

## **FAQs: 25<sup>th</sup> Amendment and CPC Act**

### **What does Section 4 of 25<sup>th</sup> Amendment do?**

- Congress enacted the 25th Amendment in 1967 in the wake of the assassination of President John F. Kennedy to address the temporary or permanent incapacity of the President.
- In the event that the President is unable to execute the powers and duties of the office, Section 4 of the 25th Amendment empowers 1) the Vice President and a majority of the Cabinet; or 2) the Vice President and *a body created by Congress* to make that determination and declare it in writing to Congress. If this determination is made, the Vice President then assumes the role of Acting President.

### **What does the Commission on Presidential Capacity (CPC) Act do?**

- The CPC Act establishes the congressionally created “body” referenced in Section 4 of the 25th Amendment. This body – the Commission on Presidential Capacity to Discharge the Powers and Duties of the Office – can determine whether the President is unable execute the powers and duties of the office.
- The CPC Act also establishes expedited procedures for Congress to consider a concurrent resolution empowering the Commission to examine the President and report its findings to Congress.
- If the Commission and the Vice President determine that presidential incapacity exists, the Vice President would immediately assume the role of Acting President.

### **How are members of the Commission selected?**

- The Commission is a non-partisan, 17-member body created by Congress.
- Congressional leadership (Speaker of the House, House Minority Leader, and Senate Majority and Minority Leaders) each select one physician and one psychiatrist to serve on the Commission. Additionally, each party (Democrat and Republican) selects four former statespersons (e.g., former Presidents, Vice Presidents, Attorneys and Surgeons General, and Secretaries of State, Defense, and Treasury) to serve. The 16 appointed members select a 17th member, who acts as Chair of the Commission.
- To avoid partisan and chain-of-command conflicts of interest, no member of the Commission may be an elected official, current federal employee, or an active or reserve member of the military.

### **What is the expedited process for determining presidential incapacity under the CPC Act?**

- In addition to creating the Commission, the CPC Act also establishes expedited procedures, in case of emergency, for Congress to consider a concurrent resolution empowering the Commission to examine the President, determine his/her ability to discharge the powers and duties of the office, and report its findings to Congress.
- The Judiciary Committees of each chamber have jurisdiction over the concurrent resolution and must consider it within 48 hours of referral.
  - The resolution will be considered on the next legislative day upon discharge.
  - If adopted, the resolution requires the Commission to examine the President to determine his/her capacity to discharge the powers and duties of the office within 72 hours.
  - The Commission can consider a President’s refusal to be examined and must submit its determination to Congress on the President’s capacity within 72 hours of examination.

- If a majority of the body and Vice President determine a presidential incapacity exists, the Vice President immediately assumes the role of Acting President.
- If the Vice President disagrees with the Commission's findings, he/she must provide the basis for disagreement in the written report submitted to Congress.

**Has the 25th Amendment ever been invoked?**

- Yes. For example, when Presidents Ronald Reagan and George W. Bush underwent medical procedures, they transmitted letters to Congress, pursuant to the provisions of Section 3, temporarily delegating presidential authority to their Vice Presidents. The wisdom of the 25th Amendment has been repeatedly vindicated by events.
- Although other forms of incapacitation have occurred in prior presidencies, Congress has yet to exercise its power under Section 4 to establish the "body" to determine presidential incapacity not identified directly by the President himself.

**Can the President challenge an incapacity finding under the 25th Amendment?**

- Yes. The 25th Amendment permits the President to subsequently declare that no incapacity exists and resume the duties of the office.
- The President's declaration can be overridden within four days by either: 1) the Vice President and a majority of the Cabinet; or 2) the Vice President and the body created by Congress, which then may be upheld by two-thirds majority vote in both Houses of Congress that the President is unable to discharge the powers and duties of the office.