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THE 22ND AND 25TH AMENDMENTS: CONSTITUTIONAL SUCCESSION AND PRESIDENTIAL TERM LIMITS

Habib Badawi
Professor of International Relations, Lebanese University
ORCID: 0000-0002-6452-8379 | Scopus ID: 58675152100
Corresponding Author: habib.badawi@ul.edu.lb | habib.badawi@gmail.com

Abstract

This study examines the constitutional tension between the 22nd and 25th Amendments to the United States Constitution, analyzing how their structural interaction creates pathways through which presidential term limits may be circumvented through non-electoral succession mechanisms. Integrating constitutional institutionalism, democratic consolidation theory, and power distribution theory, the study conducts a comparative analysis of the two amendments' divergent constitutional grammars the 22nd Amendment's prohibition on being "elected" more than twice versus the 25th Amendment's mechanisms for "acting as" or "becoming" President through non-electoral succession and of the 12th Amendment's eligibility clause that constitutionally bridges them. Drawing on American historical precedents and comparative evidence from Latin American presidential systems, the analysis develops a typology of three constitutional succession variants through which a twice-elected president might reassume executive authority without a new electoral mandate, evaluating each through the triadic analytical framework. The study concludes that the 25th Amendment's institutional plasticity represents a constitutionally distinct and structurally more tractable pathway for executive influence than the 22nd Amendment's default-rule design contemplated and proposes constitutional and legislative reforms to close the inter-amendment gap.

Keywords: 22nd Amendment and 25th Amendment, constitutional succession, presidential term limits, democratic consolidation, Vice Presidential Gambit

Abstrak

Studi ini mengkaji ketegangan konstitusional antara Amandemen ke-22 dan ke-25 Konstitusi Amerika Serikat, menganalisis bagaimana interaksi struktural keduanya menciptakan jalur yang memungkinkan pembatasan masa jabatan presiden dilewati melalui mekanisme suksesi non-elektoral. Dengan mengintegrasikan institusionalisme konstitusional, teori konsolidasi demokrasi, dan teori distribusi kekuasaan, studi ini melakukan analisis komparatif terhadap tata bahasa konstitusional kedua amandemen larangan Amandemen ke-22 untuk "dipilih" lebih dari dua kali versus ketentuan "acting" dan suksesi Amandemen ke-25 serta klausa kelayakan Amandemen ke-12 yang menjadi jembatan konstitusional keduanya. Mengacu pada preseden sejarah Amerika dan bukti komparatif dari sistem presidensial Amerika Latin, analisis ini mengembangkan tipologi tiga varian suksesi konstitusional dan mengevaluasi masing-masing melalui kerangka analitik triadik. Studi ini menyimpulkan bahwa plastisitas institusional Amandemen ke-25 merupakan jalur yang secara konstitusional lebih dapat digunakan untuk mempertahankan pengaruh eksekutif dibandingkan desain aturan default Amandemen ke-22, dan mengusulkan reformasi konstitusional serta legislatif untuk menutup celah antar-amandemen.

Kata Kunci: Amandemen ke-22 dan Amandemen ke-25, suksesi konstitusional, masa jabatan presiden, konsolidasi demokrasi, Vice Presidential Gambit

I. Introduction

For most of the post-war era, the 22nd Amendment's prohibition on a third presidential term was treated as one of American constitutionalism's settled certainties a provision so textually clear and politically embedded that serious interpretive challenge seemed inconceivable.[1] Ratified in 1951 in the direct aftermath of Franklin D. Roosevelt's unprecedented four-term presidency, the amendment was a deliberate act of constitutional memory: Congress and the states inscribed into the constitutional text a structural safeguard against the concentration of executive power that the founding generation had relied on convention and character to manage. The framers of the 22nd Amendment believed they were closing a constitutional vulnerability that the mid-twentieth century had demonstrated could no longer safely be left to informal norms alone.

Yet the constitutional landscape of 1951 was not the constitutional landscape of 1967, when the 25th Amendment was ratified in response to a different executive crisis: the assassination of President John F. Kennedy and the recognition that the Constitution's existing succession and incapacity provisions were dangerously inadequate for the realities of nuclear-age governance.[2] The 25th Amendment's framers were focused almost exclusively on the problem of unanticipated presidential incapacity and on ensuring governmental continuity in the event of a president's sudden death, resignation, or inability to discharge the duties of the office. They gave little systematic attention to the possibility that the amendment's succession mechanisms might interact with the 22nd Amendment's term-limit design to create a constitutional interface whose exploitation could undermine the very constraint the earlier amendment had enacted to enforce. The result is an inter-amendment gap whose implications are only now attracting the analytical scrutiny the question demands.[3]

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[1]United States Constitution, Amendment XXII (1951), § 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" (emphasis added).

