

FILLING VICE PRESIDENTIAL VACANCIES:

AN ANALYSIS OF SECTION TWO OF

THE TWENTY-FIFTH AMENDMENT

By

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THE TWENTY-FIFTH AMENDMENT

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DEDICATION

This thesis is dedicated to my mother and father,
Mr. and Mrs. Harold Adkison.

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CHAPTER I

INTRODUCTION

On July 6, 1965, the Twenty-Fifth Amendment to the Constitution of the United States was proposed by Congress. The proposed amendment dealt primarily with presidential disability and vice presidential vacancy. Prior to the proposed amendment several presidents had been disabled, at least temporarily, and the vice presidential office had been vacant sixteen times.

On February 23, 1967, the proposed amendment was declared ratified. Seven years later section two of the Twenty-Fifth Amendment has been invoked twice.¹ Although section two of the amendment has provided the continuity so long espoused, it also has resulted in an appointive president and vice president.

Problem

Section two of the Twenty-Fifth Amendment has been criticized since it was first proposed. One set of criticisms has attacked the "undemocratic" nature of the amendment. Then-Congressman Charles Mathias (R-Maryland) during the hearings conducted in the House of

¹After the resignation of Spiro Agnew, Richard Nixon nominated Gerald Ford to be vice president. He was confirmed by Congress and appointed by the president. After the resignation of Richard Nixon, President Ford nominated Nelson Rockefeller to be vice president. He, too, was confirmed by Congress and appointed by the president.

Representatives (89th Congress) repeatedly expressed his dissatisfaction with the appointive power as prescribed in the Twenty-Fifth Amendment:

I oppose such power as being in conflict with the basic principles of the Republic and the philosophy of the Constitution which tends to disperse, rather than to centralize, power . . . The Presidency has always been considered an elective office.²

He supported his position further during the final debate over the amendment in the House:

If you go to the Journal of the Constitutional Convention, which was kept by James Madison, you will find a great deal of discussion as to how a President should be chosen. Various methods were proposed. They were all elective methods. If we go to a new procedure under which the Vice President will be appointed by the President, as the ambassador or a judge, then we shall have changed the nature of the presidency for the first time in the history of the Republic, and it will be no longer a purely elective office.³

Arthur M. Schlesinger expressed similar views concerning an appointed president and vice president:

On the eve of the bicentennial of independence, the American experiment in self-government was confronted by a startling development: the President and Vice President who would lead the celebration on July 4, 1976, would be persons who had come to office and power, not through election, like all their predecessors, but through appointment. Nothing like this had ever happened, or could ever have happened, in the earlier history of the Republic. The right of the people to choose their own leaders had been assumed by definition as a fundamental point of self-government.⁴

When the amendment was still in the proposal stage, Senator Mike Monroney (D-Oklahoma) advocated the nomination of two vice presidential

²U.S. House, Committee on the Judiciary, Application of the Twenty-Fifth Amendment to Vacancies in the Office of Vice President, 93rd Cong., 1st Sess., 1973, p. 318. All other references to this document will be noted as U.S. House, Application of the Twenty-Fifth Amendment.

³Ibid., pp. 359-360.

⁴Arthur M. Schlesinger, "On the Presidential Succession," Political Science Quarterly, LXXXIX (Fall, 1974), p. 475.

candidates at each party's presidential convention in order to provide a successor in case there was a vice presidential vacancy.⁵ Monroney questioned the philosophy of the selection of the nominee by the nomination of one man, placing in the supreme line of authority over 180 million Americans one man chosen absolutely by the President, by sending the nomination to Congress, and saying, "This is my man; I choose him for my successor."⁶ Another Congressman at this time, Mr. Dingell (D-Michigan), referred to section two as "bad legislation".⁷ His reasons for doing so were expressed in this way:

Let me point out to you that to permit anyone to have the right to appoint someone else to an elective office, particularly the high office of the President of the United States, is to deny the country, deny the electors of this Nation the ability, the right and power to choose their public servants, the privilege to choose the highest office holder in this land . . . This is a device to permit a President to begin an orderly chain of successors through an appointive device . . .⁸

Stating that he did not believe a vice president should be appointed, Congressman Jonas (R-North Carolina) expressed belief in the right of the people to elect their vice president.⁹ One proposal suggests the vice presidency be abolished and a new president elected when the presidency is vacated.¹⁰

President Truman, while not directly criticizing the Twenty-Fifth

⁵Birch Bayh, One Heartbeat Away (New York, 1968), p. 147.

⁶Ibid.

⁷U.S. House, Application of the Twenty-Fifth Amendment, p. 389.

⁸Ibid.

⁹Ibid., p. 392.

¹⁰"Naming Vice Presidents: Efforts to Improve the System," Congressional Quarterly, Vol. XXXII (January 12, 1974), pp. 48-50.

Amendment, expressed strong feelings over the power of a president to appoint his heir as provided in the Presidential Succession Act of 1886:

It now lies within my power to nominate the person who would be my successor . . . I do not believe that in a democracy this power should rest with the Chief Executive.¹¹

President Truman for this reason asked Congress to revise the Presidential Succession Act of 1886 and to provide for a more democratic method of selection. That act provided for the cabinet officers (in the order in which their departments had been established) to succeed to the presidency when vacancies occurred in both the presidency and vice presidency.¹² Since the president appoints cabinet officers (after securing the consent of the Senate), under this act a president would be appointing potential heirs. President Truman also asked Congress to provide in the act for such successor to serve only until congressional elections. An election then could be held to fill the remainder of the term.¹³

In a criticism of the Bayh-Cellar Plan (the name given the resolution which was proposed by Congress) George Haimbaugh mentions section two's break with the Truman plan and suggests other consequences:

The . . . provision for nomination by the President would wipe out the reform effected by the instigation of President Harry S. Truman by the Presidential Succession Act of 1947 . . . The provision would be contrary to the constitutional doctrine almost universally observed among representative governments . . . Even in the presidential regimes of French-speaking black Africa, presidents are not given the constitutional

¹¹"Problems of Succession," Congressional Quarterly Guide to Current American Government, (Spring, 1974), p. 19.

¹²Ibid., p. 20.

¹³Ruth Silva, Presidential Succession (Ann Arbor, 1951), p. 124.

power to nominate their potential successors.¹⁴

Related to the arguments concerning the undemocratic nature of section two are those concerned with selection by Congress. Former President Nixon (1965), testifying before the Senate Judiciary Subcommittee on Constitutional Amendments, stated that he believed the electoral college should confirm a vice presidential appointment made by the president.¹⁵ Mr. Nixon's primary reason for advocating this method was the assurance that the electoral college would reflect the party of the president, while Congress might not. Senator Strom Thurmond ("then D"-South Carolina) also favored this procedure.¹⁶

Another area of criticism over section two concerns itself with the fact that no time limit is placed on either the nomination or confirmation process. In a statement before the House Judiciary Committee, Michael Musmann, a Pennsylvania Supreme Court Justice, suggested a thirty day time limit on congressional confirmation.¹⁷ Congressman John Monagan (D-Connecticut) proposed a similar thirty day time limit on presidential nomination.¹⁸ President Ford, himself, after his experience of delay in confirmation of Nelson Rockefeller as vice president, has suggested that Congress might be wise to consider revising the Twenty-Fifth Amendment

¹⁴U.S. Senate, Report of the Subcommittee on Constitutional Amendments, Selected Materials on the Twenty-Fifth Amendment, 93rd Cong., 1st Sess., 1973, pp. 189-190. All other references to this document will be noted as U.S. Senate, Selected Materials on the Twenty-Fifth Amendment.

¹⁵Ibid., p. 96.

¹⁶Bayh, p. 262.

¹⁷U.S. House, Application of the Twenty-Fifth Amendment, p. 220.

¹⁸Ibid., p. 179.

in order to place a time limit on congressional confirmation.¹⁹

As spelled out in the congressional hearings, section two was to provide for confirmation of a vice presidential nominee by both houses of Congress acting separately.²⁰ The Committee for Economic Development, in its study Presidential Succession and Inability, stated that congressional approval should be by a joint session of Congress.²¹ Three reasons were given by the Chairman of the Committee for Improvement of Management in Government of the Committee for Economic Development:

1. The joint session corresponds to voting strength, State by State, in the electoral college.
2. Action--pro or con--would be more expeditious than could be expected through separate consideration by the two Houses or under normal Senate procedures.
3. The Senate and the House of Representatives might be in disagreement, with unfortunate effects.²²

Representative Edward Hutchinson (R-Michigan) stated several reasons for confirmation by the Senate only:

1. In those cases where a Vice President is not elected, because of a failure of a majority of the electoral vote, the Constitution directs the Senate to elect one from the candidates who received the two highest numbers.
2. The sole constitutional duty of the Vice President remains that of the President of the Senate.
3. Our constitutional processes for the selection of our Presidents and Vice Presidents are Federal in nature. The Senate, too, is a body Federal in nature.²³

In an amendment to strike section two from the congressional joint resolution providing for vice presidential vacancy and presidential

¹⁹Oklahoma City Times, November 21, 1974, p. 56.

²⁰U.S. House, Application of the Twenty-Fifth Amendment, p. 49.

²¹U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 128.

²²Ibid.

²³Ibid., p. 63.

disability, Representative Pucinski (D-Illinois) stated:

I have the highest confidence in the man who will occupy the Presidency, regardless of the party that he belongs to, in the future, but I think this proposal in this bill does open the door at some future time--perhaps 50 years from now or 100 years from now--to a phenomenon which has not bothered or plagued our country heretofore; namely, the problem of palace intrigue.²⁴

Senator Bayh defended the appointive power of the President as given in section two as providing for selection of a vice president who would share the views and philosophy of the president.²⁵ In rebuttal, Mr. Haimbaugh proceeded to give historical documentation to the contrary and concluded:

A survey of the selection of men for the second place on winning national tickets during this century should thus suffice to demonstrate that the influence which a presidential candidate is able to bring to bear on the selection of his running mate is used basically not in the interest of continuity of policy but in the interest of victory at the polls. And when it is remembered that in this century every President who has survived his first term has been a candidate for re-election, it is reasonable to expect that if a Vice-President-just-become-President is empowered to nominate a new Vice President, his motivations will not differ from those of a presidential candidate and that he too will be thinking in terms of a ticket strengthening running mate. The argument that the President must have the initiative in a procedure for mid-term vice presidential succession in order that he can insure continuity of his executive policies is a fallacy for the simple reason that such a power would not be used for such a purpose.²⁶

Other criticisms of section two include the absence of a secret ballot,²⁷ the need for revision of the 1947 Presidential Succession

²⁴U.S. House, Application of the Twenty-Fifth Amendment, p. 385.

²⁵U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 182.

²⁶Ibid., pp. 188-189.

²⁷U.S. House, Application of the Twenty-Fifth Amendment, p. 282.

Act,²⁸ and the provision of automatic succession as prescribed by congressional statute.²⁹

Significance

Changing the Constitution through the amending process is a difficult task. The framers of the Twenty-Fifth Amendment sensed the importance of writing a constitutional amendment; they also felt a sense of urgency. Certainly, no amendment is flawless, a fact which the authors of the Twenty-Fifth Amendment realized and admitted. Before the hearings in the Senate and House were over, there were almost forty different proposals concerning vice presidential vacancy and presidential disability.³⁰ Only through the give-and-take of members in both houses and between houses was an acceptable proposal for a constitutional amendment created.

Today we have a president and a vice president neither of whom has faced election to those offices. Both came into power through the process outlined in section two of the Twenty-Fifth Amendment. The possibility of this happening was not considered or debated in the congressional hearings over the amendment. This does not automatically condemn the amendment. For some it does not even justify criticism. But one criticism of the process is that the method is undemocratic. So is the electoral college. Custom, however, has democratized the electoral college. Some argue that a presidential nominee invariably chooses his own

²⁸Ibid., pp. 314-315.

²⁹Ibid., p. 348.

³⁰Ibid., pp. 14-41.

running mate at a nominating convention. Presidential nominees, who are uncertain of election, differ from presidential incumbents. It is not the purpose of this study to test every criticism of the amendment, nor is it to question the democratic or undemocratic nature of the selection process. Such an important topic will be reserved for other students in this field. It is the purpose of this study to examine the rationale behind section two of the Twenty-Fifth Amendment and then to examine how that section has worked in practice. Perhaps after one hundred and ninety-nine years, the United States has satisfactorily solved the problem of presidential succession. Perhaps not. It is hoped that the study might serve to answer arguments on both sides and give direction for further study of the problem of presidential succession.

Literature Review

The adoption of the Twenty-Fifth Amendment and subsequent developments surrounding its usage are both relatively recent events. The unique occurrence of the resignation of both the president and the vice president of the same administration led to application of the recently ratified amendment twice in a period of less than one year. Few major studies or articles have been written about this issue. The best references are those documents compiled for and by congressional committees.³¹ Some books and articles have been written on presidential succession. One of the best studies dealing with this topic is Ruth Silva's Presidential Succession.³² Although the book was written before the

³¹U.S. House, Application of the Twenty-Fifth Amendment, and U.S. Senate, Selected Materials on the Twenty-Fifth Amendment.

³²Silva.

Twenty-Fifth Amendment was proposed it is a very good reference in tracing the development of presidential succession. Professor Silva also has provided useful insights into the thinking of the founding fathers. An article written by John Feerick appeared in the Fordham Law Review in 1965 when ratification of the amendment was taking place.³³ In this article Mr. Feerick analyzed the Twenty-Fifth Amendment section-by-section. He also gave a rather detailed description of the history of presidential disability and vice presidential vacancy. His comments concerning section two were rather brief:

In giving the President a dominant role in filling a vacancy in the Vice Presidency, the proposed amendment is consistent with present practice whereby the presidential candidate selects his own running mate who must be approved by the people through their representatives. It is practical because it recognizes the fact that a Vice President's effectiveness in our government depends on his rapport with the President. If he is of the same political party and if compatible temperament and views, all of which would be likely under the proposed amendment, his chances of becoming fully informed and adequately prepared to assume presidential power, if called upon, are excellent.³⁴

The rationale expressed in this quotation is one which was used several times during the congressional hearings to support the appointive power of the president. Charles Mathias in his dissenting views expressed doubts over this rationale.³⁵ Michael Harwood in his book In the Shadow of Presidents briefly discussed section two and its relationship to the 1947 Presidential Succession Act.³⁶ Mr. Harwood's conclusion was

³³U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 143.

³⁴Ibid., p. 168.

³⁵Ibid., pp. 67-68.

³⁶Michael Harwood, In the Shadow of Presidents (New York, 1966), p. 223.

to change the succession laws so that the next in line behind the vice president would be the Secretary of State.³⁷ An article written by George Haimbaugh criticized the Bayh-Cellar plan for vice presidential succession (which is section two). Mr. Haimbaugh stated that Senator Bayh's argument on continuity as a reason for giving the president such power was a fallacy.³⁸ In an article over presidential succession Arthur M. Schlesinger questioned both the second section of the Twenty-Fifth Amendment and the office of the vice president itself.³⁹ In contrasting the French method of presidential succession with the present system in the United States, he raises doubts over the legitimacy of the United States' method and advocated the abolition of the vice presidency.⁴⁰

The second man to be placed into the office of vice president under the Twenty-Fifth Amendment testified before the Senate Judiciary Subcommittee on Constitutional Amendments. His views are presented here for comparison because they reflect a reform favored (although specifics differ) by others. Governor Rockefeller suggested the following:

. . . the President should appoint a First Secretary of the Government to assist the President in the exercise of his constitutional responsibility and authority in the area of natural security and international affairs. The appointment should be confirmed by the Senate. The First Secretary would exercise authority as delegated by the President, be a member of the cabinet, preside in the absence of the President and Vice President and serve as executive chairman of the National Security Council. He would be the first in line of succession after the Vice President, with the remaining members of the

³⁷Ibid. His suggestion was applicable only in the instance of vacancies in both the presidency and vice presidency.

