

25TH AMENDMENT BACKGROUND & COMMISSION LEGISLATION OVERVIEW

Overview of the Commission on Presidential Capacity to Discharge the Powers and Duties of the Office Act (CPC Act)

Section 4 of the 25th Amendment empowers Congress to establish a permanent “body” that, acting with the Vice President, can declare that the President is “unable to discharge the powers and duties of his office.” The 25th Amendment was adopted more than 50 years ago, but Congress has never set up the body called for in Section 4 to determine presidential fitness in the event of physical or mental incapacity.

Congressman Raskin has introduced [legislation](#) to establish this body as the Commission on Presidential Capacity to Discharge the Powers and Duties of the Office (“Commission”). The CPC Act will allow Congress to guarantee the security of the nation and effectiveness of the government when serious concerns have been raised about the President’s ability to execute the responsibilities of the office.

In emergency situations, Congress could pass a concurrent resolution requiring the Commission to examine the President, determine his/her ability to execute the powers and duties of the office, and report its findings to Congress in coordination with the Vice President. If presidential incapacity exists, the Vice President would immediately assume the role of Acting President.

The Commission would be a non-partisan, 17-member body composed of:

- Four (4) physicians and four (4) psychiatrists, selected by the Speaker of the House and the House Minority Leader, and the Senate Majority and Minority Leaders;
- Eight (8) former high-ranking Executive Branch officers who will be a former President, Vice President, Secretary of State, Attorney General, Secretary of the Treasury, Secretary of Defense, or Surgeon General, one each selected by the Republican Leadership of the House and Senate, and the Democratic Leadership of the House and Senate; and
- a 17th member, the Chair of the Commission, will be selected by the appointed members.
- In order to avoid conflicts of interest and both civilian and military chain of command issues, none of the members can be current elected officials, federal employees, or members of the active or reserve military.

Legislative Procedures Under the Commission on Presidential Capacity Act

- The CPC Act also establishes expedited processes and procedures for legislative consideration in the event that the Commission is called upon to act.
- Upon introduction of a concurrent resolution to activate the Commission, the resolution will be referred to the Judiciary Committee of the respective chambers, which will have 48 hours to act upon the bill, or it will be discharged to the floor.
- The concurrent resolution will proceed to the floor of that chamber for debate and a vote on the first legislative day possible.
- Upon passage, the resolution will be transmitted to the other chamber, where it will receive the same expedited consideration and procedures.

- If the resolution is adopted by Congress, the Commission will have 72 hours to examine the president, and an additional 72 hours to submit its findings to Congress.
- If a majority of the Commission and Vice President finds that the President is unable to discharge the powers and duties of the office, it may submit such information to Congress and the Vice President shall immediately step in as Acting President.
 - If the Vice President disagrees with the conclusions of the Commission, he/she must document such disagreement in writing.

25th Amendment Procedures Post-Submission of Commission Report to Congress

- If the Commission and Vice President determine incapacity, the President may subsequently transmit a letter to Congress declaring that no incapacity exists.
- The Commission may then, within four days, transmit a second letter to Congress declaring that the President is unable to discharge the powers and duties of the office.
- Congress must then, within 21 days of going into Session, vote to determine whether the President is unable to discharge the powers and duties of his office.
- If both chambers determine by a two-thirds majority that such an incapacity exists, the Vice President will continue to discharge the duties of Acting President, otherwise, the President resumes office.

Although Section 4 of the 25th Amendment has not been invoked yet, other provisions of the Amendment have been used on multiple occasions.

History of the 25th Amendment and Presidential Incapacity

The 25th Amendment of the U.S. Constitution deals with presidential succession and incapacity. It was adopted on February 10, 1967. Acting in the wake of President John F. Kennedy's assassination, Congress proposed the amendment in order to clarify succession procedures in the event that the President dies, is removed from office, or is "unable to discharge the powers and duties of his office."

The 25th Amendment has been invoked six times. Only three of these invocations were related to presidential succession (Section 3). Most notably, the 25th Amendment, Section 3, was invoked when Presidents Ronald Reagan and George W. Bush underwent minor medical procedures. Both Reagan and Bush transmitted letters to Congress delegating authority to their Vice Presidents temporarily for several hours.

There have been other times when various forms of incapacitation have affected presidencies, prompting questions as to whether the 25th Amendment *should* have been invoked. One such case is that of President Richard Nixon who, on the night of October 24, 1974, suffered a temporary impairment (both physiological and psychological) severe enough to prompt Secretary of State Henry Kissinger to no longer consider Nixon a "functioning President." That evening, with President Nixon incapacitated, rising tensions in the Middle East prompted Secretary Kissinger and Alexander Haig to convene Cabinet members and senior national security aides in the White House Situation Room and raise the worldwide military alert to DEFCON 3.

Another example occurred prior to the adoption of the 25th Amendment. In October of 1919, President Woodrow Wilson suffered an incapacitating stroke, paralyzing the left side of his body, blinding him in one eye and leaving him bedridden. President Wilson's wife, Edith, acted as gatekeeper to the President, allowing only physicians and a few trusted advisers to see him, while Edith effectively took over matters of state. Even after President Wilson was allowed out of bed, his mental deterioration was obvious, yet hidden from public view, while Edith continued acting in stewardship of his presidency until the end of the term.

Text of the 25th Amendment to the United States Constitution

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. 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.

Section 3. 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 of his 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.

Section 4. 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.

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.