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## THE TWICE AND FUTURE PRESIDENT

### THE "TRUMP 2028" PARADOX AND CONSTITUTIONAL LOOPHOLES

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Recent political developments have reignited discussions about presidential term limits and their constitutional foundations, a topic that international comparisons illustrate with significant problems since presidents often have overwhelming incentives to remain in power and seek extraordinary means to evade constitutional limits.<sup>1</sup> The Trump Organization's release of "Trump 2028" merchandise, coupled with statements by President Donald Trump suggesting his openness to a third term, has produced debate about the legal possibilities and restrictions concerning

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<sup>1</sup> Rosalind Dixon & David Landau, *Constitutional End Games: Making Presidential Term Limits Stick*, 71 HASTINGS L. J. 359, 378 (2020) (citing Tom Ginsburg et al., *On the Evasion of Executive Term Limits*, 52 WM. & MARY L. REV. 1807, 1836 (2011)) (noting that, internationally, about one-in-four constitutionally required presidential term limits face attempts to evade it).

presidential service beyond two terms.<sup>2</sup> This note considers the constitutional framework governing presidential terms, reviews imaginable pathways for circumventing these constitutional limitations, and reflects on the broader implications for American democratic institutions.

In response to the newly developed "Trump 2028" branding prompting renewed scrutiny of presidential tenure,<sup>3</sup> journalists and media outlets have been closely following this movement and increasingly reporting on how President Trump continues to "refuse[] to rule out the idea" of seeking a third term after declaring that there are "methods" to make it happen.<sup>4</sup> Indeed, The Trump Organization started selling "Trump 2028" hats and shirts with slogans like "Re-write the Rules" well within President Trump's first 100 days in office of his second, nonconsecutive term, suggesting that at least some in his circle may indeed be contemplating a third term.<sup>5</sup>

Here we examine the legal boundaries of such a scenario. First, we consider recent public statements from supporters and White House spokespeople to show how the issue is being publicly framed and reported to the national voter base via open-source media. We then review how the Twenty-Second Amendment limits presidents to two lifetime terms, how no court nor Congress has since loosened that rule, and

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<sup>2</sup> See Josephine Ross, *Cracks in the "Thin Blue Line": Policing, Democracy, and Insurrection*, 31 VA. J. SOC. POL'Y & L. 243, 248–49 (2024) (discussing the danger of presidents being immunized from criminal prosecution, "thereby removing the criminal deterrent for future presidents to refuse to relinquish power" and how "[President] Trump's jokes about a third term should unsettle supporters").

<sup>3</sup> See *id.*

<sup>4</sup> Gregory Svirnovskiy, *Trump Won't Rule Out a Third Term*, POLITICO (Mar. 30, 2025, 2:30 PM), <https://www.politico.com/news/2025/03/30/trump-wont-rule-out-running-again-in-2028-00259952>. See also Brianna Tucker, *Trump Suggests "Methods" Exist for Bid for Unconstitutional Third Term*, WASH. POST (Mar. 30, 2025), <https://www.washingtonpost.com/politics/2025/03/30/trump-third-term-constitution/>.

<sup>5</sup> See Sandy Fitzgerald, *Trump's Third Term Talk May Be Freezing Out Other Candidates*, NEWSMAX (Apr. 26, 2025, 1:19 PM), <https://www.newsmax.com/politics/donald-trump-2028-presidential-race/2025/04/26/id/1208433/>.

how even creative succession plans (e.g., running for Vice President or becoming Speaker of the House) face serious constitutional hurdles.<sup>6</sup> Lastly, we consider the argument that, regardless of actual intentions, the perception of an attempted third term has negative consequences that cannot be ignored, even by the conservative party itself.

## I. MESSAGING AND PERCEPTIONS OF A POTENTIAL THIRD TERM

Statements by President Trump, members of his administration, and his supporters shed light on how the "Trump 2028" brand is being impressed upon the public.<sup>7</sup> In recent interviews, President Trump teases the possibility of a third term.<sup>8</sup> These comments keep the question open, even as White House spokespeople later downplay them.<sup>9</sup> President Trump and his team often cast 2028-talk as premature marketing for the Republican Party, and official spokespersons acknowledge the slogans and merchandise but typically frame them as aspirational or lighthearted, not as firm political strategy.<sup>10</sup>

For example, White House Communications Director Steven Cheung said in March of 2025 that it was "far too early" to consider a 2028 run rather than outright rejecting the possibility, emphasizing President Trump's focus on current governance.<sup>11</sup> White House Press Secretary Karoline Leavitt, speaking to Axios, celebrated that "Trump 2028" hats are "flying off shelves," but insisted that the President "is not . . . thinking

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<sup>6</sup> See, e.g., Louis Jacobson, *Can Donald Trump Become a Three-Term President?*, POLITIFACT (Mar. 31, 2025), <https://www.politifact.com/article/2025/mar/31/can-donald-trump-become-a-three-term-president/> (reporting on the convoluted theory that a modern-day President might serve another presidential term in ways that do not require them to be elected, such as becoming Speaker of the House and then filling the presidency after both the duly elected President and Vice President resign).

<sup>7</sup> Fitzgerald, *supra* note 5.

<sup>8</sup> See *id.*

<sup>9</sup> Tucker, *supra* note 4.

<sup>10</sup> Svirnovskiy, *supra* note 4.

<sup>11</sup> Tucker, *supra* note 4.

of<sup>11</sup> running again in 2028.<sup>12</sup> Nevertheless, prominent allies of the Trump administration have openly encouraged conversations about a 2028 term. Steve Bannon, who served as a senior counselor and chief White House strategist during President Trump's first term, publicly floated the idea shortly after the 2024 presidential election that President Trump could legitimately seek another term in 2028.<sup>13</sup> Bannon and others, including former Speaker of the House Newt Gingrich (1995–1999), ostensibly view any "Trump-centered noise" as politically beneficial, as it "starves his opponents" of attention.<sup>14</sup> Furthermore, Congressman Andy Ogles, a republican Tennessee representative, introduced a joint resolution for a constitutional amendment to allow for three-term presidencies.<sup>15</sup> However, Article V of the Constitution<sup>16</sup> makes formal constitutional changes extremely difficult, entrenching the U.S. presidential two-term limit.<sup>17</sup> This is due to the phenomenon that political minorities can block proposed changes due to the necessary two-thirds majority vote from

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<sup>12</sup> Liam O'Dell, *Karoline Leavitt Claims 'Trump 2028' Hats Referring to Unconstitutional Third Term are 'Flying Off Shelves'*, INDEP. (Apr. 26, 2025, 3:03 PM), <https://www.independent.co.uk/tv/news/donald-trump-2028-hat-karoline-leavitt-b2739798.html>.

<sup>13</sup> Svirnovskiy, *supra* note 4 (reporting that "[t]op ally Steven Bannon . . . in December [2024] suggested Trump could credibly seek another term in 2028" and has "continued that push in the months since").

