

**UNFIT TO SERVE: HOW THE BIDEN COVER-UP
ENDANGERED AMERICA AND
UNDERMINED THE CONSTITUTION**

HEARING

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

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UNFIT TO SERVE: HOW THE BIDEN COVER-UP ENDANGERED AMERICA AND UNDERMINED THE CONSTITUTION

WEDNESDAY, JUNE 18, 2025

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:15 a.m., in Room 106, Dirksen Senate Office Building, Hon. Charles E. Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley [presiding], Cornyn, Cruz, Hawley, Tillis, Kennedy, Blackburn, Schmitt, Britt, Moody, Durbin, and Welch.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Chairman GRASSLEY. Good morning. I would like to welcome everyone to this Judiciary hearing. We have multiple Member statements today, so without objection, I will introduce my longer statement into the hearing record.

[The information appears as a submission for the record.]

Chairman GRASSLEY. Today's hearing is about competency, corruption, and coverup within the Biden administration. Simply put, the last administration was rudderless. From one crisis to another, the Biden administration failed and faltered. The partisan media did their best to cover up those failures.

Having discussed these issues with my colleagues, Senators Cornyn and Schmitt, who requested to lead this hearing, all of us agreed that this Committee must discuss this important matter.

An important part of this discussion involves the last administration's weaponization of law enforcement against Trump and his associates, which was done to try and win an election. That, too, they tried to cover up. Since I became Chairman of this Committee, my investigative work has exposed how weaponization was done. Look at the FBI's Arctic Frost investigation, which ultimately became one of Jack Smith's cases against President Trump, based upon records that I have made public. The case's origin was anti-Trump FBI agent Thibault and his merry band of artisans and partisans. The records indicate that the opening of Arctic Frost was an intentionally designed vehicle by which the Biden administration would ultimately prosecute their primary political opponent, President Trump.

Then I made emails public relating to the Biden administration's political investigation into Peter Navarro. Thibault and his other anti-Trump agent, Walter Giardina, were also involved in that case. Whistleblowers have told me that Special Agent Giardina openly stated his desire to investigate Trump, even if it meant false predication. Whistleblowers have also told me that Jack Smith's deputy, J.P. Cooney, wanted to open more cases on Trump. He allegedly justified using compulsory process to obtain more information merely based upon partisan news outlets. And guess who was also allegedly involved in those communications? Well, that is the same person, Special Agent Walter Giardina.

All of this is more evidence of law enforcement weaponization that would have never been the light of day but for whistleblowers. I will have more to say about this matter later today in another forum.

Then we have the Biden FBI's anti-Catholic Richmond memo. That memo used the shoddy research of the radical Southern Poverty Law Center to accuse traditional Catholics of being violent extremists. Based on the records that I released the other week, there wasn't just one FBI document they used bias anti-Catholic sources but over a dozen. And more FBI field offices were involved than we have been led to believe.

It wasn't just the Biden and Wray FBI that failed the people. Recently, I released a record showing that the Biden Health and Human Services also failed to address the backlog of over 65,000 reports expressing concern for unaccompanied children. This included 7,346 reports related to trafficking. Three dozen cases have been accepted by U.S. attorneys for prosecution with 11 arrests and three convictions so far.

The Biden administration had a responsibility to do right by the American people. By any metric, they failed. The question is, what did the President actually know or even understand who was actually running the Government? But regardless, the buck stops with the President, and President Biden will have to answer to history for what has happened the last 4 years.

Now, I am going to turn over the opportunity to speak to Ranking Member Durbin for his opening remarks. And after that, Senator Cornyn is going to take the Chair and Senator Cornyn and Chairman Schmitt are going to lead the rest of the hearing.

Proceed, Senator Durbin.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN,
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you, Chairman Grassley.

This Committee has oversight responsibility over the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security. We have a constitutional duty to hold these agencies accountable with public hearings.

By this date in my first year as Chairman of the Senate Judiciary Committee, we had already held two major oversight hearings with Biden administration agency heads, including one with the FBI Director Wray on domestic terrorism threats. So far this year, the Republican majority in this Committee has not held a single

oversight hearing, despite numerous critical challenges facing the Nation that are under our jurisdiction.

In the last week alone, several events have demanded this Committee's immediate attention: the horrific assassination in Minnesota, the treatment of our colleague Senator Padilla by Federal agents in Los Angeles, and President Trump's unprecedented deployment of the U.S. military in Los Angeles. We should hear without delay from Attorney General Bondi and FBI Director Patel about what they are doing to address the unacceptable political violence in our country, including threats to Article III judges and justices, as well as Members of Congress. And we need to hear from the Homeland Security Secretary Noem about the treatment of our colleague Senator Padilla and this administration's mass deportation campaign against immigrants.

But instead of exercising this constitutional oversight duty, my Republican colleagues are holding this hearing. Apparently, arm-chair diagnosing former President Biden is more important than the issues of grave concern which I have mentioned. To take a few examples of the issues this Committee should be addressing, the Trump administration has removed dozens of senior career prosecutors and FBI officials with decades of national security expertise, leaving our Nation more vulnerable to terrorism and other national security threats. This should be explained to this Committee.

The Justice Department has diverted hundreds of law enforcement agents away from combating cartels, drug trafficking, and gun violence to participate in President Trump's mass deportation campaign. This should be addressed in an open hearing of this Committee.

The Justice Department is also turning a blind eye to corruption. The administration has gutted the Department of Justice's public integrity session which oversees political corruption just as the President's shameful crypto scheme unfolds. And the administration has removed Department of Justice's career ethics officials and shut down the office charged with investigating misconduct by DOJ attorneys.

With these internal checks gone and this Committee asleep at the wheel, it is no surprise that Attorney General Bondi signed off on President Trump to accept Qatar's gift of a \$400 million luxury airliner, despite the fact that the Attorney General was previously a registered foreign agent for the Qatari Government. We are still waiting for her official finding on this gift transfer.

And it is no surprise that Department of Justice official Emil Bove tried to strike a corrupt bargain with New York Mayor Eric Adams, dropping public corruption charges in exchange for the mayor's cooperation with Trump agenda mass deportations.

When it comes to these historic, compelling issues, the GOP majority tells America to move along, nothing to see here. Let's revisit this administration of a previous President in this hearing. Let's revisit a 20-year-old precedent on the use of an autopen.

And I know my Republican colleagues are eager to discuss President Biden's pardons, but why are they ignoring the actual pardon crisis that is taking place right now, President Trump's pay-to-play scheme? Last month, President Trump pardoned Paul Walczak, who pleaded guilty in 2024 to withholding over \$7 million of taxes

from his employees' paychecks and failing to pay them to the Internal Revenue Service. What warranted Mr. Walczak's swift pardon by President Trump? His pardon application explicitly cited millions of dollars his mother raised for President Trump's campaigns and other efforts to support the President.

But that was not enough. It was 3 weeks after Mr. Walczak's mother attended a million-dollar-a-person Trump fundraiser in April of this year that Mr. Walczak was miraculously receiving his pardon, and now he no longer must pay \$4.4 million to the taxpayers of this country. That is one example of the many pardons granted to President Trump's wealthy donors and political supporters.

Of course, these pay-to-play pardons are in addition to more than 1,500 January 6 rioters who received a blanket pardon from President Trump, including 169 who violently assaulted law enforcement officials.

And we are going to make a question of cognitive ability? I think we should consider what happened in Alberta, Canada, just this week where President Trump was at a press conference with British Prime Minister Keir Starmer and said the following, "You all know the great PM of the U.K., and we just signed a document," President Trump continued. "We just signed it so we have our trade agreement with the EU." Britain has not been a party to the EU for 5 years, but President Trump made a statement which clearly was wrong.

Now, I would like you to see a short video that includes some other examples of cognitive ability.

[Video is shown.]

Senator DURBIN. Do any of these statements raise a question of cognitive ability? You be the judge. If my colleagues are truly interested in issues of Presidential succession and disability under the 25th Amendment, I would suggest they embark on this constitutional journey with a proposed amendment, not today's political adventure.

I yield.

**OPENING STATEMENT OF HON. JOHN CORNYN,
A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator CORNYN. Good morning. I want to thank Chairman Grassley for convening this hearing and my colleague Senator Schmitt from Missouri for co-chairing this with me as we examine the constitutional crisis posed by the coverup of President Biden's cognitive decline.

The U.S. Constitution provides, as we all know, for three co-equal branches. Today, we are concerned about the Chief Executive, the President of the United States. As we know, the Chief Executive, the head of the executive branch, enforces the laws, appoints high-ranking officials, serves as Commander-in-Chief of our armed forces, can issue pardons, and can veto and advocate for legislation. But what are we to do when the President is incapable of performing these duties?

Last June, the American public saw with their own eyes what many knew to be true but would not dare to admit publicly. Our

sitting Commander-in-Chief was suffering from severe cognitive decline, as evident by this video, which I will now show.

[Video is shown.]

Senator CORNYN. As we now know, there was a conspiracy to hide the President's true condition by his family, by his staff, by the media, and many elected officials. Jake Tapper and Alex Thompson, who co-authored a book entitled *Original Sin*, that book amounted to a mea culpa by the mainstream media. But they summed up the problem when they wrote this: "What the world saw at Joe Biden's one and only 2024 debate was not an anomaly. It was not a cold. It was not someone who was under-or overprepared. It was not someone who was just a little tired. It was the natural result of an 81-year-old man whose capabilities had been diminishing for years." Biden, his family, and his team let their self-interest and their fear of another Trump term justify an attempt to put an at-times addled old man in the Oval Office for four more years.

So make no mistake about it, this was a constitutional crisis bigger than President Biden, bigger than any single election, and one that cannot be absolved by the collective apology of the press and an election where the President's party lost.

Current events such as we are experiencing today in the Middle East are a prime example of why we need a President with his full cognitive abilities making important decisions involving war and peace. We should know, but we don't yet know precisely what should happen when a President is unable to perform his or her constitutional duties, and that is the purpose of today's hearing.

There are many unanswered questions from this scandal, questions that the authors of *Original Sin* fail to address in their book, questions that are foundational to the proper functioning of our Government. We will address those here and shine a light on exactly what went on in the White House during the Biden Presidency. We simply cannot ignore what transpired because President Biden is no longer in office.

With a compromised President, our Government's very legitimacy and capacity to function was undermined. The American people paid a price, from President Biden's handling of the border crisis to the disastrous events we saw unfold in Afghanistan. It is absolutely imperative that Congress grapple with these difficult questions, no matter how much our Democratic colleagues would like to simply sweep it under the rug.

We need to know who was in charge during the last months of the Biden administration. Was it his wife, his chief of staff, nameless others? None of these people were elected by the American people, nor were they authorized by the Constitution and laws of the United States to carry out the duties of the President of the United States.

The 25th Amendment provides a roadmap for succession in instances of Presidential incapacity. Section 4 gives the Vice President and a majority of the President's Cabinet the authority to challenge the President's ability to carry out the functions of his office subject to a vote in Congress. But in this instance, the Vice President and the cabinet, the very ones authorized by the 25th Amendment to question the President's capacity, they did nothing.

Are there penalties when the cabinet and the Vice President refuse to carry out their duties under Section 4 of the 25th Amendment? Should there be more accountability? The framers of this amendment acknowledged that the execution of that amendment would depend on the good faith of the cabinet and the Vice President. But Biden's Cabinet and the Vice President did not act in good faith. They acted in their political and personal self-interest.

This is the great paradox of self-government. Many of the rules, traditions, and institutions that sustain our republic are self-enforcing. The health and legitimacy of our democratic republic rests on the character of the men and women who serve in government. As a government, it is imperative that we have clear contingency plans when emergency strikes. And yes, it is an emergency when we have a sitting President who is unable to discharge the duties of that office.

The concerns raised by this incident stretch far beyond the bounds of partisan politics. I will note that few of my Democratic colleagues are here today. Thank you to Senator Welch from Vermont for being here, leaving us with no other option than to take the boycotting of this hearing as an admission of guilt for their role in this crisis.

We must not turn away from the search for answers. And it is not an overstatement to say that the future of our country could one day hinge on how we choose to act or not act on this very issue.

I look forward to hearing from our witnesses this morning as we examine the difficult but necessary questions that must be answered from this monumental scandal.

I yield to my colleague from Missouri, Senator Schmitt, who will now co-chair the hearing.

**OPENING STATEMENT OF HON. ERIC SCHMITT,
A U.S. SENATOR FROM THE STATE OF MISSOURI**

Senator SCHMITT. Thank you. I do want to begin by expressing my sincere gratitude to Chairman Grassley for granting me the privilege of co-chairing this Committee with my esteemed colleague, Senator Cornyn.

The title of the hearing, "Unfit to Serve," captures a sobering and undeniable truth. President Biden was mentally unfit to carry out the responsibilities of the most powerful office in the world. Given his mental incapacity, the American people deserve to know who was running the country the last 4 years.

Today, as we seek to answer this question, it is deeply disappointing, but not surprising, that most Democrats on this Committee have chosen to all but boycott the hearing and have failed to call a single witness. They have chosen to ignore this issue like they ignored President Biden's decline. Their absence speaks volumes, an implicit admission that the truth is too inconvenient to face. By refusing to engage in this critical examination, they abdicate their responsibility to the American people. This de facto boycott is not just a refusal to participate. It is a refusal to serve the American people who deserve answers about who was truly leading their Government.

President Biden's decline did not suddenly begin in June of 2024. It was a persistent and obvious truth that was evident for years

to anyone who was willing to see it. This reality did not require special insider knowledge or investigative reporting to uncover. We didn't need Jake Tapper and Alex Thompson to tell us what millions of Americans could freely observe with their own eyes. The truth was glaringly obvious. Anyone who was paying attention could tell that the emperor had no clothes.

Nearly a year ago, I took the historic step as the first U.S. Senator to formally call for the invocation of the 25th Amendment against President Biden. I sent letters to every cabinet secretary and the Vice President laying out the urgent case. Our Nation was effectively without a leader.

[Poster is displayed.]

The absence of a functioning President wasn't an abstract issue. It inflicted severe consequences on our Nation, consequences that touched every aspect of American life. On border policy, our Nation's borders were handed over to the radical left-wing element of the administration, throwing open our borders to 15 million illegal aliens, an unprecedented immigration crisis that pulled our Nation into chaos. On foreign policy, haphazard and reckless discussions, decisions placed our warfighters in jeopardy, escalated conflicts around the globe, and led to a catastrophic humiliation on the world stage that claimed the lives of 13 American soldiers, including one Missourian, during the disastrous withdrawal from Kabul.

On the economy, rampant inflation drove up the cost of life's essentials, making them unaffordable to countless hardworking families. In the realm of culture, the regime censored free speech, closed down churches, targeted traditional Catholics and parents at school board meetings, and let an unelected class of left-wing radicals degrade, attack, and lie about our history and our heritage. A poisonous anti-Western, anti-American ideology that had once been confined to elite university classrooms suddenly became the official White House policy.

[Poster is displayed.]

All of this was done not in isolation. It was sustained, defended, and covered for by an alliance of elite institutions from the media to the so-called expert class, to Big Tech, to the Federal bureaucracy itself. When we speak of collusion among elites or the so-called deep state, we are accused of being conspiracy theorists. But this was no theory. It was plain and overt, out in the open for everyone to see.

For 4 years, we had a President who could barely string together coherent sentences after 6 p.m. Yet, this glaring fact went unreported, undiscussed, and unaddressed. Why? Because the Democrat Party, corporate media, Federal bureaucracy, and Big Tech companies collaborated to conceal the truth from the American people, not out of ignorance, but because it advanced their own interests. In the absence of a functioning President, chaos took hold. An empty vessel occupying the Oval Office becomes a puppet for those surrounding him.

Many elected officials, including some in this Chamber, have used autopens, a mechanical device that replicates a signature. There is nothing inherently wrong with that, so long as we are the ones actually making the decisions. But under President Biden, the autopen became a troubling symbol, a symbol of an absentee Presi-

dent in an executive branch directed by nameless, faceless aides that no one outside of Washington, DC. had ever heard of and no one ever voted for. It was the autopen Presidency, a government run by Committee rather than a leader chosen by the American people.

By contrast, love him or hate him, we all know President Trump is in command of his Presidency, and he is the one calling the shots. It is plain as day that President Trump is actively making the decisions, whether announced via Truth Social or signature.

Under President Biden, that transparency and certainty evaporated. We cannot confidently say that the decisions bearing his signature were the will of the President or his politburo. That goes doubly for his social media posts, including his decision to drop out of the 2024 Presidential election. We did not know if it was his decision or posted on his behalf after a palace coup because President Biden was mentally unfit to serve. The corporate media played an indispensable role in this coverup, systematically suppressing discussion of President Biden's condition.