³⁸U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 189.

³⁹Schlesinger, p. 475.

⁴⁰Ibid., p. 477.

cabinet after him.⁴¹

Research

The previously mentioned criticisms and arguments over the Twenty-Fifth Amendment raise this question: Is that part of the Twenty-Fifth Amendment which deals with selection of a vice president working as it should, or as its originators and defenders intend? This question raises other more fundamental questions. Considering the many alternatives, why was this method of selecting a vice president provided in section two? Further, what were the arguments to support such a method? Upon examining the congressional hearings, one can discover the answers (those advanced publicly) to these questions. Some have been pointed out already in this chapter. For example, it already has been noted that a major defense for the appointive power given the president in section two was to provide continuity. It was also argued that "politics" would not be involved in the confirmation process in Congress since congressmen would be under the "white heat of publicity".⁴² This study will attempt to test a set of hypotheses to determine whether section two has worked in practice as it was intended to in theory. Following are the hypotheses to be tested and an explanation of the research techniques.

1. Congressional voting upon confirmation of a vice presidential nominee will be along partisan lines.
2. A presidential appointment to fill a vacancy in the vice

⁴¹Bayh, p. 74.

⁴²Ibid., p. 264.

presidency will be of such a nature so as to balance⁴³ the present president's characteristics.

The second hypothesis is an amalgam of several less inclusive (or sub) hypotheses.

- a. The vice presidential nominee will tend to balance the president in terms of ideology.
- b. The vice presidential nominee will tend to balance the president geographically.
- c. The vice presidential nominee will tend to balance the president's "character".
3. The questions asked of the vice presidential nominee in the respective congressional committees during the confirmation hearings will emphasize policy issues.

The first hypothesis presumes the obvious. However, it is generally recognized that vacancies in the vice presidency often occur at times of national tragedy.⁴⁴ That is, vacancies occur in the vice presidency when a president dies, resigns, or is removed and the vice president succeeds leaving the vice presidency vacant, or a vacancy occurs if a vice president dies, resigns, or is removed from office. Under such circumstances voting may reflect cues other than party. The recorded votes of all representatives and senators (along with their party identification) on the confirmation of Gerald Ford and Nelson Rockefeller will be used to test this hypothesis. While the generalization will apply only to these two instances and may appear limited, these are the only two instances of vice presidential appointment. Future appointments are beyond the scope of testing and beyond the scope of the generalization.

⁴³The idea of a balance as referred to here is similar to descriptions of presidential tickets. The term "balance" in this study is defined in Appendix A. This definition applies to the sub-hypotheses also.

⁴⁴U.S. House, Application of the Twenty-Fifth Amendment, p. 51.

The second hypothesis is the proposition that section two will be used to approximate the practice of parties in their nominations which are said to "balance the ticket". This hypothesis is divided into three sub-hypotheses. It is these three sub-hypotheses which will be tested. Positive verification of two sub-hypotheses will be considered a confirmation of the general hypothesis.

The first sub-hypothesis concerns itself with ideology. The ideology of each president and vice presidential nominee will be defined by respective ADA ratings. These ratings are available for Gerald Ford up until the time he became a nominee. Some ratings are also available for Mr. Nixon. However, no such ratings exist for Mr. Rockefeller. Therefore, in order for a comparison to be made, a list of Mr. Rockefeller's stated views on several issues will be transformed into ADA ratings. This will be done by observing how particular votes (by Congressmen) on particular issues (the ones on which Mr. Rockefeller has taken a position) were taken as a vote for or against the ADA. Mr. Rockefeller's views will be obtained from the Report of the Committee on Rules and Administration: "Nomination of Nelson A. Rockefeller of New York to be Vice President". Other references will be analyses of the philosophy and public record for Mr. Ford and Mr. Rockefeller.⁴⁵ These were compiled by the Congressional Research Service.

Another measurement will be undertaken involving roll call analysis. A likeness index will be used to measure the difference between a

⁴⁵Found in the respective hearing documents compiled by the Committee on the Judiciary in the House and the Committee on Rules and Administration in the Senate.

president and vice presidential nominee. A number of issues⁴⁶ will be studied for each, and a yea (or nay) vote (or position) will be recorded. Likeness will be determined through the following formula:

$$IL = 100 - (P - N)$$

where

IL = Index of Likeness;

P = % of yea or nay votes for a president; and

N = % of yea or nay votes for a vice presidential nominee.

An index of 0 would reflect complete dissimilarity and an index of 100 would reflect complete similarity.

The second sub-hypothesis will entail an examination of various geographical areas represented by the different men. Representation will be determined by birthplace, residence, and geographical areas of political participation.

The third sub-hypothesis involves "character". Character in this study will be referred to as either "active" or "passive". Three indices will be used to measure political activity: the number of governmental offices or positions held, political books written, and the number of legislative proposals initiated.

The final hypothesis will be tested through content analysis of the confirmation hearings for Mr. Ford and Mr. Rockefeller. The questions asked of both Mr. Ford and Mr. Rockefeller at the hearings will be coded into four categories: policy questions, partisan questions, personal questions, and a residual category for those questions not falling within

⁴⁶See Appendix A.

the other categories. Questions which emphasize or pertain in a direct way to a certain policy will be coded as policy questions. Following is an example of a policy question: "What are your views insofar as public financing of campaigns is concerned?" Questions which refer directly to a particular party or concern a particular party's interests will be coded partisan. Following is an example of a partisan question: "Do you intend to run for President?" Questions emphasizing personal data will be coded as personal. Following is an example: "What motivated you to politics?" A numerical count of each category will reveal the category most emphasized by the respective committee members. It is assumed that those questions asked most frequently will be the ones deemed most important.

Organization of Study

Any study of the Twenty-Fifth Amendment must take into account the history of presidential succession; therefore, Chapter II will describe the three presidential succession acts (1792, 1886, 1947) and give an historical account of each. Chapter III will describe the tests and results for President Nixon and vice presidential nominee Ford. The fourth chapter will do the same for President Ford and vice presidential nominee Rockefeller. Chapter V will give a summary of the results and conclusions reached. Recent proposals for changing the second section of the Twenty-Fifth Amendment will also be discussed focusing attention on the results of this study.

CHAPTER II

THE CONSTITUTION AND PRESIDENTIAL SUCCESSION

The Constitutional Convention

Only one written plan for presidential succession was submitted to the Constitutional Convention in 1787. This was the Pickney Plan. It contained the following:

In case of his [the President's] removal, death, resignation, or disability The President of the Senate shall exercise the duties of his office until another President be chosen--and in case of the death the President of the Senate the Speaker of the House of Delegates shall do so. . .¹

A similar plan was voiced by Alexander Hamilton at the convention. Hamilton's provision for a chief executive: "On the death, resignation, or removal of the Governor, his authorities to be exercised by the President of the Senate till a successor be appointed."²

These two proposals were submitted to the Committee of Detail which in this case made no substantive changes. After being reported out of the Committee of Detail, the subject was referred to the Committee of Eleven (created for difficult problems). On September 4 the Committee made its report:

. . . and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office[,] the vice-president shall exercise those powers

¹Ruth Silva, Presidential Succession (Ann Arbor, 1951), p. 4.

²Ibid.

and duties until the inability of the President is removed.³

The primary difference in this plan and the Pickney Plan is in making the heir the vice president rather than the President of the Senate. It is also clear that the vice president was not to become the president, although the Committee of Eleven provided no provision for a special election in case of the president's death or removal.⁴

The means of providing a successor when both the office of the president and vice president are vacant was also discussed during the Constitutional Convention. On August 27, 1787 it was suggested that the legislature have the power to appoint a successor until the time of electing a President shall arrive. At this point Madison moved to substitute "until such disability be removed, or a President shall be elected".⁵ Madison's motion providing for "temporary appointments" and "special elections" was adopted:

The Legislature may declare by law what officer of the United States shall act as President[,] in case of the death, resignation, or disability of the President and Vice President; and such officer shall act accordingly, until such disability be removed, or a President be elected.⁶

These provisions for succession were sent to the Committee of Style.

That Committee reported out the following:

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the Congress may by law provide for the Case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall act accordingly, until the disability be removed, or the

³Ibid., p. 5.

⁴Ibid., pp. 5-6.

⁵Ibid., p. 6.

⁶Ibid.

period for choosing another president arrive.⁷

On September 15 a verbal amendment was made changing "or the period for choosing another president arrive" to the clause found in the Constitution today, "or a President shall be elected".⁸

The office of vice president was introduced during the later part of the Constitutional Convention. The vice president's primary constitutional duty was being first in line to succeed to the presidency. Despite warnings that the separation of powers doctrine was being destroyed, the vice president was also made presiding officer of the Senate and given a tie breaking vote. Of these two constitutional powers, succession was the most important. This was especially true following the first instance of presidential succession.

Tyler Precedent

The first case of presidential succession was the succession of Vice President John Tyler to the presidency after the death of President William Henry Harrison. Upon President Harrison's death, the actions of Vice President John Tyler afforded a definitive interpretation of the constitutional language pertaining to succession.⁹ Tyler's actions set the precedent for all future vice presidents. Tyler believed himself to be endowed, not only with the powers and duties of the Presidency, but with the office itself.¹⁰ The first official paper placed before him to

⁷Ibid., p. 7.

⁸Ibid., p. 8.

⁹Birch Bayh, One Heartbeat Away (New York, 1968), p. 14.

¹⁰Ibid.

be signed contained the title "Acting President" under the prescribed place for his signature. Tyler took one look and without hesitation struck the word acting.¹¹

Professor Silva maintains that this precedent set by Tyler was not the intention of the founding fathers. She states that even after the Committee of Eleven introduced the office of vice president, nobody suggested that the vice president should succeed to the higher office. Rather, he was to exercise the presidential powers and duties.¹² Furthermore, the Constitution gives each president a term of four years, but the framers of this document intended to limit the tenure of an acting president to a shorter period. The Constitution says he is to serve "only until the Disability be removed, or a President shall be elected."¹³

The provision for providing for a "special election" was meant to apply not only when a vacancy existed in the presidency and vice presidency, but also when the vice president succeeded (for whatever reasons) to the presidency. The reoccurrence of the use of "special elections" in the Constitutional Convention expresses the concern the founding fathers had for an elected executive.¹⁴

Vice President Tyler settled the issue concerning the status of a vice president after succeeding to the presidency. Tyler became the president. As far as Tyler was concerned there was to be no "special

¹¹Ibid.

¹²Silva, p. 8.

¹³The Constitution of the United States, Article II, Section 1, Clause 5.

¹⁴Silva, p. 9.

election". The "special election" was only in case of a "double" vacancy. Double vacancies (president and vice president), according to the Constitution (Article II, Section 1) were to be provided for by Congress.

Presidential Succession Acts

Article two, Section one of the Constitution provides that when there is a vacancy in both the presidency and vice presidency, Congress may by law provide for a successor. Acting under this constitutional authority Congress passed the first presidential succession act in 1792. Section nine of the law names the successor:

And be it further enacted, That in case of removal, death, resignation, or inability both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there be no President of the Senate (pro tempore) then the Speaker of the House of Representatives, for the time being shall act as President of the United States until the disability be removed or a President shall be elected.¹⁵

Debate over the bill was on only one constitutional question: Who is an "officer" in the constitutional sense and thus eligible for designation?¹⁶ This question was raised because the Constitution (Article II, Section 1) gives Congress the power to provide for a successor "declaring what officer shall then act as President. . . . Because of Hamilton's dislike for Jefferson, who was then Secretary of State, that cabinet post was omitted from the bill.

The 1792 Presidential Succession Act went unchallenged for several years. However, the impeachment of Andrew Johnson underlined the danger

¹⁵Ibid., p. 178.

¹⁶Ibid., p. 113.

of designating the President pro tempore of the Senate, a member of the tribunal by whose decree vacancy may be produced, as heir to the presidency. Shortly after being acquitted President Johnson asked the 40th Congress to initiate a constitutional amendment which would place cabinet officers immediately after the vice president in the line of succession.¹⁷ This proposal was the basis for the Presidential Succession Act of 1886. Professor Silva points out three major flaws in the 1792 Act which were influential in demands for its revision:

1. The potential of a conspiracy on the part of Congress in which an impeachment could be used to place a congressional official in the White House.
2. If vacancies in the presidency and the vice presidency happened to occur when Congress was not in session, there might be neither a President pro tempore of the Senate nor a Speaker of the House to act as President.
3. The presiding officers might not belong to the President's party.¹⁸

Although the 40th Congress took no action concerning presidential succession, attention was again brought to the act after the death of President Garfield. At the time there was no President pro tempore of the Senate. Vice President Arthur, upon succeeding to the presidency, called a special session of the Senate to elect his successor. A bitter battle began in the Senate between the Democrats and Republicans over the election of the President pro tempore. A compromise between the two parties resulted in the election of a non-partisan to preside.¹⁹ As soon as the 47th Congress met, resolutions were offered instructing the

¹⁷Ibid., p. 117.

¹⁸Ibid.

¹⁹Ibid., p. 119. The non-partisan was David Davis from Illinois.

Committee on the Judiciary to study the whole succession problem.²⁰ Although attempts were made to shift presidential succession to the cabinet, no bills were reported out of committee concerning presidential succession.

In 1886 Vice President Hendricks died. Congress had not convened, and according to the Act of 1792 there was no heir apparent if President Cleveland were to die or resign. Senator Hoar (a Republican who had previously introduced legislation concerning presidential succession) introduced a bill which provided, in effect, for the transfer of succession from the Republican Senate to the Democratic Cabinet.²¹ Three other provisions were contained in the bill:

1. An acting president was to serve only until the disability of the president or vice president was removed or a president shall be elected.
2. An acting president was required to possess the constitutional qualifications necessary to hold the presidential office.
3. If Congress was not in session or would not convene within 20 days after the statutory successor assumed presidential power, he was to call Congress into special session.²²

This became the Presidential Succession Law of 1886. The law remained unchanged until President Truman succeeded to the presidency after the death of Franklin Roosevelt. President Truman delivered a special message to Congress proposing changes in the 1886 law. "That old act," he said, "gave the President power to appoint his own successor, in the

²⁰Ibid.

²¹Ibid., p. 120.

²²Ibid., pp. 120-121.

person of the Secretary of State."²³ In Truman's opinion the office of the president should be filled by an elected, not appointed, official.

Truman, reaffirming the convictions of the founding fathers, said,

No matter who succeeds to the Presidency after the death of the elected President and Vice President, it is my opinion that he should not serve longer than until the next congressional election or until a special election is called . . . to fill the unexpired term of a deceased president and vice president.²⁴

After several unsuccessful attempts to revise the presidential succession law during the Truman administration, Congress passed the Presidential Succession Act of 1947. The act provided that whenever there was a vacancy in the presidency and vice presidency the line of succession began with the Speaker of the House. If there were no Speaker of the House the President pro tempore would act as president. Finally, if there were no President pro tempore the cabinet officers (beginning with the Secretary of State and continuing in the order of establishment) would act as president. Other provisions of the act provided that:

1. if the Speaker or President pro tempore had to act as President, he would first resign from his seat in Congress.
2. if there were no Speaker or President pro tempore the first cabinet member who passes the necessary constitutional qualifications would serve until a Speaker or President pro tempore is elected.²⁵

The act was in accordance with President Truman's wishes excepting the omission of a provision for a special election. President Truman proposed that in any circumstance in which someone other than the vice

²³Bayh, pp. 21-22.