<sup>14</sup> Fitzgerald, *supra* note 5.

<sup>15</sup> The bill specifically proposes the following amendment, with a seven-year ratification deadline:

No person shall be elected to the office of the President more than three times, nor be elected to any additional term after being elected to two consecutive terms, 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 twice.

H.R.J. Res. 29, 119th Cong. (2025).

<sup>16</sup> U.S. CONST. art. V. (outlining the process for constitutional amendments).

<sup>17</sup> Dixon & Landau, *supra* note 1, at 417.

both houses; this phenomenon has been exercised as recently as in the 119<sup>th</sup> Congress (2025-2026).<sup>18</sup>

President Trump recently told NBC News, however, that he was "not joking" about a third term and that there are "methods" for him to serve a third term, signifying that at least some in his circle have genuinely contemplated him doing so.<sup>19</sup> When asked about this comment during a recent interview with TIME, President Trump responded that he would "rather not discuss that now," but acknowledged "there are some loopholes that have been discussed that are well known."<sup>20</sup> President Trump has not yet committed to running again but has repeatedly said that many supporters are encouraging him to do so.<sup>21</sup> On one occasion, he acknowledged that such plans might exist and immediately followed with the remark that he "like[s] working," suggesting that his second term presidency is not the end of his political career while also noting his popularity.<sup>22</sup> More recently, President Trump acknowledged that though he has "never had requests so strong" for a subsequent term than what he is experiencing in the "Trump 2028" movement, he further commented that he does not know whether it is "constitutional that they're not allowing [him] to do it or anything else."<sup>23</sup> This proposes uncertainty about

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<sup>18</sup> See *id.* at 416.

<sup>19</sup> Luke Garrett, *Trump is 'Not Joking' About Third Term, Though Constitution Says He Can't Serve*, NPR (Mar. 30, 2025, 9:08 PM), <https://www.npr.org/2025/03/30/g-s1-57231/trump-third-term>.

<sup>20</sup> Eric Cortellessa & Sam Jacobs, *Read the Full Transcript of Donald Trump's '100 Days' Interview with TIME*, TIME (Apr. 25, 2025, 6:01 AM), <https://time.com/7280114/donald-trump-2025-interview-transcript/>.

<sup>21</sup> Svirnovskiy, *supra* note 4.

<sup>22</sup> Tucker, *supra* note 4.

<sup>23</sup> During an interview with NBC's *Meet the Press* on May 2, 2025, President Trump was directly questioned about a third-term campaign, to which he replied:

So many people want me to do it. I have never had requests so strong as that. . . . But it's something that, to the best of my knowledge, you're not allowed to do. I don't know if that's constitutional that they're not allowing you to do it or anything else.

whether the 2028 efforts are a direct plan of President Trump's, part of a greater GOP political strategy, purely supporter-developed discourse, or a combination thereof. Nonetheless, The Trump Organization (President Trump's family company, not a campaign committee) continues to sell "Trump 2028" embroidered hats for fifty dollars,<sup>24</sup> showing that The Trump Organization is at least venturing in that direction. It is also probable that the present-day reader has encountered "Trump 2028" hats, flags, t-shirts, and other merchandise manufactured and sold by many other proponents of this movement, which seems to be increasing in popularity among Trump supporters and becoming a tangible symbol of early discussions for the 2028 election cycle. The immediate political effect of this, which could plausibly be a part of the campaign strategy, is that "several top contenders . . . aren't likely to start building followings until [President] Trump officially backs out of a third term."<sup>25</sup>

Despite the Trump administration's casual acknowledgement of "Trump 2028" branding, it should not be regarded facetiously, as apparel normalizations foreseeably precede significant political moves.<sup>26</sup> The responsiveness of policymakers to the demands of the politically powerful textile industry for protection and the strategic use of textile

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Joey Garrison, *Trump Says He Can't Run Again in 2028: 5 Takeaways from 'Meet the Press' Interview*, USA TODAY (May 4, 2025, 10:13 PM), <https://www.usatoday.com/story/news/politics/2025/05/04/trump-third-term-economy-tariffs-constitution/83443855007/>.

<sup>24</sup> Joey Garrison, *Trump's Online Store Begins Selling 'Trump 2028' Hats as He Keeps Floating a Third Term*, USA TODAY (Apr. 24, 2025, 8:35 PM), <https://www.usatoday.com/story/news/politics/2025/04/24/trump-2028-hats-sold-online-store/83253354007/>.

<sup>25</sup> Fitzgerald, *supra* note 5 (reporting that those within the GOP do not expect President Trump to affirmatively reject a third campaign anytime soon "because he believes that doing so will keep the public from considering him as a lame duck president").

<sup>26</sup> See, generally, Kitty G. Dickerson, *Textile Trade: The GATT Exception*, 11 ST. JOHN'S J. LEGAL COMMENT. 393 (1996) (demonstrating that textile and apparel trade policies historically were not merely economic decisions but were heavily influenced by and used as tools for achieving broader political goals and to enable other significant trade initiatives).

agreements to facilitate other trade objectives historically support the idea that trade dynamics in the textile sector have significant political weight and can precede major political moves or policy shifts,<sup>27</sup> particularly in the Trump administration's tariff-centered foreign policy objectives. Combined with President Trump's statements and those of his close allies, "Trump 2028" branding has two important consequences. First, it underscores that supporters are seriously considering how to extend his presidency beyond a second term. Second, it creates the public impression that the two-term rule might well be circumvented or at least challenged in a constitutionally meaningful way, especially considering early GOP moves for a constitutional amendment. Even if White House aides insist "Trump 2028" is a mere anecdote for his presidency,<sup>28</sup> many observers—particularly the public—can reasonably interpret "Trump 2028" literally as signaling a third-term bid. Thus, we review the implications and whether such "methods" constitutionally exist.

## II. THE TWENTY-SECOND AMENDMENT: INTERPRETING THE TWO-TERM LIMIT AND THEORETICAL BYPASS METHODS

The Twenty-Second Amendment of the U.S. Constitution, proposed by Congress in 1947 and ratified in 1951, codifies a two-term limit on the presidency.<sup>29</sup> Section one of the Twenty-Second Amendment provides, in relevant part:

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.<sup>30</sup>

The most straightforward interpretation of this section prohibits a twice-elected president from being elected to a third

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<sup>27</sup> *Id.*

<sup>28</sup> O'Dell, *supra* note 12.

<sup>29</sup> U.S. CONST. amend. XXII, § 1.