As we will demonstrate in the video evidence presented today, dissenting voices were silenced, and the truth was buried. It was not a passive oversight. It was a deliberate campaign to shield the narrative that protected the interests of the most powerful. Even Members of this very Committee, some of whom served alongside then-Senator Biden when he Chaired this very Committee, defended his mental acuity for years.

Now, Jake Tapper and Alex Thompson offer a convenient narrative to absolve everyone involved. The media lacked access. The family was overtly protective. The cabinet was incompetent. And Robert Hur said the President was merely a well-meaning man in aviators who liked ice cream.

It is the tired, evasive refrain of the politician caught in a lie. Mistakes were made. Yes, mistakes were made. And every participant in the coverup, from the media to the cabinet, is jointly and severally liable for what may very well be the greatest deception in our Nation's history. Even their apologies today are framed in a way that absolved them from responsibility for this crime against the American people. They apologized for having "missed the story." They didn't miss anything. They actively chose to ignore or run cover for the people in power.

The Biden Cabinet rarely met. And some members, like former Secretary of Transportation, Pete Buttigieg, deliberately distanced themselves from the President to maintain plausible deniability.

Even Members of this Committee were part of the great deception. The Monday after Biden announced he would not seek re-election, one Member called the idea of invoking the 25th Amendment "outrageous," insisting the debate performance does not reflect who he is or his capacity to govern as President of the United States. Another Member repeatedly vouched for Biden's fitness, declaring, "Joe Biden is fit, capable, and ready to serve another term." And later, "This is a man who is sharp, who is on top of his game, who knows what is going on." Yet another, during the 2020 Democrat Presidential primary, alluded to Biden's decline, but quickly retracted his remarks when it became politically expedient. After the

debate, yet another Member praised Biden's strong delivery of remarks to NATO as evidence of his capacity to lead.

The purpose of this hearing is not to interrogate Biden officials or partisan reporters, though they should be held accountable. Instead, our focus is to identify and rectify the systemic weaknesses that allowed this situation to fester unchecked.

Our distinguished witnesses, experts in White House transparency, operational procedures, and Executive power, will assist us in diagnosing these flaws. While the House and Senate pursue factfinding missions to hold these responsible to account, our mission here is to chart a path forward. We cannot allow another weekend at Biden's Presidency with its glaring national security vulnerabilities papered over by an autopen.

The D.C. establishment might argue that the governance of shadowy, unelected figures is a legitimate substitution for a functioning President. It is not. The American people cast their vote for a President, not a faceless apparatus.

Article II of the Constitution vests immense authority in the President of the United States, a single individual. With that extraordinary power comes equally profound responsibility. At the Constitutional Convention, our Founding Fathers debated giving the President the title of Defender of the Rights of the American People.

The security and well-being of the American people and their rights must take precedent over personal ambition. It is often said that power corrupts. I believe that power reveals. Over the past 4 years, this coverup laid bare a disturbing reality. The left and the corporate media placed their pursuit of power above the welfare of your families and your country. They dismissed your observations, urging you not to trust your own eyes.

We have a solemn duty to call this what it is, an abdication of constitutional duty. As was stated in Federalist 51, ambition must check ambition. If a President is mentally unfit to serve, we need a dependable mechanism to, at the very least, ensure that the truth reaches the American people.

I look forward to the insights this hearing will yield and from our expert witnesses in the discussion that will follow. The public is counting on us to ensure this never happens again because we won't always be fortunate enough to have a leader like President Trump who is so unmistakably in command.

Senator Welch.

**OPENING STATEMENT OF HON. PETER WELCH,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Senator WELCH. Thank you very much. Senator Cornyn indicated the view of the hearing is that there was a constitutional crisis as a result of the coverup of President Biden's decline. I believe there is a constitutional crisis. It is the collapse of Congress asserting its Article I authority to make decisions about the well-being of the American people.

What has this Senate debated in the months that we have been here, other than nominations? Have we discussed the possible war with Iran? Have we had a serious discussion on the floor about the massive and mounting debt? Have we had any discussion about the

abdication of congressional spending authority by the impoundment actions of an administration? Have we had a discussion about climate change that is causing havoc throughout the world? What we have done is gone to the floor and debate—we haven't debated. We have gone to the floor and voted on nominations.

There is another issue of great concern to me because I have enormous respect for my colleagues. Each and every one of us who was elected, it is the highest honor of our life. Each and every one of us came here because it is in our bones that we want to try to do something beneficial and make life better for the people we represent. And we have different points of view. But instead of this Congress debating those different points of view, about oil exploration, or about clean energy, about a good healthcare system, what we do is turn that debate into personal accusations of motivations, of coverup, of conspiracy, of bad character, of demeaning folks who disagree with us so we never get to the discussion about how do we have a healthcare system that works for the people in Texas, the people in Louisiana, and the people in Vermont. We never get to the discussion about, are we going to deny the reality of what you know is true, climate change, and how do we address that in a way that maintains a strong economy and actually builds a strong economy?

We get into the accusations that if you disagree with me, you are a left-wing radical. We get into these discussions that if you disagree with me, you are a Marxist. We get into these discussions that fan the perception of the people we all represent, who desire nothing more than be able to take care of their families, live with some security, make a contribution in the communities where they live, that if a person disagrees with you, they are a bad person. We will get nowhere with that approach.

Now, so many of the things that happened in the Biden administration I totally supported, and many of you totally opposed. Those are policy disagreements. He came in with COVID. We got through COVID. We can debate about how we did it, but that was an accomplishment. The American Rescue Plan, we had the biggest jobs creation in the history of the country. The Chips and Science Act, acknowledging that we have to have a strong economy and be able to have the best chips here manufactured in the United States, we did that. The Federal Disaster Program improved significantly, and I can go on and on.

And I will take up something where we didn't do well, and that is immigration. You won that argument, but does it mean that those who disagreed with you along the way were bad people, should be labeled Marxist, should be condemned?

The American people ultimately get to decide, but to the extent that we have a responsibility that we share, Republicans and Democrats, whichever side of the issue you are on, it is to debate the issue and not debate the people who are in the debate.

That is what I see is the crisis that we are facing in this Congress, our refusal to engage in the serious discussion about the issues that are having such an impact on the people we represent.

And I am going to tell you what I think is a coverup. I think this Big Beautiful Bill done by reconciliation, whereby decision of the majority, not a single member of the minority who represent half

of the citizens of this country can even be in the room when the terms and the policies are being debated. We are not there.

That is what I call a coverup because our responsibility, our responsibility to the people we all represent is to debate healthcare, is to debate our budget, is to debate about the debt that we are going to be leaving future generations. And there is no debate in what is going to be decided in the private backrooms amid discussions, not even of all the Republicans, but of some Republican leaders. That is what is going to have a lasting impact on the people every one of us represents, whether it be in Missouri, Texas, North Carolina, or Louisiana, or Vermont. We can't even do our jobs because we are not allowed to be in the room.

So, sure, we can enjoy the pleasure of looking back at the Biden administration, and then getting into the weeds about when and where and how the President was acting at any given moment. But, you know, I asked myself before I get into a debate, and before I do anything, why am I doing it? And if I do it, does it have the potential to make things better for the people I represent? And if the answer is no, it doesn't have any opportunity to help the folks in Vermont, I just shut up. That is what I do because it won't help. What we are doing right now won't help. It will not help.

And I asked myself, why in the world are we doing it? But we know the answer to that, because the politics that has been embraced in this Congress is the politics of accusation, of demeaning adversaries, of deflecting from engaging in the hard discussion about hard issues and trying to come to some common agreement that is going to be to the mutual benefit of all of the people that we represent.

I yield back.

Senator SCHMITT [presiding]. Thank you. We will now introduce the witnesses. First up, from my left to right, John Harrison.

John C. Harrison is the James Madison Distinguished Professor and Class of 1941 Research Professor at the University of Virginia School of Law. He is a graduate of the University of Virginia and Yale Law School.

After graduating from law school, he engaged in the private practice of law, then clerked for Judge Robert Bork on the U.S. Court of Appeals for the D.C. Circuit. From 1983 to 1993, he worked at the U.S. Department of Justice, including as deputy assistant attorney general in the Office of Legal Counsel. He joined the law faculty at the University of Virginia in 1993.

In 2008, he was on leave from the law school to serve as counselor on international law and legal advisor to the United States Department of State. His principal academic fields are structural constitutional law, administrative law, Federal courts, and constitutional history.

Skipping over the empty seat to Theo Wold, Theo Wold is a visiting fellow for law and technology policy at the Heritage Foundation. Wold is the former solicitor general of Idaho. Previously, Wold served as the acting assistant attorney general in the Office of Legal Policy at the Department of Justice and deputy assistant to the President for domestic policy under President Donald Trump.

Wold clerked at the U.S. Court of Appeals for the District of Columbia Circuit for Judge Janice Rogers Brown and the U.S. Dis-

strict Court for the District of Puerto Rico for Judge Jose Fuste. Wold is an intelligence officer in the United States Air Force. Wold holds degrees from Georgetown University where he studied government and English and from the University of St. Andrews where he studied English literature and a JD from the University of Notre Dame. Mr. Wold and his wife have five children and live in Boise, Idaho.

Sean Spicer, Mr. Spicer served as the 30th White House press secretary, is the author of four best-selling books, and the host of the Sean Spicer Show. Mr. Spicer previously served as Communications director and chief strategist of the Republican National Committee and worked for several Members of Congress. He currently serves on the Board of Visitors of the U.S. Naval Academy, holds master's degrees from the U.S. Navy War College, and is in his 26th year of service in the U.S. Navy. Mr. Spicer is a native of Rhode Island and resides in Virginia.

It is the tradition of this Committee that all witnesses will be sworn in. If you would please rise, I will swear you in now. Raise your right hand.

[Witnesses are sworn in.]

Senator SCHMITT. Thank you. And now we will start with you, Mr. Harrison, with your opening statement.

Senator SCHMITT. Press your mic there. Thank you.

STATEMENT OF JOHN HARRISON, THE JAMES MADISON DISTINGUISHED PROFESSOR OF LAW; CLASS OF 1941 RESEARCH PROFESSOR OF LAW, THE UNIVERSITY OF VIRGINIA SCHOOL OF LAW, CHARLOTTESVILLE, VA

Professor HARRISON. Thank you, Senator Schmitt, Senator Cornyn. The Committee has asked me to discuss Congress' power to regulate the process by which the President's signature is affixed to a document other than a bimanual signature, that is to say the use of an autopen or similar technology. I have four points to make.

The first is that the Constitution and the laws generally, when they require that the President act by signing a document, do not require that the President manually sign the document. The Justice Department's Office of Legal Counsel wrote an opinion on that subject in 2005, which is quite extensive, and I find it persuasive.

The concept of signature is signing a document is more general than—like a lot of concepts, more general than its central application. The central application is manual signature, but that is not the only way by which someone can sign a document. Someone can also sign a document by indicating that the person signing the document has decided that that person's signature should be affixed to the document by some process other than manual signature.

The second point is that as a general matter, Congress has power to carry into execution the constitutional powers of the other branches of Government. The last power that is conferred on Congress by Article I, Section 8, is the end of what is called the Necessary and Proper Clause, and it provides that Congress shall have power—I will read the whole clause—"to make all laws which will be necessary and proper for carrying into execution the foregoing powers," that is Congress' other powers there, in Article I, Section

8, “and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.”

That’s the last part. That’s the part that is relevant here. It is sometimes called the Horizontal Necessary and Proper Clause because it operates horizontally among the three co-equal branches. Congress is the legislature. There are times when one of the other constitutional powers can use support that can be given only by the force of law, and that is something that Congress can do with the Horizontal Necessary and Proper Power.

The next thing I’ll say is there are some principles, I think, that should govern exercises of the Horizontal Necessary and Proper Power. The first is that it operate to support, to assist, to make—cause to function better the power that is being carried into execution, be it that of the President or that of the Federal courts.

The second is that, in supporting the other powers, Congress not seek to exercise powers that are vested elsewhere, like the power to decide cases, like the President’s power of pardon.

And third, when Congress exercises that power, it should make sure not to put substantial burdens on the exercise of the other powers that it is seeking to support, powers that, once again, are vested elsewhere than Congress—than in Congress or by the Constitution.

I think Congress can regularize the process by which the President’s signature is affixed without his manual signature in a way that would be consistent with Congress’ Horizontal Necessary and Proper Power. In particular, Congress can require that when the President indicates that his signature is to be affixed to a document without manual signature, that that decision by the President be documented and the—some individual record that the President has made that decision and that be made part of the public record, say, by being published in the Federal Register or the Weekly Compilation of Presidential Documents.

A statute like that would carry the President’s power into execution because making sure that the President really has made a decision and that it wasn’t made by someone else with the President’s—someone else with the President’s autopen is a way to make sure that the power is properly exercised, that is, by the President. As long as a statute like that is completely neutral, applies the same way to all Presidential decisions, it shouldn’t raise any problem of Congress trying to control the President’s authority. Again, constitutional power is vested in the other branches and supported by Congress under the Horizontal Necessary and Proper Power.

And third, a requirement of documentation. Well, the White House does a lot of documents. The requirement of documentation would not place a substantial additional burden on the President and the processes by which the President acts. And I would suggest that if the Committee consider legislation along these lines, that it inquire into the paper flow process currently used in the White House so that any statute Congress enacts will make that process work better rather than burdening it, making it not work as well.

Thank you.

[The prepared statement of Professor Harrison appears as a submission for the record.]

Senator SCHMITT. Thank you. Mr. Wold.

**STATEMENT OF THEODORE WOLD, VISITING FELLOW FOR
LAW AND TECHNOLOGY POLICY, THE HERITAGE FOUNDATION,
BOISE, ID**

Mr. WOLD. Senator Cornyn, Senator Schmitt, Members of the Committee, thank you for the opportunity to testify this morning about how the coverup of President Biden's mental decline endangered America's national security and undermined the Constitution.

The U.S. Constitution vests Executive power in a single person, the President. At the founding, the President exercised the Executive power through only a small group of trusted advisors and personnel. In fact, President Washington had a four-member cabinet. Today, the President directs a Leviathan executive branch with 15 cabinet departments and at least four million full-time executive branch employees.

The executive branch proliferation has a single source of democratic legitimacy, that by order of U.S. Constitution's Article II, the President is both elected by the American people and vested with the Executive power, all of it.

Traditionally, the President takes positive actions and authenticates those actions through his signature. His signature is required for the most significant actions he may undertake, to sign an Executive Order, to take any action invested in him by the Constitution, as in granting a pardon, and to take the most important action of all, to sign a bill into law. In all these cases, the President's signature is itself the protection of democratic principle. When the President signs, he communicates his assent and endorsement of the action he takes.

The autopen is a device that signs the President's signature to a document. The Oversight Project, of which I am a board member, has discovered that the Biden White House deployed an autopen to affix President Biden's signature to pardons, prison commutations, Executive Orders, and Presidential proclamations. The Oversight Project's research has found that the Biden White House first deployed the autopen to affix President Biden's signature to a proclamation on day 5 of his administration, and that there were at least three different autopen signatures in use throughout President Biden's tenure in the White House.

In June 2022, the Biden White House began deploying the autopen to sign clemency warrants and Executive Orders. Autopen use skyrocketed from there. We found that of the 51 clemency warrants issued during the Biden Presidency, over half, 32 in total, were signed with an autopen. And these include some of the most controversial acts of clemency of the Biden Presidency, including death row commutations and the preemptive pardons of members of the Biden family, Dr. Anthony Fauci, General Mark Milley, and more that were issued in the final days of the Biden Presidency.

We reviewed President Biden's schedule and his publicly available media and were unable to find any record of President Biden's personally approving these actions, such as a statement issued by the President himself to reporters. In addition, we found that the Biden White House used the autopen to affix President Biden's sig-

nature to clemency warrants and Executive Orders while the President himself was in Washington, DC, for at least some of that day, and thus was presumably available to sign important executive actions. Finally, we found multiple days where President Biden wet-signed a bill into law, but used an autopen to issue an Executive Order or for other important executive actions.

The Biden White House's widespread use of an autopen to affix President Biden's signatures to documents that exercise Executive powers belonging solely to the President poses significant constitutional, legal, and practical considerations. Once the President's signature is copied and loaded into the autopen, the machine can sign documents as the President himself would. To be blunt, by using the autopen, anyone can sign documents as the President himself.