[2]John D. Feerick, *The Twenty-Fifth Amendment: Its Complete History and Applications*, 3rd ed. (New York: Fordham University Press, 2014), 3–42.

[3]James Romoser, "How Trump Could Snatch a Third Term—Despite the 22nd Amendment," *POLITICO*, January 31, 2025; Neil Vigdor, "No, Trump Cannot Run for Re-election Again in 2028," *New York Times*, January 28, 2025.

The specific constitutional mechanism that most sharply exposes this gap is what this study terms the "Vice Presidential Gambit": a sequence in which a twice-elected, term-limited president is nominated and confirmed as Vice President, and then ascends to the presidency through one of the 25th Amendment's succession mechanisms without ever being "elected" to the presidency in the current term and therefore without, under one interpretive framework, triggering the 22nd Amendment's prohibition.[4] The constitutional feasibility of this sequence turns on the 12th Amendment's eligibility clause and on the unresolved question of whether the 22nd Amendment's electoral prohibition constitutes a constitutional ineligibility for the office that the 12th Amendment extends to the vice presidency. No court has definitively resolved this question, leaving it as one of the most significant open issues in American constitutional law.

This study examines the 22nd–25th Amendment interface through a tripartite theoretical framework integrating constitutional institutionalism, democratic consolidation theory, and power distribution theory. Drawing on the historical record of the two amendments' ratification debates, comparative evidence from Latin American presidential constitutional systems, and the broader literature on executive term-limit evasion, the analysis addresses the following central question: does the 25th Amendment's institutional architecture create a structurally more tractable pathway for executive authority extension than the 22nd Amendment's term-limit design contemplated, and what are the implications for American constitutional democracy?

II. Research Methods

This study employs a qualitative legal research methodology combining three complementary approaches. First, *doctrinal legal analysis* examines the constitutional text, legislative drafting history, and judicial interpretation of the 22nd, 25th, and 12th Amendments, attending to the textual, historical, structural, and purposive dimensions of each provision and their inter-amendment interactions. Special attention is given to the precise constitutional grammar distinguishing the 22nd Amendment's prohibition on being "elected" from the 25th Amendment's mechanisms for "acting as" or "becoming" President through non-electoral succession. Key judicial authorities include *U.S. Term Limits, Inc. v. Thornton* (1995) and *Trump v. United States* (2024).

[4]United States Constitution, Amendment XII (1804): "[N]o person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

Second, *comparative institutional analysis* examines the design and enforcement of executive term-limit and succession mechanisms across selected presidential systems, with particular emphasis on Latin American constitutional experiences Bolivia, Venezuela, Ecuador, and Nicaragua where the strategic interaction of term-limit provisions and succession mechanisms has been documented. Third, *case-based constitutional reasoning* applies the triadic analytical framework to three constitutional succession variants through which the Vice Presidential Gambit might be executed: the Succession Scenario (25th Amendment §1), the Voluntary Incapacity Scenario (§3), and the Involuntary Incapacity Scenario (§4). Primary sources include constitutional texts, congressional records, Supreme Court decisions, and authoritative scholarship on presidential succession and constitutional design.

III. Theoretical Framework

This study rests on a tripartite theoretical framework whose three pillars each illuminate a distinct dimension of the 22nd–25th Amendment interface. Applied to the inter-amendment constitutional problem, the framework demands recalibration beyond its application to simpler cases of direct frontal challenge to term-limit provisions, because the Vice Presidential Gambit exploits the gaps between constitutional provisions rather than attacking any single provision directly.

A. Constitutional Institutionalism: Norms, Partisanship, and the Inter-Amendment Interface

Constitutional institutionalism posits that formal constitutional structures operate in dynamic interaction with informal political norms and practices. The "separation of parties, not powers" thesis advanced by Levinson and Pildes[5] has salience here: partisan dynamics that suppress the institutional gatekeeping functions ordinarily triggered by constitutional norm violations are precisely the conditions under which the inter-amendment pathway opens. When Senate confirmation, party candidate-selection, and Cabinet triggering functions are all controlled by a single partisan network, the structural barriers to the Vice Presidential Gambit weaken even without any individual actor formally violating a clear constitutional prohibition.