<sup>30</sup> *Id.*

term. Congress's purpose in formalizing the two-term limit was a direct response to Franklin Roosevelt's four-term presidency (1932–1944),<sup>31</sup> during which his progressive agenda included plans to expand and "pack" the U.S. Supreme Court with as many as fifteen Justices<sup>32</sup> and a foreign policy "marked by wars, military spending, treatymaking, and international summitry."<sup>33</sup>

The text of the Twenty-Second Amendment unequivocally states that once a person has been elected president in two separate elections, they may not be elected again.<sup>34</sup> While this clearly bars election to a third term, legal commentators have debated whether the amendment's precise use of the word "elected" means the limitation applies strictly to elections—potentially leaving open non-electoral pathways to the presidency—or if it imposes a broader restriction on presidential service or tenure. Nevertheless, scholars have not been publicly consistent in whether this language is ironclad. Following President Trump's March 30, 2025 remark that "there are methods" for him to serve a third term, NPR reported "there is no wiggle room" that a President cannot be elected more than twice, according to an interview with Professor William Baude

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<sup>31</sup> John David Rausch, Jr., *When a Popular Idea Meets Congress: The History of the Term Limit Debate in Congress*, 1 POL. BUREAUCRACY & JUST. 34, 35 (2009) (discussing how President Roosevelt's unprecedented four-term presidency disrupted the longstanding tradition of voluntary two-term limits established by founding father and President George Washington). See also YOUNG B. SMITH, THE THIRD TERM PRINCIPLE AND ITS SIGNIFICANCE TODAY 3, 11–12 (1940) (quoting President Roosevelt declaring that "[u]nder no circumstances will I be a candidate for or accept another nomination" in apparent support for "[t]he wise custom which limits the President to two terms").

<sup>32</sup> Stephen F. Rohde, *By the Book*, 45 L.A. LAW. 30, 31 (2023).

<sup>33</sup> Harold Hongju Koh, *Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair*, 97 YALE L. J. 1255, 1293 (1988) (noting that "the same era also redefined the constitutional politics of American foreign affairs, for it was during Franklin Roosevelt's four terms in office that the President became the world's leader as well as America's").

<sup>34</sup> U.S. CONST. amend. XXII, § 1.

of the University of Chicago Law School.<sup>35</sup> That same day, PolitiFact reported that Professor Ilya Somin of George Mason University's Antonin Scalia Law School wrote that "the best interpretation" is that Trump "is ineligible to become president for a third term," but then acknowledged that the issue is "not airtight."<sup>36</sup>

In 1999, early scholars Bruce G. Peabody and Scott E. Gant in a well-known article on the issue similarly recognized that there are other "methods" to the presidency besides being elected.<sup>37</sup> This perspective potentially coincides with President Trump's recent acknowledgement that there are "some loopholes that have been discussed that are well known," a comment he made when asked about the possibility of a third term.<sup>38</sup> Furthermore, Peabody and Gant's work is specifically cited on the Constitution Annotated (CONAN) website, produced by attorneys in the American Law Division of the Library's Congressional Research Service (a nonpartisan legislative branch agency within the Library of Congress) on its overview of the Twenty-Second Amendment landing page.<sup>39</sup> Given the nonpartisan nature and authoritative standing of Constitution Annotated, the fact that Peabody and Gant's 1999 article is the only secondary source cited there (at the time of this writing) suggests the substantial weight their article holds within legal and scholarly circles. Peabody and Gant's detailed exploration of non-electoral pathways to the presidency—precisely the types of "methods" debated by legal commentators—positions their work as a highly visible and widely referenced analysis of potential circumventions of the two-term limit. Therefore, it is reasonable to infer that the "well-

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<sup>35</sup> Hansi Lo Wang, *Presidents Can be Elected Twice. Trump Could Try End Runs Around That, Experts Say*, NPR (Mar. 31, 2025, 2:58 PM), <https://www.npr.org/2025/03/31/nx-s1-5191889/is-trump-running-for-a-third-term>.

<sup>36</sup> Jacobson, *supra* note 6.

<sup>37</sup> Bruce G. Peabody & Scott E. Gant, *The Twice and Future President: Constitutional Interstices and the Twenty-Second Amendment*, 83 MINN. L. REV. 565, 570 n.20 (1999).

<sup>38</sup> See Cortellessa & Jacobs, *supra* note 20.

<sup>39</sup> *Overview of Twenty-Second Amendment, Presidential Term Limits*, CONST. ANNOTATED, [https://constitution.congress.gov/browse/essay/amdt22-1/ALDE\\_00001008/](https://constitution.congress.gov/browse/essay/amdt22-1/ALDE_00001008/) (last visited July 11, 2025).

known loopholes" that President Trump references when discussing "methods"<sup>40</sup> for his third term likely include or prominently feature the scenarios meticulously identified and analyzed in this well-regarded and uniquely cited scholarly work. Interestingly, at the time of their analysis, Peabody and Gant recognized that:

[s]ome may suggest that the scenarios set out in this Article are implausible because the nation would never countenance a President continuing his or her service through the methods we have identified, and that the scenarios therefore fail to warrant the attention we have given them. We disagree for a number of reasons, among these our belief that *what is unimaginable today might become conceivable in the future*.<sup>41</sup>

Twenty-five years later that conceivability is nigh and the implausible has been revived through the Trump administration. After recognizing the Twenty-Second Amendment's explicit prohibition on being "elected" President, the authors argue that Congress's use of the word is constitutionally significant and does not prevent one from otherwise *serving* a third or subsequent term.<sup>42</sup> That is, the authors contend that while a twice-elected President cannot be elected again, the amendment's text does not prohibit one from reassuming office through other means because it does not "(1) limit the amount of time, consecutively or cumulatively, a person may serve, or (2) proscribe such a person from reassuming the Office of President by means other than election."<sup>43</sup> Thus, because of the Twenty-Second Amendment's use of the word "elected," they and other commentators have explored theoretical workarounds involving succession rather

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<sup>40</sup> Fitzgerald, *supra* note 5.

<sup>41</sup> Peabody & Gant, *supra* note 37 (emphasis added).

<sup>42</sup> *Id.* at 566.

<sup>43</sup> *Id.* at 613.

than election.<sup>44</sup> One frequently mentioned scenario is that a former two-term president can run for (and be elected) Vice President.<sup>45</sup> If the President were then to leave office (e.g., by resignation or other means), the Vice President succeeds to the presidency.<sup>46</sup> Under that plan, the former two-term President regains office without being "elected" a third time.<sup>47</sup> President Trump himself in an NBC News interview overtly floats this "Vance-Trump" strategy.<sup>48</sup>

Scholars Peabody and Gant identify and constitutionally analyze six specific scenarios where a previously twice-elected President might again serve through non-electoral processes.<sup>49</sup> These include:

- (1) Serving as Vice President and then becoming President in the event of the President's removal, death, or resignation;
- (2) Serving as Vice President and then acting as President during a period where the President is unable to discharge the powers and duties of the office, as authorized by a written declaration from the President or other constitutional mechanisms;
- (3) Becoming Vice President-elect and then becoming President in the event of the President-elect's death before the term begins;

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<sup>44</sup> "But there's a caveat that hinges on the 22nd Amendment's specific phrasing: It uses the word 'elected.' 'There are ways to become president other than being elected president, and therein lies the problem,' said Brian Kalt, a Michigan State University law professor who wrote about the question in the 2012 book, 'Constitutional Cliffhangers.' The logic undergirding a Vance-Trump switcheroo is that Trump would have been elected vice president, not president, and he would become president by succession, not by election." Jacobson, *supra* note 6.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Lo Wang, *supra* note 35 (reporting that when "[a]sked by NBC News about a scenario involving Vice President Vance, [President] Trump said that 'that's one' method").

