

# A modest proposal to replace Trump with Pence — with or without Trump's consent

Trump could win the race, but Pence could run the country.

[Akhil Reed Amar](#) Oct 6, 2016, 10:10am EDT



Some Republicans wish Pence were the presidential nominee  
*Bill Pugliano/Getty Images*

Sober Republicans understand that Donald Trump is unfit to wield the awesome power of the presidency, power that in his unsteady hands could

imperil the republic and perhaps — given his cavalier discussion of nuclear weapons and generally reckless approach to foreign relations— doom the planet. But even now, at this very late date in the election season, there is one last chance for the Republican establishment to dump Trump: by flipping the ticket and putting the plodding, but at least plausible, Mike Pence in charge.

Watching the vice presidential debate, quite a few Republicans surely wished they inhabited the alternate universe in which Pence, an experienced politician with apparent steadiness and self-discipline, was their nominee. That does not have to be an idle thought; there's a way to make it happen.

True, early voting has already begun in some places, and almost everywhere it is too late to revise ballots. But a flipped ticket does not require any formal ballot change.

The first step of The Flip must begin very soon — ideally, this week or next. At a joint press conference, Pence and Trump should with fanfare announce that, if they win in November, Pence will be in charge, thanks to the rules laid down by the Constitution's 25th Amendment, which was ratified in 1967 after the assassination of John F. Kennedy.

At the press conference, Trump would solemnly pledge that on Inauguration Day, January 20, he will, only minutes after taking his oath of office, step aside by invoking the presidential disability provisions of Section Three of the Amendment — much as he might step aside if he were undergoing a scheduled coronary bypass that day. He will give notice on Inauguration Day to the president pro tempore of the Senate and the speaker of the house that he is "unable to discharge the powers and duties of his office."

Once Trump does step aside on Inauguration Day, Pence would automatically become acting president of the United States under Section

Three, entitled to all the powers of the office until Trump seeks to reassert his rights — which Trump at the press conference must promise he will never do. Trump, however, would technically retain the title of president.

## **Flipping the ticket would give the Republicans a chance to win**

Why would Trump ever agree this self-deflating maneuver? After all, we are talking about man of no small ego. One of his egotistical qualities, however, is that he likes to win — and given the current state of the race, he is on track to lose big. The Flip might give him his only chance to prevail.

The Flip might also help solve the problem of Trump's apparent ambivalence about victory, which many observers have noted. At some level, it may be that the man realizes he has no clue about how to handle the vast powers and the responsibilities of the presidency. Or perhaps the day-to-day duties of the office strike him as dull. In any case, many observers have noted that on the trail he has often mused nostalgically about his stint on *The Apprentice* or commented on the comfortable life that awaits him if he loses.

But he does want the *prestige* of the presidency— he desperately wants to be the Alpha Dog, the Grand Poohbah, Numero Uno. And, formally, he would be all these things if The Flip works, for he would, technically, be president. Having won the election, he would be in all the history books forever! His shiny name — his brand, his logo — would metaphorically float atop the White House's gleaming façade.

In short, he could continue to be a reality TV star, playing president but not really doing anything dangerous or onerous. (According to multiple press accounts, in the period before the Republican National Convention Trump offered to hand over real policy power to John Kasich, had Kasich agreed to

join the ticket as Trump's vice president. The Flip would formalize what Trump was apparently willing to accept last spring.)

## **The move can be pulled off even if Trump tries to back out**

Even if Trump initially resists taking the pledge, House Speaker Paul Ryan and Senate Leader Mitch McConnell can force Trump's hand by threatening to retract their endorsements of him unless he pledges to flip. Pence himself could also threaten to quit, in advance of the election, unless Trump takes the deal. Their leverage only grows if the gap that opened this week between Clinton and Trump in the polls widens.

The Flip does not depend on Trump's ongoing good faith. Once it is publicly announced and voters act in reliance on it, Pence can and must enforce the deal even if Trump later tries to back out.

All Pence needs to do post-inauguration, if Trump tries to weasel out, is to declare Trump disabled under another clause of the 25th Amendment — Section Four. So long as the Cabinet and the Congress back Pence in this power play, Pence prevails. The 25th Amendment does not specify all the possible and permissible reasons for declaring someone incapable of discharging his or her duties. It merely states that the Cabinet and Congress must concur that this is the case. And why shouldn't they concur, given that this deal would have been blessed by voters on Election Day?

Pence's congressional pals, Ryan and McConnell, can guarantee the deal by publicly promising at the press conference to back Pence and to confirm all of Pence's — yes, Pence's — picks for the Cabinet before the inauguration. These Cabinet picks could formally be sent to Congress by President Obama in early January, as part of the legal mechanism for fencing Trump in — a massive wall of sorts, though not quite the one that Trump has dreamed

about. Of course, Obama would hate to hand over power to Pence, but Pence beats Trump any day in Obama's mind, and in the minds of sober congressional Democrats.

True, Pence himself is no heavyweight. But by temperament and training he's far better than Trump. The presidency is a nearly impossible job, and no one is truly ready for it on day one (though Hillary comes close). If Pence surrounds himself with good advisers and works closely with his congressional allies, perhaps he could be another Gerald Ford or Calvin Coolidge.

## **Why Clinton should not oppose the gambit**

Although a ticket flip might make it more likely that Republicans will actually win in November, Hillary Clinton also has much to gain (as does, needless to say, the nation as a whole). If Republicans try this Hail Mary (Hail Mikey?) and lose, Clinton will have a stronger mandate to govern. She won't owe her victory to simply being the Not-Trump.

Rather, she will have won by persuading voters on Election Day that she and her Democratic team are superior to the generic Republican team — superior in competence and superior in vision. She won't earn much of a mandate by beating the unready and unsteady Trump, but she might do so if she triumphs over the remaining Republican establishment, such as it is, embodied by the troika of Mike Pence, Paul Ryan, and Mitch McConnell. So she should not oppose a ticket flip.

The Republican establishment was repeatedly called upon to dump Trump earlier in the electoral cycle. But although the rules of the Republican convention could have been changed late in the game to allow delegates to vote their conscience, most convention delegates were in fact Trumpists,

over whom Ryan, McConnell, and other establishment types had little legal or political leverage.

But Ryan and McConnell do not need anyone's permission to withdraw their endorsements of Trump, just as Pence is free to bolt the ticket. Politically, these threatened defections at this date would doom Trump, and he knows it. They have the leverage to persuade Trump to acquiesce to the move, and they can also impose it on him, thanks to the power Pence would have under Section Four, if backed by a sober Cabinet.

The Flip does not require that McConnell and Ryan emasculate themselves by endorsing Hillary Clinton. It merely requires that they endorse Pence over Trump, as would a great many other responsible Republicans at this very moment. Having now seen clearly that there was no post-convention pivot — that Trump is Trump and that Trump is anathema to their principles — will they persist in enabling this uniquely abnormal candidate to have a shot at supreme power? They will be held accountable by history for their choice.

The Flip is entirely permissible under the rules laid down by the Constitution. The next move is up to Pence, Ryan, and McConnell. They collectively have the power to force Trump's hand, spare the world from the worst-case scenario of Trump actually in charge, give Clinton a credible opponent, and give Americans a real choice. Gentlemen, what say you?

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