Now, to be clear, I'm not here today to suggest that the autopen is bad. It's just technology. I'm here today because of questions concerning President Biden's capacity and whether the autopen was used to usurp Presidential power or to conceal the President's decline.

As the sitting President's mental acuity declined, potentially to the point of incapacitation, his administration's expansion of the powers of the Presidency raises more questions than answers. Any investigation into this matter should focus not only on whether President Biden directed or authorized subordinate staff to take action in certain instances but whether he had the capacity to do so at all.

The 25th Amendment lays out clear procedures for what to do when the President is incapacitated. It was carefully drafted and informed by our Nation's history. The Biden administration ignored it all to aggrandize Executive power and push the country further in their preferred ideological direction.

It is our obligation at this point at—to get to the bottom of these issues and to ask the important question as to whether or not the autopen and other devices were used to cover and obscure President Biden's mental decline, undermining our national security and also the Constitution.

Thank you for the opportunity to testify this morning.

[The prepared statement of Mr. Wold appears as a submission for the record.]

Senator SCHMITT. Right on time, pretty impressive. Thank you. Mr. Spicer.

STATEMENT OF SEAN SPICER, FORMER WHITE HOUSE PRESS SECRETARY, HOST, THE SEAN SPICER SHOW, ALEXANDRIA, VA

Mr. SPICER. Chairmen Schmitt and Cornyn, Members of the Committee, thank you for having me. I was asked to share my experience as a senior White House staffer with respect to the interactions that I and other senior staff had with President Trump during his first term.

During my tenure as press secretary, I interacted with the President multiple times every day. Most days, I would talk to him by phone or in person early in the morning and then multiple times throughout the day, including weekends. For the most senior positions in the White House, those designated by the rank of assistant to the President, which includes the White House chief of staff, the

White House counsel, and the press secretary, it is critical to have regular interaction with the President.

The position of press secretary especially demands this type of consistent and intentional communication. I or any other press secretary, regardless of administration, could not do the job effectively without regular communication with the President. It was my responsibility to have the most up-to-date understanding of President Trump's position on policy, personnel, and everything in between.

Admittedly, I made a couple of rather high-profile mistakes during my tenure. You may have read some of them. But in all cases, those mistakes occurred when I wasn't connected with the President's thinking or position on a particular issue or policy. Coordinating and collaborating among even the most senior staff cannot replace direct communication with the President himself.

In my position, I was very well acquainted with the President's work, his day-to-day responsibilities, and his fitness for office. I watched him serve with the strength and endurance of a man half his age. As you can see on almost a daily basis through events, statements, and social media posts, he is up early and ends his days very late.

Yet in several instances during his first term, the media questioned his fitness for office. Guests and so-called experts, like Sanjay Gupta at CNN, were called upon to speculate on the result of Trump's physical and mental well-being. The Washington Post ran hit pieces with headlines like, "The White House struggles to silence talk of Trump's mental fitness." Vox wrote, "Is Trump mentally unfit to be President?" NBC ran a story by the Associated Press that raised mental health concerns regarding the President. CNN's Brian Stelter questioned if members of the news media were "tiptoeing around obvious questions about President Trump's instability." These headlines were not isolated instances. Most major news outlets ran with these ridiculous type of propaganda pieces. To use one of the media's favorite terms, these inquiries were without evidence.

That brings us to the juxtaposition of how the very same media covered the Biden administration. To be blunt, the legacy media failed the American people. They failed to do their job. Many, rightly so, believe the media in this country is culpable in covering up the obvious decline of the 46th President of the United States. The scrutiny that was baselessly directed at President Trump during his first term was wholly absent from the media coverage of the Biden White House. The media lacked any sense of curiosity that would naturally stem from what the public could see with their own eyes.

Even in the face of deeply concerning and public signs of President Biden's mental and physical decline, legacy media outlets were silent. Biden and his senior aides flatly dismissed the need for a cognitive test during his tenure, as had been requested of President Trump. Yet no protest was heard from the voices that were so critical of Trump. With the exception of a couple White House reporters, like Fox News Channel's Peter Doocy, reporters generally refused to breach the subject at White House briefings.

News outlets weren't the only ones complicit in covering up Biden's decline. Presidential staff would have or should have been

interacting with Biden on a daily basis. At best, his administration was grossly negligent. At worst, Biden's staff actively concealed his fitness for office.

When White House Press Secretary Karine Jean-Pierre said President Biden could run circles on her, there were only two possible conclusions, that she herself was in poor health and in need of medical assistance or that she was lying. There is no question that a vast difference between how President Trump interacted with his staff and how President Biden did.

When one—whether one supports President Trump or not, he is clearly the most accessible and transparent President in modern history, and there is no question who is running this country. The same cannot be true—said of President Biden.

It is the President who is elected by the American people. The role of staff is to execute his agenda and policies. I thank the Committee for holding this hearing so that, going forward, the American people can have the confidence in who is running the country and making critical decisions. The American people deserve no less.

[The prepared statement of Mr. Spicer appears as a submission for the record.]

Senator SCHMITT. Thank you for those opening statements. The minority did not call any witnesses for today's hearing. They have chosen to ignore the hearing, as they chose to ignore President Biden's mental decline, but we do have a short video of some previous statements from Biden administration officials and Democratic Party officials telling us not to believe our lying eyes.

You can play the video.

[Video is shown.]

Senator SCHMITT. Okay. Professor Harrison, I do want to ask you a couple questions. I just wanted you to presume for a moment that a pardon was issued under President Biden's autopen signature but issued without his direction. It comes to light that he actually didn't direct it. A member of his staff used the autopen for a pardon. What recourse is available under those circumstances?

Professor HARRISON. Senator, I think there would be two questions. The first has to do with whether—and I don't—I can't answer it other than to identify the question, which is to say sometimes documents that are properly authenticated are treated as having been validly issued even when they're not. That can happen. There are legal rules that produce that result. And I don't think there is such a rule about a pardon, but I would have to inquire into that, again, because there are such rules.

The other thing I'd say is that for a pardon particularly, the only situation I can think of that clearly would bring into question whether the pardon was valid, which was the first question, was if the Government sought to prosecute someone and the person reportedly received the pardon, offered the pardon as a defense, then the Government might say that, no, the pardon was invalid and therefore you weren't pardoned. You're still subject to prosecution. There might be some other way for a question like that about a pardon to come up. I can't think of another, but that is the one I can think of.

Senator SCHMITT. So from your perspective, let's just say that if there isn't any other legal recourse other than the one that you sort

of brought up, what advice would you give to this Committee or this Congress or this Senate to address that? What remedies could the legislative branch enact?

Professor HARRISON. It's hard to think of anything Congress can do ex post. That's why I do think that it would be advisable ex ante to improve the process of authentication and make it more clear that documents that are signed by autopen really do reflect a decision by the President. That done in advance will make whatever the authentication system is more reliable.

Senator SCHMITT. Mr. Wold, given sort of the role that you played in trying to provide more transparency of what happened during the 4-years under Joe Biden, who was running the country under Joe Biden? Let's just take the last 2 years.

Mr. WOLD. It's a great question, Senator. And at some level, I am not the right witness for this hearing. I mean, there should be members of the media here, maybe some of your Senate colleagues who had known the President over the years and obviously had close proximity during the time of his administration and obviously his staff.

I think, you know, sort of aligned with your previous question, there is a real consideration here on authentication. And in my time in the first Trump White House, there was an exhaustive process to determine how paper flowed into the Oval and when the President had given his assent to a certain action. That was through, in fact, two different policy channels, the staff secretary, and then there was also an office, essentially a policy management guiding the flow of documentation.

If the Biden administration staffers and personnel wanted to put this to bed, they could very easily dispel all of this by saying, here are the documents that show the President assented to these actions. The Trump administration would have that. Previous administrations would have that. And if that's not there, then there is cause to improve the way that executive branch employees authenticate actions undertaken by the President.

Senator SCHMITT. Yes, I mean, the President actually performing the functions of President is kind of an important thing in our constitutional order. You had, kings used to affix their seal to show that this was an official declaration from the sovereign in this country, the sovereign or the people. They delegate, you know, the authority to their elected representatives.

And as you mentioned in your opening statement, there is only one person elected by everybody. So that signature—this is not just a small point. That signature issuing a pardon for someone who'd been convicted of a crime or in the case of Joe Biden, these preemptive pardons, which are sort of unprecedented, is a big deal. And I think that is part of the reason why we are here today.

Mr. Spicer, I wanted to ask you, you alluded to this, but the media is so desperate to make sure President Trump never got back into office. Of course, you saw the lawfare that took place, but then of course this narrative that Joe Biden was fine, don't believe your lying eyes and told that they couldn't deny it anymore based on the debate. Could you just kind of compare that to your experience when you were, you know, press secretary for President Trump to sort of the inquiries that were made daily about his men-

tal acuity versus the inability to do that during the 4-years under Joe Biden?

Mr. SPICER. Well, Senator, in many cases, there was no inquiry. They would just run with a story, having guests on that would question his physical or mental acuity, speculate on it, bring guests on that would speculate it. We would often then push back on those kinds of stories.

That is in vast contrast to the lack of any kind of curiosity that existed throughout the 4-years of President Biden. And I think the difference was they would seize on the simplest thing with President Trump, whereas in President Biden's case, there was multiple issues of physical, mental confusion, him going in the wrong direction, him falling down, him misunderstanding an event or not being able to finish a sentence. That was never the case with President Trump. They were almost manufacturing instances in his case without actually trying to get to the bottom of a story or inquire within the press office to get our response. They would go with the story, then we would push back.

With Biden, my understanding from the conversations that I would have with the media is they would never ask. They just literally were basically afraid to go there.

Senator SCHMITT. Senator Cornyn.

Senator CORNYN. Professor Harrison, it strikes me when talking about the autopen, there are really two issues. One is the mechanical use of an autopen in lieu of an actual signature by the President. But it seems to me that we are confronted with more important or more fundamental issues is did the President know that the autopen was being used for that purpose?

And so one would be—if somebody stole the autopen and was signing pardons on behalf of the President, but what we are confronted with here is really the capacity of the President of the United States to understand what he was supposed to be doing.

And just thinking about other areas of the law where capacity is important, and whenever it comes to people writing a will, let's say, for example, disposing of their property to their children and grandchildren, occasionally, there arises the issue of testamentary capacity by the person disposing of their property. And generally speaking, to have testamentary capacity, that person must understand they are signing a will, they comprehend the nature and the extent of their property, they recognize their relationships with potential beneficiaries, and understand how the will disposes of their assets. So why can't we have a similar inquiry into the executive capacity, let's say, of the President of the United States to actually know what he or she is doing?

Professor HARRISON. Senator, you're absolutely right that that question, whether the President or somebody else who holds official power has the legal capacity to exercise it, is distinct from authentication of documents. Authentication of documents is important, but capacity is another question.

With respect specifically to the President, I think the answer there is—and this may be “out of the frying pan into the fire” kind of answer. The answer there is Article II and then the 25th Amendment deal with the situation in which the President is unable to exercise his powers and duties. And I think it's a reasonable

inference, although the Constitution doesn't come out and say this, that a President who is not determined to be unable through now what's the 25th Amendment process for making that determination, there's no process in Article II itself, the 25th Amendment, added something. A President who has not been, pursuant to the 25th Amendment, determined not to be able to exercise the powers and duties of the President is presumed to have capacity to do that.

I say that not on the basis of any sort of, other than practice, that's the way it's been for a couple of hundred years, but I think that is a reasonable inference from the fact that the Constitution does make a provision about what happens when the President is unable and the 25th Amendment then provides a process to determine by which the President is unable.

Senator CORNYN. Mr. Wold, following up on Professor Harrison's answer, the 25th Amendment requires actions by the Vice President and a majority of the cabinet to declare the President incapacitated, incapable of carrying out his or her duties, but there doesn't appear to be any accountability or any remedy when they fail to act as they did in this case. Some have suggested that there may be potential crimes committed by members of the cabinet for failing to act, basically suborning perjury, forging Government documents, impersonating a Federal officer, making false statements, conspiracy to defraud the United States, obstruction of justice, wire or mail fraud. Those are all statutes, criminal statutes that are on the books.

Do you think there is any application of any of those criminal statutes to the circumstances of the Biden Presidency and his incapacity and the failure of those persons, only persons authorized to question that incapacity under the 25th Amendment, the failure on their part to act?

Mr. WOLD. Senator, there very well could be. I mean, obviously, that would be a question for a prosecutor to take up in their discretion.

I will say the 25th Amendment, it's a modern contrivance, but it still is consistent with American constitutional tradition, which it assumes that officers of the United States will act virtuously and morally. And the idea that members of the cabinet would go to the length of avoiding the Oval Office so as to abdicate their responsibility to verify the appropriateness of the President's acuity or the ability to authenticate actions taken by the President, if that's not a constitutional scandal, I mean, honestly, I don't know what would constitute such.

So yes, I mean, I think there could be the potential for crimes, but moreover, the 25th Amendment can only function in its procedural mechanisms if people are actually willing to call a spade a spade.

Senator SCHMITT. Senator Britt.

Senator BRITT. Thank you, and I really appreciate Senator Cornyn, Senator Schmitt calling this hearing. This is incredibly important. I mean, you look at what the administration did, you look at what the Democratic Party did, you look at what the legacy media did. It is absolutely inexcusable. It is not only dangerous, it is disgusting. And the American people deserve better.

And the fact that we have none of my Democratic colleagues over here, that this entire dais is empty, that what they allowed to happen, that they are not interested in correcting it for the future is absolutely mind-blowing.

And so when we are looking at what Joe Biden did while he was in office, you have a disastrous withdrawal from Afghanistan. I mean, leaving equipment, leaving allies, changing the way the world viewed us. You look at an emboldened Russia, Iran. You look at what happened, obviously, with China and those conversations with Joe Biden. You look at millions flooding across our border. You look at a ton of unaccompanied children coming across, hundreds of thousands. You look at hundreds of thousands of Americans dead because of fentanyl poisoning. You look at record high inflation. Who was in charge? And the fact that not one Democrat colleague can show up and try to get answers to that, I hope the American people see that for exactly what it is.

And so my question to you is, how do we prevent this in the future?

So we know that the 25th Amendment in the 1960's, we take a look at that. Section 4 was purposefully vague to allow for some flexibility. Clearly, it either didn't work, or we have some people we need to hold accountable for not stepping up.

So I want to know from you all, what do we need to do? Do you think that there need to be more guardrails when it comes to Section 4? Do you think that we need some more standards to evaluate that? And if so, what should those standards be? And Professor Harrison, I would like to start with you.

Professor HARRISON. Senator, this is the question about further implementation of the Section 4 is one that has not received a lot of attention because, fortunately, the country has not needed it very often. I think that this is a situation in which Congress' power is pretty limited because the Constitution by design put a somewhat vague but nevertheless meaningful concept—

Senator BRITT. Well, I think it—

Professor HARRISON [continuing]. Which is ability on the part of the President to act—

Senator BRITT. Right, and it also means good faith.

Professor HARRISON [continuing]. In the hands of political process. That's the lesson I'll say.

Senator BRITT. Yes, and good faith.

Professor HARRISON. Yes.

Senator BRITT. And I don't think—

Professor HARRISON. Yes.

Senator BRITT. Obviously, we don't have that here.

Mr. WOLD, do you have any opinion on that?

Mr. WOLD. Yes, Senator. So you said, should we hold folks accountable, and should there be some reforms?

Senator BRITT. Yes.

Mr. WOLD. The answer would be both—

Senator BRITT. Right.

Mr. WOLD [continuing]. Yes, to—so, you know, your colleague on the Democrat side who did attend, Senator Welch said, hey, this is just kind of retrospective. We need to move on. I would strenuously disagree with that. There's—the only ability to move forward

is if there's an accounting of what was undertaken under the Biden staff, the Biden personnel, the bureaucrats, and the cabinet.

And one thing I'll just say is this very issue was debated by Republicans in 1988 in the Miller Commission Report at the University of Virginia. Republicans had the—you know, the open and honest, transparent discussion about the end of the Reagan Presidency and whether or not there were other guardrails that needed to be imposed on the 25th Amendment. Some discussions were about the inclusion of a mental health professional on the White House medical team, whether the surgeon general should oversee the inclusion of medical reporting as part of Section 4, Clause 4 of the 25th Amendment.

All I'll say is all of those things have been set aside. There has been no legitimate discussion in the years since about how to make the 25th Amendment more robust and how it could actually operate in the instance that the President lacked capacity.

Senator BRITT. Right, and do we need to more clearly define what "unable" means in the 25th Amendment?

