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PRESIDENTIAL TENURE

TWENTY-SECOND AMENDMENT

SECTION 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

SECTION 2. This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

LIMITATION OF PRESIDENTIAL TERMS

"By reason of the lack of a positive expression upon the subject of the tenure of the office of President, and by reason of a well-defined custom which has risen in the past that no President should have more than two terms in that office, much discussion has resulted upon this subject. Hence it is the purpose of this . . . [proposal] . . . to submit this question to the people so they, by and through the recognized processes, may express their views upon this question, and if they shall so elect, they may . . . thereby set at rest this problem."[1] This characterization of the issue, of course, followed soon after the people had expressed their views by electing

[1] H.R. Rep. No. 17, 80th Cong., 1st Sess. at 2 (1947).

Franklin D. Roosevelt to unprecedented third and fourth terms of office, in 1940 and 1944, respectively.

The Twenty-Second Amendment has yet to be tested or applied. Commentary suggests, however, that a number of issues could be raised as to the Amendment's meaning and application, especially in relation to the Twelfth Amendment. By its terms, the Twenty-Second Amendment bars only the election of two-term Presidents, and this prohibition would not prevent someone who had twice been elected President from succeeding to the office after having been elected or appointed Vice-President. Broader language providing that no such person "shall be chosen or serve as President . . . or be eligible to hold the office" was rejected in favor of the Amendment's ban merely on election.[2] Whether a two-term President could be elected or appointed Vice President depends upon the meaning of the Twelfth Amendment, which provides that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President." Is someone prohibited by the Twenty-Second Amendment from being "elected" to the office of President thereby "constitutionally ineligible to the office"? Note also that neither Amendment addresses the eligibility of a former two-term President to serve as Speaker of the House or as one of the other officers who could serve as President through operation of the Succession Act.[3]

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[2] H.J. Res. 27, 80th Cong., 1st Sess. (1947) (as introduced). As the House Judiciary Committee reported the measure, it would have made the covered category of former presidents "ineligible to hold the office of President." H.R. Rep. No. 17, 80th Cong., 1st Sess. at 1 (1947).

[3] 3 U.S.C. § 19. For analysis of the Twenty-Second Amendment and its applicability to the various scenarios under which a person can succeed to the office, see Bruce G. Peabody and Scott E. Gant, *The Twice and Future President: Constitutional Interstices and the Twenty-Second Amendment*, 83 MINN. L. REV. 565 (1999).