²⁴Arthur M. Schlesinger, "On the Presidential Succession," Political Science Quarterly, LXXXIX (Fall, 1974), p. 497.

²⁵Bayh, p. 22.

president succeeded to the presidency, he should hold the office only until the next congressional election, at which time a special election should be held to elect a new presidential ticket.²⁶ Congress did not include this "special election" provision in the 1947 act.

The 1947 Presidential Succession Act resembled the 1792 Act in the established line of succession. The same government officials were utilized by each but in reverse order. Debate in Congress over the 1947 Act concerned an old issue which was similarly debated in 1792: Who is an "officer" in the constitutional sense and thus eligible for designation?²⁷ Professor Silva argues that the Speaker of the House and President pro tempore of the Senate are not officers of the United States.²⁸ Article I, Section 6, Clause 2 of the United States Constitution states,

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any office under the United States, shall be a Member of either House during his continuance in office.

The fact that the Speaker of the House must, under the 1947 Act, resign his post gives credence to the argument that he is not considered an "officer" and thus is constitutionally ineligible to succeed to the presidency. The practice of vice presidents who succeeded to the presidency becoming presidents was carried further to apply to the Speaker of the House or the President pro tempore in case of a "double vacancy" by the language of the 1947 Presidential Succession Act. That Act provides

²⁶Ibid.

²⁷Ibid.

²⁸Silva, p. 133.

that when the Speaker and President pro tempore succeed to the presidency they must resign their respective positions in Congress. It was argued in the Seventy-ninth Congress (the Congress in which the Act was debated) that these two must resign their legislative posts because the Constitution denies membership in Congress to an officer of the United States.²⁹ Thus, this argument assumes that the Speaker and President pro tempore are not "officers" before succeeding.

Succession Laws in Practice

Although all three presidential succession acts provided for succession beyond the vice president, succession has never proceeded further than the vice president. From 1792 to 1886 the presidency was vacant four times. Two of the vacancies were the result of the deaths of Presidents Harrison and Taylor. The other two vacancies were the result of the assassinations of Presidents Lincoln and Garfield. The vice presidency was vacant ten times. Five of these vacancies were due to deaths, four were the result of vice presidents succeeding to the presidency, and one vacancy occurred after the resignation of Vice President John C. Calhoun.³⁰ Except for a brief one month interruption, the vice presidency remained vacant for seven consecutive years. On July 9, 1850, Zachary Taylor died after suffering a heat stroke. Millard Fillmore succeeded to the presidency for the unexpired term of President Taylor. During this time President Fillmore had no vice president. In the 1852 elections the Democratic presidential ticket consisted of Franklin Pierce

²⁹Ibid., p. 141.

³⁰See Appendix C.

and William King. Pierce and King won the election, but Vice President King never performed any of his duties. Shortly after being inaugurated Vice President King died, so President Pierce had no vice president for the remainder of his term. The special election provision of the 1792 Act was never used.

From 1886 to 1947 the presidency was vacant three times. Two of the presidential vacancies were the result of deaths, and the other was caused by assassination. The vice presidency was vacant five times. Three of the vacancies occurred when vice presidents succeeded to the presidency. The remaining two were the result of vice presidential deaths.³¹

As was the case with the 1792 Act, succession never extended beyond the vice president. The special election provision of the 1886 Act was never used.

Since 1947 the presidency has been vacant twice. The vice presidency has been vacant three times.³² Succession has not extended beyond the vice president.

All three presidential succession acts provided for a successor in the event there were vacancies in the presidency and vice presidency. None have been used in practice for this purpose. There never has been a "double" vacancy. However, the succession of Lyndon Johnson to the presidency in 1963 marked the sixteenth time the vice presidency had been vacant. These vacancies totaled more than thirty-seven years or nearly one-fifth of the history of the United States.

³¹Ibid.

³²Ibid.

Development of the Twenty-Fifth Amendment

Shortly after the death of President Kennedy, Lyndon Johnson, the vice president, was sworn into office and became the thirty-third president. The office of vice president served its constitutional purpose of providing a successor and maintaining continuity. However, Lyndon Johnson now had no vice president.³³ Like his predecessors, Lyndon Johnson had no way of filling that vacancy. The Constitution provided for succession when the presidency was vacant or when both the presidency and vice presidency were vacant. The Constitution was silent on vacancies occurring in the vice presidency. None of the three major presidential succession acts mentioned the filling of vice presidential vacancies.

Only months before the Kennedy assassination, the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary favorably reported Senate Joint Resolution 35. That resolution dealt primarily with presidential disability.³⁴ On August 10, 1963, the chairman of the subcommittee, Estes Kefauver, died of a heart attack. The Committee on the Judiciary selected Senator Birch Bayh to replace him. The events surrounding the Kennedy assassination impressed upon Senator Bayh and others the need for a constitutional amendment to deal with the problem of presidential succession. On December 12, 1963, Senator Bayh introduced Senate Joint Resolution 139 in the United States Senate. That resolution provided, among other things, for the filling of vacancies in

³³Ibid.

³⁴Bayh, p. 345.

the vice presidency.³⁵ Shortly after the introduction of legislation dealing with presidential disability and vice presidential vacancies, the American Bar Association held a conference on presidential disability and succession in Washington, D. C. That conference emphasized the need for the office of the vice president to be filled at all times.³⁶ The ABA held another conference on presidential disability and vice presidential vacancy in May of that year. At that conference Representative Emanuel Celler of New York expressed his agreement with the ABA conference: "I am in complete agreement with the members of the conference that the office of vice president should be occupied at all times. There should be no gap."³⁷

Senate Joint Resolution 139 was reported favorably from the Subcommittee on Constitutional Amendments and unanimously approved by the Judiciary Committee.³⁸ On August 13, that resolution was placed on the Senate calendar. Section two of S. J. Resolution 139 stated that:

Whenever there is a vacancy in the office of Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority of both Houses of Congress.³⁹

Leading the floor debate on the resolution, Senator Bayh discussed the problem of vice presidential vacancies as follows:

. . . the office of Vice President, has gone through a period of development perhaps to a greater degree than any other office in the history of the country. Starting with John

³⁵Ibid., pp. 352-353.

³⁶Ibid., p. 115.

³⁷Ibid., pp. 115-116.

³⁸Ibid., p. 346.

³⁹Ibid., p. 353.

Adam's description of it as the most insignificant one that the invention of man had contrived; it has developed to its significant position today as the second most important office in the land. In recent times, Vice Presidents have performed highly important missions for their Presidents. By virtue of the roles they have been given in Equal Employment Opportunity, the National Aeronautics and Space Council, and the National Security Council, they have been involved in the most important issues of the day.

In the final analysis, the most important qualification for a Vice Presidential candidate is his ability to fulfill the office of President if tragedy should strike. In his unique capacity as "understudy" to the President, the Vice President is well qualified to do just that. Thus reason dictates that we take steps to assure that the nation shall always have a Vice President.⁴⁰

The resolution unanimously passed the Senate on a roll call vote. Congress adjourned, however, before any action could be taken on the resolution in the House.

There was a feeling in the United States at this time that the problem of presidential succession and vice presidential vacancy should be solved.⁴¹ Members of Congress knew that efforts to solve this problem in the past had failed. Senator Bayh was determined to amend the Constitution so that solutions to the problem of presidential disability would be provided for by more than confidential agreements between a president and vice president (such as existed between President Eisenhower and Vice President Nixon) and so that never again would a vacancy exist in the vice presidency merely because there was no constitutional means for filling it. Following is Senator Bayh's call to action:

It is not easy to arouse widespread interest in a subject like Presidential succession and disability. But unless satisfactory corrective steps are taken, the danger to this nation will remain a grave and ever-present one.

The stability and continuity of our democratic form of

⁴⁰Ibid., p. 142.

⁴¹Ibid., p. 8.

government are at stake. The time to act is now.⁴²

On January 4, 1965, Representative Emanuel Celler introduced House Joint Resolution 1 in the House of Representatives. Only two days later Senator Bayh introduced Senate Joint Resolution 1, the Senate equivalent. Section two contained the same wording that S. J. Res. 139 contained when it was unanimously approved by the Senate in 1964.⁴³ The main body of these resolutions dealt with presidential disability.

President Johnson expressed his views concerning S. J. Res. 1 and H. J. Res. 1 to Congress. Included in his message was his position on vice presidential vacancy:

Indelible personal experience has impressed upon me the indisputable logic and imperative necessity of assuring that the Second Office of our system shall like the First One, be at all times occupied by an incumbent who is able and who is ready to assume the powers and duties of the Chief Executive and Commander in Chief. . . In moments of need, there has always been a Vice President, yet Vice Presidents are no less mortal than Presidents. . . Since the last order of succession was prescribed by the Congress in 1947, the office of the Vice Presidency has undergone the most significant transformation and enlargement of duties in its history. . . Once only an appendage, the office of Vice President is an integral part of the chain of command and its occupancy on a full-time basis is imperative.⁴⁴

The hearings conducted over the resolutions brought out several arguments over section two. Some arguments questioned the entire rationale supporting section two, while others expressed concern over the interpretation and implication of certain words and phrases.

Some Congressmen expressed concern over possible ambiguities in the use of "majority", since the section did not specify whether the word

⁴²Ibid., p. 98.

⁴³Ibid., pp. 355-356.

⁴⁴U.S. House, Application of the Twenty-Fifth Amendment, p. 11.

referred to a simple majority or a two-thirds majority.⁴⁵ It was explained by Senator Bayh that the word "majority" was meant to refer to a simple majority.⁴⁶ There was also disagreement over whether the two houses of Congress should act separately or in a joint session. Senator Bayh expressed the intention of the authors that the confirmation take place separately.⁴⁷ The Committee for Economic Development (C.E.D.) in its report on Presidential Succession and Inability recommended joint action.⁴⁸ Representative Charles Mathias felt that a joint session of Congress would provide a more normal atmosphere for making the choice. He stated, "The atmosphere would not be unlike the situation in one of our great national conventions in which the convention has before it so to speak, the entire population."⁴⁹ Those who favored separate action argued that there was no precedent for such action (except impeachment and formal meetings for Presidential messages) and joint action could lead to numerous procedural problems.⁵⁰

Congressional refusal to confirm a nominee was also discussed during the hearings. Senator Bayh was asked what would happen if Congress should refuse to confirm the nominee. His reply was that there is no

⁴⁵Ibid., p. 105.

⁴⁶Ibid., p. 93. This was the interpretation made in the Senate, and rested on the precedent in the Supreme Court case Missouri Pacific Railway Company v. Kansas.

⁴⁷Ibid., p. 49. A major defense of separate action was the lack of precedent for joint sessions.

⁴⁸Ibid., p. 157.

⁴⁹Ibid., p. 213.

⁵⁰Ibid., pp. 164-165.

limit to the number of names the president might submit.⁵¹

The time factor was another point raised on several occasions during the hearings. When questioned about placing a time limit on the actions of the president and Congress, Senator Bayh replied that with the glare of publicity and public opinion on the president, as well as on all of Congress, if the proposed amendment were ever called into action the business would be disposed of judiciously and quickly.⁵² Representative John Monagan (D-Connecticut) filed a joint resolution to place a thirty day time limit on the naming of a nominee once the vice presidency became vacant.⁵³

Concern was voiced over the power given the president to appoint his heir. The Monroe County Bar Association of New York questioned this power in a letter to Representative Frank Horton:

Section two we believe would be strengthened if the succession to the Vice-Presidency were spelled out in advance rather than left to the choice of the President. As successors, we suggest the Secretaries of State, Defense, Treasury and Justice, the Speaker, and the President pro tempore, persons obviously of outstanding ability and already experienced in the problems and the policies of the current administration. We believe that so high a constitutional office as that of the Vice-Presidency of the United States should never be open to Presidential appointment as a matter of course.⁵⁴

According to section two the nominee would be subject to confirmation by a majority of both houses of Congress, but the initiative in selecting a nominee would rest with the president. Mr. Mathias questioned Senator

⁵¹Ibid., p. 54.

⁵²Ibid., p. 69.

⁵³Ibid., p. 179. House Joint Resolution 158. Mr. Monagan supported H. J. Res. 1 during the later stages of the hearings.

⁵⁴Ibid., p. 341.

Bayh on this point:

Mr. Mathias. I am interested a little in the philosophy that may have been expressed in your committee about the fact that it is the President who shall nominate the Vice President. Under the provisions of the Constitution already in effect when there is a vacancy in the Presidency by reason of failure of an election to be decisive, it is the House of Representatives where the election is decided. I wonder what is the philosophy expressed in your committee?

Senator Bayh. It is the feeling, first of all, in the normal procedure of our convention process, the President does have a strong voice--not always the final voice--but a strong voice in choosing who his running mate may be. Certainly it is wise, and particularly in the time of crisis it is imperative, that we have a Vice President with whom the President can work. . . . For this reason, we give the President the same authority that he now has as far as the Cabinet officials and others are concerned to nominate.

Mr. Mathias. I would suggest that the man who sits in the presidential suite of the Blackstone Hotel in Chicago, who looks forward to a period of 3 or 4 or 5 months of campaigning ahead of him, who needs to have a salesman with him, is going to sell his ticket and his program and his platform to the American people, may be a very different man from the man who is ensconced in the full panoply of power at 1600 Pennsylvania Avenue and his motivations may be somewhat different.⁵⁵

A major point was brought out in the rebuttal to Mr. Mathias. According to Senator Bayh, the unique position of a president would necessitate his selecting a vice presidential nominee with whom he could work.

The President must have a voice in the selection of a Vice President. . . . It would assure a reasonable continuity of Executive policy, should the Vice President become President.⁵⁶

The initiative of the president in selecting his nominee would also insure that the vice president should, and in all probability would, be

⁵⁵Ibid., pp. 93-94.

⁵⁶U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, pp. 286-287.

of the same political party as the president.⁵⁷ In this way the public would be assured that the vice president would be someone presumably capable of working in harmony with the basic policies of the president.⁵⁸ The Subcommittee on Constitutional Amendments did consider placing the initiative of selecting a nominee with Congress.⁵⁹ Consideration was even given to allowing only those members of Congress who were of the same political party as the president to participate in the selection process.⁶⁰ These solutions fell short of the practical necessity which would seem to require that the president be given a primary say as to whom the vice president should be: "By this means, it is virtually assured that the vice president will continue to be a man in whom the President has full confidence and a man of the same political party and political philosophy."⁶¹

Related to the arguments concerning the appointive power of the president were suggestions that a special election be held to fill vacancies in the vice presidency. Mr. Jonas (R-North Carolina), in the committee of the whole, asked the following:

I wonder if the committee gave any consideration to a provision that in case of such appointment, it would be an interim one until a vice president could be elected by the people of the

⁵⁷U.S. House, Application of the Twenty-Fifth Amendment, p. 249.

⁵⁸Ibid.

⁵⁹Ibid., p. 95. Under this kind of selection process, Congress would elect a vice president subject to the veto power of the President.

⁶⁰Ibid. Giving the initiative for selecting a vice presidential nominee to the President would, it was argued, serve two purposes: 1) the man would have to be qualified or else Congress would not confirm him; 2) the man would be one with whom the President could work.

