

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 25<sup>th</sup> Amendment. Was the autopen (among other schemes) used to side-step the 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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.