<sup>49</sup> Peabody & Gant, *supra* note 37, at 567–69, 611–33.

- (4) Becoming Vice President-elect and then acting as President if a President has not been chosen before the term begins or the President-elect fails to qualify;
- (5) Acting as President under the circumstances in the Succession Act of 1947,<sup>50</sup> which places the presidency, first, upon the Speaker of the House of Representatives or, second, upon the President *pro tempore* of the Senate if:
  - (a) Both the President and Vice President die, resign, or are unable to discharge their duties; or
  - (b) Both the President-elect and the Vice President-elect are constitutionally unqualified to hold office;
- (6) Becoming President if chosen by the House of Representatives in the event no person received a majority of the electoral votes in the presidential election.<sup>51</sup>

In discovering these methods, Peabody and Gant examine the textual and legislative histories of the Twenty-Second Amendment, as well as other constitutional provisions like the Twelfth Amendment (which addresses vice-presidential eligibility) and the Guarantee Clause (which requires a republican form of government).<sup>52</sup> These methods center heavily on a vice presidency, absent a catastrophic event requiring imposition of the Succession Act or the Electoral

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<sup>50</sup> 3 U.S.C. § 19 (establishing a successive line of officials to follow; but if neither the Speaker of the House of Representatives nor the President *pro tempore* of the Senate are able or qualify for the presidency, the successive hierarchy in subsection (d)(1) is followed). This, of course, is assuming that the past two-term president subsequently held an in-succession office.

<sup>51</sup> Peabody & Gant, *supra* note 37, at 569 n.18 (suggesting that the Speaker of the House's "choosing" is not functionally equivalent to "election" since the Electoral College would have failed in this method).

<sup>52</sup> *Id.* at 617.

College failing to designate a successor.<sup>53</sup> But if the Twenty-Second Amendment is interpreted as rendering a two-term President *ineligible* to be elected again, then it is arguable that such a person might still be *ineligible* to serve at all, even in the role of Vice President. On the other hand, Peabody and Gant note how the Twelfth Amendment does not differentiate between being elected President versus simply *serving* again.<sup>54</sup>

In examining the legislative history of the Twenty-Second Amendment, Peabody and Gant note the inherent difficulties in using legislative history to interpret statutes, arguing these difficulties are "magnified" when interpreting a constitutional amendment.<sup>55</sup> Furthermore, they find that members of Congress use various, sometimes inconsistent, terms like "service," "tenure," and "election" without clear definitions or consistent application throughout the legislative history of the Twenty-Second Amendment.<sup>56</sup> These different phrases seem to be employed "without substantial attention to the implications of these word choices" or how they relate to existing constitutional provisions for succession and assuming office without election.<sup>57</sup> With that, the authors admit that the "imprecision" and "relative brevity" of the debates make it hard

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<sup>53</sup> Methods (5) and (6) are variations of the general phenomenon globally observed of presidents employing diverse strategies and "other routes" to evade term limits. Dixon & Landau, *supra* note 1, at 364.

<sup>54</sup> Peabody & Gant, *supra* note 37, at 618–19 (proposing that the term "eligibility" in the Twelfth Amendment likely refers only to the core qualifications listed in Article II, Section 1, clause 4 (natural born citizen, age, residency)).

<sup>55</sup> *Id.* at 614 (recognizing that, "in the context of the amendment process, the problem of ascertaining legislative 'intent' may be magnified by the abundance of interpreters who have an opportunity to assess, debate, and support (or reject) the proposed measure," and the difficulty lies in determining "[w]hose intent counts" between Congress in proposing the amendment and the states in ratifying it).

<sup>56</sup> *Id.* at 600, 615.

<sup>57</sup> *Id.* at 615.

to discern a detailed, shared objective among those who supported the Twenty-Second Amendment at ratification.<sup>58</sup>

The authors find, however, that the legislative record, including the operative text itself, shows "some awareness that individuals can assume the Office of President without being elected."<sup>59</sup> For example, the Senate Judiciary Committee noted that the original House language does not fully account for contingencies wherein a person serves or acts as President without being elected, which could occur under Article II and the Twentieth Amendment.<sup>60</sup> They further believe that it was not the intent of Congress to penalize those who served or acted as President without being elected, which "led Congress to focus on 'elections' as the cornerstone of the Amendment's proscriptions" and "seemingly glossed over the significance of limiting subsequent election rather than subsequent 'service.'"<sup>61</sup> While members of Congress "clearly distinguished elections from non-electoral means of assuming the Office of President" at times,<sup>62</sup> these scholars find no evidence in the legislative record that the legislature (or anyone else) anticipated the scenario of someone twice-elected later assuming office through non-electoral means.<sup>63</sup>

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<sup>58</sup> "The problem is that the one evident purpose—to prevent another President from serving four consecutive terms, as FDR had—is so specific and lacking in nuance that it is of little service in evaluating the constitutionality of our six scenarios. . . . And yet the imprecision and relative brevity of the debates make it difficult to discern another (more illuminating) objective genuinely shared by those supporting the Amendment." *Id.* at 616.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 616 n.224 ("As the Senate Judiciary Committee explained in its report, '[i]t was the thought of the committee that the original [House] language did not adequately care for a contingency that might occur under both the language of article II of the Constitution as well as the twentieth Amendment thereof,' namely, that a person might serve as President or acting President without having been elected.") (quoting S. Rep. No. 80-34, at 2 (1947) (alterations in original)).

<sup>61</sup> *Id.* at 600.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 616 (arguing that, "[n]evertheless—and notwithstanding the Senate's gradual narrowing of its focus to reelection—members remained conscious of the difference between being elected President on the one hand and assuming that Office (temporarily or for the duration of the term of another) on the other").

Despite these difficulties and the lack of direct discussion of their identified methods—save a passing reference to method one (succession from the vice presidency) during deliberation on drafting language to cover those serving without election<sup>64</sup>—the authors concluded that the legislative history "do[es] not provide a basis for declaring any of our scenarios unconstitutional."<sup>65</sup> They suggest that in narrowing the amendment's focus to re-election, Congress may have "unwittingly (we presume) left open the possibility of a previously twice-elected President reassuming Office" through non-electoral means.<sup>66</sup> Therefore, while these scholars find the legislative history of the Twenty-Second Amendment difficult to definitively interpret through purposivism, what evidence exists regarding the distinction between "election" and other methods of assuming office, as well as the congressional intent not to disadvantage those who serve without being elected, does not contradict their argument that the amendment's limitations apply only to re-election and leave open non-electoral paths to the presidency.<sup>67</sup> That is, the Twenty-Second Amendment's legislative history, while not explicitly endorsing their identified methods, fails to foreclose them under either purposivist or textualist approaches.<sup>68</sup>

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<sup>64</sup> "In discussing how a person might succeed from the vice presidency to act as or become President, Congress seems to have touched on at least part of Scenario 1 during its deliberations on the Twenty-Second Amendment. The congressional debates do not appear to have engaged our other scenarios, however. In the case of Scenarios 2 and 5 this is hardly surprising, since neither the Twenty-Fifth Amendment nor the Succession Act of 1947 had yet been enacted. Less clear is why Congress failed to touch upon the issues raised by Scenarios 3, 4, and 6." *Id.* at 616 n.225.