Mr. WOLD. Oh, I think most certainly, and I think there should be—look, you know, the other issue, and a number of legal academics, you know, former colleagues of Professor Harrison, have taken this up over the years. I mean, Professor Calabresi wrote about this 20 years ago, that there needs to be a more precise definition. And there are lots of issues related to succession.

Senator BRITT. Well, there clearly does because, I mean, even from all of us from the outside, we are saying there is a problem. And the fact that we could get no one on the inside to actually take a look at what they already knew to exist and then be able to hold them accountable, we have to have other guardrails moving forward, and that is absolute. So we need to be talking today about what those guardrails are.

I have a question. I am running out of time. It is two things. One, senior staff. So I have been a senior staff member. You take an oath when you get to come and work in this body. You know, you want to make sure you are doing what is best for the United States of America, for the State you serve, all of the things. Is there any way to hold senior staff accountable for either helping to cover up and/or moving people to the side? Because it is clear that there are people within this administration that saw that, and they should be sitting in front of us today, answering the question of why they turned their back on America because that is exactly what they did. And so whether it is secretaries, whether it is people in the administration, or whether it is senior staff, we deserve some accountability and we deserve some answers.

And then my last question will be for Mr. Spicer. Legacy media, how in the world do we hold them accountable? If all of us on the outside can see it, and we are saying get to the bottom of this, but yet they refuse, what mechanism should we put in place to be able to hold them accountable for not actually following what is clearly in front of them?

Mr. SPICER. Senator, you're asking the right question. When it comes to accountability, it can't be overstated. When the Biden White House stripped 440 White House hard passes from independent journalism—journalists, they were attempting to control

the narrative, to make sure that no one who wanted to hold them accountable was silenced.

Part of what I think this administration has done so well is bringing in new voices, people from disparate backgrounds of all sorts to ask the White House Press Secretary, to ask the senior staff, and to be able to hold them accountable. Part of it is allowing other voices in the media. We've seen what the legacy media did, but that's why I think the growth of independent media is so healthy for our democracy, and we need more of it, not less.

Senator BRITT. Thank you, and then the senior staff question, please.

Mr. WOLD. Yes, look, Senator, I mean, senior staff from the first Trump administration were brought in before Committees and investigated for their participation in drafting the President's remarks on January 6, for drafting a speech. So if there was an effort by senior staff, the politburo, as they seem to like to have called themselves, if they were purposely distancing cabinet members, evading difficult Q&A with press, all as an attempt to conceal the President's mental acuity, yes, they should be held accountable.

Senator BRITT. Thank you.

Senator SCHMITT. Thank you. Senator Moody.

Senator MOODY. Thank you, Senator Cornyn, Senator Schmitt. I appreciate you holding this important hearing. And certainly, I appreciated my colleague, Senator Britt's remarks in listing out so many of the failures of the last administration as they played out. I think Americans, yes, sat horrified as they watched these events unfold, but at the core of those failures were bad policy decisions.

And the truth is, you know, people talk a lot about the end of the Biden administration and his debate performance, but those of us that were involved of the repercussion and the consequences of some really bad, irresponsible, reckless, I would say dangerous policies, and were involved from day one of the Biden administration, we started questioning immediately who was making these decisions because they were so disastrous for the security of this Nation and the safety of our people. So I would say from day one of the Presidency through all 4 years, this was a legitimate question. And every single failure that Senator Britt listed was the consequence of a policy decision.

When I was the Florida Attorney General, one of the very first executive actions that came out undid both Republican and Democrat Presidential precedence of saying, if someone is here in our country and they are here illegally, and they are committing serious felonies, we are deporting them. And actual priorities were that those were the ones they went after first. And one of the very first actions that came out of that White House was they abandoned that, that both Democrats and Republican Presidents had enforced and released to all law enforcement around the Nation that they were no longer going to make that a priority.

When sheriffs were calling and pleading with us to take these people from their jails and not make them release them back into the communities, we would try and communicate this, but indeed, they were canceling detainers and releasing these people into the communities. They were taking people that were brought here from other countries, brought here only to prosecute because they were

a danger to our Nation and our people. And instead of deporting them after their prison sentences, they were pushing them into the United States.

And I don't think it should be lost on anyone that just yesterday it came out. You know how many the Trump administration pushed into our interior in the last 4 months? Zero. And I want you to compare that to a month of the Biden administration where hundreds of thousands of people barely vetted, if vetted, were forced into our Nation's interior.

And you have seen these consequences play out. It is not just rape victims, murder victims, robbery victims. We have caught people here from foreign nations that are on the terrorist watchlist that can cause some of our Nation's biggest tragedies and devastation. That is the undermining of what a Commander-in-Chief is supposed to do in those policies. We saw it day one, and that is just one example. And it played out for 4 years.

So I think one of the reasons that you see not one Democrat in this hearing room right now asking these questions is because how do you defend the indefensible? What are they going to say? I mean, there has never been a more reckless, negligent administration that I can remember in my lifetime. And as Attorney General, as the wife of a law enforcement officer, as a Federal prosecutor, as a judge, I sat horrified that that was the person that was in charge of our safety, our Commander-in-Chief, in charge of our borders.

And I know, Mr. Wold, you have talked about the danger in executive actions being pushed out when somebody is not in charge that understands how it is affecting the safety of this Nation. I am sure based on your prior experience and some of the things that you saw being pushed out, I often thought, this is a radical aide's dream. You have a Commander-in-Chief probably not able to pay attention, and they are pushing out policies left and right. Tell me in your experience if you noticed anything where that could be the case coming out of that administration.

Mr. WOLD. Yes, thank you, Senator. I mean, I think on the immigration score itself, so many of those sort of special powers exercised by President Biden on parole, on temporary protected status, they require the President to do those in his own name, correct? It's a case-by-case evaluation performed by the Chief Executive. And so I think in reviewing some of those, when I was sitting on the sidelines, the question I had was, well, what does the paper process look like for that? How did DHS work that up? How did it go through the staff secretary's office? And what was the President briefed on as far as the policy considerations tied to some of these decisions to bring in violent criminals from Haiti or Nicaragua into the interior of the United States?

Senator MOODY. And did it concern you when you learned, and we are now uncovering, that cabinet officials were kept from meeting with the President for months at a time?

Mr. WOLD. Look, I mean, if you go back through our history, Senator, so Grover Cleveland, Wilson, FDR, JFK, President Johnson, President Biden, it's almost a Democrat sport to keep from the American people the health and acuity of the Chief Executive. They've been doing this for a long time. But this is of another level,

especially as Mr. Spicer was mentioning, the complicity of the national media in obscuring this, but also that cabinet officers would go to the lengths of avoiding interacting with the Chief Executive because they were fearful that they would have to speak to his diminished capacity.

Senator MOODY. And I am running out of time, and it was of particular concern that the media seemed to never ask him about executive actions and policy. Favorite flavor of ice cream, yes. Why he was pushing dangerous criminals into the interior of this Nation, no. And that is why I think this hearing was so very important. What was coming out of this administration was a radical wish list. And certainly you can see what has happened to the consequences playing out right now. And now I think we are all seeing why.

Senator SCHMITT. Thank you. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman.

And I am so pleased to join my colleague from Florida in saying it is time that we have this hearing. All across Tennessee, I hear from people every single week that say, what was really going on in the White House, and why would no one say anything when, with your very own eyes, you could look at any of the footage and see what was transpiring with President Biden. And I think the fact that many of his own cabinet members knew that he was not fit to serve and that there was a cabal behind the curtain who was making all the decisions, it is so offensive to the American people.

And it is not something that is a partisan issue. As I talked with the Democrats, many of them have lost faith in what they thought was going to be a very moderate Joe Biden administration. And it turned into be the far-left Bernie Sanders version of the Democrat Party that was using the autopen and making decisions and committing our great Nation to policies that the American people did not support and would never have supported.

And I fully believe that because of that overreach and that flip-pant attitude that much of his staff had toward the policies of this Nation to people in the administration that chuckled about tossing gold bars off the Titanic. They knew they were going down. They knew they were going to be found out. And they probably knew at some point there would be a hearing like today and the other side of the dais would be completely empty because no one can defend what they did.

Mr. Wold, I want to come to you for a moment and talk about something that was really a disturbing revelation from the Tapper-Thompson book. And you know, this is part of the thing. Now we are finding out the media was all a part of the joke. They were part of the ruse. They were part of the fraud that was pushed forward. A Biden staffer told the authors that Biden just had to win, and then he could disappear for 4 years. That is all they needed to do. And you know, it is, the following statement was, he would only have to show proof of life every once in a while.

And as I had a Tennessean say to me when they had actually downloaded this book and read it, and then they said, you know, how stupid do they think we are? And the disrespect this administration showed to the American people. Why is it that the American people appreciate that President Trump goes out nearly every day is taking questions and answering questions is because they

have now found out that these staffers were willing to do undemocratic things, using their term to keep the President in office, to keep Biden there. They were willing to do undemocratic things, unlawful things.

So Mr. Wold, let's talk about that behavior and how that undermines the faith of Tennesseans and all Americans in our public institutions because they could see what was happening, but they were being lied to, lied to by people in the White House who were probably then running in their office and saying, well, we pulled it off another day.

Mr. WOLD. Yes, Senator, I mean, this is a theme you've talked about for many years, which is the executive branch is enormous. I mean, there are close to 1,000 employees in the executive office of the President. There are nearly 4 million full-time Federal employees throughout the 14 departments that the President oversees.

Executive power, as accountable to the people of this country, really manifests in two ways: the power of the President to remove bureaucrats and to fire them and to affix his signature to official actions that he undertakes. So when our—you know, the Washington establishment says something to the effect of, well, democracy dies in darkness, yes, it does, when there are staffers, the media, cabinet officials, senior advisors to the President who all create a covering sort of a shroud of darkness that obscures who is actually making the decisions.

And one other thing I'll just say very quickly, a number of your colleagues on the Democrat side have said, well, there is an OLC opinion here. We don't need to talk anymore. There is an OLC opinion. It says you can use the autopen. That opening—the opening paragraph of that OLC opinion says you can use the autopen but only when the President directs that you do so under his decisionmaking power, right? It is very clear again and again that the President actually has to make the decision. That cannot be delegated to a staffer or an advisor. And there's no indication here that anyone other than staff were making these decisions.

Senator BLACKBURN. Thank you, Mr. Chairman.

Senator SCHMITT. Thank you. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Thanks to all the witnesses for being here.

You know, the visual, sometimes it really is true. A picture speaks louder than words. It is worth a thousand words. And here, all you have to do is look over at this side of the dais to see that the stone wall continues. I mean, from the party that lied to this Nation for 4 years, let's just take a look at some of the things that our colleagues said on the Democrat side when their own Justice Department was concluding that Joe Biden, who let's not forget, illegally took classified documents, illegally took classified documents and kept them in his garage, in his freezer, I mean, Lord knows where. He certainly didn't know. Their own Justice Department interviewed the guy and concluded he could not form the requisite mental state to stand trial. He did not have the mental ability to stand trial.

[Poster is displayed.]

And what did our Democrat colleagues say? Vice President Harris says, oh, no, no. The way that the Hur report characterized the President is so wrong. The President's demeanor is totally fine. Senator Smith, what the Hur said about the President not remembering his son's death, so unfair. Senator Kaine said this is grandstanding. Senator Fetterman said it is just cheap shots. You had other Senators saying—Senator Ossoff in February 2024—2024—saying, “I found the President to be sharp, focused, impressive, formidable, and effective.” In June 2024, Congressman Jeffries insist Biden was “incredibly strong, forceful, and decisive.”

Where are they now? They don't want to answer for any of those quotes now. They lied to us for 4 years, and we know they lied. They know they lied. It is why they are not here. They don't want to answer a single question. They can't bear to show their faces in public. And you know what? It is right that they can't do that because the bill of goods they sold this country, they walked this country right into one of the greatest constitutional crises of our history, of our history. And now they are afraid to even show up to admit it. These are people and this is a party that cannot be trusted with power, that cannot be trusted to tell the truth, the most basic truth.

They all changed their tunes after Joe Biden debated President Trump, and the whole world could see he couldn't even form a sentence, that running this guy for President again is a form of elder abuse. My, how they changed their tunes after that. Now they can't even show up in public to talk about it. This is embarrassing. But worse than that, it's dangerous. It is dangerous for this country.

Mr. Wold, I want to pick on something you just said a second ago about the OLC and their opinion as to when an autopen can be used. To be clear about this, autopen means not signed by the person. Autopen is basically push of a button and it gets signed. OLC says only when the President specifically directs it, and it is under his direct authority. Do I basically have that right?

Mr. WOLD. That's correct, Senator.

Senator HAWLEY. So based on the facts we know, did that happen in this case with all of the pardons and clemencies and other giveaways that Joe Biden signed?

Mr. WOLD. Assuming that the Biden White House complied with sort of traditional practice of Presidential administrations and that there was recordkeeping either from the staff secretary or others, there should be records to indicate either through covering memorandum or briefing books where the President would have signed his signature authorizing this decision, none of that has come forward. That would be very easy to dispel some of these concerns.

And I think what we're seeing here is really the autopen is best understood as a sort of a tool of executive convenience.

Senator HAWLEY. Hold on a second. I would just want to—you just said something very important. I want to emphasize that. So what you are saying is is that there should be—for every time that Biden authorized the autopen, there should be a record of that, and he should have had to have registered his personal consent to using the autopen. Is that basically correct?

Mr. WOLD. I think to put it another way, I would say in the policy paper flow to the Oval Office, there should be a record of what

documents are presented to the President when and when he gave his assent to the actions that are listed in those documents, whether it's a judicial nomination or it's a statutory——

Senator HAWLEY. Okay.

Mr. WOLD [continuing]. Response to Congress.

Senator HAWLEY. Well, I think the answer is we need to get those documents. And I just say to our friends in the media over here, you guys need to be asking for those documents, and we need to be asking for them, Mr. Chairman. We need to see those documents. And the President, the former President now can certainly choose to release them. I am sure they are part of his personal papers. Right, Mr. Wold?

Mr. WOLD. That's correct. And the first place to start would be the staff secretary's office under President Biden.

Senator HAWLEY. So here is the trail. If you want to know, if you want an answer to the question, did Joe Biden actually assent to the use of the autopen—and you think of all the people he pardoned, he granted clemency to, murderers, drug dealers, child rapists. Let's find out, did he actually authorize it? There should be a record of it is what we have learned today. Thank you for that testimony, Mr. Wold. There should be a record of it.

So this is a binary question. It is not, oh, we don't know. Gee, it is hard to say. No, actually we can find out. So I, right now, today, I call on President Biden, former President Biden and his staff, release the documents. You have them, you know you have them, release them. If what you did is legal and if you are really not embarrassed about it and you think it was totally constitutional, release the paper flow. Show us the documents where the President authorized the use of the pen for every single pardon and clemency and stay application. Let's see it. Let's see all of it.

And if you won't do it, we should subpoena those documents, and we should find out the truth of who was really running the White House because I think we can see it was not Joe Biden.

Thank you all for being here today. Mr. Wold, thanks for your testimony.

Senator SCHMITT. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Gentlemen, I want to try to separate policy and politics for a second. I know it is hard to do around this place, but I thought Senator Cornyn made a very good point in his opening remarks. I think Senator Smith made the same point that the policy here is very important. And I want to ask you your opinion on the policy. Professor, tell me briefly, I know you came to talk about autopens, but tell me briefly about the 25th Amendment.

Professor HARRISON. Senator, the 25th Amendment provides the process by which to implement a principle that's in the original constitution, which is when the President is unable to exercise power at the powers and duties of the Presidency, somebody else exercises them starting with the Vice President. And the 25th Amendment sets up a process by which if there's a question whether the President is able to do that, the Vice President and the heads of the executive departments can temporarily basically put the Vice President in as acting President, and then Congress ultimately decides the question.

Senator KENNEDY. Well, the standard—is it not, Professor, the standard is disability of the President. Is that correct?

Professor HARRISON. Unable to exercise the powers and duties.

Senator KENNEDY. Okay.

Professor HARRISON. Yes.

Senator KENNEDY. Here is what I would like your opinion on and the opinion of these two gentlemen here. You have all been staffers. You have worked in government. You have had a boss. In Mr. Spicer's case, his boss was the President of the United States. Let's suppose the President—using your experience as a staffer. You were working for the President, any President, hypothetically, a President. And let's suppose the President started talking like he was from outer space. Let's suppose the President became fatigued very easily. He couldn't finish a sentence without taking a nap. Let's suppose the President, I mean, if he was just physically in bad shape, mentally and physically. Mentally, he may or may not have—you are not a doctor—neurodegenerative disease, but physically, you can see—you could bake a Thanksgiving turkey in the time it takes him to walk across the stage.