⁶¹U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 287.

country in a special election.⁶²

The idea of special elections certainly had been acceptable to the founding fathers as demonstrated by the debates during the Constitutional Convention. The 1792 and 1886 succession acts had provided for "special elections" under certain circumstances. In a resolution submitted in 1965 to the House of Representatives (H. J. Res. 140), Representative John Lindsay (R-New York) proposed the election of the vice president by Congress.⁶³ A similar provision was included in H. J. Res. 264 submitted by Mr. Mathias.⁶⁴ Several reasons were given for rejecting the "special election". It was pointed out that such an election in the United States would cost somewhere between \$25 million and \$35 million.⁶⁵ An election might result in a vice president of the opposite party. Mr. Celler pointed out during discussion in the committee of the whole house that for a special election to be included in the amendment, other parts of the Constitution concerning the election of a president and vice president would be affected (Article II and Twelfth Amendment).⁶⁶ Another foreseeable problem with using special elections to fill vice presidential vacancies is that of determining when the election would be held. If held at the mid-term congressional elections, a further question arises over the term of the newly elected vice president. The Constitution states, "The president shall hold office during the term of four years,

⁶²U.S. House, Application of the Twenty-Fifth Amendment, p. 391.

⁶³Ibid., p. 78.

⁶⁴Ibid., p. 207.

⁶⁵Ibid., p. 393.

⁶⁶Ibid., p. 392.

together with the vice president, chosen for the same term."⁶⁷ Whether a special election could be used to fill a vice presidential vacancy for the remainder of a term would be a constitutional question.

Richard Nixon, testifying before the Subcommittee on Constitutional Amendments in 1965 advocated reconvening the electoral college for purposes of selecting a new vice president.⁶⁸ Professor Silva, in the book Presidential Succession, argues that the only special election provisions that would increase popular control are those which provide a choice of a new set of electors. Only such a system would insure that a president (or vice president) would be chosen by a group of electors with a mandate for that special purpose.⁶⁹

Most of the discussion over Bayh-Celler resolution concerned the sections dealing with presidential disability. Because of the disagreement in the House and Senate over the disability sections, the resolution was sent to a conference committee. This committee produced a proposal that was acceptable to both houses. Section two of the proposed constitutional amendment was not in disagreement. Consequently, the conference committee made no changes concerning it. It read:

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.⁷⁰

⁶⁷The Constitution of the United States, Article II, Section I, Clause 1.

⁶⁸U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 96.

⁶⁹Silva, p. 165.

⁷⁰U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 69.

Recent Developments

Six and a half years after ratification of the Twenty-Fifth Amendment, Spiro Agnew resigned as vice president (October 10, 1973). President Nixon, using the provision providing for replacement of a vice president, nominated Gerald Ford on October 12, 1973. He was at the time the minority leader in the House of Representatives. On December 6, 1973, for the first time in the history of the United States, Congress approved a vice presidential nominee, and for the first time the House of Representatives acted with the Senate in confirmation of an executive official.⁷¹

Less than one year later President Nixon resigned after disclosing information that in all probability would have resulted in his impeachment and conviction. Gerald Ford became the new president only to face the task of filling the vacancy left by his ascension to the presidency. On August 20, 1974, President Ford nominated Nelson Rockefeller for vice president, and Congress confirmed the nomination on December 19, 1974, after extended hearings and debate.

Because of these events and the provisions for filling vice presidential vacancies as provided in the Twenty-Fifth Amendment, the United States now has a president and a vice president who were appointed. Most of the recent criticism of section two of the Twenty-Fifth Amendment focuses on its supposedly undemocratic qualities.

The Senate Judiciary Subcommittee on Constitutional Amendments subsequently held hearings on section two and recent proposals for the

⁷¹"House Key Votes," Congressional Quarterly, XXXII (January 12, 1974), p. 41.

filling of vacancies in the vice presidency.⁷² Senator John O. Pastore (D-Rhode Island) has consistently favored a special election to fill such vacancies.⁷³ Although conceding that the present system did what it was supposed to do, Senator Pastore said,

I can understand that by the process of appointment you might get a better man, but that's not the point. . . It's central to the very essence of our democracy that the people elect their own president.⁷⁴

Under this plan, a special national election would be required whenever an appointed vice president becomes president with more than a year remaining in a presidential term of office.⁷⁵ A Harris poll taken in 1973 showed that 50% of Americans were favorable to a "special election" for President in 1974, while 36% were not.⁷⁶

Senator William D. Hathaway (D-Maine) during the recent hearings urged the adoption of legislation that would require a special election in case vacancies occurred in the office of both president and vice president.⁷⁷ Unlike Senator Pastore, Senator Hathaway feels the Twenty-Fifth Amendment should not be altered. Under Hathaway's plan, the ranking House member of the administration's party would serve as acting president until a special presidential election could be held.⁷⁸

⁷²February 25-26, 1975.

⁷³"Twenty-Fifth Amendment," Congressional Quarterly, XXXIII (March 1, 1975), p. 445.

⁷⁴Oklahoma City Times (February 26, 1975), p. 4.

⁷⁵"Twenty-Fifth Amendment," Congressional Quarterly, p. 445.

⁷⁶Schlesinger, p. 501.

⁷⁷"Twenty-Fifth Amendment," Congressional Quarterly, p. 445.

⁷⁸Ibid.

During his February 26, 1975, press conference President Ford endorsed a congressional reappraisal of the amendment:

But I think it is appropriate that the Congress take another look at the 25th Amendment. It was passed, as I think most of us know, not to meet the unique circumstances that developed in 1973 and 1974.

Perhaps this experience does require the Congress to take a look, to see whether there is a better way or a different way where a vice president might be selected.⁷⁹

The reaction to section two has not been totally one-sided. James McGregor Burns of Williams College expressed optimism in the appointive process of section two. He contends that surprise benefit of the amendment will be a tendency by presidents to nominate strong, independent, qualified persons to fill vice presidential vacancies when they occur.⁸⁰ Dr. Burns contrasts the old concept of "balancing the ticket" with a newer type of balance:

Balancing the ticket used to mean having presidential and vice presidential candidates from differing geographical regions. We have departed for good from the old concept of balancing the ticket. The vice president has become so visible that the public now cares less about where he's from and more about his substantive qualifications.⁸¹

Professor Burns implies that future presidents will have to select and use vice presidents whose strengths offset imbalances and inequalities that might otherwise exist in the administration.⁸²

In support of section two a recent newspaper editorial was skeptical of the circumstances which led to the appointive president and vice president happening again. To judge the Twenty-Fifth Amendment of such

⁷⁹Ibid., pp. 437-445.

⁸⁰Oklahoma City Times (March 4, 1975), p. 28.

⁸¹Ibid.

⁸²Ibid.

astronomical happenstance is hasty to say the least.⁸³ Yet, the amendment is being judged by senators, the public, and the president himself.

Summary

The office of vice president was created during the later stages of the Constitutional Convention. Among other things the vice president was to succeed to the presidency when that office became vacant. Differing interpretations over the status of a vice president succeeding to the presidency were settled by Tyler's precedent. John Tyler established himself as president with the full powers of the office.

Three presidential succession acts have been established by Congress to provide for a successor when a "double" vacancy (president and vice president) occurred. All three differ in naming who the successor would be. The latest act (1947 Presidential Succession Act) names the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Cabinet officials (in order of their creation) as successors in that order. While eighteen vacancies have occurred in the vice presidency, none of the succession acts have ever been used in practice since a "double" vacancy never has occurred.

The increase in duties and importance of the vice presidency impressed some of the need for the vice presidency always being occupied. Thus in 1965 a constitutional amendment was proposed which contained a provision for filling vice presidential vacancies. The amendment was ratified by the necessary thirty-eight states in 1967. Since then the vice presidency has been filled twice using the procedure outlined in

⁸³Oklahoma City Times (November 21, 1974), p. 56.

section two of the Twenty-Fifth Amendment. Chapter III examines the first instance of filling the vice presidency and the results of the tests of the hypotheses mentioned in Chapter I.

CHAPTER III

THE FIRST INSTANCE OF FILLING A VICE PRESIDENTIAL VACANCY

This chapter gives the research procedures and results for the hypotheses listed in Chapter I. It is hypothesized that voting on the confirmation of a vice presidential nominee will be partisan, that the nominee will be chosen for a "balance", and that the congressional committees will ask more "policy" questions than partisan or personal, of the vice presidential nominee. This chapter deals with Richard Nixon and his vice presidential nominee, Gerald Ford.

Partisan Congressional Vote

The presumption that the vote for the vice presidential nominee will be partisan is based on the fact that certain types of issues will result in partisan voting (one in which a majority of voting Democrats oppose a majority of voting Republicans).¹ Jewell and Patterson list three categories in which party cohesion (whether high or low) is more likely to appear. Those categories are: 1) issues involving the prestige and fundamental programs of the administration, 2) social and economic proposals for welfare programs or the regulation of labor issues associated with the "liberal-conservative" dichotomy, and 3) issues involving the

¹"Party Unity Voting: Slight Drop in 1974," Congressional Quarterly, XXXIII (January 25, 1975), p. 199.

special interests of the parties or legislative organization and procedure.²

Presidential confirmations would fall into category one and might be included in category three. A major appointment like that of vice president certainly involves the prestige of a president. The vice president, if confirmed, will become a spokesman of the administration, president of the Senate, and most importantly potential heir to the presidency. The nomination will be of interest to both major parties. The new "team" created may be the one to beat the opposition in the next presidential election. On these types of issues (confirmations) it is suspected that party cohesion will be evident. To test this hypothesis the recorded House and Senate votes for confirmation of Gerald Ford were examined. Unlike any other executive appointment, vice presidential nominees must be confirmed by both houses of Congress. The first indication from the votes is the overwhelming support for Gerald R. Ford to be vice president. There was unanimous support for the nomination from the 186 Republicans voting on confirmation. Of the 201 Democrats voting, thirty-five voted against confirmation. The thirty-five "no" votes contended that Ford was weak on civil liberties, and lacked the qualities of leadership needed in a president. Of the fifteen black House members, only one, Andrew Young (D-Georgia), voted for Ford.³ The Senate vote was also in overwhelming support of Mr. Ford. The vote was 92-3 with three Democrats voting

²Malcolm Jewell and Samuel Patterson, The Legislative Process in the United States (New York, 1966), p. 430.

³"House Key Votes," Congressional Quarterly, XXXII (January 12, 1974), p. 41.

against confirmation.⁴ Of the five absent senators three later announced they would have voted for confirmation. Thus, the projected vote is 95-3.

The bipartisan support for Mr. Ford in both houses indicated a strong stamp of approval for President Nixon's choice of a vice presidential nominee. The support is even more impressive considering the fact that the Democrats controlled both houses of Congress. One explanation for the lack of partisanship in the vote might be the fact that this particular vice presidential nominee had been a member of the House of Representatives since 1949.

Given these findings, the hypothesis that congressional voting on confirmation of a vice presidential nominee will be along partisan lines is not confirmed.

This lack of partisanship on a vice presidential confirmation vote was anticipated by Senator Bayh during the hearings over the Twenty-Fifth Amendment:

Under the present circumstances, usually the President would be able to rely on the members of his own party to support his own choice as to who the Vice President should be which would be very similar to our nominating procedures. In the event the opposite party controlled the Congress, then I feel that the effort to play politics with this appointment would be prevented by a strong voicing of public opinion and I think this could be supported by the tradition which finds very limited opposition to the power that the President now has to appoint his cabinet and many other officers who must be confirmed by a vote of the Senate.⁵

The fears expressed during the hearings concerning a possible political battle if the opposite party controlled Congress seemed to have

⁴The three Democratic senators voting against confirmation: Gaylord Nelson (Wisconsin); Thomas Eagleton (Missouri); William Hathaway (Maine).

⁵U.S. House, Application of the Twenty-Fifth Amendment, p. 52.

been put to rest. The members of both houses were well aware of the importance of the confirmation hearings and the disruptive effects the proceedings could have were they to "play politics" with the confirmation.⁶

Balance

Prior to the Twelfth Amendment, vice presidents were those persons running second in the electoral college. Because of the tie in electoral votes in 1800 the Twelfth Amendment was proposed and ratified. Under this amendment, electors must designate their votes for either president or vice president. The result was that the presidential and vice presidential candidates began running as party teams. Until the mid-nineteenth century the caucus was used as the nominating device. The short lived Anti-Masonic Party held the first presidential nominating convention in 1831. The following year the national Republican and Democratic Parties followed suit and the evolution of the presidential nominating convention began. Since then the nominations of president and vice president have been made by a convention.

Today, the vice presidential nomination is made at each party's national convention. The tradition has been for each party to allow its presidential candidate to "hand pick" the vice presidential nominee followed by a token vote of the convention delegates. The one exception was 1956 at the Democratic Convention. Adali Stevenson left the nomination up to the delegates. The delegates chose Senator Estes Kefauver. In 1972, the Democratic nominee, George M. McGovern, selected Thomas

⁶"Nixon, Congress Seek Accord on Agnew," Congressional Quarterly, XXXI (October 13, 1973), p. 2695.

Eagleton to be his running mate. Later Senator Eagleton withdrew after it was discovered he had undergone psychiatric treatment. McGovern selected Sargent Shriver as his new running mate. His choice was left to the approval of the National Democratic Committee. As in the case of delegate approval at the national conventions, the approval of McGovern's choice by the National Democratic Committee was a mere formality.

What criteria does a presidential nominee employ when selecting his running mate and potential successor? Perhaps the selection is used to select an individual with a similar political philosophy who is qualified to assume the presidency. More often than not presidential nominees select vice presidential nominees that serve in some way to "balance the ticket". As one Congressman stated, "Whether they should or not, they will not, in the final analysis, choose their vice presidential candidate to succeed them; they will choose them to help them succeed."⁷ Such balance may serve several purposes or be in several forms. It may serve to unite existing factors within the party or to represent interests outside the party. The balance may range from geographical to ideological

⁷Arthur M. Schlesinger, "On the Presidential Succession," Political Science Quarterly, LXXXIX (Fall, 1974), p. 484.

depending on the situation.⁸ A survey of the selection of men for the second place on winning national tickets during this century thus should suffice to demonstrate that the influence which a presidential candidate is able to bring to bear on the selection of his running mate is used basically not in the interest of continuity of policy but in the interests of victory at the polls.⁹

The fact that presidential nominees do have a large say, although not the last say, in who their vice presidential running mate will be weighed heavily in giving the president the initiative in filling vice presidential vacancies. In giving a president this power, the Twenty-Fifth Amendment institutionalized the tradition found in both major parties. Will presidents use this power in the same way that presidential nominees have used it? To put this question another way, will presidents select vice presidential nominees in order to strengthen or balance the ticket? The general hypothesis states that presidents will

⁸U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, pp. 182-189. See this reference for a more detailed review of the history of the Twentieth Century national political conventions at which successful tickets have been chosen. Following is a general account of the president, vice president, and major type of balance: 1900-McKinley and Theodore Roosevelt (geographical and ideological); 1904-Theodore Roosevelt and Charles Fairbanks (ideological); 1908-Taft and James Sherman (geographical and ideological); 1912-Wilson and Thomas Marshall (ideological); 1916-incumbants renominated and re-elected; 1920-Harding and Calvin Coolidge (delegate choice); 1924-Coolidge and Charles Dawes (Coolidge's choice); 1928-Hoover and Charles Curtis (geographical and tempermental); 1932-Franklin Roosevelt and John Garner (geographical); 1936-incumbants renominated and re-elected; 1940-Franklin Roosevelt and Henry Wallace (ideological); 1944-Franklin Roosevelt and Truman (geographical); 1948-Truman and Alben Barkley (geographical); 1952-Eisenhower and Nixon (ideological); 1956-incumbants renominated and re-elected; 1960-Kennedy and Johnson (geographical and ideological); 1964-Johnson and Humphrey (geographical and ideological); 1968-Nixon and Agnew (geographical); 1972-incumbants renominated and re-elected.

