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Joe Biden: The 25th Amendment's First Victim?

"After the disastrous events in Afghanistan, we must confront a serious question: Is Joe Biden capable of discharging the duties of his office or has time come to exercise the provisions of the 25th Amendment?"

That August 16 tweet from Senator Rick Scott (R-Fla.) brought to the fore one of the concerns many Republicans — and, privately, a few Democrats — have expressed since last year's presidential campaign. Is the 78-year-old Biden, the oldest man ever to occupy the Oval Office, competent to lead our nation? If not, what can be done about it?



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Sleepy, Dopey, and Grumpy

One needn't be a partisan to see that Biden's faculties are not what they once were. Biden used to be a competent, if gaffe-prone, public speaker who could respond to questions — even challenging ones — without consulting a teleprompter. He'd never have made senator and vice president otherwise.

During the presidential campaign, however, it became clear that the Biden of 2020 was not the Biden of 2012. Much of his campaign was conducted from his home via video; for months, he made no in-person appearances. Although some of this could be attributed to coronavirus lockdowns and Biden's own age-related vulnerability to the virus, it made for a very low-energy campaign that, in turn, suggested the candidate himself lacked vigor — hence then-President Donald Trump's nickname for him, "Sleepy Joe." When Biden did begin turning up in public, he frequently called a "lid" on campaign events in the morning, which further hinted at a lack of energy and led some to suspect that he was suffering from "sundowning," a symptom of dementia that manifests itself in "increased confusion, anxiety, agitation, pacing and disorientation beginning at dusk and continuing throughout the night," according to the Alzheimer's Association.

Biden's appearances were often marked by "struggles to get out a standard line," PolitiFact conceded in a piece otherwise devoted to defending Biden against attacks on his cognitive abilities. At a virtual appearance last October, he even forgot the name of his opponent.

When challenged, Biden frequently became testy and insulted the person who had addressed him. When a college woman questioned his ability to "win the national election" after he finished fourth in the Iowa caucuses, Biden called her "a lying, dog-faced pony soldier." Asked by CBS' Errol Barnett if he'd taken a cognitive test to put to rest any questions about his mental fitness, the candidate ridiculed him, suggesting it was akin to asking Barnett to take a test to prove he wasn't "a junkie."

Biden's faltering was so obvious that an August 2020 Rasmussen poll found that 59 percent of likely voters, and nearly half of those identifying as Democrats, thought it unlikely that he would finish even a single term. A June 2020 Zogby poll revealed that 55 percent of likely voters thought Biden was "in the



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early stages of dementia”; 32 percent of Democrats shared that opinion.

“A lot of Democrats will tell you, at least privately, that he does not have the mental acuity that he even had a couple of years ago,” *The Hill’s* Joe Concha told *Fox & Friends* at the time.

Matters haven’t improved since Biden took his oath of office. The New American online reported in July:

As president, Biden has forgotten the name of the secretary of defense and the Pentagon, managed to fall up the stairs to Air Force One, called [Vice President Kamala] Harris “President Harris” (in a redo of when he referred to her as “President-elect Harris” after the election), confused Syria with Libya at the G7 summit, just to name a few times.

More recently, he needed to consult a pocket note to answer a question about which he had *literally* just been briefed. During that embarrassing episode, he was also driven to near-total mental shutdown by the fact that while fumbling with the question, he was paying for a purchase at a fruit stand.

Then came the bungled Afghanistan withdrawal — and Biden’s similarly bumbling attempts to explain away all the chaos, refusing to admit that any mistakes had been made or that any of the disastrous side effects of the United States’ departure could have been foreseen.

Questioning the Commander

Which brings us back to Senator Scott. “Does this guy have the capability to lead the United States and be commander in chief of the most powerful and lethal military force ever created in the history of the world?” he asked Miami radio host Brian Mudd in the aftermath of the withdrawal. “If he does not, then we have got to do something about it.”

Scott isn’t the only Republican in Congress questioning the president’s competence. Representative Ronny Jackson (R-Texas), who served as physician to the president in the Obama and Trump administrations, has been sounding the alarm on Biden’s mental state for more than a year now.

Jackson told Fox News’ Sean Hannity in July that, in his opinion, either Biden’s advisors will convince him to resign “or they’re going to have to use the 25th Amendment to get rid of this man.”

From JFK to XXV

But how, exactly, would that happen?

The Constitution’s original articles make no provision for the removal of a president except by impeachment and trial, which are reserved for executives accused of “high crimes and misdemeanors.” Until 1967, there was no legal way to oust a president who, though physically or mentally unfit to lead, either refused to resign (or at least temporarily step aside) or could not express his intent to do so.

However, after President John F. Kennedy was assassinated, Congress began taking a hard look at amending the Constitution to address such situations. The problem facing the nation was expressed by *New York Times* columnist James Reston in a piece published the day after Kennedy’s murder:

For an all-too brief hour today, it is not clear again what would have happened if the young president, instead of being mortally wounded, had lingered for a long time between life and



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death, strong enough to survive but too weak to govern.