What is as a member of his staff, what do you think is your moral obligation to say, wait a minute, the President can't do the job anymore? I know you are loyal folks. You believe in your President, this President, whichever President, I am speaking hypothetically. You are loyal, you want to be a good staffer, but you also have a moral obligation. How do you reach that decision, Professor? And I will go to each of you.

Professor HARRISON. Senator, I think the first thing you would have to do in a situation like that is exercise your own judgment. Is this—how serious is this problem? Because everybody has moments when they lose focus. It happens. But if somebody thinks this is a really serious problem, I think the first thing to do is the most difficult, which is to say to the President—because the 25th Amendment also provides that the President can say, I am unable to exercise the powers and duties of my office.

Senator KENNEDY. And suppose the President says—

Professor HARRISON. That would be extremely difficult, but I think it should be done.

Senator KENNEDY [continuing]. Look, trust me, I can. And it is clear to you that he has neurodegenerative disease and he can't. What do you do? Do you have a moral obligation as a staff member to go to the American people and say, we have got a problem here, it may cost me my career?

Professor HARRISON. Senator, I think at that point, you have an obligation to talk to the Vice President who is in charge of the Section 4 process under the 25th Amendment.

Senator KENNEDY. What about you, Mr. Wold? You have a moral obligation. I understand you want it to go away, you want to work it out within, but you can't. When does a staffer have a moral obligation to stand up and say he can't be President anymore, or she can't be?

Mr. WOLD. Well, Senator, the 25th Amendment only works if individual staffers or officers of the United States exercise that kind of moral judgment so—

Senator KENNEDY. That is what I am asking you.

Mr. WOLD. Yes, so, I mean, I think always, as the professor said, and the Presidency is an enormous burden, so it would be not one instance, it would have to be several instances of a failure to exercise judgment.

Senator KENNEDY. How do you make that decision? You are the staffer, I get it.

Mr. WOLD. Yes, well, I think it begins with prayer, of course, but after that, I think it's conversation with other staffers. And if you're unable to confront the President or to raise the issue with the Vice President, you should resign.

Senator KENNEDY. What about you, Mr. Spicer? Do you stand up and do it and tell the truth and run, or do you have a greater obligation to your boss?

Mr. SPICER. Well, luckily, I didn't have that problem. But I would say that you have a moral obligation as an American, as a citizen, as a human being. If the leader of the free world cannot conduct themselves to make the decisions that are critical to this country and to the world, you absolutely have a moral obligation to follow the chain of command. And if they don't act, then you must.

Senator KENNEDY. Do either of you gentlemen disagree with that? Professor?

Professor HARRISON. Senator, I think acting means talking to the people who have the responsibility or are in a position under the Constitution to do something with the situation.

Senator KENNEDY. You don't agree with Mr. Spicer?

Professor HARRISON. I'm not—Senator, I'm not sure exactly what he has in mind, other than talking about the—talking to the people who can make the decision.

Senator KENNEDY. Well, I am just trying to ask, you have all been staffers. Suppose you go to everybody you are supposed to go to, and they all say, my advice to you is to shut up. Do you have a moral obligation as a staffer to say, look, this person can't be President of the United States. It isn't policy. He physically can't do it.

Mr. SPICER. Senator Kennedy, I'll—it's not a question of whether a staffer has that obligation. It's whether you, as an American, have that obligation. And I think each and every one of us does.

Senator KENNEDY. Yes, but you can see it. An American can't. Professor, what do you think?

Professor HARRISON. Senator, I think there are situations under which someone in that position should speak publicly, but I also think that the views of a single individual who is not the person who is constitutionally responsible for taking measures should be considered by the public as just the views of a certain—of a—of one individual who has some information about the subject.

Senator KENNEDY. Thank you, Mr. Chairman.

Senator SCHMITT. Thank you. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman.

Gentlemen, thank you for being here. Actually, the fact that this is in the past kind of reminds me of that scene in Lion King where Rafiki the mandrill hits Simba on the head and said, doesn't matter, it is in the past. You know, I could see where my Democrat colleagues would like to use that argument, but it mattered.

And, you know, for me, I met President Biden as Vice President Biden when I was sworn in. He literally swore me in in 2015. And I have had several interactions with him over the years. There is no question that there was a significant degradation in his cognitive abilities. Probably the last time I spent much time with him was at a NATO summit.

And I do think there are a lot of legitimate questions to be asked about, know, who may have been tending the store, and I believe we should get to the bottom of it, but I want to look to the future. And back when this discussion was going on, I was suggesting—we know what the 25th Amendment does. Professor, I am kind of curious about why—and with due respect to my colleague from Louisiana, this is a hell of a burden to place on a staff. You know, Mr. Spicer, you have been in the White House. Can you imagine how heavy that would be and how unlikely it would be for you to be successful as an individual staff member?

But Professor Harrison, I am thinking more along the lines of what you see in boardrooms all the time about annual evaluations of the CEO or board members. What about the concept of something short of triggering the 25th Amendment where the cabinet members, hand-selected members of the President, confirmed by the Senate, maybe on an annual basis, have to have an attestation, that based on their work with the President of the United States, that he is mentally capable, fit, the same way that we have boards make those decisions about board directors and CEOs?

What would be wrong with some sort of a report or attestation to Congress from the cabinet members saying this man or woman is good to go, and it would be, you know, perjury to Congress if they ended up covering up and history proved that? What is wrong with something like that as we are looking forward?

Professor HARRISON. Senator, I would be—and maybe I am sort of being unduly protective of the independence of the other two branches, but I—

Senator TILLIS. Well, that is sort of why I want to leave it in the—that is why I want to—all I want is the cabinet to truthfully attest to the fact that their boss is of sound mind and body, and unless they lie, it is not an issue.

Professor HARRISON. Senator, I—

Senator TILLIS. It is an Article II responsibility to report to Congress like so many other things. What is wrong with that?

Professor HARRISON. I think it would be a very good idea for the President to create a process like that. My concern is the thought of Congress making such a process mandatory, especially in light—

Senator TILLIS. Well, I am trying to figure out the consequence because, arguably—I find it hard to believe that there were members of the cabinet that didn't go, you know what, we love this guy, he appointed us to this position, but he is missing a step. And they are refusing to—this is not about any one person. This is about 340 million people in this country. No one of us should think that we should somehow be given a break if we are missing a step. So all I am saying is you got to report honestly to Congress that the President of the United States, in your opinion, is absolutely demonstrated sound mind and body. It is like no other testimony. It

would be no different than us having them before the Committee and say, is the boss okay? And if they lied, they would be perjuring themselves. So what is the difference between that and some sort of a pro forma report that I would be willing to subject the current President to, and then we would have it for all the future Presidents? What would be wrong with that?

Professor HARRISON. Senator, again, I think the problem there is the Constitution has created a process for that, and that's the 25th Amendment. And that suggests that Congress can't create another process.

Now, I do think that the point you're making today is part of the political process that might lead Presidents to create a system like that on their own, which might enhance the people's confidence that they're okay.

Senator TILLIS. I am about to run out of time.

Mr. Spicer, what do you think?

Mr. SPICER. Senator, the President normally goes under a routine physical every year. In the case of President Biden, it was Dr. O'Connor who affirmatively stated his fitness for office. The doctor is probably the most competent person to attest to the President's fitness for office. The doctor should be held accountable for stating in the affirmative that President Biden was fit for office.

Senator TILLIS. Thank you. Thank you, Mr. Chair.

Senator SCHMITT. Thank you. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

The Biden administration may go down in history as the most brazen constitutional fraud in American history, a Potemkin Presidency fronted by a failing puppet with staffers behind the scenes pulling the strings.

This is not political hyperbole. The American people saw it with their own eyes during the June 2024 debate. Numerous times Biden stood frozen behind the podium, mouth agape, eyes frozen and unblinking. When he did speak, his words were confused and disjointed. I said that night, this is the most consequential Presidential debate in history because it will result in one of the two candidates being removed from the ballot. That was exactly right.

And following that debate, the Democrats recognized the collapse. They pulled out their knives and took out President Biden like Caesar on the Ides of March. For all of their strutting about, protesting that they support democracy, not a one of them gave a damn about democracy when they pulled Biden off the ballot and dropped Kamala Harris in without a single Democrat primary voter voting for him. And you know what? Not a single Democrat is here today because not a single one of them gives a damn about the fact that they lied to the American people for 4 years.

They knew. Every one of them knew that Joe Biden was mentally not competent to do the job. The White House press secretary, she knew when she stood in front of the American people and lied over and over and over again. And they are not here because they can't defend themselves.

It wasn't a surprise. For 4 years, the White House hid President Biden from Republican Senators, would not let him meet with us. He served 4 years in this body. We all know him. And they deliberately lied. And by the way, Jake Tapper had a bombshell book

exposing the incredible scandal that Biden's mental decline was covered up by Jake Tapper. There is a Yiddish word, chutzpah. And that truly is chutzpah. How dare we lie and cover up what we all knew?

Now, I have been asked literally a thousand times by Texans, who was running the country? And I am going to give you the most terrifying answer. I don't know. I genuinely don't know. And not a single Democrat here cares.

The most telling proof of Biden's decline came with the signature of the President, the symbol of executive authority that was outsourced to a machine.

Mr. Wold, you are a lawyer who served in the White House Counsel's Office. You understand the gravity of Presidential action. Does the President's signature carry legal and constitutional weight under Article II?

Mr. WOLD. Yes.

Senator CRUZ. Is the act of signing an Executive Order or signing a law or granting a pardon a delegable duty of the President?

Mr. WOLD. So in that opinion in 2005 from OLC, they said essentially that an autopen could be used by a subordinate, but the President's determination as to sign the document can never be delegated.

Senator CRUZ. Can that authority be transferred to a staffer or machine without the President's explicit authorization?

Mr. WOLD. Never.

Senator CRUZ. And if you look at the statistics, the statistics are stunning. In 2021, President Biden issued 78 Executive Orders. None were signed with an autopen. That first year of the Presidency, Biden, I suppose, was relatively lucid, and 78 Executive Orders he signed by hand. The second year, however, we see the autopen emerge. The first autopen Executive Order was issued on July 15, 2022. After that day, 100 percent of the Executive Orders issued in 2022 were signed by an autopen. In 2023, Biden issued 24 Executive Orders; 16 were autopenned. In 2024, Biden issued 19; 14 were autopenned. In 2025, Biden issued 14 Executive Orders. Every single one was autopenned.

Mr. Wold, let me ask you as a legal matter, if there is a law that has passed both houses of Congress and it goes to the White House and a staffer autopens signing that law without the President's authorization, is that law legally passed and signed into law?

Mr. WOLD. No.

Senator CRUZ. If an Executive Order is issued and a staffer autopens it without the President's authorization, is that Executive Order legally binding?

Mr. WOLD. No.

Senator CRUZ. And if a pardon is issued from the President of the United States and a staffer autopens it without the President's authorization, is that pardon legally binding?

Mr. WOLD. No.

Senator CRUZ. Under the Biden White House, the ceremonial song "Hail to the Chief" was effectively replaced with "Hail to the Pen," and it was an outright assault on democracy. And every reporter covering this ought to ask, why doesn't a Democrat care?

We heard about the moral responsibilities of a staffer. How about an elected Senator who knows damn well that if we get into a war and Iran is preparing to fire a nuclear weapon at the United States, that the Commander-in-Chief is busy playing with his jello and is not competent to defend ourselves. And every member of the cabinet, the chief of staff, the press secretary, and the Members of Congress who lied about this on a daily basis with the press's complicity, they are all responsible for subverting democracy.

Senator SCHMITT. Senator Cornyn.

Senator CORNYN. Professor Harrison, we have talked about the mechanics of the 25th Amendment whereby an incapacitated President would be removed. But it strikes me that, ultimately, it happened, albeit not before the end of President Biden's full term. What we saw happen after the disastrous debate in the summer of 2024 is basically an exercise of the powers of the 25th Amendment by the political elites and the Democratic Party to get President Biden not to run again and to substitute Kamala Harris for him as the Democratic nominee for President.

So, Mr. Spicer, maybe the mechanics were a little bit different. Maybe the timing was not the same, but doesn't that demonstrate the capacity of the leadership of the Democratic Party, of the Biden family, of the senior staff in the President's administration to be able to convince the President that he no longer was capable of serving and needed to step down?

Mr. SPICER. Senator, the left and their friends in the media like to throw around terms like threats to democracy, constitutional crisis. And if we don't have confidence in the leader of the free world making decisions, that truly is the definition of a constitutional crisis and a threat to democracy. So for all these folks to stand up here and use those phrases over and over again and then not have the desire to show up, to understand what's happening, to stand up at the time, as we discussed earlier, whether it was a staffer or a cabinet member, to literally avoid going to the Oval Office and, in the case of the media, to avoid the questions that were so clearly obvious to the rest of America, shows that they were more concerned with power and preserving that power and an agenda than they were at really caring about the Constitution and democracy.

Senator CORNYN. I agree that that is the clear conclusion. And obviously, they decided to do it only at such a time as that ability to wield power was coming to an end. If in fact, President Biden had remained the nominee of the Democratic Party and then ran against and lost to President Trump, these folks would be out of luck and out of power, so they decided to act under that circumstance.

Mr. SPICER. Senator, you look at a lot of these decisions, and it was pretty clear that there was a handful of folks at the top of the Biden administration and Biden White House that had been around him for decades where all of that information funneled. So I mentioned before, there are approximately 20, 25 senior White House staffers that have the rank of assistant to the President. Those are the highest White House staffers. I would bet that only a handful of them ever interacted with President Biden on a daily basis. The rest of them had their communications funneled through other people.

If the press secretary, the communications director, whose job it is to speak on behalf of the principal in lieu of them being able to talk or communicate don't have access to those individuals at the senior most level, then what good are they?

And I would argue that while many times we heard people in the press and on the left accused the Trump White House of "lying," for them to go out there and talk about the President's stance on issues, what President Biden thought or didn't think on a personnel issue or policy issue, when in fact they had never spoken to him, is in fact the epitome of lying.

Senator CORNYN. One of the most consequential actions or inactions of the Biden Presidency during 4 years was his failures to secure our southern border and to deal with the illegal immigration. I have in my hand examples of the Biden immigration proclamations and Executive Orders, and there are a lot of them, as you know. They also include things like granting temporary protected status to large populations of immigrants, particularly from countries in Central America, rescinding Trump administration policies when it came to enforcing our laws at the border, granting parole, which is essentially a permission slip to enter the country in a way that would otherwise be illegal.

And Mr. Chairman, I would ask unanimous consent that this document be made part of the record as an example of the sort of consequential border security and immigration-related measures that President Biden purported to sign.

Senator SCHMITT. Without objection.

[The information appears as a submission for the record.]

Senator CORNYN. Mr. Wold, I do want to followup on a couple of things with you and Mr. Harrison and also Mr. Spicer. Under the Presidential Powers Act, we could have a special access request, correct, to the archivist to find out what assent was actually given by Joe Biden on the autopen. Is that your understanding?

Mr. WOLD. If they kept records, yes.

Senator CORNYN. Right. Right. Well, I think that will be something we will be pursuing.

Professor Harrison, I wanted to ask you, you know, sort of on the Article I branch's role—and I think I understand your concern when you say the President could do something, you are dealing with sort of a separation-of-powers issue is sort of what I am reading into that. So the Article I branch can impeach for high crimes and misdemeanors should the Constitution be amended, in your view, to deal with this incapacitation. So impeachment would be a vehicle beyond just the 25th Amendment, but impeachment would be a vehicle to deal with these issues.

Professor HARRISON. Senator, there is a longstanding question about whether impeachment is appropriate for inability. There has been questions right at the beginning of the republic about a couple of judges who were in very poor shape, not that they would committed crimes, they were impeached and removed, and there were doubts as to whether impeachment was appropriate for that because there was problem—their problem was age and inability.

So you're absolutely right that there is a doubt right now whether the impeachment process—and it goes back a long, long way—whether the impeachment process is a way of doing—dealing with

inability as opposed to misconduct. It's clearly primarily directed at misconduct, and I think that if Members of Congress are thinking about an additional constitutional amendment, and maybe they should be, they should think both about adapting the impeachment process to inability, which, as I say, right now it's not clear it's properly used in those situations, or creating yet some other political process to deal with Presidential inability if lawmakers think that the political process that is in Sections 3 and 4 of the 25th Amendment is inadequate.