[5]Daryl Levinson and Richard Pildes, "Separation of Parties, Not Powers," *Harvard Law Review* 119, no. 8 (2006): 2312–2386.

Ackerman's analysis of "charismatic leadership" within constitutional constraints[6] provides an additional lens: the Vice Presidential Gambit is the constitutional form that charismatic executive authority takes when the electoral pathway is formally closed. Skowronek, Dearborn, and King's analysis of the "unitary executive" tradition[7] further contextualizes this dynamic: the expansion of presidential institutional resources the administrative apparatus, the communications infrastructure, the party machine has transformed the vice presidency into an office from which the Gambit could be executed with capabilities the 22nd Amendment's framers could not have anticipated.

B. Democratic Consolidation Theory: The Attitudinal Dimension Under Inter-Amendment Stress

The democratic consolidation framework established by Linz and Stepan[8] provides the diagnostic criteria for evaluating the constitutional threat posed by the inter-amendment interface. Their three-dimensional model behavioral, attitudinal, and constitutional consolidation maps directly onto the three ways in which the Vice Presidential Gambit erodes democratic norms without formally violating constitutional text. Behaviorally, the gambit requires political actors to treat the 25th Amendment's succession mechanism as a strategic instrument rather than an emergency safeguard. Attitudinally, its feasibility depends on whether elites and the public have internalized the norm that term limits apply to the spirit as well as the letter of the 22nd Amendment. Constitutionally, the absence of judicial precedent squarely resolving the 22nd–25th Amendment interface leaves behavioral and attitudinal dimensions as the primary safeguards a fragile foundation when confronted with a determined political actor.

The historical precedent of the 22nd Amendment's own ratification illustrates how attitudinal and constitutional consolidation interact. Before 1951, the two-term norm established by George Washington operated entirely as an informal convention; Roosevelt's departure from it demonstrated that informal norms, however deeply embedded, are insufficient constraints on executive ambition without constitutional

[6]Bruce Ackerman, *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* (Cambridge, MA: Harvard University Press, 2019), 3–21.

[7]Stephen Skowronek, John A. Dearborn, and David H. King, *Phantoms of a Beleaguered Republic: The Deep State and the Unitary Executive* (Oxford: Oxford University Press, 2021), 11–35.

[8]Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: Johns Hopkins University Press, 1996), 5–15.

textual support.[9] The lesson the 22nd Amendment's framers drew that behavioral norms require constitutional textual backing to be reliably enforced applies with equal force to the 25th Amendment interface: without explicit constitutional text closing the succession gap, the behavioral norm against the Vice Presidential Gambit depends on the same attitudinal foundations that proved insufficient to contain Roosevelt's electoral ambitions.

C. Power Distribution Theory: The 25th Amendment as Shadow Executive Architecture

Posner and Vermeule's "executive unbound" thesis[10] and Levinson's reframing of separation-of-powers analysis away from institutional equality and toward the distribution of power among societal interests[11] converge on a critical insight about the 22nd–25th Amendment interface: the danger is not merely that a once-term-limited president might return to the Oval Office through non-electoral means, but that the 25th Amendment's incapacity provisions create a structural architecture for executive power concentration that the 22nd Amendment's purely electoral prohibition cannot reach. If executive authority can be transferred to a twice-elected former president through a Cabinet-driven incapacity declaration, the power distribution rationale of the 22nd Amendment is defeated without its text being formally violated.

D. Framework Synthesis: The Triadic Equilibrium Recalibrated

Applied to the 22nd–25th Amendment interface, the triadic equilibrium must be recalibrated around a specific insight: the Vice Presidential Gambit is precisely the kind of constitutional threat most difficult to resist, because it cloaks itself in constitutional legitimacy at every individual step while defeating constitutional purpose in aggregate. The four interdependent variables of the framework constitutional textual clarity, informal democratic norms, institutional gatekeeping, and democratic consolidation level[12] each behave differently in this context. Textual clarity is high for the 22nd Amendment in isolation, but that clarity is calibrated exclusively to the electoral

[9]Michael J. Korzi, *Presidential Term Limits in American History: Power, Principles, and Politics* (College Station: Texas A&M University Press, 2011), 44–88.

