

Review

A New Speaker Rises—Could Wilson, Polk, and Article 1 Section 2 help map an early Biden ascendancy?

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The American political climate now features at least three worrisome storms: 1) unresolved racial inequality and cultural unrest, 2) the Covid-19 pandemic, and 3) economic depression accompanied by high unemployment. Against this background, limited media reports (thus far, all repudiated) have speculated that the President might resign or withdraw his candidacy to allow the country to move forward quickly under new leadership. One published variation explores a Vice Presidential resignation after Election Day, with replacement by the President-elect as the then-validated winner of the 2020 Presidential contest. The new Vice President then rises to the Presidency when the incumbent President also resigns. Crucially, this scenario requires coordinated participation of both President and Senate. Records reveal President Wilson considered a similar step-aside for his opponent Charles Evans Hughes, had Wilson's 1916 reelection failed. The current analysis considers a non-responsive executive branch, outlining a longshot Congressional bypass: President and Vice President are both impeached with prompt Senate conviction. However, before these offices are vacated, the U.S. House would convene in special session to name the President-elect as Speaker, using its Article 1 Section 2 powers which do not require the Speaker be an incumbent member. This approach puts the President-elect (as Speaker) in line for Presidential succession, irrespective of White House cooperation. As the prospect of Presidential election results being disregarded or challenged must be contemplated, atypical options warrant discussion with a view to preserve civil order and avoid government crisis. Here, selected contemporary issues, historical factors, and Constitutional mechanisms concerning a Speaker-to-President transition are outlined.

Key words: election; U.S. Constitution; Presidency; succession

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INTRODUCTION

Merits and misgivings regarding the Electoral College system in U.S. Presidential elections continue to be studied, often centering on how best to register popular support, to avoid government domination by mob rule, to defend interests of small states, or to reach an *ad hoc*

constitutional compromise. In 2000 and again in 2016, many were reminded that electing a U.S. President is not merely a matter of popular vote (Higgins, 2020). And once the Presidential Oath is duly administered and the term of office begins, little can be done to alter the prescribed four-year cadence. Although Executive recall by ballot initiative is available at the state level, no

equivalent option exists for a U.S. President. Besides death in office, early truncation of a Presidential term is possible only by resignation or removal by impeachment. Since the latter procedure is regarded as a negation of democratic process, it is cautiously approached and rarely deployed (Madison, 1987). Despite three attempts, thus far no U.S. President has been removed from office by impeachment. Importantly, no President has ever been impeached twice.

Presidential election rules received renewed attention when the President expressed a “wait and see” approach, fearing unreliable balloting data and a “rigged” election (Feuer, 2020). Moreover, an atypical—but not unprecedented—option has been mooted as an alternative in case Electoral College results turned unfavorable (Davis, 2020). As the process for selection of Presidential Electors is reserved to the individual states, it is at the state level where any challenge of ballot irregularities or voter fraud is to be resolved. Thus, an attempt to interfere with or influence customary Electoral College processes will have greatest effect when focused at the state level.

To achieve this, a dispute would first be lodged with state election officials regarding bulk mail-in ballots, polling irregularities, underage voters, nonregistered aliens, etc. This initiates a formal audit, which takes time. Meanwhile if an uncontested Electoral College majority is not possible by a certain “safe harbor” date, this triggers a seldom used contingent election process as specified in Article 2 and modified by the 12th Amendment. Only three such contingent elections have ever occurred in U.S. history.

Essentially, this means that the election for President is decided in the House, where each state casts one vote. Fortunately for the incumbent, more than 25 states are under Republican control in that chamber today, so it would be possible to achieve reelection using this method (Wirth & Rogers, 2020).

Given all the ailments currently convulsing the American body politic, the prospect of four more years of the current administration has evoked creative consideration of unusual countermeasures as a strategy to reduce the risk of that outcome.

PLAN A – THE WILSON METHOD

Imagine a scenario where the current President takes swift and decisive action the day after the election, should the November ballot confirm his defeat (Adams, 2020). Robenalt (2020) envisions such action in the service of the national good to accelerate the arrival of a properly chosen successor as soon as possible. It dramatically frames the level of national crisis as sufficiently urgent that the dutifully chosen President-elect is not made to wait until 20th January 2021 to begin work (Robenalt, 2020). Although such a Constitutional ballet could be

staged, it would require a high level of organization and a capable cast willing to join this complex choreography. How might it work?

In 1916 it was President Wilson who was under stress. He believed that if defeated in that year’s election by Charles Evans Hughes, the four-month delay until March 1917 for inauguration might truly endanger America. The world was at war. “I would have no right to risk the peace of the nation,” Wilson noted, by clinging to office for another season “after I had lost my authority” (Robenalt, 2020). With selfless insight, he developed a perfectly legal way to help his replacement move in quickly. First Wilson would magnanimously reach out to Hughes and name him as Secretary of State, then Wilson would get his Vice President, Thomas R. Marshall to resign. Next, Wilson himself would resign. In accordance with Presidential succession rules then in effect, with both Wilson and Marshall out, President-elect Hughes (now in place as Secretary of State) would immediately become President.

