

What Does the 25th Amendment Provide for and Why is it Relevant to an Investment Portfolio?

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In the aftermath of President John F. Kennedy's assassination in 1963, the 25th Amendment was proposed by Congress and in 1967, ratified by the states. The 25th Amendment provides for the replacement of the President and Vice President in the event of death, removal, resignation, or incapacitation.¹

We learned early this morning that President Trump and the First Lady Melania Trump both tested positive for the COVID-19 virus.² While the details that have been released are still somewhat limited, it has been disclosed that the President is symptomatic. To reassure the American people, White House physician Sean Conley said that the President and First Lady were both "well at this time" and planned to remain at the White House while they recover. Conley further said the medical team would "maintain a vigilant watch"³ over the President and First Lady.

A combination of factors, including the President's age and weight put him at elevated risk. While we have no reason to believe that the President is currently incapacitated and unable to fulfill his duties, we thought a quick civic refresher would be of interest.

The 25th Amendment provides for who will succeed the President (as well as the Vice President) if either is unable to discharge the powers and duties of their office. Set forth below is the language of the 25th Amendment:

Amendment XXV

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

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

¹https://www.senate.gov/civics/constitution_item/constitution.htm#amendments

² <https://www.wsj.com/articles/president-trump-and-first-lady-melania-test-positive-for-the-coronavirus-11601639968>

³ <https://www.cnn.com/2020/10/02/coronavirus-stimulus-trump-positive-test-changes-dynamic-pelosi-says.html>

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Section 3 is the provision that is applicable if the President declares that he is unable to discharge the powers and duties of his office. Section 4 is the provision that is applicable if the Vice President and a majority of the Secretaries of the executive departments transmit a letter to the President pro tempore of the Senate and the Speaker of the House of Representatives with their written declaration that the President is unable to discharge the powers and duties of the office.

Anytime an issue is raised regarding the health of a head of state, particularly the President of the United States, it introduces a level of uncertainty into the capital markets. Markets abhor uncertainty. However, before we become overwrought with angst, a little bit of historical context is in order.

First, it's important to remember that roughly 25 million people around the world have contracted, and recovered from, COVID-19⁴. This includes other heads of state that have tested positive for the virus, such as UK Prime Minister Boris Johnson.

Second, if it becomes necessary to invoke the 25th Amendment, it is important to note that this is not the first time that has occurred. It has actually been invoked on five separate occasions with the first time occurring in the 1970s. Vice President Spiro Agnew resigned on October 10, 1973 and following the procedures of Section 2 of the 25th Amendment, President Richard Nixon nominated Gerald Ford to succeed him. President Nixon resigned his office on August 9, 1974 and Vice President Ford succeeded to the office and took the presidential oath the same day. Again in 1985 President Reagan invoked Section 3 and President George W. Bush did so twice in 2002 and 2007.⁵

⁴ <https://www.statista.com/statistics/1087466/covid19-cases-recoveries-deaths-worldwide/>

⁵ <https://www.cnbc.com/2020/10/02/coronavirus-trump-has-covid-19-heres-what-happens-next.html>

What makes this fact pattern a little more complicated is the proximity of President Trump's illness to the presidential election. The President will need to quarantine and recuperate. This should result in a substantial curtailment of his re-election related activity including the potential elimination of future debates. Depending upon how long the President is ill with the COVID virus, there is also a remote chance that the election could be postponed.

While we were hopeful that we would have clarity as to who would lead our country immediately after election day, we need to manage our expectations and wrap our heads around the potential of not knowing who the next president will be for several days or weeks after election. This outcome may result from not just due to a possible delay in the election, but also due to the time necessary to count absentee ballots, and the time necessary to hear any potential challenges to the results. While this in and of itself is not catastrophic, it will nevertheless extend the period of uncertainty, potentially contributing to market volatility

This leads me to a point that is so important for us to remember during these tumultuous times. To quote Plato, "Always be kind, for everyone is fighting a hard battle". While these are difficult times, we will get through them together.

As always, we are here to support you and your financial well-being during this challenging time. If you have any questions or concerns about your investments, your allocation, or any of the information we discussed in today's journal entry, please don't hesitate to contact us.

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