⁹Ibid., p. 188.

use the nominating power, in filling vice presidential vacancies, in this way. In order to test the general hypothesis, three areas of possible balance were selected: 1) ideology, 2) geography, and 3) character.

Ideology

The labels "conservative", "liberal", and "moderate" are not clear cut. However, the public record of a politician may be labeled as such. One measure of ideology used here is ADA ratings.

In 1947 a group of Democrats, including Hubert H. Humphrey (D-Minnesota) founded the Americans for Democratic Action (ADA). The ADA is an interest group which offers an annual voting record as a guide for liberals in judging the performance of their senators and representatives on issues of importance. The organization indicates by a plus or minus whether a member's vote is in harmony with the ADA's definition of a liberal position. Failure to vote can result in a lower score.

From 1959 to 1973, Gerald Ford averaged a 11.13 ADA score.¹⁰ In other words, on those selected votes, Mr. Ford voted with the ADA position about 11% of the time. A similar vote could be expected for Mr. Nixon. In 1973 Ford supported Nixon on 80% of the House votes on which the former president had taken a position.¹¹ Using the votes on which the ADA rated Congress for 1971 and 1973 and comparing the position favored by the ADA and the position taken by President Nixon, an approximate ADA score may be tabulated. Using this method President Nixon

¹⁰"Interest Group Ratings of Ford," Congressional Quarterly, XXXII (August 17, 1974), p. 2209.

¹¹"Gerald Ford: A New Conservative President," Congressional Quarterly, XXXII (August 10, 1974), p. 2077.

agreed with the ADA 7% of the time. These ratings for both men reflect a rather conservative voting record and political philosophy. Ford's ties to Nixon reflect a conservative kinship that has existed for nearly thirty years.¹² Using these scores, their ideology graph looks like this:

Nixon	Ford
LIBERAL	LIBERAL
MODERATE	MODERATE
CONSERVATIVE	CONSERVATIVE.

Thus, the sub-hypothesis on ideology is not confirmed. Further evidence of the similar political positions held by Mr. Nixon and Mr. Ford comes from the likeness index. The following formula is used:

$$IL = 100 - (P - N)$$

where

IL = Index of Likeness;

P = % of yea or nay votes for a president; and

N = % of yea or nay votes for a vice presidential nominee.

A list of issues were selected and a general agreement or disagreement score was noted.¹³ The position for Mr. Nixon was determined from his Public Papers and "The Public Record of Richard Nixon".¹⁴ The position for Mr. Ford was taken from the "Analysis of the Philosophy and Voting Record of Representative Gerald R. Ford, Nominee for Vice President of

¹²Ibid.

¹³See Appendix B.

¹⁴"The Public Record of Richard Nixon," Congressional Quarterly, XXVI (August 16, 1968), pp. 2145-2165.

the United States" and from the voting record of Gerald Ford.¹⁵ Inserting the percentages for agreement into the formula results in a similarity score of 87%:

$$IL = 100 - (83\% - 70\%)$$

$$IL = 87\%.$$

However, this score is somewhat misleading as Appendix B illustrates. While both men agreed on a large percentage of issues, the issues in which they agreed are not the same. The men are in close agreement; however, looking at individual issues reveals a more accurate index of 70% agreement on those specific issues on which a position is recorded for each.

Geographical Balance

The second sub-hypothesis contends that vice presidential nominees will be selected in order to create a geographical balance. The indices used in order to determine the geographical areas represented by these two men were birthplace, residence, and areas of political participation.

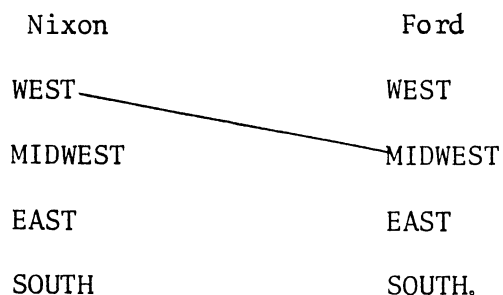
Mr. Ford was born in Omaha, Nebraska, but spent his childhood in Grand Rapids, Michigan. He attended South High School in Grand Rapids and received a B.A. degree from the University of Michigan. He was elected as a representative from the Fifth District of Michigan in the House of Representatives from 1949 until being nominated as vice

¹⁵U.S. Senate, Hearings Before the Committee on Rules and Administration, Nomination of Nelson A. Rockefeller of New York to be Vice President of the United States, 93rd Cong., 2nd Sess., 1974, p. 1049; "Public Record and Assessment of Nixon's Nominee," Congressional Quarterly, XXXI (October 13, 1973), p. 2762.

president in 1973. Using the indices above, Mr. Ford would represent the midwest geographical region.

Mr. Nixon was born in Yorba Linda, California. He attended Whittier (California) College where he received an A.B. degree. After obtaining a law degree at Duke University, he returned to Whittier, where he practiced law for five years. Nixon was elected to the House of Representatives from California in 1946 and was re-elected in 1948. In 1950, Nixon ran in California for the Senate and won. In 1952, Mr. Nixon was selected as the vice presidential nominee and shared the Republican ticket with Dwight Eisenhower. Eisenhower won in 1952 and was renominated and elected in 1956. He choose Nixon as his running mate again. Nixon won the presidential nomination at the Republican National Convention in 1960. He was defeated by John Kennedy by the smallest vote margin in the 20th Century. Upon returning to California to practice law, Nixon entered the governor's race. He won the Republican primary but was defeated by the incumbant, Governor Edmund Brown. The geographical area represented by Mr. Nixon is the west.

Thus, the second sub-hypothesis is confirmed. The geographical graph looks like this:



Character

The third sub-hypothesis involves a dichotomous typology of character. Each president and vice presidential nominee is labeled as either active or passive. The indices used include: the number of governmental offices or positions held, political books written, and the number of legislative proposals initiated. An extension typological study of presidential style is James Barber's The Presidential Character.¹⁶ Unlike Barber's study the categories in this study do not include psychological traits but are merely general categories of past political activity.

In his book, The Presidential Character, Barber classifies Nixon as an active president.¹⁷ The evidence for this classification is Nixon's energetic campaigning activities. Nixon held several governmental offices. He was a member of the House of Representatives from 1946 to 1950 and was a United States Senator from 1950 to 1952. In 1952, Nixon became vice president and successfully ran again with Eisenhower in 1956. Nixon campaigned vigorously in 1960 for the presidency. As part of his campaign strategy he promised to visit all fifty states before the election. John Kennedy defeated Nixon in 1960 in a close election. Two years later Nixon lost his bid for the governorship of his home state of California. Nixon won the Republican presidential nomination in 1968 and defeated the Democratic candidate, George McGovern, in what was considered a landslide election.

Shortly after the California gubernatorial race, Nixon wrote his

¹⁶James Barber, The Presidential Character (New Jersey, 1972).

¹⁷Ibid., p. 347.

book, Six Crises.¹⁸ Nixon, in 1966, wrote a series of monthly syndicated newspaper columns.

Nixon sponsored several pieces of legislation during his membership in the House and the Senate. He sponsored 47 bills and cosponsored 28 others from 1947 to 1952.¹⁹ Nixon also initiated many governmental proposals as president. During his third year as president, Nixon proposed his six great goals: revenue sharing, welfare reform, executive reorganization, health insurance, environment protection, and economic prosperity. These facts indicate an active political career.

Gerald Ford's political record does not reveal as much activity as Richard Nixon's. Ford was elected to the House of Representatives in 1949. He was re-elected until his nomination to the vice presidency in 1973. His lifelong political dream was to become Speaker of the House.²⁰ He never achieved his goal but did serve as minority leader from 1965 until being appointed vice president. Ford was a member of the Warren Commission and co-authored a book entitled Portrait of the Assassin about his findings while on the commission.²¹

Gerald Ford was not considered an active congressman. Although a member of Congress for twenty-five years, Gerald Ford's relationship with the workings of Congress could not be labeled as intimate. The fact is that not one major bill has ever come out of Congress under Gerald Ford's

¹⁸Richard Nixon, Six Crises (New York, 1962).

¹⁹"The Public Record of Richard M. Nixon," Congressional Quarterly, XXVI (August 16, 1968), p. 2151.

²⁰"Notes and Comment: Congressman Ford," New Yorker, Vol. 49 (November 12, 1973), p. 42.

²¹Gerald Ford and John Stiles, Portrait of the Assassin (New York, 1965).

name or aegis.²² Representatives from both parties criticized Ford for his lack of leadership in the House of Representatives.²³ Mr. Brown, examining Ford's congressional performance, refers to him as an upstate Michigan stump.²⁴ Politicians were also critical of Ford's activity as vice president. Representative James T. Brayhill, a veteran North Carolina Republican, remarked on Ford's performance as vice president, "I'm not degrading any of his abilities, but I had hoped he would become more active than he has been."²⁵ Thus, the third sub-hypothesis is confirmed. The character graph looks like this:



Hearings

Both houses of Congress must confirm a vice presidential nominee. Since the vice presidency is an elective position, the congressmen are acting as voters in the confirmation hearings. What kinds of questions will the committee men who question a vice presidential nominee ask? It has been stated that the vice presidential nominating power was given to the president so that he could select a person of similar political views. The third hypothesis is based on this rationale. It states that

²²B. Brower, "Under Ford's Helmet," New York Times Magazine (September 15, 1974), p. 65.

²³"Notes and Comment: Congressman Ford," New Yorker, Vol. 49 (November 12, 1973), pp. 39-43.

²⁴Brower, p. 13.

²⁵"Ford: Keeping a Low Profile on Capitol Hill," Congressional Quarterly, XXXIII (August 3, 1974), p. 2027.

the questions asked of the vice presidential nominee in the respective congressional committees during the confirmation hearings will emphasize policy issues. The confirmation hearings in the Senate and the House for Mr. Ford were used to test this hypothesis. Questions were coded as either policy, partisan, or personal. Questions not falling within these categories were coded as residual. Each question was read and then placed in the category which best described that question. Questions which had no substantive basis or which were not encompassed by the three categories were categorized as residual. Following are examples of this type of question: "Would it be in your files?"; "Why do you say probably?"; and "Is that correct?".

Examples of questions belonging in the other categories are given in Chapter I. Long involved questions were categorized according to what was determined to be their basic point. Other questions were prefaced clearly enough by the congressman to allow easy categorization. For example, a congressman might even label his question as a "policy" question. Regardless of difficulty the examples given in Chapter I were adhered to as strictly as possible to insure consistency in coding. The results of the coding show that of all the questions asked Ford in both houses, the highest percentage of questions were those related to policy. Partisan type questions were asked the least. The percentages are found below.

Percentage of Questions Asked*

PARTISAN	19.8
POLICY	31.9
PERSONAL	23.6

*Total does not equal one hundred because of rounding and omission of residual questions.

In fact, policy questions were the most asked questions in both committees in each house and by both Democrats and Republicans in both houses. These findings confirm the hypothesis and suggest that the nominee's stance on certain policies were most important to the committee members.

Summary

The first instance of filling vice presidential vacancies was examined in this chapter. The voting in both houses of Congress was in overwhelming support of Gerald Ford. There was no "partisan" vote. There was a "balance" in the president and the nominee's geographical representation and character. The two were similar ideologically, so there was no balance in ideology. The examination of the congressional committee hearings and types of questions asked of Gerald Ford shows policy questions to be the most asked questions by both parties in both houses.

CHAPTER IV

THE SECOND INSTANCE OF FILLING A VICE PRESIDENTIAL VACANCY

Chapter IV gives the research procedures and results for the hypotheses listed in Chapter I. It is hypothesized that voting on the confirmation of a vice presidential nominee will be partisan, that the nominee will be chosen for a "balance", and that the congressional committee will ask more policy questions than partisan or personal of the vice presidential nominee. This chapter concerns Gerald Ford and his vice presidential nominee Nelson Rockefeller.

Partisan Congressional Vote

The voting in both houses of Congress for confirmation of Nelson Rockefeller to be vice president was similar in support to that of Gerald Ford. Only seven senators voted against confirmation.¹ The House vote was not so overwhelming for Rockefeller as it had been for Ford. The vote in the House was 287-128, with twenty-nine Republicans and ninety-nine Democrats voting against confirmation.

The issue of most importance concerning Rockefeller's confirmation was his great wealth and the possibility of future conflicts of

¹Of these, four were Democrats (Birch Bayh, Indiana; James Abaurezek, South Dakota; Howard Metzenbaum, Ohio; and Gaylord Nelson, Wisconsin), and three Republicans (Barry Goldwater, Arizona; Jesse Helms, North Carolina; and William Scott, Virginia).

interest.²

One of Rockefeller's toughest inquisitors during the hearings, Senate Majority Whip Robert C. Byrd (D-West Virginia), voted to approve the nomination despite his concerns about Rockefeller's gifts and loans to New York state officials.³ Senate Rules Committee Chairman Howard Cannon (D-Nevada) declared that the potential wedding of this economic and political power required careful scrutiny.⁴ Rockefeller sought to dispell doubts about possible conflicts of interest arising from his financial holdings by volunteering to place all his securities in blind trusts. Several House Democrats questioned the effectiveness of Rockefeller's blind trust proposal. Barbara C. Jordon (D-Texas) said her fears of conflicts of interest were "not allayed" by the arrangements.⁵ Jack Brooks (D-Texas) called the proposal "unrealistic window-dressing". One of the seven voting against confirmation in the Senate was Birch Bayh, the principal architect of the Twenty-Fifth Amendment. Bayh asserted that:

. . . however well prepared Mr. Rockefeller might be as president to ferret out the answers. . . and make the right decisions, I am afraid that the people of this country will not credit him with the ability to make an impartial decision. As a result there is no way that the public would have

²"House Key Votes," Congressional Quarterly, XXXIII (January 11, 1975), p. 73.

³"9-0 Vote for Rockefeller in Senate Rules," Congressional Quarterly, XXXII (November 23, 1974), p. 3153.

⁴"Rockefeller: Watergate Haunts Nomination," Congressional Quarterly, XXXII (November 16, 1974), p. 3145.

⁵"Rockefeller Nomination," Congressional Quarterly, XXXII (November 30, 1974), p. 3237.

confidence in that decision.⁶

Another senator who opposed Rockefeller's nomination, Barry Goldwater (R-Arizona), said, "In my opinion, there exists in this country a strong suspicion that the tremendous financial power of the Rockefeller family might have a corrupting influence on the political process."⁷

Rockefeller received support from both parties in both Houses. Several of Rockefeller's supporters noted that they were supporting confirmation despite reservations.⁸ Robert Byrd (D-West Virginia) summed up the position of many supporters:

My decision to vote for this nomination is based on the following beliefs---the United States needs a vice president; Nelson Rockefeller is a man of proven executive experience and ability; he is the President's choice; and unresolved doubts should be resolved in favor of the nominee.⁹

The hypothesis that congressional voting on confirmation of a vice presidential nominee will be along partisan lines is not confirmed. A majority of Democrats did not oppose a majority of Republicans. In fact, a majority of Democrats, along with Republicans, supported Nelson Rockefeller's nomination. However, it should be noted that while a large percentage of House Democrats crossed party lines and voted for confirmation, forty-two percent did not, and sixteen percent of the House Republicans opposed confirmation.

