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THE CURRENT: Will Trump be removed from power after Capitol attack?

Thursday, January 7, 2021

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

Congress convened on Wednesday, January 6, to conduct what is usually a pro-forma final step in the American electoral process – counting the electoral votes that have been certified and submitted by each state. This last act in the orderly transition of the U.S. government, overseen by Vice President Mike Pence, was interrupted by rioting pro-Trump supporters who overwhelmed U.S. Capitol Police to storm both chambers of the House and Senate and ransacked members offices until members of the National Guard and other federal law enforcement were finally called in to clear the chambers.

With us today to talk about what happened on Wednesday and the response from the U.S. government is John Hudak, senior fellow and deputy director with the Center for Effective Public Management here at Brookings. John, thanks for talking to us today.

HUDAK: It's good to be back, Adrianna.

PITA: While Congress did reconvene in the early hours of Thursday morning and officially certified Joe Biden and Kamala Harris the next president and vice president of the United States, people are understandably really angry and frightened about what an attack like this means for the integrity of American democracy, not to mention the safety of the thousands of ordinary people who go to work at the Capitol and surrounding office buildings every single day. Certification was intended to be Congress' last act of business and they have adjourned until inauguration week, but what have we heard from members of Congress so far today, in the wake of Wednesday' attack? And I should mention for our listeners that we're recording this on early Thursday afternoon, so take that into consideration.

HUDAK: Yesterday's attack was America, really, at its darkest. We saw a president of the United States generate a wave of negative enthusiasm and drove, really, a set of his supporters to act out violently against the United States and against the United States government. And I think members now are taking a deep breath and taking a look at what happened and understanding just what a horrible incident it was. It put staff at risk, it put the lives of Capitol Police officers at risk. It also affected the continuity of government. The second, third, and fourth-highest ranking individuals in the line of succession were in the Congress yesterday while it was being attacked: the vice president, the House speaker, Nancy Pelosi, and the president pro-tem of the Senate, Chuck Grassley. There were legitimate serious concerns for not just the operation of the Congress to count electoral votes, but for the continuity of government itself. And that threat, and the ability for Capitol Police to stop that threat immediately is

going to be, I think, the focus of what a lot of members are going to do in the coming months, and it will likely adjust the security procedures of the United States Capitol complex.

At the same time, though, the focus needs to be on more than just the people who attacked the Capitol; there's plenty of law enforcement attention that will be focused on them. But there's a bigger issue and it rests with the president of the United States. In his actions, what we're hearing right now, is a slew of calls for either impeachment and removal of the president, or for the invocation of the 25th Amendment to transfer the powers of the presidency to the vice president. We're also seeing a lot of resignations out of protest from White House staff, from Secretary Elaine Chao, the secretary of transportation. And we'll likely see more of them in the coming days as individuals who signed up to work for Donald Trump, finally, after almost four years, are waking up to the fact that he is someone who is serving himself and does not have allegiance to the United States.

PITA: Thanks for that, John. I want to come back to those questions of the response to the president, the questions of impeachment, the 25th Amendment, but just to briefly to go back to this certification process, while a few Republicans did in the aftermath of yesterday's violence reconsider their objections to certifying the election results, some 147 Republican members of Congress still did ultimately vote to overturn November's election results. And in response Representative Cori Bush, amongst others, has called for the investigation, the censure, and possible expulsion of some of those members. Can you talk a little bit about the precedence of both these objections and about what the response of Congress could or should be to this level of resistance to the standard electoral process?

HUDAK: Challenges to electoral votes are not unheard of. We saw challenges like this after the 2000 election after the 2004 election, and after the 2016 election. In 2004, it was really the first time in quite some time that there was a challenge brought by a House member and by a senator. And that was brought up by Maxine Waters and Barbara Boxer to challenge the electoral votes in Ohio after pretty serious allegations of black voter disenfranchisement in that state. Ultimately, that electoral challenge was voted down by the House and Senate, but it is not unprecedented for that to happen. What is unprecedented is for the sheer number of individuals who are backing these resolutions. And, as you said, after the attack on the Capitol, there were some Republicans who shied away from their earlier commitment to voting against this, but, ultimately there were well over 100 members of the House and Senate who voted to overturn the will of the public, to overturn the votes of 81 million Americans.

Now, Representative Bush's proposal or suggestion that members who supported this should be censured or expelled certainly goes a bit far. I mean, I certainly disagree with the idea that Congress would overturn the presidential election, but Congressmembers' ability to do this comes from a law that the Congress itself passed. And so, it's very difficult to imagine a scenario in which you are expelling members of Congress because they are doing something that they are legally entitled to do. Even if the grounds for that vote and those beliefs are baseless, they are still effectively complying with the law.

So, I don't think the censuring or the expulsion route is going to happen within the Congress. But I think what does need to happen is that those individuals who thought both that we should overturn the will of 81 million Americans and that they should engage in a type of rhetoric that would result in serious violence against our government, they need to reconsider what they're doing, because that's not democracy. They're doing it wrong. They are supporting insurrection. And that is not the way America works, but they are ensuring that it is the way that some Americans believe their grievances should be aired through.

