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*THE INTERSECTION BETWEEN THE FORMER
PRESIDENTS ACT AND THE IMPEACHMENT
PROCESS*

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Abstract. Under the Former Presidents Act, as amended, 3 U.S.C. Section 102 note, former Presidents receive a monetary allowance for the remainder of their lives, except for those periods when they hold appointive or elective office or a position in or under the federal government or the District of Columbia government at other than a nominal rate of pay. The Act also provides for office staff and office space for former Presidents and for a monetary allowance for a former President's widow, under specified circumstances, should he predecease her. It appears that if a President is tried by the Senate in an impeachment trial, but not convicted and therefore not removed from office; or if he were to resign before or during an impeachment proceeding, but before being convicted on an article of impeachment; he would remain a "former President" for purposes of the Act.

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The Intersection Between the Former Presidents Act and the Impeachment Process

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Summary

Under the Former Presidents Act, as amended, 3 U.S.C. § 102 note, former Presidents receive a monetary allowance for the remainder of their lives, except for those periods when they hold appointive or elective office or a position in or under the Federal government or the District of Columbia government at other than a nominal rate of pay. The Act also provides for office staff and office space for former Presidents and for a monetary allowance for a former President's widow, under specified circumstances, should he predecease her. The Act defines the term "former President" to include persons who have held the office of President of the United States of America, who do not currently hold that office, and whose service in that office terminated other than by removal through the impeachment process. It appears that if a President is tried by the Senate in an impeachment trial, but not convicted and therefore not removed from office; or if he were to resign before or during an impeachment proceeding, but before being convicted on an article of impeachment; he would remain a "former President" for purposes of the Act.

The Former Presidents Act, P.L. 85-745, 72 Stat. 838,¹ as amended, 3 U.S.C. § 102 note, makes provision for a monetary allowance for former Presidents, payable monthly, at an annual rate equal to that of the head of an executive department as defined in 5 U.S.C. §101. The allowance is not paid during any period when the former President holds an appointive or elective office or a position in or under the Federal government or the District of Columbia government at other than a nominal rate of pay. The Act also

¹ P.L. 85-745, 72 Stat. 838 (Aug. 25, 1958); as amended by P.L. 86-682, § 12(c), 74 Stat. 730 (Sept. 2, 1960); P.L. 88-426, Title I, § 124, 78 Stat. 412 (Aug. 14, 1964); P.L. 89-554, § 8(a), 80 Stat. 660 (Sept. 6, 1966); P.L. 90-206, Title II, § 224(c), 81 Stat. 642 (Dec. 16, 1967); P.L. 91-231, § 7, 84 Stat. 198 (April 15, 1970); P.L. 91-658, § 6, 84 Stat. 1963 (Jan. 8, 1971); P.L. 95-138, § 1, 91 Stat. 1170 (Oct. 18, 1977); P.L. 103-123, Title IV, § 6(a), 107 Stat. 1246 (Oct. 28, 1993); P.L. 103-329, Title V, § 531, 108 Stat. 2413 (Sept. 30, 1994); P.L. 104-52, Title V, § 523, 109 Stat. 495 (Nov. 19, 1995); P.L. 105-61, Title IV, § 409(a), 111 Stat. 1299 (Oct. 10, 1997).

provides for selection, compensation and status of office staff for former Presidents, as well as provision of appropriately furnished and equipped office space. A widow's allowance is also provided for the widow of each former President at a rate of \$20,000 per annum, paid monthly, if she waives the right to every other annuity or pension to which she is entitled under any other Act of Congress. This allowance continues until the last day of the month before she dies or remarries before age 60, and is not payable for any period during which she holds an appointive or elective office or position in or under the Federal government or the District of Columbia government at other than a nominal rate of pay. In addition, the Act authorizes appropriations for security and travel related expenses for each former President and the spouse of each former President, where the former President or spouse was not receiving lifetime protection by the United States Secret Service under 18 U.S.C. § 3056(a)(3); where the protection of the Secret Service expired at its designated time; or where the protection provided by the Secret Service was declined prior to authorized expiration in lieu of these funds.