[10]Eric A. Posner and Adrian Vermeule, *The Executive Unbound: After the Madisonian Republic* (Oxford: Oxford University Press, 2017), 3–62.

[11]Daryl Levinson, "Confronting Power in Public Law," *Harvard Law Review* 130 (2016): 1–83.

[12]Tom Ginsburg, James Melton, and Zachary Elkins, "On the Evasion of Executive Term Limits," University of Chicago Public Law & Legal Theory Working Paper No. 328 (2010): 4–12.

mechanism and provides no guidance on non-electoral succession pathways. Informal democratic norms operate as the primary safeguard, but Levitsky and Ziblatt's analysis of democratic backsliding[13] demonstrates that informal norms erode precisely in the high-polarization environments where the gambit is most likely to be attempted. Democratic consolidation is tested not through a visible norm-breaking moment but through a slow-motion sequence of individually defensible constitutional steps that collectively produce a constitutionally impermissible outcome.

IV. Discussion and Analysis

A. Institutional Plasticity: Contrasting the Constitutional Architecture of the 22nd and 25th Amendments

The concepts of interpretive flexibility, normative recalibration, and systemic resilience developed in the institutional plasticity literature[14] apply to the 22nd and 25th Amendments in profoundly asymmetric ways an asymmetry that is itself a central structural finding of the comparative analysis. The 22nd Amendment exhibits what Ginsburg, Melton, and Elkins characterize as high-clarity "default rule" design.[15] Its prohibition is categorical, binary, and applies to a single, easily verifiable constitutional event: election to the presidency. This textual precision has historically served as a powerful coordination mechanism for democratic actors, making direct electoral challenge politically prohibitive. As Levitsky and Ziblatt observe, explicit constitutional rules function as focal points for democratic norm enforcement, reducing the coordination costs of resistance and raising the political costs of violation to levels that most political actors find prohibitive.

The 25th Amendment, by contrast, exhibits pronounced institutional plasticity. Feerick's comprehensive analysis of the amendment's drafting history establishes that its framers were focused almost exclusively on genuine presidential incapacity and gave no systematic attention to the possibility that its succession mechanisms might be invoked for strategic purposes.[16] The amendment's operative terms"unable to discharge the powers and duties of his office" (§4), "transmits his written declaration" (§3) are discretionary and

[13]Levitsky and Ziblatt, *How Democracies Die*, 97–117.

[14]Mark Tushnet, *Taking Back the Constitution: Activist Judges and the Next Age of American Law* (New Haven: Yale University Press, 2020), 33–57.

[15]Ginsburg, Melton, and Elkins, "On the Evasion of Executive Term Limits," 4–12.

[16]Feerick, *The Twenty-Fifth Amendment*, 50–76.

actor-driven rather than objective and event-triggered, creating significant space for motivated deployment. Waldron's account of constitutional frameworks as generative institutions[17] captures this quality precisely: the 25th Amendment's openness to contextual interpretation was designed to ensure functionality across unanticipated incapacity scenarios, but that same openness makes it susceptible to strategic deployment in scenarios its drafters did not contemplate.

B. The Constitutional Nexus: A Comparative Reexamination of the 22nd and 25th Amendments

1. Textual Architecture: "Elected" versus "Acting" and the Grammar of Executive Power

The 22nd and 25th Amendments occupy adjacent but structurally distinct registers of constitutional grammar. The 22nd Amendment operates through the language of electoral prohibition: "No person shall be *elected* to the office of the President more than twice."[18] The 25th Amendment operates through the language of institutional succession: the Vice President "shall *become* President" (§1), and persons "*acting as President*" (§§3–4).[19] The distinction between being "elected" and "becoming" or "acting" is not merely semantic it is constitutionally operative and decisive for the feasibility of the Vice Presidential Gambit.

The 22nd Amendment's prohibition is triggered exclusively by the act of election. A president who becomes president through the death or resignation of a predecessor under §1 of the 25th Amendment does not become president by being "elected"; they become president by constitutional operation following a qualifying event entirely independent of the electoral process. This textual divergence creates what this study terms a "succession gap": the 22nd Amendment prohibits a twice-elected president from being elected again but is textually silent on whether such a person can become President through the 25th Amendment's non-electoral pathways. Neither set of congressional framers addressed this interface directly.[20]

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[17]Jeremy Waldron, *Political Theory: Essays on Institutions* (Cambridge, MA: Harvard University Press, 2016), 45–70.

