-Fifth Amendment is not perfectly stated and clear, but since this action was intentional, it must be concluded that it is perfect in its own way. Since this appears to be true for the Twenty-Fifth Amendment, the equivalent must be true for the other Amendments contained within the Constitution. As each Amendment of United States Constitution becomes increasingly prevalent in individuals lives, it is important to possess knowledge and understand citizens' rights and obligations, as well as understand the House's rights and obligations.

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