Would the powers of the presidency have remained in Kennedy's incapable hands? If so, how would they have been exercised? Would Jacqueline Kennedy and members of the Cabinet have continued to exercise them through a shadow government, pretending that all was well with the president, as Woodrow Wilson's wife and advisors did after he was incapacitated by a stroke? Would the powers have devolved to Vice President Lyndon Johnson? There simply were no constitutional provisions, laws, or precedents to address such a crisis. As long as the president lived and did not expressly resign, he remained in full possession of the powers of his office.

The urgency was such that within four years of Kennedy's death, Congress passed and the states ratified the 25th Amendment in hopes of settling the matter once and for all.

The 25th Amendment has four sections. All concern presidential succession or disability, but Section 4 is the one to which Scott and Jackson referred. That section sets forth the procedures by which the president may be divested of his powers because of a perceived disability, and also how he may regain them. Note that the president cannot be *removed* from office by this provision; he can only be rendered powerless.

In order for a president to be declared disabled under Section 4, the vice president, in concert with "a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide," informs the president pro tempore of the Senate and the speaker of the House in writing that the president "is unable to discharge the powers and duties of his office." At that moment, the president is relieved of his powers, and the vice president becomes acting president.

Should the president seek to regain his powers at any time thereafter, he must inform the same congressional leaders in writing "that no inability exists." If the vice president and the principal officers (or other body) do not contest the president's declaration, his powers are restored. If they do contest it, Congress must assemble (if not already in session) and consider the matter. If, within 21 days, Congress, by a two-thirds vote in each chamber, opts to continue the president's disabled status, the vice president remains acting president. "Otherwise, the president shall resume the powers and duties of his office."

While Section 4 is quite specific about the procedures involved, it is silent on the matter of just what constitutes an "inability" on the president's part. According to Yale Law School's reader's guide to the 25th Amendment, "The framers specifically rejected any definition of the term, prioritizing flexibility."

Veepers Creepers

Thus far, Section 4 has never been invoked, though there have been a few close calls. Activating the provision was considered twice during the Reagan administration, first when Reagan was shot and then several years later when some aides claimed he was "inattentive and inept," but it was ultimately deemed unnecessary in both instances. Trump, too, faced two calls to use Section 4 against him, after he fired Federal Bureau of Investigation Director James Comey and following the January 6 Capitol riot. Both attempts, which were clearly politically motivated, withered on the vine.

But Biden is a different story. When a sizable percentage of Democrats — including, it seems, his own press secretary, who has admitted she doesn't want him taking questions from the media — is



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convinced that he's losing it, and after he completely botched a major military maneuver, few would view stripping him of his powers under Section 4 as a Republican *putsch*. That is especially true given that (a) the initial declaration of inability would come from Harris and officials appointed by the president and (b) any challenges to it would be adjudicated by a Congress wholly controlled by members of the president's own party. Furthermore, the prime beneficiary of such an action would be Harris, who would become acting president.

Then again, Harris' potential elevation might be the biggest obstacle to Democrats getting behind any move to dethrone Biden. Although the far-left vice president, then a senator, was considered a frontrunner for the Democratic Party's 2020 presidential nomination and had a record-tying first day of fundraising, her support evaporated so rapidly that she pulled out of the race before a single vote had been cast.

"Her performance as vice president has shown her to be an arrogant self-promoter, someone unlikely to appeal to rank and file voters," observed John F. McManus, president emeritus of The John Birch Society, which publishes The New American. Assigned by Biden to deal with the crisis at the U.S.-Mexico border, she dawdled for weeks, only showing up for (in McManus' words) "a glorified photo op" after Trump announced he would be visiting the border. "POLITICO," McManus penned, "has made note of the 'toxic work environment' in her vice presidential office." Pollster Bill McInturff tweeted that Harris has "an unprecedented 'very negative' rating [among first-year vice presidents] on @NBCNews survey tracking." Little wonder then that, according to Axios, "Democrats are privately reconsidering the idea of Harris as Biden's heir apparent."

Party Poopers

For now, only Republicans appear to be interested in disempowering Biden via the 25th Amendment. According to [FloridaPolitics.com](#), Scott "admitted that his idea has no traction with Democrats," and Senator Marco Rubio (R-Fla.) said he didn't "foresee that happening."

Democrats, of course, don't want to hand Republicans even such a relatively hollow victory, and they would surely be loath to admit that they knowingly shepherded a mentally declining man to the highest office in the land. But if Biden's condition deteriorates to the point that his unfitness to lead can no longer be denied, they may be forced to take the difficult and painful step of discharging a president whose lifelong dream was to call 1600 Pennsylvania Avenue home.

Michael Tennant is a freelance writer and regular contributor to The New American.



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