[18] United States Constitution, Amendment XXII (1951), § 1.

[19]United States Constitution, Amendment XXV (1967), § 1: "In case of the removal of the President from office or of his death or resignation, the Vice President shall become President."

[20]Korzi, *Presidential Term Limits in American History*, 101–120.

2. The 12th Amendment Bridge: Constitutional Eligibility and the Vice Presidential Threshold

The constitutional interface between the 22nd and 25th Amendments runs through the 12th Amendment's declaration that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."[21] This provision serves as the constitutional bridge or barrier between the two amendments, and its interpretation determines whether the Vice Presidential Gambit is feasible at its predicate step: the nomination and confirmation of a twice-elected president as Vice President.

Two competing interpretive positions have emerged in the constitutional scholarship. The "narrow ineligibility" reading holds that the 12th Amendment's reference to persons "constitutionally ineligible to the office of President" refers exclusively to the natural eligibility requirements: natural-born citizenship, the age of thirty-five years, and fourteen years of residency. Amar's analysis of the 12th Amendment's original purpose supports this reading: the clause was designed to ensure the vice president could serve as President if necessary, not to impose additional bars on vice presidential eligibility.[22] On this narrow reading, the 22nd Amendment does not render a twice-elected president "constitutionally ineligible to the office of President" it merely prohibits that person from being *elected* to the office.

The "broad ineligibility" reading holds that the 22nd Amendment is itself a constitutional ineligibility provision that the 12th Amendment extends to the vice presidential office. This reading draws structural and purposive support from the principle that constitutional provisions should be read harmoniously to avoid outcomes that one provision was designed to prevent. The Supreme Court's holding in *U.S. Term Limits, Inc. v. Thornton* that constitutional qualifications are exhaustive and cannot be supplemented by external actors[23] complicates both positions. No court has directly resolved this question, which remains the most significant open constitutional issue in the American law of presidential succession.

[21] United States Constitution, Amendment XII (1804).
[22] Amar, *America's Constitution*, 390–391.
[23] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783–800 (1995).

3. The Vice Presidential Gambit: A Constitutional Typology of Three Succession Variants

The constitutional scenario that most directly tests the 22nd–25th Amendment interface can unfold in at least three constitutionally distinct variants, each evaluated through the recalibrated triadic framework.

Variant One: The Succession Scenario (25th Amendment, §1).[24] A twice-elected president (Person A) is nominated and confirmed as Vice President; the sitting President dies, resigns, or is removed; Person A automatically "becomes President" by constitutional operation without having been "elected" to the presidency in the current term. This variant presents the highest textual plausibility under the narrow ineligibility reading. Institutionally, it requires the 12th Amendment hurdle to be resolved in favor of the narrow reading, Senate confirmation of a controversial nomination, and a sitting President willing to accept a vice presidential selection that effectively designates a successor with an independent power base.

Variant Two: The Voluntary Incapacity Scenario (25th Amendment, §3).[25] The sitting President voluntarily transmits a written declaration of inability, and Person A becomes "Acting President." This variant is procedurally the most straightforward: §3's declaration is purely discretionary and self-executing. However, it faces the highest normative barrier, as it constitutes the deliberate use of a constitutional emergency provision for non-emergency strategic purposes. Levinson and Pildes's partisan alignment thesis[26] predicts this variant is most feasible when strong partisan alignment suppresses the institutional resistance that democratic norms would otherwise generate. The voluntary incapacity scenario has one modern historical precedent approaching but not reaching the Gambit structure: Presidents Reagan and George W. Bush each temporarily transferred power under §3 during medical procedures, but in circumstances of genuine incapacity and with vice presidents who were not former two-term presidents.

Variant Three: The Involuntary Incapacity Scenario (25th Amendment, §4).[27] The Vice President and a majority of the Cabinet transmit a written declaration

[24] United States Constitution, Amendment XXV (1967), § 1.
[25] United States Constitution, Amendment XXV (1967), § 3.
[26] Levinson and Pildes, "Separation of Parties, Not Powers," 2340–2355.
[27] United States Constitution, Amendment XXV (1967), § 4.

that the President is "unable to discharge the powers and duties of his office," and Person A becomes "Acting President." This variant has never been successfully invoked and faces the highest institutional barriers: coordinated action by multiple Cabinet officers, contestability by the President, and potential congressional resolution. Sunstein's account of systemic resilience[28] identifies multi-actor constitutional mechanisms as more resistant to individual manipulation, but also more vulnerable to coordinated partisan capture when institutional actors share strategic incentives.