The last thing I'll say, just as a policy matter—and this is not speaking on the legal question—I do think it's important that any decision about Presidential inability remain something that's decided by politically accountable people, that it's treated as a political decision. It can't just be a technocratic decision.

Senator SCHMITT. Mr. Spicer, you have criticized the corporate media and legacy media folks for sort of lying down here or being complicit because of their, whether it is Trump derangement syndrome or whatever the reason was. Who specifically do you think gets a gold star for lying most profusely and just sort of continuing to cover this up over the years?

Mr. SPICER. Sir, that would be like a photo finish. There would be a lot that would be probably right there at first place. They're all culpable. I mean, I read some of the headlines to the Committee earlier, The Washington Post, CNN, NBC, without evidence, to use their phrase, went after President Trump's physical and mental acuity and yet failed to ask similar questions of the White House press office publicly. They failed to cover the stories. I don't think that there's a winner. I think they're all losers.

Senator SCHMITT. Thank you. And then we will sort of wrap up here with Professor Harrison and Mr. Wold. So moving forward, we mentioned maybe possibly amending the Constitution or further exploring whether incapacitation is an impeachable—you know, if impeachment is a remedy. What other, in your experience, what other things moving forward could be done to make sure that this scenario that we saw play out over the last 4 years never happens again?

Professor HARRISON. Senator, I think the most important thing that can be done is something you're doing right now, which is draw public attention to this problem, and so give Presidents an incentive to take steps that will reassure the people that they are sound and able to perform their functions.

Senator CORNYN. Mr. Wold?

Mr. WOLD. I would agree with the professor and just add that there should be some accountability for the staffers and the officers of the United States who acted to conceal and to cover up the President's incapacity from the American people. One other issue that is tied up in sort of this bundle of incapacity, impeachment is also succession. And that's something so many have written about extensively over the years. We are very blessed that we have never had a double vacancy with the President and the Vice President, either because of terror attack or misconduct. That's something that legal scholars have said for many decades that Congress really has to work on that. And I would add, yes, in fact, that's something you all should take up with some seriousness.

Professor HARRISON. May I say spontaneously, yes, please.

Senator SCHMITT. Okay. Well, I want to thank the witnesses for your testimony here today. Written questions for them may be submitted for the record until June 26 at 5 p.m.

And with that, this hearing is adjourned. Thank you.

[Whereupon, at 12:24 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

Opening Statement
Chairman Charles E. Grassley of Iowa
Unfit to Serve: How the Biden Cover-Up Endangered America and Undermined the Constitution
June 18, 2025

Good Morning,

I'd like to welcome everyone to the Judiciary Committee's hearing.

We have multiple member statements today. So, without objection, I'll introduce my longer statement into the hearing record.

Today's hearing is about competency, corruption and cover-up within the Biden administration. Simply put, the last administration was rudderless.

From one crisis to another, the Biden administration failed and faltered.

The partisan media did their best to cover-up those failures but that can only be done for so long.

Having discussed these issues with my colleagues, Senators Cornyn and Schmitt, who requested to lead this hearing, all of us agreed that this committee must discuss these important matters.

An important part of this discussion involves the last administration's corrupt weaponization of law enforcement against Trump and his associates, which was done to try and win an election.

That, too, they tried to cover-up.

Since I became chairman of this committee, my investigative work has exposed how that weaponization was done.

Look at the FBI's Arctic Frost investigation, which ultimately became one of Jack Smith's cases against President Trump.

Based on government records I've made public, the case's origin was anti-Trump FBI agent Thibault and his merry band of partisans.

A partisanship that should never be present in our FBI.

FBI Agent Thibault violated the FBI's no self-approval rule.

Literally, there's a rule on the books in the FBI called the No Self-Approval Rule.

That rule says that a supervisor isn't supposed to create a case and then approve that case for themselves.

The records I've made public show he did exactly what that rule forbids.

His bad conduct also exposed the cultural rot within the FBI and the DOJ's leadership. All of them eagerly approved of Thibault's case.

All those alleged layers of review on the 7th Floor of the FBI building turned out to be the Democratic National Committee's echo chamber.

In emails I made public, Thibault told anti-Trump prosecutor Thomas Windom:

"This case will be prioritized over all others" and "it frankly took too long for us to open this."

The Biden FBI then proceeded to obtain possession of Trump's phone when he wasn't even a formal subject of the investigation.

The records indicate that the opening of Arctic Frost was an **intentionally designed vehicle** by which the Biden administration would ultimately prosecute their primary political opponent: President Trump.

Moreover, I questioned then nominee-Todd Blanche about whether Jack Smith provided emails I've made public to Trump's defense counsel.

Blanche said the Biden prosecutors didn't provide all the emails.

If the defense team knew that partisan FBI agents had opened the case against Trump in breach of FBI rules, they would've been able to raise those issues.

Then, I made emails public relating to the Biden administration's political investigation into Peter Navarro.

Thibault and his other anti-Trump agent Walter Giardina, were also involved in this case.

Upon hearing that Navarro would be indicted Thibault exclaimed "Wow. Great."

Whistleblowers have told me that Special Agent Giardina openly stated his desire to investigate Trump even if it meant false predication.

Whistleblowers have also told me that Jack Smith's deputy, J.P. Cooney, wanted to open more cases on Trump.

He allegedly justified using compulsory process to obtain more information merely based on partisan news outlets.

And guess who was also allegedly involved in those communications?

Special Agent Walter Giardina.

All of this is more evidence of law enforcement weaponization that would've never seen the light of day but for whistleblowers.

I'll have more to say about this matter later today.

Then we have the Biden FBI's anti-Catholic Richmond memo.

That memo used the shoddy research of the radical Southern Poverty Law Center to accuse traditional Catholics of being violent extremists.

Based on records I released the other week, there wasn't just one FBI document that used biased anti-Catholic sources, but over a dozen.

The anti-Catholic memo was distributed far more broadly than the Biden FBI told Congress.

And more FBI field offices were involved than we'd been led to believe.

It wasn't just the Biden and Wray FBI that failed the people.

My oversight continues to reveal the Biden administration's either deliberate indifference or downright incompetence to unaccompanied children.

Recently, I released records showing that the Biden Health and Human Services also failed to address a backlog of over 65,000 reports expressing concern for unaccompanied children.

This included 7,346 reports related to trafficking.

At the same time the Biden administration was busy targeting pro-life Americans, parents at school board meetings and traditional Catholics, it failed to follow up on actual reporting of children in danger.

The Trump administration's now cleaning up this mess.

Three dozen cases have been accepted by U.S. Attorneys for prosecution, with 11 arrests and three convictions so far.

The Biden administration had a responsibility to do right by the American people.

By any metric, they failed.

The question is what did the president actually know or even understand and who was actually running the government?

But regardless, the buck stops with the president, and President Biden will have to answer to history for what happened the last four years.

Statement of
John C. Harrison
Professor of Law
University of Virginia

Hearing Titled “Unfit to Serve: How the Biden Cover-Up Endangered America and Undermined
the Constitution”

Committee on the Judiciary
United States Senate

June 18, 2025

580 Massie Road
Charlottesville, Virginia 22903

This statement, prepared at the Committee's request, presents my views concerning legal and policy issues associated with the practice of affixing a facsimile of the President's signature to documents that the President has not signed manually, including with the device known as the autopen.

I believe that Congress has power to regulate the process by which the President's signature is affixed to an official document other than by the President's manual signature. Congress can regulate that process in order to provide a documentary record showing that the President manifested his assent to that action on his behalf. I first describe the current practice as I understand it and issues that the practice raises, then discuss Congress's relevant constitutional power, then outline a way in which Congress could exercise that power.

The Constitution and statutes confer many powers on the President, including for example the power to pardon offenses against the United States. Those powers are often exercised through documents on which the President's signature signifies that the President has made the choice that is authorized by law. One very important power is explicitly required to be exercised by signing a document. Article I, section 7 of the Constitution provides that bills that have passed both houses of Congress are to be presented to the President, and that if the President approves a bill that is presented to him after passing both houses of Congress, "he shall sign it." The clause conferring the pardon power does not provide that pardons are to take the form of signed documents, but pardons have long taken that form.

When the President is authorized to take an official action by signing a document, the central example of that process is manual signature by the President personally. Because manual signature is the central example of signing, a question arises whether signing a document can be accomplished in any other way. In 2005, the Office of Legal Counsel of the Department of Justice issued an opinion concluding that the President can sign a document other than by personally affixing his signature.¹ If the President signifies his wish that a facsimile of his signature be applied to a document, for example by an autopen, affixing that facsimile pursuant

¹ Office of Legal Counsel, United States Department of Justice, *Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It*, 29 Op. OLC 97 (2005).

to the President's direction constitutes signing the document by the President. For example, as the opinion explains, the President might wish to sign a bill while he is away from the capital city, so that the bill can go into effect immediately. In order to sign a document that is not physically before him, the President can direct that a facsimile of his signature be affixed to the document. I agree with that conclusion and find the opinion's reasoning persuasive. For ease of exposition, I will refer to the process by which a facsimile of the President's signature is affixed to a document as signature by autopen.

Signature by autopen is one way for the President to sign a document, and presents a distinctive version of a question that arises with respect to all forms of presidential signature: how to create an official record confirming that the President signed a document. When the President signs a document manually, an individual with knowledge that the President took that action can attest that the President did so. Today, commissions the President issues to officers of the United States generally bear the President's signature and an attestation by the Secretary of State.

When the President directs that his signature be affixed to a document, the process of signing involves two steps, rather than the one step of the President signing manually. First, the President indicates that his signature is to be affixed to a document, then someone implements that directive, for example by using an autopen. A question can arise whether the President took the first step. If that step is absent but the President's signature is affixed to a document nevertheless, the document does not reflect the President's assent. The legal consequences of the document under those circumstances depend on the rules governing documents that appear to be, but are not, genuine; I will not discuss those rules. The danger is that a document that does not reflect the President's assent will be treated as if it did, either because legal rules make some actually inauthentic documents legally effective, or because the defect is not detected.

Because of that danger, Congress has good reason to take steps to ensure that a facsimile of the President's signature is affixed to a document only when the President has directed this his signature be so affixed. The next question concerns Congress's power to take steps of that kind.

I think that Congress's power in this connection is substantial, though not unlimited. Under the last clause of Article I, section 8 of the Constitution, the Necessary and Proper Clause, Congress has power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers [listed in the preceding clauses of Article I, section 8], and all other powers vested by this Constitution in the government of the United States, or any department or officer thereof." The last part of that provision, called the Horizontal Necessary and Proper Clause, enables Congress to make laws necessary and proper for carrying into execution the powers of the President and of the federal courts.²

Congress's horizontal power is an important component of the constitutional system, because it enables the national legislature to give the other two branches the kind of support that only legislation can give. For example, that power enables Congress to provide criminal punishment for the falsification of federal judicial records.³ The federal courts can better perform their functions with laws of that kind in place. Only Congress can create a federal crime, so only legislative power can provide that kind of support.

On the other hand, the power to carry another branch's power into execution is not the power to exercise discretion the Constitution confides to the other branch. The horizontal power does not enable Congress to decide whom to pardon, or which bills the President shall approve.⁴

² The fundamental scholarly work on the horizontal necessary and proper power is William van Alstyne, *The Role of Congress In Determining Incidental Powers of the President and the Federal Courts: A Comment on the Horizontal Effect of the "Sweeping Clause,"* 36 OHIO STATE L. J. 788 (1975).

³ For example, 18 U.S.C. § 505 criminalizes forging "the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof . . . for the purpose of authenticating any proceeding or document."

⁴ Many of the President's powers come from statute, not directly from the Constitution. When Congress confers power on the President by statute, the legislature may have some power to regulate the process through which the President exercises that power that derives, not from the horizontal necessary and proper power, but from the power that Congress exercised in conferring authority on the President. When the President exercises a power conferred by statute, however, the President is also using the Article II executive power, so congressional regulation of the President is a regulation of both a power conferred by statute and regulation of a power conferred by the Constitution. The requirements for a legitimate exercise of the horizontal power are more demanding than for a legitimate exercise of a power that does not regulate the constitutional authority of a coordinate branch of government. A statute that satisfies the requirements of the horizontal power *a fortiori* satisfies the requirements of any other congressional power, so my conclusion that the kind of legislation I discuss would be a permissible use of the horizontal power entails that such legislation also would be a permissible use of Congress's other powers when it confers statutory authority on the President.

Proper exercises of the horizontal power must facilitate the power being carried out without directing the exercise of choices confided to an officer or department other than Congress. Because the Necessary and Proper Clause enables Congress to enact laws that are a means to the end the clause states, those basic features of the horizontal power should be implemented through an inquiry into means and ends. Laws are legitimate exercises of the power when they serve the goal of facilitation, do not serve the goal of exercising or controlling the power being assisted, and do not in practice substantially hinder the exercise of the power being assisted.

With those principles about horizontal necessary and proper legislation in mind, I suggest that Congress can and should provide for an official record of presidential decisions to affix the President's signature to a document through a means other than manual signature (a means such as an autopen). When the President directs that his signature be so affixed, another official should prepare and certify a document recording the certifying official's knowledge that the President gave that instruction. The document should describe the circumstances under which the certifying official obtained that knowledge, for example through a telephone conversation with the President, and should include the certification that the President's decision was with reference to the document to which his signature was affixed. The certifying document should be published; the *Federal Register* and the *Weekly Compilation of Presidential Documents* would be appropriate official publications for certifying documents. In order to ensure that the certifying officials may take a binding, ministerial act on behalf of the government, Congress should enable the President to appoint some individual or individuals who otherwise serve on the White House staff as inferior officers to perform that function.

A law like that would be a legitimate exercise of the horizontal necessary and proper power. Ensuring that documents bearing the President's signature reflect the President's decisions carries into execution the power exercised by signing the document. Inaccurate records of official acts, including forged records, detract from the exercise of the power that operates through the record. Part of the President's power to pardon offenses is the authority to decide which offenses not to pardon. A forged pardon could interfere with the President's choice not to pardon, so steps that prevent forgery facilitate the constitutional authority to make that choice.

The law I have described would impose the same documentation requirements for all presidential decisions to sign by autopen or in a similar way, and so would have no effect on the substance of the President's decisions. Neutrality of that kind is in my view constitutionally mandated, and can readily be achieved. As is often the case, the legislature can achieve neutrality by applying a uniform rule to all situations, leaving variation to result from the President's choices, not Congress's.

One especially delicate point concerning horizontal legislation involves the practical burden that Congress places on the power being facilitated, power Congress does not itself hold and is not allowed to control. A procedural requirement, such as a requirement of documentation, might fail to qualify as carrying another power into execution if the procedure impeded the exercise of the other power. Required procedures frequently impose some burden, however. For example, a requirement that pardons be in writing would make granting pardons slightly more difficult for the President.

A statute requiring documentation of decisions to sign with an autopen (or another substitute for manual signature) would have a minimal burden on the President, if it has any burden at all. Use of an autopen (or a similar means of affixing the President's signature to a document) already involves a procedure by which the President signifies his decision. I am not sufficiently familiar with the details of White House document flow to know how that process now works. I do not know how the White House system currently documents the President's decisions to have his signature affixed to a document other than by manual signature. However the system now operates, building a certification of the President's decision into the existing process will impose at most a trivial additional burden on the President.⁵

This statement, and testimony I present to the committee, address legal and policy questions. I do not attempt to describe current or recent White House practice in affixing the

⁵ It is possible that at the hearing for which this statement is prepared, the Committee will learn more about the existing process for affixing the President's signature. I recommend that if the Committee decides to propose legislation calling for documentation of the President's choice to use a means of signing other than manual signing, that legislation should be designed to integrate any new requirement into the procedures already in use at the White House.

President's signature to documents the President has not signed by hand. The statement was prepared, and my testimony is presented, as a public service. I speak on my own behalf, and not on behalf of any client or of my employer, the University of Virginia.

PREPARED TESTIMONY
 SEAN M. SPICER
 30th WHITE HOUSE PRESS SECRETARY
 18 JUNE 2025

Chairman Grassley, Ranking Member Durbin, and members of the Committee:

My name is Sean Spicer and I served as the 30th White House Press Secretary from the first inauguration of President Donald Trump until September 1, 2017, and am now the host of the Sean Spicer Show podcast.