⁶"Senate Overwhelmingly Approves Rockefeller," Congressional Quarterly, XXXII (December 14, 1974), p. 3303.

⁷Ibid.

⁸Ibid., p. 3304.

⁹Ibid.

Balance

Ideology

Nelson Rockefeller has never been a member of Congress. His ideology score was approximated using the procedures outlined in Chapter I.¹⁰ Rockefeller's approximate ADA score is 70. This score is not surprising since Rockefeller is generally thought of as more "liberal" than most republicans:

Rockefeller's image as a liberal dates from his early days as an executive of Standard Oil, the foundation of the family fortune. He once lectured at an annual board meeting that the only justification for ownership is that it serves the broad interest of the people. That was 1937, when Rockefeller was twenty-nine years old. Later, as governor, civil rights became a priority in Rockefeller's legislative proposals. Under Rockefeller's leadership New York also inaugurated a dramatic increase of state services.¹¹

As governor of New York, Rockefeller initiated "liberal policies" in transportation, education, housing, the environment, and health and welfare.¹² Following are some brief summaries of Rockefeller's programs while governor of New York:

He inaugurated a pioneering program to provide financial assistance to hard-pressed private colleges and universities.

He successfully proposed farm bond issues relating to the environment totaling approximately \$2.5 billion. These bond issues helped finance 348 new sewage treatment plants, the acquisition of park lands and the development of 55 new state parks.

A \$2.5 billion Transportation Bond Issue provided the first state financing in the Nation for mass transportation as well as highway and airport construction.

In 1971, Governor Rockefeller achieved the first major

¹⁰See Chapter I, p. 14.

¹¹"Rockefeller Finances: A Discreet Inquiry," Congressional Quarterly, XXXII (August 24, 1974), p. 2272.

¹²Ibid.

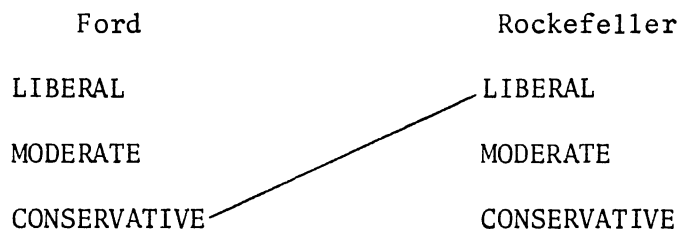
overhaul of the state's welfare system in a generation.

Under Governor Rockefeller's leadership, New York State carried out the Nation's largest State medical care program for the needy under Medicaid.

In the housing area, New York State, under Governor Rockefeller's leadership, completed or started over 88,000 units of housing for limited income families and the aging. He achieved virtual total prohibition of discrimination in housing, employment, and places of public accommodation.

Governor Rockefeller gave New York its first state-wide minimum wage which was increased five times, while unemployment insurance benefits were increased four times.¹³

The ideology graph for Ford and Rockefeller shows a balance.



The likeness index for Ford and Rockefeller is 92. This high score in likeness is somewhat deceiving since it does not control for the same issues. While both men had positive scores on a number of issues, they agreed on the same issues only 57% of the time. Appendix B illustrates this point.

Geographical Balance

It has already been established that Gerald Ford represents the mid-west geographical region.¹⁴ To confirm the hypothesis suggested above, Rockefeller must not come from the midwest.

Nelson Rockefeller was born in Bar Harbor, Maine. He grew up in Tarrytown, New York, and New York City. President Franklin Roosevelt

¹³U.S. Senate, Report of the Committee on Rules and Administration, Nomination of Nelson A. Rockefeller of New York to be Vice President of the United States, 93rd Cong., 2nd Sess., 1974, pp. 198-199.

¹⁴Chapter III, p. 52.

appointed Mr. Rockefeller in 1940 to his first full time position in public service. Rockefeller headed a new program known as the Office of the Coordinator of Inter-American Affairs. During this time he resided in the District of Columbia. Mr. Rockefeller served on several other conferences concerned with international relations in general, and with Latin America in particular. As Assistant Secretary of State for American Republic Affairs, he initiated the Inter-American Conference on Problems of War and Peace in Mexico City in February of 1945. He acted as chairman of the Inter-American Development Commission, which was formed to find ways of filling the gap caused by the loss of European markets. He also served as American Co-Chairman of the Mexican American Development Commission to help Mexico emerge as an industrial nation in the transition from war to peace. He returned to private life in New York in 1946. Mr. Rockefeller first ran for public office in 1958 and was elected Governor of New York State. He was re-elected in 1962, 1966, and 1970. He resigned as governor on December 18, 1973 to chair two bipartisan national commissions. The bipartisan Commission on Critical Choices for Americans is studying the critical policy decisions the United States must face as the Nation moves into its third century.¹⁵ Rockefeller, as Chairman of the National Commission on Water Quality had the responsibility of organizing and leading the Commission's look into major national policy questions relating to ecology and the future of the United States.¹⁶ Mr. Rockefeller's private and public life show that he

¹⁵U.S. Senate, Hearings Before the Committee on Rules and Administration, Nomination of Nelson A. Rockefeller to be Vice President of the United States, 93rd Cong., 2nd Sess., 1974, p. 77.

¹⁶Ibid., p. 78.

represents the eastern geographical balance.

Ford	Rockefeller
WEST	WEST
MIDWEST	MIDWEST
EAST	EAST
SOUTH	SOUTH

Character

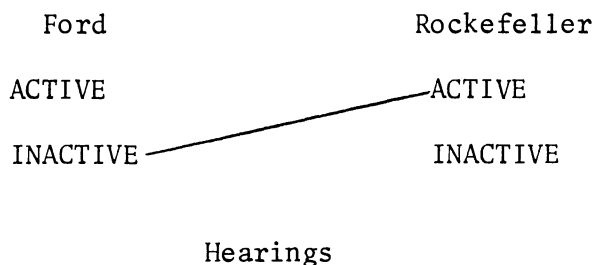
Gerald Ford was previously labeled "inactive" in Chapter III. Following is a list of some political activities of Nelson Rockefeller: Coordinator of Inter-American Affairs, 1940-1944; Assistant Secretary of State for American Republic Affairs, 1944-1945; Chairman of International Development Advisory Board, 1950-1951; Under Secretary of Health, Education and Welfare, 1953-1954; Chairman of President Eisenhower's Commission on Government Organization, 1953-1958; Assistant to President Eisenhower, 1954-1955; Governor of New York, 1959-1973; Member of the Advisory Commission on Intergovernmental Relations, 1965-1969; Chairman of the Governors Conference Committee on Human Resources, 1967-1972; and Member of President Nixon's Foreign Intelligence Advisory Board, 1969-1974. This list does not include all the political activities of Nelson Rockefeller. He has also authored several books: The Future of Federalism (1962);¹⁷ Unity, Freedom and Peace (1968);¹⁸ Our Environment Can Be Saved (1970).¹⁹ Rockefeller, while Governor of New York,

¹⁷Nelson Rockefeller, The Future of Federalism (Cambridge, 1962).

¹⁸Nelson Rockefeller, Unity, Freedom, and Peace (New York, 1968).

¹⁹Nelson Rockefeller, Our Environment Can Be Saved (New York, 1970).

initiated many programs. One of the major programs of the Rockefeller administration was the creation of the State Consumer Protection Board and the initiation of no-fault auto insurance. His administration also built the largest public university system in the world, which grew from 41 campuses and 38,000 students, to 72 campuses and 232,000 full-time students. Another program instituted a large-scale construction program to rehabilitate and modernize prison facilities. His administration also created the Nation's first State Council on the Arts and sponsored and provided state funds for an average of over 7,000 cultural events every year. In the area of economy, Rockefeller's administration helped to attract over 9,300 new plants or major expansions to the State's economy.²⁰ These are just a few of the programs which were carried out under Governor Rockefeller's leadership. This data would indicate that Mr. Rockefeller's "character" variable would be active. The third sub-hypothesis is confirmed as shown by the "character" graph.



The analysis of the kinds of questions asked of Nelson Rockefeller by the committees of Congress was conducted in exactly the same fashion as the analysis of the questions asked of Gerald Ford. The same three categories---policy, personal, and partisan---were used and the same

²⁰U.S. House, Hearings Before the Committee on the Judiciary, Nomination of Nelson Rockefeller to be Vice President of the United States, 93rd Cong., 2nd Sess., 1974, pp. 57-62.

definitions were applied.

The Judiciary Committee in the House and the Rules and Administration Committee in the Senate asked more "personal" questions than "policy" or "partisan" questions of Mr. Rockefeller. The percentages appear below.

Percentage of Questions Asked*

PARTISAN	11.2%
POLICY	47.5%
PERSONAL	21.7%

*Total does not equal one hundred because of rounding and omission of residual questions.

Not only were the "personal" questions the most asked in both committees, but they were also the most asked by Republicans and by Democrats. This finding does not correlate with the finding on Gerald Ford's hearings. The hypothesis that "policy" questions will be asked more than "partisan" or "personal" was not confirmed in Rockefeller's case. Although no direct evidence exists to support it, one reason for "personal" questions being asked more could be Rockefeller's immense wealth. The committees did ask many questions pertaining to Rockefeller's wealth and private loans.

Summary

The voting in both houses of Congress on Rockefeller's confirmation was not partisan. However, Rockefeller did not receive the support from both parties that Gerald Ford did. For the second general hypothesis, all three sub-hypothesis (ideology, geography, and character) were confirmed; therefore, Rockefeller "balanced" Gerald Ford in these areas. Of the three categories of questions (partisan, policy, and personal), the

congressional committees asked more "personal" questions. This finding differs from the hearings on Gerald Ford in which "policy" questions were more frequently asked.

CHAPTER V

THE SUMMARY AND CONCLUSIONS

Summary of Presidential Succession

The Constitution provides that in case of the removal, death, or resignation of the president, the powers and duties of the office of president shall devolve on the vice president (Article II, Section 1). Since the first instance of vice presidential succession, that part of the Constitution has been interpreted to imply the succeeding vice president becomes president. Tyler set the precedent which every succeeding vice president followed. A good argument could be made that the founding fathers never intended this interpretation. The evidence found in tracing the evolution of Article II, Section 1, Clause 5, from the original succession plans introduced in the Constitutional Convention through the Committee of Eleven, through the Committee of Style, and then on the floor of the Convention raises doubts over the Tyler precedent. The final draft is as follows:

In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall act accordingly, until the disability be removed, or a President shall be elected.¹

¹The Constitution of the United States, Article II, Section 1, Clause 5.

The controversy centers on whether "the same shall devolve" refers to the presidential office or the duties and powers of the office. Further controversy exists over whether the latter part of Clause 5--"such officer shall act accordingly, until the disability be removed, or a President shall be elected"--refers to a succeeding vice president or those successors named by Congress when a vacancy exists in both the presidency and vice presidency. The disagreement over the proper interpretation was settled by section one of the Twenty-Fifth Amendment: In case of the removal of the President from office or his death or resignation, the Vice President shall become President.

Three presidential succession laws (1792, 1886, 1947) have been passed providing for successors where there was a vacancy in the presidency and vice presidency. The 1792 Act named the President pro tempore of the Senate and Speaker of the House as successors, respectively, but included a provision for a "special election" to elect a president. The 1886 Act placed the cabinet officers, according to the date of the establishment of their respective departments, in the line of succession. The Act left open the option for Congress to call a "special election". The latest Presidential Succession Act (1947) names the Speaker of the House, President pro tempore of the Senate, and cabinet officials (according to the date of the establishment of their respective departments) in the line of succession, respectively. This Act did not provide for "special elections". None of the acts included a provision for filling vice presidential vacancies. In 1963, following the assassination of President Kennedy, steps were taken in Congress to provide for presidential disability and vice presidential vacancies. Congress proposed the Twenty-Fifth Amendment in 1965, and three-fourths of the states

ratified in 1967. Section two of that Amendment outlines the procedure for filling vice presidential vacancies:

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take the office upon confirmation by a majority vote of both houses of Congress (emphasis added).

The hypotheses in this study have mainly concerned themselves with the power of the president to nominate his successor. It has already been argued that the founding fathers intended for vice presidents who succeeded to the presidency to act as president until a "special election" could be held. There can be no disagreement that Congress did provide for "special elections" in the 1792 Succession Act and left the option open to Congress in the 1886 Act. Although the 1947 Act does not provide for "special elections", President Truman originally intended that it would.² Considering these references to "special elections", why was the president given the power to nominate his potential heir? Arguments could be made on both sides of this issue. There are "pros" and "cons" to the issue. These will be discussed and then application made to the finding in this study.

Findings

Three major hypotheses were stated and tested in the preceding chapters. Those hypotheses are:

1. Congressional voting upon confirmation of a vice presidential nominee will be along partisan lines.
2. A presidential appointment to fill a vacancy in the vice presidency will be of such a nature so as to balance the present president's characteristics.

²Chapter II, p. 24.

3. The questions asked of the vice presidential nominee in the respective congressional committees during the confirmation hearings will emphasize policy issues.

All three hypotheses are directed at the practical functioning of section two of the Twenty-Fifth Amendment which establishes the procedure for filling vice presidential vacancies. These hypotheses were tested using the only two occurrences of vice presidential appointment. Because of the limited occurrences of filling vice presidential vacancies the hypotheses are limited. There is no guarantee that the president in selecting his nominee or the Congress in its "approving" role will behave similarly in future vice presidential appointments, but there is no guarantee they will not continue for many years to come. The procedure for filling vacancies in the vice presidency, as outlined in the Constitution, is not detailed. The criteria used in nominating a potential heir are left to the president. The amount of time that elapses between the nomination and confirmation is entirely in the hands of Congress. The informal "rules" filling the gaps in the procedure may set precedents for future presidents to follow. At the same time these gaps may provide presidents with room for "individualization" in using the appointment power as they see fit. History will, of course, answer these questions. The results of testing the hypotheses set forth above for the first two vice presidential appointments are presented in the following discussion on the pros and cons of presidential power to nominate a vice president.

Reasons for Giving the President the Power to Nominate a Vice President

One factor which weighed heavily in giving the president the nominating power was the custom of allowing a party's presidential

nominee to "hand pick" his running mate. Before 1830, presidential nominees were selected by a congressional caucus. National nominating conventions came into being during the 1830's. After 1840 the nominating conventions of the leading national parties were uniformly held in the presidential election years.³ In practice the presidential nominee selects his running mate. The delegates do vote on his selection but the vote is usually a matter of routine. However, the assumption that a president can "pick" his running mate is only partly justified. Three situations should be distinguished:

1. A president running to succeed himself with vice presidency occupied.
2. A president running to succeed himself with vice presidency vacant.
3. A president retiring.⁴

The amount of control a presidential nominee would have over the selection of his running mate is limited by these circumstances.⁵ The initiative which presidential nominees have in selecting their running mates at national conventions is a custom. The constitutional initiative a president has for filling vice presidential vacancies has institutionalized that custom:

. . . the analogy used to justify this amendment would crystallize contemporary political custom into organic law. Current practice at national political conventions and conventions themselves are the creatures of custom only. Customs can and should change as social, political, and technological changes affect our way of living. The Constitution cannot and

³Richard Bain, Paul David, and Ralph Goldman, The Politics of National Party Conventions (Washington, D.C., 1960), p. 19.

⁴Ibid., p. 56.

⁵Ibid., p. 59.

should not be so flexible.⁶

Another reason for leaving the selection of the vice president up to the president is that this virtually assures (although it does not guarantee) that the vice president will be of the same political party as the president.