PITA: John, as you mentioned, a great many people have laid yesterday's violence ultimately at the feet of President Trump, including Republican Senators Romney and Burr, amongst other prominent Republicans. As you mentioned, both impeachment and 25th Amendment have been talked about. What does it take for either of those steps to happen and how likely is it for either step to be taken?

HUDAK: They're both pretty unlikely. So, I'll briefly walk through impeachment and then the invocation of the 25th. Impeachment, as we saw in 2020 plays out first by the House bringing articles of impeachment; traditionally that would involve impeachment hearings in the Judiciary Committee, although those are not required. And so essentially the House could bring up impeachment articles to vote and just vote on them if they wanted to. It would require a simple majority in the House, and then the president would be impeached. That would then move over to the Senate where there would need to be an impeachment trial. There are rules in place about how an impeachment trial plays out. They tend to be fairly drawn out, and so the likelihood that impeachment and removal could happen in the next 13 days is effectively zero. And certainly, I don't think you would have the votes, which, in the House, you would need a simple majority which would probably be fairly easy to get, but in the Senate, you need a two-thirds majority to remove the president, and as we saw in 2020, the Republicans held firm in their support of the president. I don't think enough has changed where two-thirds of members would be willing to remove the president

The invocation of the 25th Amendment, in particular section four of the 25th Amendment, would involve the vice president, along with the majority of the cabinet, to sign a letter to congressional leadership that says that the president is incapacitated, effectively that he is no longer able to fulfill his office and exercise the powers of the office. Once they send that letter to the Congress, the president is stripped of his power temporarily, and that power is transferred to the vice president who serves as acting president. The president can then notify Congress that he is no longer incapacitated, which you would be certain that Donald Trump would do. And if he does that, the vice president and the majority of the cabinet can once again notify Congress to say that, no, presidential incapacity continues to exist. And if that happens, the question is then decided by the Congress, and the House and the Senate would be required to vote by two-thirds majorities in both chambers to sustain the presidential incapacitation, so that bar is a bit higher for Congress to use the 25th Amendment, because both chambers would have to have a two-thirds vote.

But ultimately that process wouldn't start with the Democratic House like an impeachment would; it would start with a Republican vice president and the president's cabinet. So, I think that would have a little bit more legitimacy in the eyes of some Republicans in Congress, but ultimately it is an enormous undertaking. It would be unprecedented. The section four of the 25th Amendment has never been exercised in our history, and so the likelihood of it happening in the next couple of days, I think, is also likely zero. So, sadly, I think what we're going to have is 13 more days of a president who has demonstrated to America that he is perfectly comfortable encouraging his supporters to take up arms against the United States. So, it'll be a dark 13 days, but it's probably going to be the result that we have.

PITA: In light of that, I want to ask you about what where the Republican party then goes from here. David Frum, himself a Republican strategist and speechwriter once famously said, several years ago now, "if conservatives become convinced that they cannot win democratically, they will not abandon conservatism. They will abandon democracy." And while we are seeing some Republican leaders now speaking out about this abandonment of democratic processes and of norms, most especially, we're seeing some others double down. You know, you saw Republican Representative Mo Brooks this

morning, amongst others, still claiming that all yesterday's violence was all due to antifa infiltrators. What does this tell us about where one half of the American political body goes after this?

HUDAK: I think for a lot of Republicans, they've spent four years showing their loyalty to Donald Trump and really not getting much in return. Donald Trump's loyalty doesn't return. It's not reciprocated. His loyalty is to himself. For a lot of Republicans, that was the price they had to pay to get a lot of conservative judges put on the federal bench, to get tax cuts, to get regulations rolled back, etc. I think for some of them, however, yesterday's events will serve as a bit of a wake-up call. And we already had Republicans in the House and Senate speaking out against the effort to overturn the presidential election during the electoral vote counting, really a historic number of them speaking out against the president, speaking out against this president. And then the events of yesterday, the attack on the Capitol, made those numbers grow.

And I think for Republicans, you'll hear publicly a lot about "both sides," you know, that the left's rhetoric is heated, the right's rhetoric is heated, that we need to tone things down overall, but I think internally, yesterday scared them. Yesterday was as far away from traditional Republican orthodoxy as you could get. You had an armed insurrection against the United States government to stop states from exercising their power in the electoral system of our country. For a party that is about law and order and is about national defense, and is about states' rights, yesterday's attack undermined all of that. And I think for some significant number of Republicans that will give them pause. Once Donald Trump is out of their system and out of office, I think Republicans will certainly go back to partisan politics as usual -- Democrats will as well -- but there will be, I think, a process by which a lot of Republicans will work to rid itself, rid the party of the power that Trump and Trump ideologues have held for four years, and that you're going to have a real moment where the Republicans want the adults to be back in the room. Because in the Republican Party, the adults have not been in the room since 2016.

And, like I said, they've gotten a lot of judges, they've gotten tax cuts, they've gotten regulatory rollbacks in that time, but they've also lost quite a bit. They lost the presidency, we know now that they've lost the Senate, but they've also lost their moral courage and their values, and I think for a lot of them, Richard Burr, Mitt Romney, and others, they need to find a path to get that back. And that starts today.

PITA: All right. John, thanks very much for talking to us today about this.

HUDAK: Thank you.