I was asked by the Committee to share my experience as a senior White House staffer with respect to the interactions that I and other senior staff had with President Trump during his first term. During my tenure as press secretary, I interacted with the President multiple times every day. Most days, I would talk to him by phone or in person in the morning and then multiple times throughout the day, including weekends. For the most senior positions in the White House—those designated by the rank of Assistant to the President, which includes White House Chief of Staff, White House Counsel, and Press Secretary—it is critical to have regular interaction with the President.

The position of press secretary especially demands this type of consistent and intentional communication. I, or any other press secretary regardless of Administration, could not do the job effectively without regular communication with the President. It was my responsibility to have the most up-to-date understanding of President Trump's positions on policy, personnel and everything in between. Admittedly, I made a couple rather high profile mistakes during my tenure. But those mistakes almost entirely occurred when I wasn't connected with the President's thinking or position on an issue or policy. Coordinating and collaborating among even the most senior staff cannot replace direct communication with the President himself.

In my position, I was very well acquainted with President Trump's work, his day-to-day responsibilities, and his fitness for office. I watched him serve with the strength and endurance of a man half his age. As you can see on an almost daily basis through events, statements, and social media posts, he is up early and ends his days very late. Yet in several instances during his first term, the media questioned his fitness for office. Guests and so called "experts" like [Sanjay Gupta at CNN](#) were called upon to speculate on the results of Trump's physical and mental well being.¹ *The Washington Post* ran hit pieces with headlines like, "[The White House struggles to silence talk of Trump's mental fitness](#)".² Vox wrote, "[is Trump mentally unfit to be President?](#)"³ NBC ran a story by the Associated Press "[raised mental health concerns](#)"

¹ CNN, January 17, 2018: <https://www.youtube.com/watch?v=CXpvFjxDmSI>

² January 8, 2018:

https://www.washingtonpost.com/politics/the-white-house-struggles-to-silence-talk-of-trumps-mental-fitness/2018/01/08/2a7d4092-f493-11e7-a9e3-ab18ce41436a_story.html

³ January 19, 2018:

<https://www.vox.com/science-and-health/2018/1/19/16866040/donald-trump-diagnosis-mental-health-behavior>

regarding the President.⁴ [CNN's Brian Stelter](#) questioned if members of the news media were tiptoeing around "obvious" questions about President Trump's instability.⁵ These headlines weren't isolated instances; most major news outlets ran with these ridiculous types of propaganda pieces. To use one of the media's favorite terms, these inquiries were all "without evidence."

That brings us to the juxtaposition of how the very same media covered the Biden Administration. To be blunt, the legacy media failed the American people. They failed to do their job. Many, rightly so, believe the media in this country is culpable in covering up the obvious decline of the 46th President and leader of the free world.

The scrutiny that was baselessly directed at President Trump during his first term was wholly absent from the media coverage of the Biden White House. The media lacked any sense of curiosity that would naturally stem from what the public could see with their own eyes. Even in the face of deeply concerning—and public—signs of President Biden's mental and physical decline, legacy media outlets were silent. Biden and his senior aides flatly dismissed the need for a cognitive test during his tenure as had been requested of President Trump, yet no protest was heard from the voices that were so critical of Trump. With the exception of a couple White House reporters like Fox News Channel's Peter Doocy, reporters generally refused to breach the subject at White House press briefings.

News outlets weren't the only ones complicit covering up Biden's declining state. As I described, presidential staff would have—or should have—been interacting with Biden on a daily basis. At best, his administration was grossly negligent. At worst, Biden's staff actively concealed his fitness for office.

When White House Press Secretary Karine Jean-Pierre [said President Biden could run circles around her](#), there were only two possible conclusions: that she herself was in very poor physical condition herself and in need of medical assistance or she was lying.⁶

There is no question there was a vast difference between how Trump interacted with his staff and how President Biden did. Whether one supports President Trump or not, he is the most accessible and transparent president in modern history, and there is no question who is running the country. The same can't be said of Biden.

It is the president who is elected by the American people – the role of staff is to execute his agenda and policies.

⁴ January 9, 2018: <https://www.nbcnews.com/health/health-news/trump-faces-presidential-fitness-test-friday-amid-raised-medical-health-n836271>

⁵ August 24, 2019: <https://www.cnn.com/2019/08/25/media/donald-trump-job-fitness-press>

⁶ June 2022, "I can't keep up with him [Biden]" <https://www.youtube.com/watch?v=t7Oc8X-eRng>

I thank the committee for holding this hearing so that going forward the American people can have confidence in who is running the country and making critical decisions.

The American people deserve no less.

Testimony of Theodore Wold
Before the
Senate Judiciary Committee
“Unfit to Serve: How the Biden Cover-Up Endangered America and Undermined the
Constitution”
June 18, 2025

Chairman Grassley, Ranking Member Durbin, Members of the Judiciary Committee. Thank you for the opportunity to testify before you today about how the cover up of President Biden's mental decline endangered America and undermined the Constitution. My name is Theo Wold. I am a Senior Advisor at the Claremont Institute's Center for the American Way of Life, board member of The Oversight Project, and served in the White House of the First Trump Administration.

The US Constitution vests the executive power in a single person: the President.

At the Founding, the President exercised the executive power through only a small group of trusted advisors and personnel. President Washington had a four-member cabinet.

Today, the President directs a leviathan executive branch, with fifteen cabinet departments and at least four million executive branch employees.

This executive branch proliferation has a single source of democratic legitimacy: that, by order of the U.S. Constitution's Article II, the President is both elected by the American people and vested with the executive power—all of it.

That is why so much judicial energy has been focused on the presidential removal power. Nearly 100 years ago, in *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court confirmed that the President possessed the sole power to remove officers of the Executive Branch. Numerous subsequent cases have refined and applied that principle, most recently, *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020). See also *Trump v. Wilcox*, 145 S.Ct. 1415 (2025). Decisions that restrain the President's removal power, like *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), have been limited in recent years and may yet be overruled altogether. That is because preserving the President's removal power is essential to the democratic legitimacy of the office. The power to remove is the power to control the bureaucracy: it is the negative power to remove officials who do not represent the President's policy vision.

The Constitution imposes a positive duty on the President to take action to execute the laws. U.S. Const. art. II, § 3. The Constitution reserves other positive powers, including approving or vetoing bills (U.S. Const. art. I, § 7, cl. 2), serving as Commander in Chief, or granting "Reprieves and Pardons for Offenses against the United States" (U.S. Const. art. II, § 2, cl. 1) *solely* to the President. These powers cannot be delegated.

Traditionally, the President takes positive actions and authenticates those actions through his signature. His signature is required for the most significant actions he may undertake: to sign an executive order, to take any action vested in him by the Constitution—as in granting a pardon, and to take the most important action of all: to sign a bill into law. In all these cases, the President's signature is itself the protection of democratic principles. When the President signs, he communicates his assent and endorsement of the action he takes.

The autopen is a device that signs the President's signature to a document. The Oversight Project, of which I am a founding board member, has discovered that the Biden White House deployed an autopen to affix President Biden's signature to pardons, prison commutations,

Executive Orders, and proclamations. The Oversight Project's research has found that the Biden White House first deployed the autopen to affix President Biden's signature to a proclamation on *day five* of his Administration and that there were at least three different autopen signatures in use throughout President Biden's tenure in the White House.

In June 2022, the Biden White House began deploying the autopen to sign clemency warrants and Executive Orders in July of 2022. Autopen use skyrocketed from there. We found that of the 51 clemency warrants issued during the Biden Presidency, over half—32 in total—were signed with an autopen. These include some of the most controversial acts of clemency of the Biden presidency, including the death row commutations and preemptive pardons of members of the Biden family, Dr. Anthony Fauci, General Mark Milley, and more issued in the final days of Joe Biden's presidency. We reviewed President Biden's schedule and publicly available media and were unable to find any record of President Biden personally approving these actions (such as a statement by President Biden himself to reporters). In addition, we found that the Biden White House used the autopen to affix President Biden's signature to clemency warrants and Executive Orders while the President was in Washington D.C. for at least some of that day and thus was presumably available to sign important records. Finally, we found multiple days where President Biden wet signed a bill into law, but used an autopen to issue an Executive Order or for other important records.

The Biden White House's widespread use of an autopen to affix President Biden's signature to documents that exercised powers belonging solely to the President poses significant constitutional, legal, and practical concerns. Once the President's signature is copied and loaded into the autopen, the machine can sign documents as the President himself would. To be blunt: by using the autopen, *anyone* can sign documents as the President himself.

To be clear, I am not here today to say the autopen is "bad." I am here today because of questions concerning President Biden's capacity and whether the autopen was used to usurp presidential power. The autopen introduced a tremendous risk *as to President Biden* because it divorces the President's signature from what it is expected to represent: the President's assent and endorsement. It is (now) admitted that President Biden was cognitively impaired—particularly towards the later years of his Presidency. In that scenario the autopen can become a weapon, allowing someone other than the President to wield the executive power that belongs only to him.

In 2005, the Office of Legal Counsel wrote an opinion concluding that an autopen could be used for the most important presidential action: to sign a bill into law. But from the first paragraph of that opinion, OLC was clear that, although the President could delegate the action of signing, he could not delegate the decision whether to sign. "We are not suggesting that the President may delegate the decision to approve and sign a bill, only that, having made this decision, he may direct a subordinate to affix the President's signature to the bill." *Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It*, 29 Op. O.L.C. 97 (2005).

In this sense the autopen is a perfect lens into the broader question of the 25th Amendment. Was the autopen (among other schemes) used to side-step the 25th Amendment and allow those acting for an incapacitated President to run the Country? The Oversight Project's research reveals that is the key question.

Congress and the States ratified the 25th Amendment because of a recognition that the Republic cannot operate with an incapacitated President. Historical examples of presidential assassinations and the prolonged incapacitations of Presidents James Garfield and Woodrow Wilson represented constitutional crises, even if the American people did not know it at the time. The 25th Amendment was designed to put questions of Presidential capacity to rest. But here it did not.

There is something far more concerning about the Biden Administration than the historical record that led to the 25th Amendment. As to both President Wilson and President Garfield, the White House dramatically *contracted*. Much of the work of the Presidency went undone. But under President Biden, Executive Power massively expanded through trillions of dollars of federal spending, the vast expansion of the administrative state, and aggressive use of the pardon power to shape policy.

As the sitting President declined, potentially to the point of incapacitation, his Administration's expansion of the powers of the Presidency raises more questions than answers. Any investigation into this matter should focus not only on *whether* President Biden directed or authorized subordinate staff to take action in certain instances, but whether he had the *capacity* to do so at all. The 25th Amendment lays out clear procedures for what to do when the President is incapacitated. It was carefully drafted and informed by history. The Biden Administration ignored it all to aggrandize the Presidency and push the country further in their preferred ideological direction.

I worked for President Trump in the first Trump Administration. I have personal knowledge of how the autopen is used. The autopen can be credibly used only where appropriate documentation is created—both to assure that the President himself is directing its use, and to learn what person has purported to exercise that Presidential power. Creating that documentation makes sense. There *should* be an appropriate record. Careful lawyers managing paper flow in the Staff Secretary's Office and elsewhere in the White House will work to minimize legal risk by carefully documenting Presidential approval. Congressional staff does the same for important actions, like subpoenas. Exploring that record is essential to making progress in investigating this matter and understanding how the cover-up of President Biden's mental decline posed not only national security risks, but also undermined the Constitution.

Thank you for the opportunity to testify and I am happy to answer any questions.

Responses by John Harrison to Questions for the Record Regarding the Senate Judiciary Committee
Hearing on June 18, 2025

Question: Article II vests the executive power in the single person of the President of the United States of America. Would our constitutional system be able to properly function if the one person vested to wield the executive power is incapacitated, and if not, why not?

The constitutional system cannot function effectively without a person who is empowered to exercise the powers, and perform the duties, of President, and is able to do so. Some important functions, such as making treaties, can be performed only by the President personally. Bills can become law without the President's signature, but the process of presidential review of bills contemplated by Article I, section 7 requires that someone be able to conduct that review. The need for a person who can perform the President's functions is the reason the original Constitution addresses presidential inability in Article II, and the reason the 25th Amendment sets up a procedure by which to determine whether presidential inability has arisen.

Question: If Section 4 of the 25th Amendment is not invoked promptly in the situation where there is an incapacitated President, what sorts of continuity of government issues could that potentially create?

The answer to that question depends in part on whether section 4 of the 25th Amendments sets out necessary conditions for the next person in line of the presidency to act as President, or sets out only a sufficient condition. Article II provides for the Vice President or another officer designated by statute to exercise the powers and duties of the President when the President is unable to do so. Section 4 does not change that rule, but adds a procedure through which to determine whether the President is unable to carry out the office. If the procedure in section 4 is a necessary condition for someone other than the President to act as President, then if the President is disabled and the section 4 process has not operated, no one will be able to act as President. That situation would present a grave continuity of government problem. If the Section 4 process is a sufficient but not a necessary condition for someone other than the President to act as President, then if the President is disabled and the section 4 process has not been invoked, the situation would be as it was before the 25th Amendment was adopted. As the country's experience before the amendment demonstrates, for example in the disabilities of President Garfield and President Wilson, the situation in which the President is in fact disabled but no one is clearly identified as acting President poses severe continuity of government problems.

- **Follow up:** Invocation of Section 4 requires the Vice President to act – they are a necessary party. If the President were incapacitated, and the Vice President were to then become incapacitated themselves, what would happen? Would we be stuck with an incapacitated President?

Again, the answer to that question depends in part on whether the section 4 process is the exclusive means by which an acting President can be identified, or only one such means. If the section 4 process is the only way in which an acting President can be identified in case of possible disability, then if the Vice President is incapacitated, no one can be identified as acting President. If the section 4 process is a sufficient but not a necessary way to identify an acting President, then if the Vice President is incapacitated, the situation is as it was before the 25th Amendment. As my previous answer indicates, the amendment was adopted because uncertainty as to presidential succession is a grave problem.

Question: If an executive decision is made in the President's name, but without his direction, would that decision be invalid as a rule, or could such a decision become valid post hoc if the President later acquiesces to that decision?

The legal effect of a document to which the President's signature was affixed by autopen without the President's direction that it be so affixed depends on the rules that govern the validity of documents that appear to be, but are not, genuine official documents. Sometimes a document that reasonably appears to be what it purports to be is treated as authentic, even if it is not. I do not know how principles of that kind would apply to a document bearing an unauthorized facsimile of the President's signature that was affixed with the White House autopen.

As to possible later presidential acquiescence in an unauthorized use of the autopen, I think, first, that no acquiescence short of an explicit presidential endorsement of the earlier use of the autopen could serve to render the document legally binding. Second, I am not sure whether a later, explicit endorsement of the unauthorized use of the autopen would relate back to the time at which the President's signature was affixed, even if the endorsement came during the President's term of office. I think that an endorsement given by a former President would be ineffective, because a former President no longer holds the powers of the office. Either the current President or a former President, however, might state that an earlier affixation of his signature by autopen was in fact pursuant to his direction. Such a statement would be evidence that the use of the autopen was proper, and that the document in question was valid ab initio.

- **Follow up:** Would Presidential silence be sufficient acquiescence in that scenario?

As stated, I think that after-the-fact acquiescence that does qualify as an affirmative endorsement of the earlier act affixing the President's signature by autopen cannot render an earlier unauthorized affixation by autopen legally binding.

- **Follow up:** If we believe a President is incapacitated, how can be sure they actually acquiesced to a decision made in their name?

In light of the views expressed above, I think the possibility of subsequent endorsement of an earlier use of the autopen to affix the President's signature arises only when the current President affirmatively states that he endorses such a use. If the current President makes such an affirmative statement while unable to exercise the powers and duties of his office, the endorsement would be as valid or invalid as any other purported official act taken under those circumstances. If such an endorsement came during a period in which the President had been determined to be unable to perform his duties through the process set out in section 4 of the 25th Amendment, the endorsement would be ineffective.

Question: Can the President use the autopen in any situation where he needs to affix his signature to a document, or are there situations where the President must personally affix his signature for the action to be valid?

The only situation in which the Constitution requires that the President act by signing a document is signature of a bill that has been presented to him under Article I, section 7 of the Constitution. As I said at the hearing, I agree with the Office of Legal Counsel that the President can sign a bill by directing that a facsimile of his signature be affixed by a device such as an autopen. I do not know of any statute that authorizes the President to act by signing a document and that requires that that President sign by manually affixing his signature.

- **Follow up:** What is important is whether or not the President made the decision?

Absent an explicit requirement that the President sign by manually affixing his signature, whether he has signed a document depends on whether he personally decided that his signature be affixed to it, either by manual signature or through some indirect means like an autopen.