Related to the argument that the president in nominating a vice president assures a vice president from the same political party is the argument that this also assures a vice president who has a similar political philosophy. Further, this will enable the president to work in harmony with the vice president and will provide continuity if, for whatever reasons, the vice president succeeds to the presidency. To give the initiative to any other person or group would increase the chances of a president and vice president of differing political philosophies. This could lead to serious consequences. Theodore Roosevelt observed, "It is an unhealthy thing to have the vice president and the president represented by principles so far apart that the succession of one to the place of the other means a change as radical as any possible party overturn."⁷ In 1965 the acting Attorney General, Nicholas Katzenbach, stated, "Permitting the President to choose the Vice President. . . will tend to insure the selection of an associate in whom he can work in harmony."⁸ In 1965 a representative in Congress from New York stated the case for continuity. Seymour Hulpain argued that giving a president the

⁶U.S. House, Application of the Twenty-Fifth Amendment, pp. 43-47; p. 112; p. 183; p. 249; p. 376.

⁷Arthur M. Schlesinger, "On the Presidential Succession," Political Science Quarterly, LXXXIX (Fall, 1974), p. 485.

⁸U.S. House, Application of the Twenty-Fifth Amendment, p. 112.

power to nominate the vice president and continuity were inseparable:

There are those who would weaken the President's authority to designate a successor; this argument fails to contend with the essential point, and that is the capacity of the means to provide continuity. Continuity, the constitutional questions of Presidential power during a term of office, must be the guiding principle. The Vice President, when the Presidency becomes vacant, should be able to provide that continuity to every possible extent. We can help to insure this by providing the President with the initial power to nominate the second person in line of succession.⁹

Why has there been so much concern over the "working" relationship between the president and vice president? Any explanation would have to include the increase in duties (and thus importance) of the vice presidency. Today, the vice president is a vital part of the executive machinery. He sits as a member of the Cabinet and the National Security Council; he coordinates various government programs, acts as a liaison between the executive and legislative branches and as a representative of the president at home and abroad.¹⁰ The history of the vice presidency is a dull one. The original method for the election of the president and vice president provided that after the president, the person having the greatest number of electoral votes would be the vice president.¹¹ By this method vice presidents would be "presidential material". Thus, this insured rather high caliber individuals as second in command. This changed abruptly with the adoption of the Twelfth Amendment in 1804. According to that Amendment, electors must specify a vote for president and a vote for vice president. As a result, presidents and vice presidents

⁹Ibid., p. 183.

¹⁰U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 150.

¹¹The Constitution of the United States, Article II, Section 1.

began running as teams. Candidates for the office were now selected with a view to balancing the ticket and appeasing dissident elements in the presidential candidate's party. Little attention was given to the vice presidential candidate's suitability for the presidency.¹² The relatively recent increase in duties of the vice presidency and the apparent increase in importance of the office may necessitate a president and vice president who are similar enough to work harmoniously together. Richard Nixon stated at one time:

With the increasing use of the vice president the fundamental reason why the president should in effect name or have a veto power on who holds the office of vice president is that a vice president can only be as useful as a president has confidence in him.¹³

A second possible explanation for the concern over harmony and continuity between the president and vice president is the increase in political assassinations. Political assassination and violence occurred with tragic frequency during the 1960's.¹⁴ [President Kennedy-1963; Robert Kennedy-1968; Dr. Martin Luther King, Jr.,-1968; assasssination attempt on Governor George Wallace-1972; two serious attempts to assassinate Gerald Ford-1975.] This increase in violence aimed at presidents and presidential aspirants helps to explain the concern over the vice presidential office being filled with men of political views similar to those of the president.

A final reason for giving the president the power to nominate his

¹²U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 150.

¹³Birch Bayh, One Heartbeat Away (New York, 1968), p. 87.

¹⁴Milton Cummings, Jr., and David Wise, Democracy Under Pressure (New York, 1974), pp. 179-182.

vice president is that all other alternatives are not practical. Other possible alternatives would include: a special election to elect a new vice president; leave the decision up to Congress with the president having a veto power over its selection; provide for automatic succession as provided for when vacancies occur in both the presidency and vice presidency; or reconvening the electoral college to select a new vice president. While each of these proposals has its "good" and "bad" points, suffice it to say the importance given to allowing the president to nominate his heir, along with the problems found with each of these proposals, prevailed.

Objections to Giving the President the Power to Nominate a Vice President

One objection to presidential nomination has already been mentioned in this chapter (page 72). Giving the president the power to nominate his vice president has institutionalized the "custom" of each party's national conventions where presidential nominees can literally select their running mate with only a token vote by convention delegates.

A second objection denounces such power as non-democratic. The vice presidency is an elective office. The Constitution states that the president shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected.¹⁵ A more democratic method of filling vice presidential elections would be through special elections. It has already been demonstrated that the founding fathers were concerned over an elected president and vice

¹⁵The Constitution of the United States, Article II, Section 1; (emphasis added).

president.¹⁶ Two of the three presidential succession acts permitted some type of special election. The third, the 1947 Act, was written on the urging of President Truman who felt the 1886 Act was too undemocratic. This particular act placed the cabinet officials in the line of succession. Cabinet officials are appointed by the president; therefore a president would, in effect, be appointing a potential heir. Congress did respond to this wish of Truman and changed the line of succession to the Speaker of the House, the President pro tempore, and the cabinet. Truman also wanted the 1947 Act to include a provision for a special election. Congress did not include this. While there has been some support for "special elections" where the presidency and vice presidency are vacant, little support has been given for allowing "special elections" for filling vice presidential vacancies. Of those who supported a "special election" in 1965 during the hearings over the amendment, most stated a preference for an elected vice president.¹⁷ More recent support for such elections have also stressed the undemocratic nature of the amendment. Senator Pastore (D-Rhode Island) in February, 1975, stated, "It is central to the very essence of our democracy that the people elect their own president."¹⁸ Senator Pastore was referring to the present circumstances surrounding the nomination of Gerald Ford and subsequent nomination of Nelson Rockefeller which has resulted in a president and vice president who were not elected. This situation was made possible because of section two of the Twenty-Fifth Amendment. That section

¹⁶Chapter II, pp. 17-19.

¹⁷U.S. House, Application of the Twenty-Fifth Amendment, pp. 193-194; p. 389; p. 391.

¹⁸Oklahoma City Times (February 26, 1975), p. 4.

literally reversed the reform sought by President Truman by again giving the president the power to appoint his heir. Special elections for filling vice presidential vacancies present several problems. One problem would be the delay involved with the election. This problem however, is not unique to this method for filling vice presidential vacancies. Indeed, the absence of a time limit for congressional approval of a vice presidential nominee was of concern to House and Senate members when the amendment was being proposed in 1965.¹⁹ More recently a Ford administrative spokesman, Assistant Attorney General Antonin Scalia, suggested that Congress set a time limit of sixty days for confirmation of future vice presidential nominees.²⁰ A similar time limit could be set for special elections. Such a system has worked for the French:

. . . article seven of the Constitution of the fifth republic stated that in case of a vacancy in the presidency a new presidential election must be held within thirty-five days. In the meantime, the functions of the president (save for the powers of calling a national referendum and of dissolving the National Assembly) are to be exercised by the president of the senate. On April 2, 1974, President Pompidon died. On May 5 the French had their election, followed by a run off on May 19 and the inauguration of the new president on May 27. In less than two months France had a new president, freely chosen by the people and equipped by them with a French mandate.²¹

Further objections point out the cost, confusion, and turmoil involved with such elections.²² But this was not the French experience in 1974, nor indeed has it been the experience in parliamentary states where

¹⁹U.S. House, Application of the Twenty-Fifth Amendment, p. 69; p. 220; p. 223; also see Bayh, pp. 59-60; p. 264.

²⁰"Twenty-Fifth Amendment," Congressional Quarterly, XXXIII (March 1, 1975), p. 445.

²¹Schlesinger, p. 477.

²²U.S. House, Application of the Twenty-Fifth Amendment, p. 393.

elections are held at unpredictable intervals.²³

Another problem with "special elections" is the possible departure from our system of quadrennial presidential elections. The Constitution states that the president shall hold his office during the term of four years together with the vice president (Article II, Section 1). Does the language of the Constitution demand that an elected vice president serve a full four year term? The evidence suggests not:

It is far from self-evident that the Constitution forbids elections to fill unexpired terms. We have such elections every day for senators and representatives, though they . . . serve for terms specified in the Constitution.²⁴

Further, a study done by the House Judiciary Committee in 1945 found that the constitutional phrase "during the time" often means "in the time", and does not necessarily mean "throughout the entire course of".²⁵

In addition, vice presidents upon succeeding to the presidency become president. Yet no one argues that such a president deserves a full four year term. Similar application could be made to newly elected vice presidents.

Another problem that exists with "special elections" is that the vice president selected by such a method might be one who could not work harmoniously with the president, that might be of a different political philosophy, or that might be of a different political party. However, these conditions were also possible under the original method for

²³Schlesinger, p. 502.

²⁴Ibid., p. 498.

²⁵Ibid.

electing a president and vice president.²⁶ In fact, while the Twelfth Amendment and the unit rule custom for casting electoral votes decreased the chances of it occurring, it is possible for a president and vice president of different parties to be elected. Concern over a vice president who shares the political philosophy and views of the president are unwarranted. The reasons will be discussed in the latter part of this chapter.

A third objection to the power given the president in section two relies on another section of the same amendment. Sections three and four of the Twenty-Fifth Amendment deal with presidential disability. Section three outlines the steps a president must take to declare his disability. Section four outlines the procedures the vice president and a majority of the cabinet may take to declare the president disabled.²⁷ Taken as a whole the amendment gives a president the power to nominate his heir who, if confirmed, is given the power (along with a majority of cabinet officers) to declare the president disabled! Under these circumstances a president might nominate a less vigorous or aggressive individual. Charles Mathias (R-Maryland) has said that the amendment could be "explosive":

I think that the combination of giving a President the power to

²⁶The Constitution of the United States, Article II, Section 1. Under the instructions outlined in this section the vice president was the runner-up in the electoral college--regardless of political party.

²⁷The section reads: 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. . . The reference here is to the cabinet officials. Reference was not directly made to preserve lack of reference to this body in the Constitution. (See Bayh, p. 50.) The "other body" was added so that if the cabinet proved unworkable Congress could provide another body to verify disability--for example, a blue ribbon commission or team of doctors, etc.

nominate his heir and, at the same time, giving the heir at least a part of the power to depose the President, sets in play some of the very classic situations which the framers of the Constitution would examine most carefully for their analysis of what the probable human reaction would be, and I think this is one of the dangers of House Joint Resolution I, that you are doing two things which will have opposite reactions, and I think they could be explosive, given the right combination of circumstances and personalities and conditions.²⁸

Along these same lines is the "problem" of a president selecting a vice president that balances his political philosophy. While this may not be a problem, it would refute a major justification of the power of the president to nominate.²⁹ It was the analogy of presidential nominees being able to select their running mates that warranted giving the president the power to nominate his vice president. It has been the general practice for presidential nominees to select a running mate that "balanced the ticket". If the analogy holds, vice presidential nominees will be selected so as to "balance" the president. The balance may be geographical, ideological, temperamental, or a combination of two or all three or other balances. But does the analogy apply? John D. Ferrick says it does not:

The . . . amendment does not deal with the selection of a running mate with a view to forthcoming election, and there is thus no question of choosing the nominee on the basis of his ability to attract votes.³⁰

If the president is "lame duck" there is no question of choosing the nominee on the basis of his ability to attract votes. But consider the example of Gerald Ford. Although Gerald Ford swore before a congressional

²⁸U.S. House, Application of the Twenty-Fifth Amendment, p. 215.

²⁹U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, pp. 282-287.

³⁰Ibid., p. 203.

committee that he had no intentions of seeking the presidency, he has now announced that he will run for president in 1976.³¹

After being sworn into office, Gerald Ford nominated Nelson Rockefeller as his vice president and most likely his running mate in 1976.³² On the other hand if the analogy referred to is false then how can it be used to justify giving the president the nominating power? In this study both vice presidential nominees "balanced" their respective presidents.

The first sub-hypothesis involved ideology. In this study, ideology was measured using ADA scores. As the percentage of agreement with the ADA position increased the individual was considered more liberal. Where there were no scores, they were computed using the ADA's method of computation. An index of likeness was also used to compare the similarities of each president and his vice presidential nominee.

There was a lack of balance in ideology between Richard Nixon and Gerald Ford. Following are the ADA scores for each and corrected "likeness" score:

³¹U.S. House, Committee on the Judiciary, Nomination of Gerald Ford to be the Vice President of the United States, 93rd Cong., 1st Sess., 1973, pp. 605-606.

³²"Ford News Conference Text," Congressional Quarterly, XXXIII (March 22, 1975), p. 613. In his news conference of March 17, Ford was asked about the possibility of Nelson Rockefeller as a running mate in 1976. He replied, "Nelson Rockefeller has been an exceptionally active and able Vice President. I said when I nominated him I wanted him to be a partner. I think he deserves great praise and I see no reason whatsoever that that team should not be together in the campaign of 1976." However, during the first week of November (1975) the press announced that Nelson Rockefeller had personally delivered a letter to President Ford stating that he would not be his running mate in 1976.

	Nixon	Ford
ADA Score	7%	11%
	Likeness Score -- 70%.	

The similarity is expected as Ford strongly supported the Nixon administration's programs as the minority leader in Congress. The only major split between Ford and Nixon was in mass transit. Ford's opposition to mass transit is apparently a result of his representing a district in the auto-producing state of Michigan.

A balance in ideology did occur between Gerald Ford and Nelson Rockefeller. Following are the ADA scores and corrected "likeness" score:

	Ford	Rockefeller
ADA Score	11%	70%
	Likeness Score -- 57%.	

As pointed out in Chapter IV, Rockefeller tended to support liberal programs as Governor of New York.

Presidential nominees frequently have, in the past, selected running mates whose "ideology" or political philosophy has differed from their own in an attempt to strengthen the ticket (see footnote, page 48). This type of ideological balance was apparent in President Ford's nomination of Nelson Rockefeller to be vice president. The lack of balance in ideology between Richard Nixon and Gerald Ford could be attributed to many factors. Not to be ignored, however, are the factors of Watergate and the fact that Richard Nixon had been elected to the presidency his second time (and thus his constitutional limit). There was no need therefore to select a more liberal nominee in hopes of gaining a potential electoral edge in a forthcoming election. Gerald Ford, on the other

hand, selected the man who, in all probability, appeared to be his likely running mate in 1976 when he nominated Nelson Rockefeller. An ideological balance would appeal to the ideological differences within the Republican party and between the two parties. With the future presidential election staring Gerald Ford in the face, and his subsequent announcement to run, it is evident ideology may well have been an important factor (although not the only one) in selecting a vice presidential nominee.

The second sub-hypothesis involved geography. In both instances of filling vice presidential vacancies the nominees geographically balanced their respective presidents. It is not unusual for presidential nominees to select running mates that serve the purpose of "balancing the ticket" geographically. These balances are intended to serve as electoral strengths. In the presidential election of 1900, Theodore Roosevelt was forced on the administration by finance and westerners. President McKinley felt little political affinity with Theodore Roosevelt but accepted him as a running mate so as not to offend either the westerners who wanted the Rough Rider on the ticket or the Wall Streeters who sought thus to unseat him in Albany.³³ In 1932 the Democrats selected John Nance Garner, a Texan, to run with Franklin Roosevelt. Roosevelt was a senator in the state legislature of New York (1911-1912) and Governor of New York (1929-1932) before being elected president in 1932. The geographical balance was intended to increase Roosevelt's chances of being elected. In the words of Roosevelt's field marshal, James A. Farley,

³³U.S. Senate, Selected Materials on the Twenty-Fifth Amendment, p. 183.