<sup>65</sup> *Id.* at 616–17.

<sup>66</sup> *Id.* at 600.

<sup>67</sup> *Id.* at 615–17.

<sup>68</sup> "Purposivist scholars often criticize this [textualist] approach, arguing that it dilutes legislative goals . . . by focusing too narrowly on [congressional] language to the exclusion of a broader [congressional] purpose. However . . . moderate textualists like [Justice Barrett] believe there is room for *textual purpose*." Matthew R. Mulholland, *Beyond Saving Ink: How the Current Court Finds Meaning in Textual Variations Post-Loper Bright*, 18 TENN. J. L. & POL'Y 1, 8 (2025) (emphasis in original).

Peabody and Gant then considered that the key issue might lay within the Twelfth Amendment, considering whether its provision that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice President"<sup>69</sup> prevents a previously twice-elected President from serving as Vice President.<sup>70</sup> If it did, it would bar any of the identified vice presidency scenarios. Considering the Twelfth Amendment's historical context, the authors recognize that it was adopted after the problematic election of 1800.<sup>71</sup> Before then, electors voted for two candidates, and the runner-up became Vice President.<sup>72</sup> The Twelfth Amendment changed this by requiring separate votes for President and Vice President, and it added the clause about the Vice President's eligibility being tied to presidential eligibility.<sup>73</sup> The authors note that this original eligibility likely referred only to the qualifications listed in Article II (natural-born citizen, age, and residency).<sup>74</sup>

After this review, Peabody and Gant asserted that the Twelfth Amendment does not foreclose any of the four scenarios involving the vice presidency for several reasons.<sup>75</sup> For one, it was written before the Twenty-Second Amendment, so Congress could not have originally intended to incorporate the Twenty-Second's limits.<sup>76</sup> Furthermore, even if read in light of the Twenty-Second Amendment, they argue that the Twelfth Amendment's eligibility requirement might only apply to *becoming* President, not simply *acting* as President.<sup>77</sup> This is because, as mentioned, the Twenty-Second Amendment only expressly prohibits *election* to the office more than twice and does not explicitly prevent one from reassuming office through

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<sup>69</sup> U.S. CONST. amend. XII.

<sup>70</sup> Peabody & Gant, *supra* note 37, at 617–20.

<sup>71</sup> *Id.* at 618 ("Republican candidates Thomas Jefferson and Aaron Burr each received seventy-three electoral votes . . . [and it] was thrown to the House of Representatives.").

<sup>72</sup> *Id.* at 617.

<sup>73</sup> *Id.* at 618.

<sup>74</sup> *Id.* at 618–19.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* ("[T]herefore, the Twelfth Amendment could not have originally meant to preclude someone from being Vice President who had been elected President twice . . . [but] likely point[s] to the 'eligibility' provision of Article II, Section 1, clause 4.").

<sup>77</sup> *Id.*

other, non-electoral means.<sup>78</sup> Moreover, since a twice-elected President is not wholly ineligible for the office on this basis, the Twelfth Amendment's provision does not prohibit them from serving as Vice President.<sup>79</sup> In essence, the authors conclude that the limitations of the Twenty-Second Amendment apply only to re-election. Since a twice-elected President is not barred from all potential avenues to the presidency, they are not considered "constitutionally ineligible to the office of President" in a way that would trigger the Twelfth Amendment's restriction on vice-presidential eligibility.<sup>80</sup>

Lastly, the authors turned to the Guarantee Clause: "The United States shall guarantee to every State in this Union a Republican Form of Government . . . ."<sup>81</sup> Here, they note that the concept of "republicanism" is historically linked to popular rule, in contrast with monarchies.<sup>82</sup> Traditionally, courts have held this clause to be nonjusticiable, meaning courts typically will not rule on cases that turn on the Guarantee Clause's meaning, viewing its enforcement as a political question reserved for Congress.<sup>83</sup> The authors indicate, though, that while interpretation of the Guarantee Clause is not the task of the courts, nonjudicial agents have a responsibility to interpret and apply the Constitution, even parts rarely considered by the judiciary.<sup>84</sup> They then explore whether the commitments embodied by the Guarantee Clause are "challenged or undermined by a variant of our scenarios."<sup>85</sup>

Focusing primarily on methods where a previously twice-elected President returns to office by first becoming Vice President or Vice President-elect (Scenarios 1-4), they consider

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<sup>78</sup> *Id.* at 620.

<sup>79</sup> *Id.* ("[I]f the meaning of 'eligibility' under the Twelfth Amendment was transformed with the adoption of the Twenty-Second Amendment, the Twenty-Second Amendment still does not render twice-elected Presidents 'constitutionally ineligible to the office of President,' and it therefore cannot be said that the Twelfth Amendment prohibits a twice-elected President from serving as Vice President.").

<sup>80</sup> *Id.*

<sup>81</sup> U.S. CONST. art. IV, § 4.

<sup>82</sup> Peabody & Gant, *supra* note 37, at 620-21.

<sup>83</sup> *Id.* at 621 n.244-45.

<sup>84</sup> *Id.* (internal citations omitted).

<sup>85</sup> *Id.* at 621.

the situation, most likely under Scenario 1, where a twice-elected President is elected Vice President and then the President-elect resigns to allow the former President to reassume the presidency.<sup>86</sup> The potential argument is that while the Guarantee Clause explicitly guarantees a republican form of government to the states, it might also forbid instituting the federal government itself in a manner that conflicts with republican principles, especially since states play an integral role in electing the President through the Electoral College.<sup>87</sup> Here, they admittedly acknowledge that a purposeful substitution, such as a pre-arranged resignation after the election, could be seen as undermining the popular will expressed in the election.<sup>88</sup>

Nevertheless, the authors are skeptical that such substitutions violate the Guarantee Clause.<sup>89</sup> They argue that if the substitution plan is carried out with the prior knowledge of the electorate (i.e., the public is aware of such a possibility or plan accordingly when voting), allowing the former President to reassume office could be regarded as facilitating rather than frustrating the democratic will.<sup>90</sup> In this view, they believe it might be The People's way of circumventing the Twenty-Second Amendment's re-election limit to then elect the leader they prefer.<sup>91</sup> They also point out that under their "methods," the previously twice-elected President would serve a fixed

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<sup>86</sup> *Id.* at 622.