- **Follow up:** What procedures or means of verification could be used to augment the signature and ensure that the President did actually make a decision?

As my statement and testimony indicated, I believe that Congress has power under the Constitution to require that when the President's signature is affixed to a document by a device like an autopen, an official in the White House should create an official record of the President's decision that his signature should be so affixed. That record should be made public. I will add that Congress might wish to consider updating the statutory rules providing that when the President signs a document manually, another official, such as the Secretary of State, attest that the President has done so.

Senate Judiciary Committee follow up

Sean Spicer

Question: In your view, how would a responsible media have covered serious concerns about a sitting President's mental fitness?

Responsible members of the media would have asked questions and demanded follow up issues that were clear to the public about the President's physical condition. Most failed to ask basic questions and seemed intimidated from asking during press conferences. As noted during the hearing, when the Biden press office stripped over 400 hard passes from independent journalists that should have been a red flag. Instead the White House Correspondents Association was complicit in allowing it to occur.

Question: What steps could the mainstream press take now to regain lost credibility?

I am not sure that is possible. However, their missteps has helped give rise to countless independents journalists and content creators.

Question: In your experience, how does media silence or spin affect national security when the President's ability to lead is in question?

In a perfect world, media outlets would be providing both sides of an issue and presenting opposing views and voices. Silence on issues of national security all the White House to promote a agenda without opposition.

Question: What actions, if any, should be taken by individuals outside of the media to hold the mainstream press accountable for covering up the President's incapacity?

● Follow up: Who should take those actions?

At their core, media outlets are businesses. They need viewers/readers etc to generate revenue. Supporting independent media and tuning out left wing legacy outlets is the most effective way of holding them accountable.

Question: What is to stop this, an extensive media coverup of a declining President, from happening again? Is there anything to stop this from happening again?

As noted in my testimony, any effort to minimize the opposing views and outlets should be flagged. The Trump White House should be commended for how they have increased access to the briefing room.

**Senator Eric Schmitt
Senate Judiciary Committee
Written Questions for Theodore Wold
Hearing on “Unfit to Serve: How the Biden Cover-Up Endangered America and
Undermined the Constitution”
Wednesday, June 18, 2025**

As you confirmed in response to questioning in the hearing, guidance from Office of Legal Counsel states that the autopen is permitted only when the President directs an action under his direct authority. You noted that, “assuming that the Biden White House complied with traditional practice of presidential administrations and there was record keeping either from the staff or others, there should be records to indicate [Presidential Approval], either through covering memorandum or briefing books where the President would have signed his signature authorizing this decision.” Despite the fact that these documents would make it “very easy to dispel some of these concerns,” none have come forward. I have several questions related to those documents. Committee in the below refers to the full Senate Judiciary Committee and the role the Subcommittees, particularly the Subcommittee on the Constitution, which I chair.

1. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in briefing books?

The briefing book could be the place to find signatures authorizing autopen use, but a presidential administration could set up other protocols. The answer to this question would be known to members of the presidential staff charged with handling the approval process for presidential papers, particularly within the Staff Secretary’s office.

2. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in covering memoranda?

Yes, this would be a likely place to find an authorizing signature if the Biden Administration adhered to past practices. The answer to question #1 also applies here.

3. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in decision memoranda?

Yes.

4. If the Biden Administration adhered to record keeping practices used by prior administrations, are there any other types of documents where it would be likely to find President Biden’s signature authorizing the use of the autopen?

Yes. There may have been a general policy memorandum(a) outlining appropriate uses of the autopen, (*i.e.*, what types of documents could be autopenned and in what circumstances), declaring who has authorization to operate the autopen, and who had authorization to order use of the autopen to execute the President's orders.

5. According to reporting from Fox News, Neera Tanden testified to the House Oversight Committee that "to get approval for the use of autopen signatures she would send decision memos to members of Biden's inner circle. However, she added that she was not aware of what actions or approvals took place between the time she sent the decision memo and the time she received it back with the necessary approval."¹ If this testimony is accurate, would those members of Biden's inner circle have any record keeping obligations if the Biden Administration adhered to record keeping practices used by prior administrations?

Yes. However, it must be emphasized how different the Biden Administration's practices and procedures appear to be from past-precedent and "normal" Oval Office operations. In past Administrations, the Staff Secretary would have free and routine access to the President. Indeed, in most Administrations the Staff Secretary has "walk-in" privileges meaning he can enter the Oval Office without going through any gatekeepers.

6. Is it unusual for the staff secretary to send a request for autopen usage to an intermediary, rather than to the President directly?

Yes. As discussed above, in an Administration that follows conventional practices, the Staff Secretary and subordinates of that office would often take records directly to and from the President themselves.

For questions 7-17, I respectfully submit it would be most effective to organize and approach document or Special Access Requests by discrete event and presidential action, instead of trying to identify particular custodians. As Ms. Tanden's interview before the House Oversight Committee illustrated, she was incredibly isolated from President Biden. In fact, her access to the President *decreased* once she became Staff Secretary and she testified that she saw him once approximately every six weeks. That lack of access as the Staff Secretary does not match my experiences in the White House.

President Biden kept a notoriously close inner circle of aides who have worked for him for decades during his long tenure in Washington. These individuals may or may not have had the traditional White House titles that comport with their power within the White House staff and access to the President. By organizing potential records requests by custodian, the Committee would be playing the proverbial game of "whack-a-mole" to identify who the real power players and/or decisionmakers were. Since I did not work in

¹ Alec Schemmel and Elizabeth Elkind, *Top Biden aide admits to Congress she directed autopen signatures without knowing who gave final approval*, FOX NEWS (Jun. 24, 2025), <https://www.foxnews.com/politics/top-biden-aide-admits-congress-she-directed-autopen-signatures-without-knowing-who-gave-final-approval>.

the Biden White House, I would be speculating on what particular documents particular custodians would be likely to possess, and I lack the requisite knowledge to offer productive recommendations on what you should request from each custodian listed in questions 7 through 17..

Instead, I suggest organizing document or Special Access Requests by particular use of the autopen as to a non-delegable Presidential power. We know which pardons were signed via autopen. We know which Executive Orders were signed via autopen. The Oversight Project will soon publish findings identifying which Proclamations were signed with an autopen. These events represent a finite universe by which to organize records requests for all relevant communications about those events. By accessing the communications surrounding *each particular* use of the autopen to exercise a nondelegable Presidential power, the Committee should be able to identify each person's role in the deployment of the autopen in a given instance.

7. Jessica Hertz was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Hertz, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Jessica Hertz?
 - i. If so, which documents?
8. Neera Tanden was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Tanden, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Neera Tanden?
 - i. If so, which documents?
9. Stefanie Feldman was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Feldman, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Stefanie Feldman?
 - i. If so, which documents?
10. Michael Hochman was former Deputy Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Hochman, in his position as Deputy Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Michael Hochman?
 - i. If so, which documents?
11. Garrett Lamm was former Director of Presidential Correspondence under President Biden. Based on the record keeping practices of prior administrations, would it be likely that Lamm, in his position as Director of Presidential Correspondence, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Garrett Lamm?

- i. If so, which documents?
- 12. Eva Kemp was former Director of Presidential Correspondence under President Biden. Based on the record keeping practices of prior administrations, would it be likely that Kemp, in her position as Director of Presidential Correspondence, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Eva Kemp?
 - i. If so, which documents?
- 13. Michael Donilon was former Senior Advisor to the President under President Biden. Based on the record keeping practices of prior administrations and public reporting that Donilon was a member of the “Politburo” – President Biden’s inner circle,² do you believe that it is possible that Donilon could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Michael Donilon?
 - i. If so, which documents?
- 14. Bruce Reed was former Deputy Chief of Staff for Policy under President Biden. Based on the record keeping practices of prior administrations and public reporting that Reed was a member of the “Politburo” – President Biden’s inner circle,³ do you believe that it is possible that Reed could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Bruce Reed?
 - i. If so, which documents?
- 15. Steve Ricchetti was former Counselor to the President under President Biden. Based on the record keeping practices of prior administrations and public reporting that Ricchetti was a member of the “Politburo” – President Biden’s inner circle,⁴ do you believe that it is possible that Ricchetti could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Steve Richetti?
 - i. If so, which documents?
- 16. There are a number of other persons of interest who may be relevant to this investigation and the reform effort.
 - a. Should this Committee request documents from Anthony Bernal?
 - i. If so, which documents?
 - b. Should this Committee request documents from Ashley Williams?
 - i. If so, which documents?
 - c. Should this Committee request documents from Annie Tomasini?
 - i. If so, which documents?
 - d. Should this Committee request documents from Ron Klain?

² Ryan King, *Here are the 'politburo' members who were really running the Biden White House, according to 'Original Sin' authors*, NEW YORK POST (May 25, 2025), <https://nypost.com/2025/05/25/us-news/the-politburo-members-who-were-really-the-biden-white-house-according-to-original-sin/>.

³ *Id.*

⁴ *Id.*

- i. If so, which documents?
- e. Should this Committee request documents from Kate Bedingfield?
 - i. If so, which documents?
- f. Should this Committee request documents from John Anzalone?
 - i. If so, which documents?
- g. Should this Committee request documents from Julie Chávez Rodríguez?
 - i. If so, which documents?
- h. Should this Committee request documents from Rachel Cotton?
 - i. If so, which documents?
- i. Should this Committee request documents from Richard Sauber?
 - i. If so, which documents?
- j. Should this Committee request documents from Michael LaRosa?
 - i. If so, which documents?
- k. Should this Committee request documents from William Daley?
 - i. If so, which documents?
- l. Should this Committee request documents from Anita Dunn?
 - i. If so, which documents?
- m. Should this Committee request documents from TJ Ducklo?
 - i. If so, which documents?
- n. Should this Committee request documents from Ed Siskel?
 - i. If so, which documents?
- o. Should this Committee request documents from Jeff Zients?
 - i. If so, which documents?
- p. Should this Committee request documents from Kevin O'Connor?
 - i. If so, which documents?
- q. Should this Committee request documents from Geoffrey "Geoff" Garin?
 - i. If so, which documents?
- r. Should this Committee request documents from Brooke Goren?
 - i. If so, which documents?
- s. Should this Committee request documents from John F. Kirby?
 - i. If so, which documents?
- t. Should this Committee request documents from Ben LaBolt?
 - i. If so, which documents?
- u. Should this Committee request documents from Jennifer "Jen" O'Malley Dillon?
 - i. If so, which documents?
- v. Should this Committee request documents from Jennifer "Jen" Psaki?
 - i. If so, which documents?
- w. Should this Committee request documents from Becca Siegel?
 - i. If so, which documents?
- x. Should this Committee request documents from Jacob "Jake" Sullivan?
 - i. If so, which documents?

17. Are there any career staff in the White House, possibly those referenced by Neera Tanden in her Transcribed Interview with the House Oversight Committee, that would have documents that would be helpful to this Committee?

I also have several questions related to reforms that can be implemented.

1. What reforms do you recommend to ensure presidential authority isn't quietly outsourced in times of incapacity?

One effective strategy would be for members of Congress to question administration officials testifying under oath in oversight hearings: "When was the last time you interacted with the President? How often do you interact with the President? Do you have concerns about the President's mental acuity or fitness to carry out the duties of his office?" These questions would go a long way toward shining a light on a President's capacity and control of the executive branch and inviting public scrutiny.

Congress should also take up the problem of a dual vacancy and the order of succession. This has long been a concern given the possibility, God forbid, of a catastrophic event or confluence of events that would render both the President and the Vice President incapable of exercising Article II power. Who becomes President when both of the democratically-elected executives are incapacitated?

2. Could the Congress impose any statutory reforms on the use of the autopen, consistent with Article II?

Impositions of this kind are fraught with constitutional separation-of-powers problems. Recognizing that, Congress can simply make a regular or standing request for any supporting documents that affirm an executive action as having the endorsement of the President. The President would refuse such a request at his peril because doing so would cast doubt on legitimacy (and therefore invite scrutiny) of exercises of Presidential authority.

3. Do you think that judicial review is, or should be, available to challenge the validity of a statute or other executive actions signed by autopen?

Any official action is always subject to review when it is implicated in a judicial proceeding. While there is no freestanding cause of action to challenge a Presidential action, *see, e.g., Forthingham v. Mellon*, 262 U.S. 447, 483-485 (1923), that is not the end of the matter. It is well established that both Congress and the Executive have at least *some* ability independent from the Judiciary to review and pass upon the legality of actions. *See, e.g.,* Richard H. Fallon, Jr., *Judicial Supremacy, Departmentalism, and the Rule of Law*, 96 Tex. L. Rev. 87 (2018). Thus, the Executive Branch is already reviewing the legality of the pardons pursuant to President Trump's Memoranda. *See Reviewing*

Certain Presidential Actions (June 4, 2025) found at <https://www.whitehouse.gov/presidential-actions/2025/06/reviewing-certain-presidential-actions/> (last visited July 29, 2025). Presumably, interested groups may at some point petition the Executive and through that mechanism be involved in the process to investigate the validity of these Executive actions.

4. If it is true that individuals other than the President were making decisions to sign laws or executive actions, independent of the President's approval, what remedy is there? If it were proven that a pardon was signed totally independently by a staffer, would that pardon, for instance, be void?

Assuming the action in question is non-delegable that action would be utterly void.

Take the power of the pardon. The Constitution is explicit that "[t]he President" and only the President "shall have Power to grant Reprieves and Pardons for Offences against the United States . . ." U.S. Const. art. II, § 2, cl. 1. "To the executive alone is entrusted the power of pardon . . ." *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1871). It is well established that the pardon power is non-delegable. *See, e.g., Relation of the President to the Executive Department*, 7 Op. Att'y Gen. 452, 464–65 ("Thus it may be presumed that he, the man discharging the presidential office, and he alone, grants reprieves and pardons for offences against the United States, not another man, the Attorney General or anybody else, by delegation of the President."); *Presidential Succession and Delegation in Case of Disability*, 5 Op. O.L.C. 91, 94 (1981) ("A study prepared by this Office in the 1950s reaches the same conclusions. This study and our research suggest that the following are nondelegable functions of the President: . . . 4. The power to grant pardons. U.S. Const. Art. II, §2, cl. 1."); *United States v. Batchelor*, 22 C.M.R. 144, 155 (Ct. Mil. App. 1956) ("It is the general rule that this pardon power is nondelegable and cannot be shared with another person or official when the power is granted in terms similar to those used in our Constitution.").

Any Branch of Government may examine whether a pardon is in fact valid—that power is not the exclusive province of the judiciary. *See, e.g., In re DePuy*, 7 F.Cas. 506, 512–513 (S.D.N.Y. 1869) (Case No. 3,814) (affirming Executive's position that pardon issued by President Andrew Johnson and revoked by President Ulysses S. Grant prior to delivery was not operative); *cf., e.g., Attorney Generals Survey of Release Procedures*, Vol. III Pardon 130–132 (1939) (A.G. Pardon Survey) (collecting federal and state authorities holding judiciary has the power inquire into lawfulness of pardon); *id.* at 181–88 (collecting same).

It follows from these principles that a pardon never actually authorized by the President Biden is void. *See, e.g., A.G. Pardon Survey* at 32 (collecting English law that forged pardons are void); *id.* at 130–132 (collecting American authorities reviewing validity of pardons); *id.* at 192–192–93 (collecting American authorities invalidating pardons for lack

of proper form and authorization); *cf. Henry v. State*, 10 Okla. Crim. 369, 987–91 (1913) (holding that commutation of all death sentences due to moral opposition rather than on a case specific basis would be an unlawful suspension of the law).

5. Generally, what is to stop this widespread use of the autopen, and potential lack of Presidential approval, from happening again? Is there anything to stop this from happening again?

The only prospective remedy is accountability. The American people are entitled not only to an investigation to understand the Biden Administration's use of the autopen; they are entitled to have punished anyone who purported to exercise Article II executive authority without the President's personal authorization. Forging a signature on an official document is a serious crime. Regular Americans know they could not do so and expect to avoid punishment if caught. The matter is far more serious when it strikes at the heart of our democracy. Accountability is the only way to prevent autopen abuses going forward.

A P P E N D I X

The following submissions are available at:

<https://www.govinfo.gov/content/pkg/CHRG-119shrg61845/pdf/CHRG-119shrg61845-add1.pdf>

Submitted by Senator Cornyn:

Examples of Biden Immigration Proclamations and Executive Orders 2

Submitted by Senator Hawley:

Denying the Decline, Biden Declining, Democrats in Denial 13

Submitted by Senator Schmitt:

United States Presidents, chart 14