Of course Wilson did win his second term, yet his worries were well placed. He recalled the unusual events which had aligned to make his 1912 victory possible and understood that to expect another miracle in 1916 was unrealistic. Moreover, by 1916 divisions among voters had only intensified—Wilson and Hughes received 277 and 254 Electoral College votes, respectively. Accordingly, Wilson’s elaborate “replace and resign” scheme never needed to be launched.

PLAN B – POLK AS PROXY

Simultaneous Presidential and Vice-Presidential vacancies have, thus far, not happened in the United States, so there has never been a need to study the deeper list of Presidential successors. However unfamiliar such a dual vacancy might be, history gives one example of a Speaker who did later become President with no Constitutional succession: James K. Polk. The nation may find reassurance in taking a page from the Polk playbook now, not because he was a Speaker whose office lifted him to Presidential succession, but because he was someone who played each role capably. Like Polk of the 1800’s, the Presidential challenger in 2020 has also indicated that he would serve only one term if elected (Lizza, 2020). One brought experience as a former Speaker, and the other carries previous service as a former Vice President.

It is necessary to reexamine how the Speaker of the U.S. House of Representatives is chosen. Except for Congressional scholars and staff, few today may actually have familiarity with this mechanism. As per Article 1 Section 2 of the U.S. Constitution, the House of Representatives does this with full autonomy in a manner of their own determination. Faithful to unbroken but unwritten tradition, all Speakers of the U.S. House have

always been incumbent members. But this is not actually mandated. In 2020, this detail in Speaker selection could become as relevant to the challenger as dreams of a contingent election are for the incumbent.

Presidential succession in general (and the Speaker in particular) may matter more now, given the disappointing response to the Coronavirus problem (Rucker *et al*, 2020), the potential for additional acts of Presidential clemency, including the curious case of Presidential self-pardon (McCarthy, 2018), unsourced claims of voter fraud secondary to postal ballots (Raju & Herb, 2020), or a potential third Supreme Court nomination (Morris & Adolphe, 2018). And if that were not enough, security experts have linked computer crime from Russia in “actively trying to steal information from researchers working to produce coronavirus vaccines and anti-viral drugs” (Booth & Taylor, 2020). Thus, even if an electoral win for the challenger is achieved, the widespread problems gripping the country might make the countdown between November and January seem to pass at a glacial pace.

DISCUSSION

Is there a way for a President-elect to become President well before inauguration day? This assessment shows that if the President-elect were created Speaker of the House, absolutely. It does assume that both chambers of Congress can coordinate the herculean tasks of impeaching and removing from office both President and Vice President, if neither office were already vacated voluntarily by resignation. The engine for impeachment—shut off after this year’s earlier run—still might remain warm in the Congressional garage. Moreover, the tank could get fresh fuel if new evidence is entered linking Presidential pardons with obstruction of justice by attempting to influence potential subsequent investigation into the President’s own actions (Colarossi, 2018). Indeed, successfully delivering two impeachments and convictions is likely to make a House special election of a non-member as Speaker seem easy by contrast. Yet since this would represent the second impeachment trial for the incumbent President (and the first for his Vice President), perhaps just the threat of such an operation would yield a Nixon-Agnew style resignation. Vacating the top two posts would then clear the chessboard for a Speaker who would also be the President-elect-in-waiting. Once the Speaker ascends to the Presidency the appointment of the Vice President follows (that selection becoming the running mate previously announced). A second special House election would then be called, restoring the previous Speaker to her previous office, thus no vacancies remain.

While difficulties faced by Presidents are never repeated exactly, similarities are sometimes apparent upon close inspection. The pandemic season of 2020 is

nothing like what Polk or Wilson confronted, and no one can know how either might respond to our current crises. If the 2020 Presidential election occurred in summer rather than November, few experts can plot any credible path to a second Electoral College victory for the incumbent (Dzhanova, 2020). While positive public opinion ratings through January 2020 were viewed as an affirmation of an administration delivering an expanding economy with record low unemployment, America’s political weather quickly grew darker under the heavy clouds of a disorganized national response to Covid-19.

CONCLUSION

Now banned from most international travel due to the high-risk contagion of being an American, voters here find little to celebrate during the Coronavirus nightmare. Nearly one in five Covid-19 cases worldwide now come from three U.S. states of Florida, Texas, and California (Chiwaya & Siemaszko, 2020). These factors have led to hopeful pleas for the President and his deputy to leave office either immediately, or the day after November’s election if they lose. Any landslide win by the challenger would be viewed as a strong rebuke of current leadership (Robenalt, 2020). Cries of voter malfeasance as a pretext to invoke a contingent House election may be seen as a manufactured emergency, designed expressly to retain high office. A contravening strategy might entail impeachment, removal, and Speaker ascension as a valid (albeit novel) application of prerogatives given to the House in Article 1 Section 2.

Thoughtful, intelligent leadership could still outfox the febrile effects of ‘Trump Flu.’ Maintaining the current ‘don’t test, don’t tell’ strategy needlessly confuses any national cure (Hunt, 2020), and the best antidote may indeed require blending some 1916 Wilson with some 1845 Polk. With proper support, free from atavistic distractions, our republic can exceed the present afflictions in measure sufficient to rescue America from ruin and put her on the road to recovery.

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