<sup>87</sup> *Id.* at 623 ("Understood in this way, the Clause may be read not only to provide a 'guarantee' to the individual states but also to forbid constituting the federal government in a manner that conflicts with the principles of republican government.").

<sup>88</sup> Peabody & Gant, *supra* note 37, at 622–23.

<sup>89</sup> *Id.* at 623.

<sup>90</sup> "For instance, where the substitution plan is carried out with the ex ante knowledge of the electorate, allowing the former President to reassume Office would seem to facilitate rather than frustrate the democratic will (and serve as a way of circumventing an amendment that may not allow the public to elect the person they most want to serve as President). Therefore, this substitution would be at odds with republican principles only if those principles valued the formalities of democratic procedure above the genuine fulfillment of popular sentiment." *Id.*

<sup>91</sup> *Id.* at 624.

term, after which the electorate would again have the opportunity to exercise its will in the next election.<sup>92</sup>

In light of their analysis, Peabody and Gant concluded that their account of the Guarantee Clause also "does not suggest a basis for concluding that any other variant of our six scenarios would pose a constitutional problem."<sup>93</sup> They believe that an already twice-elected President serving again via the vice presidency (Scenarios 1-4), the Succession Act (Scenario 5), or the Speaker of the House choosing the President (Scenario 6) would not, "in itself, subvert popular rule."<sup>94</sup> That is, only if a scenario involves reassumption of office in a manner avoiding or overturning the popular will of The People, would it potentially implicate the Guarantee Clause.<sup>95</sup>

Based on this 1999 exploration, these scholars unsuspectingly head the analysis that the "Trump 2028" movement is likely contemplating, and which the current conservative majority U.S. Supreme Court may well take up in the coming years. Nevertheless, it is clearer now, according to a majority of modern courts that have considered the matter, that the Twenty-Second Amendment was intended to apply to any President *during their lifetime*, with a strong public policy basis of support, whether elected or otherwise acting as President, and without any regard to whether their terms were consecutive.<sup>96</sup> While mostly discussed or analyzed when similar state constitutional term limits have been challenged, courts consistently refer to the Twenty-Second Amendment in the comparative context of lifetime service bans.<sup>97</sup>

Thirty years ago, Justice Stevens, in dicta, recognized the Twenty-Second Amendment as an example of how presidential term limits provide fresh perspectives and prevent representatives from losing touch with their constituents – that is, by limiting "the *number of terms* that the President may

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Peabody & Gant, *supra* note 37, at 624.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 611 n.211.

<sup>97</sup> *Id.*

serve."<sup>98</sup> In *Bates v. Jones*, the Ninth Circuit noted that the Twenty-Second Amendment imposes a "lifetime" prohibition on being elected to the Office of the President more than twice, even though the amendment does not explicitly use the term *lifetime*.<sup>99</sup> In *Citizens for Legislative Choice v. Miller*, the U.S. District Court for the Eastern District of Michigan relied on the policy that if the Michigan General Assembly intended to impose lifetime bans in its constitutional amendment, then it could have easily followed the language of the Twenty-Second Amendment.<sup>100</sup>

This same interpretation has been consistently applied by state courts. In *Maddox v. Fortson*, the Supreme Court of Georgia noted that the Twenty-Second Amendment is more stringent than some state provisions, as it imposes a lifetime limit on the presidency, whereas certain state constitutions allow individuals to seek office again after an interval.<sup>101</sup> In *State ex rel. Rhodes v. Brown*, the Supreme Court of Ohio highlighted the "unequivocal" language of the Twenty-Second Amendment, finding that it clearly limits presidents to two terms during their lifetime, contrasting it with its state constitutional provisions that allow for consecutive term limits and underscoring the deliberate drafting of the Twenty-Second Amendment to

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<sup>98</sup> "Over half the States have adopted measures that impose such limits on some offices either directly or indirectly, and the Nation as a whole, notably by constitutional amendment, has imposed *a limit on the number of terms that the President may serve*. Term limits, like any other qualification for office, unquestionably restrict the ability of voters to vote for whom they wish. On the other hand, such limits may provide for the infusion of fresh ideas and new perspectives, and may decrease the likelihood that representatives will lose touch with their constituents." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 837 (1995) (emphasis added).

<sup>99</sup> *Bates v. Jones*, 131 F.3d 843, 846 (9th Cir. 1997) (emphasizing the clarity of the amendment's language imposing the restriction, that "[t]here certainly is no confusion that this language imposes a lifetime ban on the office of the President").

<sup>100</sup> *Citizens for Legis. Choice v. Miller*, 993 F. Supp. 1041, 1050 n.14 (E.D. Mich. 1998) (quoting and citing *Bates*, 131 F.3d at 856 n.21).

<sup>101</sup> *Maddox v. Fortson*, 172 S.E.2d 595, 597 (Ga. 1970) (proclaiming that the Twenty-Second Amendment "precludes an incumbent President from seeking the office *for a third time* and it is more stringent than the Georgia provision which permits an incumbent Governor to seek the office after an interval of four years") (emphasis added).

impose a lifetime restriction.<sup>102</sup> And in *State ex rel. Maloney v. McCartney*, the Supreme Court of Appeals of West Virginia recognized the ratification of the Twenty-Second Amendment as a rational public policy measure to limit the ability of incumbents to entrench themselves in power, thereby enhancing the overall health of the political system.<sup>103</sup>

Fifteen years thereafter, the Supreme Court of California in *Legislature v. Eu* similarly followed the *Maloney* court in discussing how the Twenty-Second Amendment is the illustration of a constitutional restriction that serves as rational public policy by limiting continuous tenure in office to ensure regular changes in leadership.<sup>104</sup> In *Roth v. Cuevas*, a New York County Supreme Court, later upheld by all subsequent state appellate courts, similarly relied on *Maloney* when comparatively discussing the Twenty-Second Amendment as a model for limiting tenure in office to prevent abuses of power and to ensure the infusion of fresh perspectives in governance.<sup>105</sup> In modern, 21st century opinions, courts continue to maintain the same view. In *Paige v. Vermont*, the Vermont Supreme Court found the Twenty-Second Amendment to be one "limiting the number of terms a person

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<sup>102</sup> "The framers of this limitation upon executive tenure were unequivocal in their declaration. Yet, in our state, those who sought to confine executive tenure chose the language heretofore discussed. This constituted a distinct and clear departure from that which could have been easily stated if the desired result was to limit persons to two, four-year terms during their lifetime." *State ex rel. Rhodes v. Brown*, 296 N.E.2d 538, 540 (Ohio 1973).

<sup>103</sup> "Constitutional restrictions circumscribing the ability of incumbents to succeed themselves appear in over twenty state constitutions, and exist in the Twenty-[S]econd Amendment to the *Constitution of the United States* with regard to the Presidency. The universal authority is that restriction upon the succession of incumbents serves a rational public policy and that, while restrictions may deny qualified men an opportunity to serve, as a general rule the over-all health of the body politic is enhanced by limitations on continuous tenure." *State ex rel. Maloney v. McCartney*, 223 S.E.2d 607, 611 (W. Va. 1976) (internal citations omitted).