4. The 25th Amendment as Shadow Executive Mechanism: A Power Distribution Analysis

Posner and Vermeule's "executive unbound" thesis gains analytical traction when applied to the 25th Amendment's incapacity provisions as potential shadow executive mechanisms.[29] The amendment contains no explicit protection against its use to extend the executive influence of a constitutionally term-limited president. Its §§3-4 create what this study terms an "incapacity corridor" a formal constitutional pathway through which executive authority can be transferred to a designated successor without the democratic validation of an election, and potentially without genuine incapacity. Feerick's analysis of the amendment's drafting history confirms that this vulnerability was not addressed in the congressional debates of 1965: the framers relied on informal democratic norms rather than textual safeguards to prevent strategic misuse.[30]

The power distribution implications are fundamental. If the 25th Amendment can be used to install a twice-elected president in the Oval Office without a new electoral mandate, the 22nd Amendment's power-distribution rationale is defeated not by formal constitutional amendment but by inter amendment interaction that neither set of framers anticipated. Levinson's reframing of separation-of-powers analysis makes this implication explicit: the distributional purpose of the 22nd Amendment preventing the concentration of political power in a durable executive majority is defeated without the constitutional text having been formally violated. Goldstein's analysis of the modern vice presidency's institutional transformation[31] completes the

[28]Sunstein, "On the Resilience of Constitutional Democracy," 8–14.

[29]Posner and Vermeule, *The Executive Unbound*, 44–62; Levinson, "Confronting Power in Public Law," 15–22.

[30]Feerick, *The Twenty-Fifth Amendment*, 77–103.

[31]Goldstein, *The Modern American Vice Presidency*, 155–162.

structural picture: the office that serves as the predicate position for the Vice Presidential Gambit has evolved from a constitutional afterthought into a position of genuine institutional consequence from which the Gambit could be executed with capabilities the 22nd Amendment's framers did not contemplate.

5. Comparative Evidence: Latin American Constitutional Systems and the Succession-Limit Interface

The Vice Presidential Gambit's inter-amendment structure acquires additional analytical clarity through comparison with the experiences of Latin American presidential constitutional systems, where the strategic interaction of term-limit provisions and succession mechanisms has generated a substantial comparative constitutional record.

The most commonly documented Latin American evasion strategies constitutional revision by constituent assembly (Venezuela, 1999; Ecuador, 2008; Bolivia, 2009), judicial reinterpretation of term-limit start dates (Nicaragua, 2009), and popular referenda are frontal challenges to term-limit provisions that differ structurally from the Vice Presidential Gambit in one critical respect: they are visible, contestable, and require an open departure from the existing constitutional order.[32] The Vice Presidential Gambit proceeds entirely through constitutionally available mechanisms without formally amending or overtly violating any constitutional provision. It is constitutionally distinctive in the evasion-strategy inventory precisely because it exploits the gap between two provisions rather than attacking directly.

The cases in which term-limit evasion succeeded Venezuela under Chávez, Ecuador under Correa, Bolivia under Morales shared a common institutional profile: weakened judicial independence, captured constitutional courts, suppressed competitive party systems, and civil society unable to mount effective resistance. The cases in which evasion attempts failed involved stronger institutional counterweights: independent electoral tribunals, fragmented opposition capable of coordinating resistance, and residual public commitment to constitutional norm-adherence.[33] The triadic framework's prediction that the effectiveness of term limits depends on the

[32]Baturo and Elgie, "Executive Term Limits in Comparative Perspective," 14–22.

[33]Alexander Baturo and Robert Elgie, "Executive Term Limits in Comparative Perspective," in *The Politics of Presidential Term Limits*, ed. Alexander Baturo and Robert Elgie (Oxford: Oxford University Press, 2019), 1–28.

institutional ecosystem rather than on the constitutional text alone is robustly supported by the Latin American comparative record.

C. Institutional Safeguards Against Inter-Amendment Exploitation

The comparative constitutional analysis of the Vice Presidential Gambit reveals that existing institutional safeguards against the 22nd–25th Amendment interface are significantly weaker than those available against direct frontal challenges to the 22nd Amendment's electoral prohibition. Four institutional safeguard categories merit systematic analysis.