". . . we needed the Lone Star State to win. . ." ³⁴ In 1948 the Democratic Convention nominated a Kentuckian to run with Harry Truman from Missouri. The southern states were disturbed over Truman's civil rights policies. Senator Alben Barkley as a Kentuckian was well liked in the South. ³⁵ The 1960 presidential election was won by a geographically balanced ticket. Lyndon Johnson was selected as a political maneuver to increase Kennedy's chances of the southern states electoral votes. ³⁶

These cases of geographical balance in presidential elections are not the only cases, but they demonstrate instances since the turn of the century in which a geographical balance was thought to be important in "winning" the election. This practice of selecting running mates who geographically "balance the ticket" was also used in the first two instances of presidential selection of vice presidential nominees.

The final sub-hypothesis involved character. Gerald Ford and Nelson Rockefeller balanced the character of their respective presidents. This type of balance is not one which always will be done consciously. It may result merely because of the relationship involved between the president and his vice president. It is reasonable that a "strong" or "active" president would prefer a weaker second in command and vice versa. This balance seems in fact a natural event. Where there is an inactive president the vice president may be selected so that those activities which a relatively "passive" president might ignore can be passed on to him. Likewise, an "active" president (especially one eligible for re-election)

³⁴Ibid., p. 185.

³⁵Ibid., p. 187.

³⁶Ibid., p. 188.

may hesitate to select a politician who has had a very active political past, especially if he is a potential challenge for the nomination. Past balances of this type may be lacking because of the very nature of the office of the vice presidency. It was not until the late 1940's that vice presidents were given many important functions to perform. Since that time the office has been thought of as more important.

Presidents Truman, Eisenhower, and Kennedy successively expanded the role of the vice president. He now participates in Cabinet meetings, is a statutorily designated member of the National Security Council, and is frequently designated as the President's representative in foreign and domestic matters. It is this recent importance and increase of duties which will make this type of "character" balance more important in the future. The findings for the first two instances of presidents filling vice presidential vacancies have shown this balance to occur.

Giving a president the power to nominate his vice president has resulted in an indirect problem. While the initiative in nominating rests with the president, Congress (a majority of a quorum) must, according to section two, confirm the nomination. The problem is that section two contains no time limit for either the nomination or the confirmation. The chances of Congress dragging its feet is greater considering the fact that twenty percent of the time Congress has been under the control of a party other than that of the president.³⁷ The findings in this study indicate that congressional approval, while it may be time consuming, is pro forma.

Both houses of Congress overwhelmingly approved both vice

³⁷Ibid., p. 97.

presidential nominees. Combining both instances there were only a total of one-hundred and sixty-three "no" votes. In both instances the nominees were Republican and Congress was controlled by Democrats. There was more opposition to Nelson Rockefeller's nomination than to that of Gerald Ford. Even so, more than a majority of Democrats supported Rockefeller in the House and Senate.

Considering the nature of the appointment (a president appointing his potential heir), one might assume that the voting on confirmation would be along party lines. This assumption would seem to be even more valid when the opposite party controlled Congress. The facts of the first two cases of vice presidential confirmation show the assumption to be invalid. Several reasons could be given for the lack of partisan voting. Congress may have feared a "political battle" over the nominees. The fact that these two instances were the first two instances of filling vice presidential vacancies may have impressed upon Congress the need to proceed with caution. The responsibility was not only to Republicans and Democrats but also to the Nation. Strict partisan voting would have resulted in the vice presidency remaining vacant until another could be nominated. Further, the present Presidential Succession Act of 1947 provides that whenever there is a vacancy in both the presidency and the vice presidency the Speaker of the House succeeds to the presidency. Since the Democrats are the majority party in the House, the Speaker is a Democrat. Carl Albert (D-Oklahoma) would have succeeded to the presidency had either Richard Nixon or Gerald Ford died, resigned, or been removed from office before a vice presidential nominee was confirmed. Had the Democrats voted in a partisan vote to block confirmation, claims certainly would have been made that this was purely a political move to

provide a chance for the speaker to become president. These kinds of claims could be very damaging to a party's image.

The confirmation process for Ford and Rockefeller took approximately two months and four months, respectively. To insure a confirming body of the same political party as the president's and thus reduce the possibility of delay, some have argued for reconvening the electoral college to select a vice president.³⁸ But even with this method there is a problem (along with many others) of time. The electors would have to be reassembled and vacancies filled. The electoral college would also have to investigate the nominee, so machinery for this purpose would have to be initiated. In all, the chances of saving time seem slim.

It has already been pointed out that arguments for presidential nomination of a vice presidential nominee emphasize the need for continuity. This rationale for giving the president such appointment power raises the question: Will Congress exhibit this concern over continuity and similarity in views when confirming vice presidential nominees? The questions asked in the committee hearings of Gerald Ford and Nelson Rockefeller were categorized into either "partisan", "policy", or "personal" to test this hypothesis.³⁹ Over two thousand questions were coded.⁴⁰ Following are the percentages of each category of questions for all questions asked of both nominees:

³⁸Ibid., p. 96; also see Bayh, p. 262.

³⁹Chapter I, p. 16.

⁴⁰The total questions coded were 2,380.

PARTISAN	15.5
POLICY	26.8
PERSONAL	<u>35.5</u>
	77.8.

These percentages indicate that the members of the committees which held hearings on the Ford and Rockefeller nominations asked more personal than partisan or policy questions. Following are the percentages for each nominee:

Ford		Rockefeller	
PARTISAN	19.8%	PARTISAN	11.2%
POLICY	31.9%	POLICY	21.7%
PERSONAL	23.6%	PERSONAL	47.5%.

While "personal" questions were asked more of both nominees, they were not asked most for each nominee. The category of questions asked most of Rockefeller was personal. The category of questions asked most of Ford was policy. These findings suggest that the types of questions asked depends on factors relevant to the particular nominees. Before being nominated for vice president, Gerald Ford had been a member of the House of Representatives for twenty-five years. Congressional familiarity with his career and his relatively "passive" political character could possibly have affected the kinds of questions asked him by the members of the committees. Nelson Rockefeller, on the other hand, had been involved in numerous political activities.⁴¹ Also of importance in Rockefeller's nomination was his immense wealth and possible future conflicts of interest. This would suggest that the type of questions asked of vice

⁴¹Chapter IV, pp. 64-65.

presidential nominees depends on the nominees themselves. These conclusions, however, are based on the only two occurrences of congressional confirmations of vice presidential nominees.

Application and Conclusion

The pros and cons of the presidential power to nominate a vice president when there is a vacancy in the vice presidency have been discussed in the preceding sections. It is argued that in order to provide harmony and continuity it is necessary to allow the president this initiative. Any other method might result in a vice president too different from the president. Were this to happen the president and vice president would not be able to work together effectively. More importantly, if the vice president succeeded to the presidency (for whatever reasons), the difference in political philosophy and policy could have a drastic effect on the government and Nation. In short, there would be no continuity in executive policy.

This study has tried to answer some of these arguments. Again, it should be mentioned that the results of the study come from the only two instances of filling vice presidential vacancies. On the other hand, these first occurrences of filling vice presidential vacancies may provide the precedent for future occurrences. Routinization and custom can be just as binding as written statutes.

The findings concerning the first hypothesis would suggest that a vice presidential nominee has an excellent chance of being confirmed by Congress. Both nominations were made by presidents whose party differed from the party that controlled Congress. Yet the votes were not even close for both nominees.

The second hypothesis has a broader application. It suggests that a criterion that presidents will use to select vice presidential nominees will be "balance". The three areas tested were ideology, geography, and character. The findings, in almost every instance, indicate that the vice presidential nominee balanced the president in these three areas. Only in the case of ideology for Richard Nixon and Gerald Ford was there a lack of balance. These findings weaken those arguments for giving the president the power to nominate on the grounds that this will provide harmony and continuity. Presidents, like presidential nominees, choose those individuals that balance their political philosophies and policies. They do not use the initiative given them in section two to seek out individuals that are similar. On the contrary, the findings from this study suggest that they use the initiative to seek out individuals that are different.

A final finding is that congressional committees are not exceedingly concerned with the policy positions a vice presidential nominee supports. Based on the types of questions most asked, no tendency was exhibited from the two confirmations. It would seem the characteristics and background of each nominee directs the area emphasized by congressional committees.

This study should not end without mentioning some of the recent proposals to change the method for filling vice presidential vacancies.

Senator Pastore (D-Rhode Island) suggests a new constitutional amendment calling for a special national election whenever a vice president appointed under terms of the Twenty-Fifth amendment rose to the presidency with more than a year remaining in a presidential term of

office.⁴² Under this plan a special election for president would have been held when Nixon resigned instead of Gerald Ford succeeding to the presidency. An appointed president is too undemocratic for Senator Pastore. The proposal would insure an elected president but the vice president could still be appointed when vacancies occurred. He does not mention the need for special elections to fill vacancies in the vice presidency.

Another related change is suggested by Senator William D. Hathaway (D-Maine). He suggests that the Twenty-Fifth amendment remain intact, but urges legislation that would require a special election in case vacancies occurred in the office of both president and vice president. Under this plan the ranking House member of the administration's party would serve as acting president until a special presidential election could be held. The specially elected president would serve out the outgoing president's unexpired term.⁴³ Congress has the constitutional authority to pass legislation of this type. This proposal does not remedy the present situation of an appointed president and vice president. Further, it does not propose to change the method for filling vice presidential vacancies. It would only affect the present law (1947 Presidential Succession Act) providing for succession when a "double" vacancy occurs.

Another proposal, and one which President Ford endorses, suggests that Congress limit the time for confirmation (60 days) of a vice president. The administration also suggests clarifying other technical

⁴²"Twenty-Fifth Amendment," Congressional Quarterly, XXXIII (March 1, 1975), p. 445.

⁴³*Ibid.*

aspects of the amendment and the succession act:

Congress should specify whether the Speaker of the House could nominate a vice president under the Twenty-Fifth Amendment in case a "single catastrophe" removed both president and vice president. And Congress should clarify whether acting Cabinet officers could join a vice president in a declaration, under the Twenty-Fifth Amendment, that the president was disabled.⁴⁴

These proposals would not substantially alter the Twenty-Fifth Amendment, except perhaps for the time limit. The adoption of the time limit proposal seems unlikely. If adopted this would place a limit on debate in the Senate. The Senate would not be eager to endorse this type of limitation. Further, if Congress should be limited in the time for confirmation, should not the president be limited in the time for nomination? The Ford administration in its proposals mentioned no need for a presidential time limit.

There are the more recent proposals for change. Some would argue that the Twenty-Fifth Amendment has worked well and should be left untouched.⁴⁵ This study does not point to any one proposal as the "best". It has tried to examine the Twenty-Fifth Amendment both in a historical and an analytical fashion. The conclusions as stated earlier in this chapter are certainly limited. But this limitation should not excuse every finding. The Twenty-Fifth Amendment has resulted in a president and vice president, neither of whom were elected. The rationale for authorizing the president to nominate his successor is unwarranted. Many of the arguments against reform have been shown to be false. The idea of "special elections" is not foreign to our government. While Senator Pastore's proposal does not effect how vice presidential vacancies are

⁴⁴Ibid.

⁴⁵Ibid.

filled it does insure an "elected" president. Some would scoff at even bothering with such "nonsense", but to quote Senator Pastore, "It's central to the very essence of our democracy that the people elect their own president."⁴⁶ It is hoped that the findings in this study will impress on others the need to examine more fully the workings of section two of the Twenty-Fifth Amendment.

⁴⁶Oklahoma City Times, p. 4.

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APPENDIX A

DEFINITION OF BALANCE

	West-----West
Geography	Midwest-----Midwest
	East-----East
	South-----South
Character	Active-----Active
	Passive-----Passive
Ideology	Liberal-----Liberal
	Moderate-----Moderate
	Conservative----Conservative

The relationships shown in this appendix are all the possible relationships which could be found in which no "balance" occurs. Any other relationship found for each category will be classified as a balance.

APPENDIX B

SELECTED ISSUES AND RECORDED POSITIONS

<u>ISSUES</u>	<u>POSITION</u>			
	Nixon	Ford	Rockefeller	
ABM	+	+	+	
ABORTION	-	+	+	
ATOMIC ENERGY	+	+	+	
BALANCED BUDGET	+	+	+	
BUSING	-	-	0	
CAPITOL PUNISHMENT	+	+	-	
CIVIL RIGHTS	+	-	+	
DRUG ABUSE	+	+	+	
AID TO EDUCATION	+	0	+	
ELECTION REFORM	+	+	+	
EXECUTIVE PRIVILEGE	+	+	+	
FOOD SHORTAGE	x	-	+	
FOREIGN POLICY	+	+	+	
GUN CONTROL	-	+	+	
HOUSING	+	-	+	
IMPOUNDMENT	+	+	0	
MINIMUM WAGE	+	-	+	
NATIONAL HEALTH INSURANCE	x	+	+	
OIL IMPORTS	x	+	-	
PRAYERS IN PUBLIC SCHOOLS	x	+	+	
REVENUE SHARING	+	+	+	
TAX REFORM	+	0	+	
POLLUTION CONTROL	+	+	+	
SST	+	+	0	
WAGE AND PRICE CONTROLS	-	-	-	
WELFARE REFORM	+	+	+	
WOMEN'S RIGHT	+	+	+	
	Total (+)	19	19	21
	Total (-)	4	6	3

APPENDIX C

VACANCIES IN THE VICE PRESIDENCY

<u>VICE PRESIDENT</u>	<u>TERM ELECTED</u>	<u>DATE OF VACANCY</u>	<u>REASON</u>
George Clinton (R)	1809-1813	4/20/1812	Death
Elbridge Gerry (R)	1813-1817	11/23/1814	Death
John Calhoun (D)	1829-1833	12/28/1832	Resignation
John Tyler (Whig)	1841-1845	4/ 6/1841	Succeeded to Presidency on Death of President Harrison
Millard Fillmore (Whig)	1849-1853	7/10/1850	Succeeded to Presidency on Death of President Taylor
William King (D)	1853-1857	4/18/1853	Death
Andrew Johnson (R)	1865-1869	4/15/1865	Succeeded to Presidency Following Assassination of President Lincoln
Henry Wilson (R)	1873-1877	11/22/1875	Death
Chester A. Arthur (R)	1881-1885	9/20/1881	Succeeded to Presidency Following Assassination of President Garfield
Thomas Hendricks (D)	1885-1889	11/25/1885	Death
Carrett A. Hobart (R)	1897-1901	11/21/1899	Death
Theodore Roosevelt (R)	1901-1905	9/14/1901	Succeeded to Presidency Following Assassination of President McKinley
James S. Sherman (R)	1909-1913	10/30/1912	Death
Calvin Coolidge (R)	1921-1925	8/ 3/1923	Succeeded to Presidency on Death of President Harding
Harry S. Truman (D)	1945-1949	4/12/1945	Succeeded to Presidency on Death of President Roosevelt
Lyndon B. Johnson (D)	1961-1965	11/22/1963	Succeeded to Presidency on Death of Assassination of President Kennedy
Spiro Agnew (R)	1973-1977	10/10/1973	Resigned
Gerald Ford (R)	1973-1977	8/ 9/1974	Succeeded to Presidency Following Resignation of President Nixon

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