

## The Breakfast Club

### Constitutional Minute for 26 April 2022

#### Removing a President – the 25<sup>th</sup> Amendment

Someone at the Newport News Breakfast Club came up to me after I gave the Constitutional Minute last week and suggested I take a look at the 25<sup>th</sup> Amendment. OK, here we go. We have a President who many charge owns a time-share in nana land – and visits it often, that the “real” President’s name is Jill, or that the man in the mask we see stumbling up the steps of Air Force One or trudging across the White House lawn from Marine One is in fact a body double, the real Joe Biden having been sequestered away in a nursing home long ago.

The American public should not be unfamiliar with the 25<sup>th</sup> Amendment, we received a four-year-long lesson on the amendment, courtesy of the mainstream media, during the administration of Donald Trump. But now the Democrats are dusting off their Pocket Constitutions once again and are considering using the 25<sup>th</sup> Amendment AGAINST THEIR OWN GUY! I hope and pray they do not; I would rather do a swan dive into molten lava than listen to that laugh for the next two years. But that’s just me. On the other hand, perhaps another review of the amendment wouldn’t hurt.

When President William Henry Harrison died in office on April 4, 1841, Vice President John Tyler declared he had *become* the President. Had it not been for ambiguity in the wording of Article II, Section 1, Clause 6 of the Constitution, no one would have questioned Tyler’s declaration. But the Clause read:

“In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President ...”

Did the clause say the Vice President *became* the President or only took over as the “acting” President, assuming the “Powers and Duties” of the President until such time as a new President was elected? See the problem?

President Woodrow Wilson suffered a stroke on October 2, 1919, three years into his second term, leaving him paralyzed on his left side, and with only partial vision in the right eye. Wilson’s wife and the White House physician colluded to keep the stroke a secret while Wilson attempted recovery. During this time his wife became the “unofficial President,” filtering the documents Wilson was presented and communicating decisions he made to staff. By February 1920, Wilson’s condition became known publicly. His recovery was described as “partial at best.” While his mind remained relatively clear; he remained “physically enfeebled.” No one close to the President was willing to certify Wilson’s “inability to discharge the Powers and Duties of the said Office,” so he finished his term under a cloud. After retirement, Wilson’s health never really improved and he died on February 3, 1924, at the age of 67.

President Dwight D. Eisenhower suffered several periods of incapacity due to severe health problems, including a heart attack in 1955 and intestinal problems requiring emergency surgery the following year. Each time, Eisenhower was eventually able to resume his duties, but while incapacitated, including the

time Eisenhower was in surgery, Vice President Nixon simply presided over Cabinet meetings, kept the executive branch functioning, and assured the public the situation was “under control.”

John F. Kennedy’s assassination in 1963 was the final straw, Congress realized the need for clearer and more definitive procedures affecting the transition of power if a President ever became truly incapacitated: the 25<sup>th</sup> Amendment was proposed and ratified on February 10, 1967.

It should be clear from the forgoing history that the 25<sup>th</sup> Amendment was never intended as “impeachment in disguise,” i.e. a removal mechanism for a President who became unpopular to one side of the aisle (ala Trump), but that’s what it seems to be becoming.

The amendment contains four sections:

Section 1 makes it clear that if the President is ever removed from office or dies or resigns, the Vice President becomes the President, he does not become acting president.

Section 2 allows a vacancy in the vice presidency to be filled by Presidential appointment to complete the remaining portion of the term rather than let the vacancy remain until the next election, as was the standard practice. Congress must confirm the appointment, but always has. This provision has allowed a circumstance where neither the sitting President nor Vice President were elected. (Gerald Ford & Nelson Rockefeller)

Section 3 allows the President to declare himself temporarily unable to discharge his duties, such as during surgery when he will be unconscious (Reagan did this). In such cases the Vice President becomes the acting President until the President declares himself once again fit to discharge his duties.

The infamous Section 4 allows for “the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide” (we’ll call this group “the cabal”) to declare the President is unable to discharge his duties. The President can rebut this declaration, but until that rebuttal process is complete, the Vice President immediately becomes the Acting President. The President can declare himself fit, but then “the cabal” has four days to once again insist that the President is unfit. If they decide to do so, Congress has 48 hours to convene and 21 days to decide who’s right. If Congress rules in favor of the “cabal” the Acting President becomes the President and serves out the remainder of the former President’s term of office.

Will the Democrats do this? Given the ridiculous performance of the current Vice President, they risk much if they do. Elevating Kamala Harris could torpedo the November election even further. So it is hard to say whether removing Biden via the 25<sup>th</sup> Amendment will improve or worsen Democrats chances in November, but I certainly see a down side whichever option they choose. I think they will act to remove this senile, befuddled President but wait until after November. What do you think?

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club.  
Contact: [gary@constitutionleadership.org](mailto:gary@constitutionleadership.org); 757-817-1216