<sup>104</sup> *Legis. v. Eu*, 816 P.2d 1309, 1326 (Cal. 1991) (relying on *Maloney*, 223 S.E.2d 607).

<sup>105</sup> *Roth v. Cuevas*, 603 N.Y.S.2d 962, 972 (Sup. Ct. 1993), *aff'd*, 197 A.D.2d 369 (N.Y. App. Div. 1993), *aff'd*, 624 N.E.2d 689 (N.Y. 1993).

may hold the Office of the President."<sup>106</sup> And in *Mayfield v. Secretary of Florida Department of State*, a concurring opinion from Justice Labarga of the Supreme Court of Florida ascribed the Twenty-Second Amendment as an example of a constitutional provision that "impose[s] a lifetime limit on service in a particular office," contrasting it with state constitutional provisions that specifically focus only on consecutive term limits.<sup>107</sup>

Peabody and Gant, in their work, preemptively identified widespread misunderstanding of the Twenty-Second Amendment as the cause of infrequent examination.<sup>108</sup> Indeed, there had been approximately 270 proposals limiting presidential terms in the span of over 150 years from 1789 to 1947.<sup>109</sup> However, even these scholars' own comprehensive investigation of the legislative history shows that the shift from the language focusing on presidential "service" or "tenure" to that focusing on "election" appears largely to be the result of political compromise.<sup>110</sup> That is, the Twenty-Second Amendment's language as ratified does not illustrate a legislative intent conforming to strict textualism as these authors suggest.<sup>111</sup> Rather, throughout its induction and complex legislative history, what still exists is a common and persistent intent to limit presidents from *serving* more than two terms, and modern courts have consistently upheld that certainty across the country.

In practical terms, any third-term scheme would encounter challenges.<sup>112</sup> In fact, after President Trump's first

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<sup>106</sup> *Paige v. Vermont*, 88 A.3d 1182, 1185 (Vt. 2013) (emphasis added).

<sup>107</sup> *Mayfield v. Sec'y, Fla. Dep't of State*, 402 So. 3d 1002, 1011-12 (Fla. 2025) (Labarga, J., concurring).

<sup>108</sup> Peabody & Gant, *supra* note 37, at 566.

<sup>109</sup> *Id.* at 590.

<sup>110</sup> "Although these issues received considerable attention on the floors of the House and Senate, our review of the congressional debates suggests that the text of the Amendment *was probably shaped most decisively by the impulse for compromise*. The shift from the House's references to presidential 'service' and 'tenure' to the Senate's eventual reliance on simply limiting presidential 'election' appears largely to have been a function of political give-and-take." *Id.* at 600 (emphasis added).

<sup>111</sup> *Id.*

<sup>112</sup> Lo Wang, *supra* note 35.

term, several democrats preemptively moved to affirm that the Constitution's term limits "apply to Trump and his nonconsecutive terms," but legal experts responded with assurance that nothing in the Twenty-Second Amendment suggests any special exception.<sup>113</sup> If a two-term President tries to run again, election officials will likely disqualify the candidacy, leading to interpretive decisions by the courts. Of course, judicial involvement, while necessary, carries the risk of political pressure, and manipulation of the judiciary is a technique presidents have used elsewhere to evade term limits, sometimes involving intense political pressure and potential damage to judicial independence.<sup>114</sup> State election officials who administer ballots will almost certainly enforce the Twenty-Second Amendment's bar on any person serving who has already been elected twice.

As mentioned in the introduction, Tennessee Representative Andy Ogles introduced a joint resolution to amend the Constitution so a person could be elected three times if not elected in three consecutive terms.<sup>115</sup> Nevertheless, that proposal acknowledges how rigid the current rule is, and the restriction cannot be relaxed absent a constitutional amendment. Even still, attempts at a formal amendment are unlikely given the rigidity of Article V.<sup>116</sup> It is this very rigidity that may increase incentives for presidents to seek alternative routes to stay in power.<sup>117</sup> The issue is that the Supreme Court has not directly interpreted the Twenty-Second Amendment and indeed may treat the limitation as a nonjusticiable question grounded in the principle of separation of powers and the Political Question Doctrine.<sup>118</sup> Thus, in the absence of a new

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<sup>113</sup>*Id.*

<sup>114</sup> Dixon & Landau., *supra* note 1, at 389.

<sup>115</sup> *See supra* note 15.

<sup>116</sup> Dixon & Landau, *supra* note 1, at 417.

<sup>117</sup> *Id.*

<sup>118</sup> The Political Question Doctrine prevents judicial review of matters that are textually committed to other branches of government or lack judicially manageable standards for resolution. "Much confusion results from the capacity of the 'political question' label to obscure the need for case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever

amendment, the text of the Twenty-Second Amendment remains controlling, and it appears that no modern-day President will ever "serve" more than two terms.

### III. MESSAGING, PERCEPTION, AND THE NORMATIVE IMPLICATIONS OF A POTENTIAL THIRD TERM

Proponents of the view that "Trump 2028" is merely rhetorical might argue it is nothing more than dialogue influenced by the 2024 majority Republican electorate as an energizing voter base, not a literal campaign plan. Nevertheless, perception matters regardless of the true intent behind this branding by the Trump Organization. In addition, comparative experience worldwide demonstrates that presidents seeking to remain in power often employ a wide range of "methods" to evade term limits when direct re-election is constitutionally prohibited.<sup>119</sup> Critics have noted that even the suggestion of a third term has already affected politics, with this branding effectively filibustering the potential 2028 Republican presidential field. One report contends that "the threat of [President Trump] seeking office in 2028 is [already] freezing out potential [republican] candidates" since no GOP aspirant wants to offend the MAGA voter base and face "total and complete rejection."<sup>120</sup> Former Arkansas Governor Asa Hutchinson observes that President Trump's third-term musings "particularly impact [Vice President] JD Vance and [Florida Governor] Ron DeSantis and anyone else who wants

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authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine." *Baker v. Carr*, 369 U.S. 186, 210-11 (1962).

<sup>119</sup> Dixon & Landau, *supra* note 1, at 378, 404 (detailing various devices that presidents from around the world have used to get around permanent bans on re-election, including formal constitutional amendment, wholesale constitutional replacement, manipulation of the judiciary, and placeholder or "puppet ruler" techniques).

<sup>120</sup> Fitzgerald, *supra* note 5.

the favor of Donald Trump."<sup>121</sup> In simpler terms, the mere discussion of a third Trump term can overshadow the political dialogue and dissuade other viable candidates from considering a 2028 run. Additionally, this situation may lead to a power dynamic within the GOP in which aspiring candidates delay their initial campaign strategies to seek approval before challenging an incumbent.