Constitutional textual reform of the 22nd Amendment replacing the prohibition on being "elected" more than twice with a prohibition on holding or exercising presidential authority for more than two terms would be the most comprehensive safeguard, closing the succession gap at its textual source. However, constitutional amendment requires two-thirds of each house of Congress and three-fourths of state legislature, a threshold that is currently unavailable in the high-polarization political environment the triadic framework identifies as the most dangerous for inter-amendment exploitation. *Legislative supplementation* faces the constitutional objection that Congress cannot impose qualifications not specified in the constitutional text, as *U.S. Term Limits, Inc. v. Thornton* establishes.[34] However, targeted legislation establishing judicial review standards for §4 declarations assessing whether a declaration reflects genuine incapacity could provide a partial statutory safeguard without directly imposing new constitutional qualifications.

Preemptive judicial clarification of the 12th Amendment's eligibility clause would significantly narrow the legal uncertainty on which the VicePresidential Gambit depends. The Supreme Court's recent engagement with presidential power questions in *Trump v. United States* suggests a continuing willingness to address high-stakes executive authority issues,[35] though the Court requires a live case or controversy to resolve the 12th–22nd–25th Amendment interface directly. *Political party norm codification*[36] through explicit

[34] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

[35] *Trump v. United States*, 603 U.S. ___ (2024).

[36] Political Party Norm Codification**:** A non-legal, intra-party safeguard that would entail amending a political party's formal rules (e.g., the Republican or Democratic National Committee's bylaws) to explicitly prohibit the nomination of any twice-elected former president for the office of Vice President. By embedding this restriction in party governance, the measure would supplement constitutional law with internal political discipline, making it institutionally costly for party actors to advance or support the Vice Presidential Gambit even if the formal constitutional text remains ambiguous.

party rules prohibiting the nomination of a twice-elected president for the vice presidential slot would supplement formal legal constraints with the normative-cultural dimension that the triadic framework identifies as ultimately decisive.

D. The Triadic Equilibrium Recalibrated: Democratic Consolidation When One Amendment Tests Another

The triadic theoretical framework, applied to the 22nd–25th Amendment interface, generates findings that differ from its application to simpler cases of direct term-limit challenge. On the variable of constitutional textual clarity, the standard prediction higher clarity produces greater term-limit durability holds for direct electoral challenges but fails for inter-amendment exploitation strategies. The 22nd Amendment's clarity is precisely calibrated to the electoral pathway it was designed to block; counterintuitively, that very precision its focus on "election" as the triggering mechanism is what creates the succession gap, by calibrating its prohibition so specifically to the electoral mechanism that it does not reach constitutionally available non-electoral alternatives.

On the variable of informal democratic norms, American constitutional history offers two paradigmatic cases of how informal democratic norms interact with constitutional text in the presidential term-limit context. The Washington two-term norm, sustained entirely by attitudinal commitment for 150 years, proved insufficient when confronted with Roosevelt's electoral ambitions. The 22nd Amendment was adopted precisely because the attitudinal norm proved insufficient, and it has been effective in directly constraining every president who has served since 1951. The lesson for the inter-amendment interface is clear: attitudinal norms provide a first line of defense, but the American constitutional tradition has repeatedly demonstrated that they require constitutional textual backing to be reliably enforced against determined political actors.

The democratic consolidation variable Linz and Stepan's behavioral, attitudinal, and constitutional dimensions[37] is tested in a uniquely difficult way by the inter-amendment interface. Behaviorally, each individual step in the Vice Presidential Gambit sequence is defensible: the Senate confirming a nominee exercises its constitutional function; the Cabinet invoking §4 exercises its constitutional authority; the Vice President assuming the presidency complies with the constitutional succession mechanism. Yet the aggregate

[37] Linz and Stepan, *Problems of Democratic Transition and Consolidation*, 7–15.

behavior collectively violates the democratic rotation norm the 22nd Amendment was designed to enforce. Attitudinally, the gambit erodes the norm not through a dramatic visible departure which would mobilize public resistance but through a slow-motion normalization of each individually defensible step. The triadic equilibrium framework thus identifies the Vice Presidential Gambit as the paradigmatic constitutional threat of the contemporary era: one that exploits the institutional legitimacy of constitutional mechanisms to defeat the democratic purposes those mechanisms were designed to serve. Levitsky and Ziblatt's account of how the erosion of mutual toleration among political elites enables exploitation of constitutional mechanisms for non-constitutional purposes[38] precisely captures the cultural precondition without which the Gambit's individual steps would encounter decisive political resistance.