Under subsection (f) of the Former Presidents Act, the term "former President" is defined to include those who have held the office of President of the United States of America, who are not currently holding that office, and whose service in that office "shall have terminated other than by removal pursuant to section 4 of article II of the Constitution of the United States of America". Article II, Section 4, provides that:

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Under Article I, Section 2, Clause 5, the House of Representative has the "sole Power of Impeachment." The Senate, under Article I, Section 3, Clause 6, has the "sole Power to try all Impeachments." Article I, Section 3, Clause 7 states that:

Judgment in cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

The decision as to whether to convict on each of the articles of impeachment in a given proceeding must be made separately. A conviction on any one of the articles of impeachment brought against an individual subject to impeachment is sufficient to constitute conviction in the impeachment trial. Should a conviction occur, judgment is limited to either removal from office or removal and prohibition from holding future offices of public trust under the United States. The precedents in impeachment suggest that removal may flow automatically from conviction in an impeachment trial, but that the Senate must vote to prohibit the individual from holding future offices of public trust, if that judgment is also deemed appropriate in a given case. Conviction on impeachment does not foreclose the possibility of criminal prosecution arising out of the same factual situation.

In light of the language in the Former Presidents Act, one consequence of removal of a President from office as a result of a conviction in an impeachment trial would be that the individual involved would no longer fit within the definition of "former

President” for purposes of the Act. He would therefore not be eligible to receive the benefits available under the Act’s provisions. It would seem to follow that his spouse or widow would also be ineligible to receive those benefits available under the Act to the spouse or widow of a “former President.” Because of the way in which “former President” is defined in subsection (f) of the Act, it would appear also that if a President were to be the subject of an impeachment trial, but not convicted on any article of impeachment and therefore not removed from office, he would remain within the definition of “former President” for purposes of the Act. Further, if a President resigned from office before impeachment proceedings were initiated, or during an impeachment proceeding, but before conviction on any article, he would not have been removed from office pursuant to the impeachment process, and therefore he would still seem to fit within the definition of “former President” under the Act.²

² It may be noted that resignation before impeachment proceedings are initiated or completed may lead the House of Representatives or the House and the Senate to decide not to pursue impeachment proceedings. *See, e.g.,* H.Res. 803; *Impeachment of Richard M. Nixon, President of the United States, Report of the Committee on the Judiciary of the House of Representatives*, H.Rept. 1305, 93rd Cong., 2d Sess. (1974), in which the House Committee on the Judiciary filed its report on its impeachment inquiry with respect to President Richard M. Nixon with the full House, including a resolution impeaching President Nixon and setting forth articles of impeachment against him. Because President Nixon resigned from office, the House did not vote on the resolution and took no further action with respect to impeachment of the former President. *See also*, the impeachment of George W. English, District Judge for the United States District Court for the Eastern District of Illinois, 1925-26. There the House impeached and voted articles against Judge English, and the House Managers appeared before the Senate to advise the Senate of the House action and to begin the process which would lead to a Senate trial. Judge English resigned six days before the scheduled start of the Senate trial on his impeachment. The House Managers recommended to the House that the impeachment proceedings be discontinued, while stating that the resignation did not affect the Senate’s authority to try the matter. The House voted to accept the Managers’ recommendation. 68 *Cong. Rec.* 297 (1926), discussed in a Committee Print entitled *Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry, Committee on the Judiciary House of Representatives*, 93rd Cong., 2d Sess. 52-54 (Feb. 1974). The Senate, having been advised by the House Managers that the House wished to discontinue the proceedings in light of Judge English’s resignation, passed a resolution dismissing the impeachment proceedings. 68 *Cong. Rec.* 344, 348 (1926).

On the other hand, in 1876, Secretary of War Belknap resigned from office just before the adoption of impeachment articles against him by the House of Representatives. The Senate, after having given exhaustive consideration to the arguments of the House Managers and counsel for the respondent, concluded that the former Secretary of War was amenable to trial by impeachment for acts done in that office, despite his resignation from office before he was impeached. Belknap’s demurrer to the replication of the House on the ground that the Senate lacked jurisdiction to go forward with the impeachment was therefore overruled. III *Hinds’ Precedents of the House of Representatives* § 2007, at 321. It may be noted that Belknap was acquitted of the charges brought against him in the articles of impeachment, those voting in favor of conviction falling short of the requisite two-thirds of those Members present. This acquittal seems to have reflected, in part, a residual level of concern on the part of some of the Senators as to the wisdom of trying an impeachment of a person no longer in office. Two of the 37 voting “guilty” and 22 of the 25 voting “not guilty” stated that they believed the Senate lacked jurisdiction in the case. III *Hinds’ Precedents of the House of Representatives* §2467, at 945-46.