More fundamentally, the branding of "Trump 2028" undermines fundamental principles traditionally upheld by constitutional conservatives. From a doctrinal perspective, maintaining the integrity of term limits is a neutral legal imperative, not a partisan stance. As discussed, the intent behind the ratification of the Twenty-Second Amendment was likely to prevent third and subsequent presidential terms. Constitutional scholars and the judiciary appear to largely agree that neither President Trump, nor any other two-term president, is eligible for a third or subsequent term.<sup>122</sup> Allowing a President to exploit loopholes – even if technically not barred by implication of the word "elected" – violates the spirit of the amendment in this regard. As Professor Kalt put it, "the whole point of the [Twenty-Second] Amendment was to send presidents home after two terms, and it looks as though this is what Congress and the states thought they were doing."<sup>123</sup> In this context, any attempt to reinterpret or evade that intent will undoubtedly be perceived as inconsistent with constitutional order. Thus, even if members of the Trump administration maintain the position that The Trump Organization's "Trump 2028" branding is "just a hat" and "not something he's thinking of,"<sup>124</sup> the wider legal and political community is taking it seriously, and the conservative electorate should as well.

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<sup>121</sup> Peter Nicholas et al., *Trump's Third-Term Talk Freezes the Potential 2028 Republican Field*, NBC NEWS (April 26, 2025, 5:00 AM), <https://www.nbcnews.com/politics/donald-trump/trump-third-term-talk-freezes-potential-2028-republican-field-rcna198878>.

<sup>122</sup> Jacobson, *supra* note 6 (reporting that PolitiFact "asked constitutional law experts what they thought about Trump's rationale for legally serving a third term" and that "they widely agreed that allowing a president a third term would violate the Constitution's spirit").

<sup>123</sup> *Id.*

<sup>124</sup> See O'Dell, *supra* note 12.

Furthermore, continued public dialogue around "Trump 2028," however framed, risks undermining the settled norm of peaceful transfers of power, which President Trump has already been widely accused of undermining after the controversial events of January 6, 2021, following his loss to President Joe Biden.<sup>125</sup> Media sources and reporters continue to caution that such discussions "run[] directly counter" to the Twenty-Second Amendment.<sup>126</sup> In sum, even if one treats "Trump 2028" as a metaphorical association of MAGA republicanism, a President or movement that trifles with extending tenure must recognize that the Constitution forbids it, and the appearance of flouting that rule is damaging to respect for the law and, subsequently, is damaging to the conservative party.<sup>127</sup>

## CONCLUSION

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<sup>125</sup> "After January 6, 2021, we were no longer attempting to rein in a president who enriched his family with appointments and himself with gifts from foreign powers, but with a president who wanted to undermine our entire system of government. A president who did not want to leave office after being voted out. A president who refused to concede defeat or to agree to a peaceful transfer of power. A president who wanted to stay in power without regard to the will of the people. Which leaves us with the problem of how to rein in and restrict a president who stands against our country's basic foundational principle: that 'We, the People of the United States,' hold the ultimate political power and sovereignty. President Trump tried to wrest that power and sovereignty for himself."

Margaret Tarkington, *The Role of Attorney Speech and Advocacy in the Subversion and Protection of Constitutional Governance*, 69 WASH. U. J. L. & POL'Y 287, 288 (2022).

<sup>126</sup> Svirnovskiy, *supra* note 4.

<sup>127</sup> "Presidents who simply ignore constitutional term limits are likely to undermine a culture of respect for the rule of law. A disregard for constitutional term limits can encourage disrespect of other constitutional limitations by other government officials, including limitations on their power and prohibitions against corruption. It may even encourage popular disobedience of legal rules and thus an increase in looting, violence, and other forms of disrespect for legal norms. [Even] 'informal' approaches to circumventing term limits can also put pressure on the rule of law." Dixon & Landau, *supra* note 1, at 389.

The recent emergence of "Trump 2028" branding by The Trump Organization, coupled with statements from President Trump suggesting potential "methods" or "loopholes" for serving a third term, has justifiably reignited critical debate surrounding presidential term limits in the United States. This note examines the constitutional framework governing presidential terms, reviews imaginable pathways for circumventing limitations, and reflects on the broader implications for American democratic institutions. Based on this review, a clear conclusion emerged: under the current terms of the U.S. Constitution, a third presidential term for President Trump, whether sought through election or non-electoral means, is definitively barred absent a formal constitutional amendment.

The Twenty-Second Amendment was ratified with the express purpose of codifying a two-term limit on the presidency, a direct response to President Franklin Roosevelt's unprecedented four terms in office. While the amendment's text primarily uses the word "elected," scholarly debate, particularly highlighted by the work of Peabody and Gant, explores theoretical non-electoral "methods" for a previously two-term president to reassume office, such as succession through the vice presidency or another statutory or constitutional mechanism. However, as demonstrated, the overwhelming weight of legal interpretation, particularly by modern courts considering similar term limits, treats the Twenty-Second Amendment as imposing a lifetime prohibition on presidential service beyond two terms, regardless of the means by which office is assumed.

State and federal courts consistently emphasize the Twenty-Second Amendment's clarity and its public policy basis aimed at preventing incumbent entrenchment and ensuring fresh perspectives. While the legislative history of the Twenty-Second Amendment reveals some imprecision regarding the distinction between "election" and other means of assuming office, it also shows a persistent underlying intent to limit presidents to two terms of service. The notion that a twice-elected President can simply sidestep this restriction through succession is incompatible with this historical purpose and dominating judicial interpretation. Moreover, while some scholars explore the Guarantee Clause, any pre-arranged substitution plan designed to circumvent the Twenty-Second

Amendment could be seen as undermining the popular will of The People.

Beyond a strict legal interpretation, "Trump 2028" messaging and discourse carry significant normative and political consequences. Such demonstrations undermine the deeply engrained norm of a peaceful transfer of power and foster disrespect for the rule of law. Furthermore, the mere suggestion of a potential third term has already disrupted the political landscape, effectively "freezing out" potential republican contenders for 2028 by dissuading them from challenging the possibility of President Trump's return. This demonstrates that, regardless of actual intent, the perception of a potential third term, even framed as rhetorical or aspirational, has meaningful negative impacts.

Ultimately, any attempt by President Trump or his allies to pursue a third term faces an almost insurmountable constitutional barrier. The only constitutionally viable pathway to altering this limit is through a formal constitutional amendment, a process made extraordinarily difficult by Article V. While the Supreme Court has not directly ruled on the Twenty-Second Amendment in the context of the "methods" discussed by legal commentators, state election officials are likely to disqualify such a candidacy based on the plain language of the text and its consistent interpretations. The neutral and constitutionally grounded position, supported by judicial consensus and historical intent, is clear: the Constitution stands firmly in the way of "Trump 2028." While the political conversation around this possibility persists and warrants serious attention due to its normative implications, the legal reality dictates that a President who has served two elected terms is constitutionally ineligible for a third term of service in the absence of a constitutional amendment. To suggest otherwise, or to actively promote such a possibility through branding, undermines the very foundations of American constitutional order.