Closing

A. Conclusion

This study has demonstrated that the intersection of the 22nd and 25th Amendments to the United States Constitution constitutes a significant and undertheorized constitutional vulnerability in the American design of executive term limits. The doctrinal analysis, the comparative constitutional evidence from Latin American presidential systems, and the application of the triadic theoretical framework have established three principal conclusions.

First, the 22nd and 25th Amendments operate in structurally distinct constitutional registers whose textual divergence the 22nd's prohibition on being "elected" and the 25th's non-electoral succession mechanisms creates a genuine "succession gap" through which a twice-elected president might reassume executive authority without triggering the 22nd Amendment's explicit prohibition. The 12th Amendment's eligibility clause serves as the constitutional bridge between the two amendments, but its interpretation is genuinely contested between the narrow and broad ineligibility readings, leaving the predicate step of the Vice Presidential Gambit legally unresolved without authoritative judicial precedent.

Second, the 25th Amendment exhibits significantly greater institutional plasticity than the 22nd Amendment's default-rule design, making it a structurally more tractable instrument for shadow executive arrangements than the frontal term-limit challenges that

[38] Levitsky and Ziblatt, *How Democracies Die*, 115–130.

American constitutional enforcement mechanisms have historically been designed to resist. The 25th Amendment's discretionary, actor-driven triggering mechanisms and its framers' exclusive focus on genuine incapacity created an incapacity corridor that constitutes, in the triadic framework's terms, a constitutionally available pathway for executive authority extension that the 22nd Amendment's categorical electoral prohibition cannot reach.

Third, the comparative evidence from Latin American presidential systems and the recalibrated triadic equilibrium confirm that the inter-amendment interface's vulnerability is primarily a function of the informal political ecosystem rather than of constitutional text. The American constitutional tradition's own historical experience from the Washington two-term convention through the 22nd Amendment's ratification demonstrates that attitudinal norms provide a first line of defense but require constitutional textual backing to be reliably enforced against determined political actors. The succession gap identified in this study represents exactly the kind of unresolved constitutional vulnerability that, in the absence of textual reform, judicial clarification, or enduring normative consensus, may ultimately require a live constitutional crisis to force resolution.

B. Recommendations

Based on the doctrinal analysis and the recalibrated triadic theoretical framework, this study advances five targeted recommendations directed at closing the 22nd–25th Amendment constitutional gap. First, *constitutional amendment* of the 22nd Amendment should re-draft its prohibition in terms of holding or exercising presidential authority rather than exclusively in terms of being elected to the office, thereby closing the succession gap at its textual source. A revised formulation might read: "No person who has twice held the office of President shall again hold that office or exercise its powers and duties." Such a formulation would cover all three Gambit variants alike without disrupting legitimate vice presidential service by persons who have served partial presidential terms by succession.

Second, *targeted 25th Amendment reform* should add an explicit provision establishing that persons who have previously been elected to the office of President on two occasions are ineligible to serve in the line of succession to that office, and that § 4 declarations are subject to judicial review for compliance with the genuine-incapacity

standard. Third, *preemptive declaratory litigation*[39] should be pursued to obtain authoritative judicial resolution of the 12th Amendment eligibility question before a politically charged live case makes principled adjudication more difficult. Fourth, *political party norm codification* through explicit party rules prohibiting the nomination of a twice-elected president for the vice presidential slot would supplement formal legal constraints with the normative-cultural dimension of the triadic framework. Fifth, *civic and scholarly education* on the inter-amendment constitutional interface should be expanded within law schools, bar associations, and civic education programs, cultivating the attitudinal commitment without which constitutional text alone cannot reliably constrain executive ambition.

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[39] Preemptive Declaratory Litigation: A proposed legal strategy in which a plaintiff with standing seeks a declaratory judgment from a federal court on the proper interpretation of the 12th, 22nd, and 25th Amendments *before* a twice-elected president attempts to assume the vice presidency or ascend again to the Oval Office. The goal is to obtain an authoritative judicial ruling on unresolved questions—such as whether the 22nd Amendment's electoral prohibition makes a person "constitutionally ineligible" for the vice presidency under the 12th Amendment—thereby closing the succession gap without waiting for a live, politically charged constitutional crisis.

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