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CHAPTER 9
CONSTITUTIONAL LIMITATIONS ON THE ASSUMPTION OF PUBLIC OFFICE

§ 9.1 Qualifications for Membership in Congress

§ 9.1(b) The Incompatibility and Ineligibility Clauses

§ 9.1(b)(i) The Incompatibility Clause

When a Senator or Member of the House Assumes the Presidency

Former Senators have become Presidents over a dozen times since our nation’s founding. However, it is rare when a sitting Senator or Member of the House is elected to the Presidency, but it does happen. Senator Barack Obama, a sitting Senator of Illinois, was elected President in 2008. Before that, Senator John F. Kennedy of Massachusetts was elected President in 1960. And before that, Senator Warren G. Harding of Ohio was elected President in 1921. In fact, Harding was the first sitting Senator to become President.

The historical practice has been that the sitting member of Congress must resign that office when assuming the Presidency and most commentators would come to that conclusion. Attorney Seth Barrett Tillman has made an argument to the contrary,⁵¹ though it is unlikely that a court would adopt it, or that the President would remain in office as a member of the Senate while acting as President. As one commentator has argued, “The Constitution does not contemplate a weird distinction between ‘Officers of the United States’ [as used in the Appointments Clause] and ‘Officers of the Government of the United States’ [as used in the Necessary and Proper Clause].”⁶²

When a Senator or Member of the House Assumes the Presidency

§ 9.1(b)(i) LIMITATIONS ON ASSUMPTION OF OFFICE

