

Dianne Feinstein must resign if she can no longer perform her duties

It's not ageism or sexism. It's the judiciary.

[Robert Reich](#)

Years ago, when I walked into an elevator in the Senate office building, I found the late Senator Strom Thurmond, Republican from South Carolina, accompanied by one of his Senate aides.

Thurmond nodded to me. "Nice suit you have on, Mr. Secretary," he said.

"Thank you, Senator."

"Do they make it in an adult size, too?"

Thurmond didn't seem to be joking. He wasn't smiling. His aide looked distinctly uncomfortable. Did Thurmond intend to be nasty?

At the time, Thurmond was 99 years old. Although he had a well-established reputation for being an assh*le, by then he was also suffering from dementia.

I said nothing. The elevator doors opened. I moved to leave.

“Nice to see you looking so spiffy, Mr. Secretary,” he waved.

Over the years, I’ve come to know several senators who have remained in the Senate beyond, shall we say, their prime.

American politics at the highest levels is coming to bear an uncomfortable resemblance to a gerontocracy. From the Senate to the presidency to the Supreme Court, top positions are held more and more by people in their late 70s or above.

This is a problem. As someone in his late 70s, let me be clear. I’m not suggesting an age limit on public service. I’m only suggesting vigilance. Joe Biden may be perfectly equipped to be president well into his 80s. But we need clarity and transparency about whether someone is able to continue to perform the public’s work.

The annual risks of serious cognitive impairment [roughly double](#) every five years after age 70. By age 85, [almost one-third](#) of adults experience some form of dementia.

Which brings me to the awkward subject of Senator Dianne Feinstein.

Feinstein is 89 years old.

She has accomplished many worthy things since she was first elected to the Senate in 1992. She took the lead in passing the Assault Weapons Ban of 1994. In 1998, she spearheaded legislation to guarantee humanitarian protections to unaccompanied immigrant children who arrived alone at the U.S. border. She oversaw a six-year review of the CIA's detention and interrogation program, culminating in the December 2014 release of the report's executive summary and subsequent anti-torture legislation. She authored the 2016 Transnational Drug Trafficking Act.

She has said she will retire at the end of 2024, but too much damage is being done in the interim. If she can no longer perform her duties, it is now time for her to step down.

I say this with great sadness — as one of her personal friends as well as one of her constituents.

Many of her friends talk openly of her declining mental state. She has missed more than 60 votes. After being absent for more than two months, **she is now (as of Tuesday afternoon) on a plane en route to Washington and could return to the U.S. Capitol as early as this evening.**

A few weeks ago, former Speaker of the House Nancy Pelosi suggested that sexism was behind calls for Feinstein to step down now. "I've never seen them go after a man who was sick in the Senate in that way," Pelosi [said](#).

But Feinstein's situation is vastly different from that of Strom Thurmond or any other senator who can no longer perform his or her duties.

The particular duty Feinstein has not been able to perform is especially crucial: voting as a member of the Senate Judiciary Committee, which must consider judicial nominees before the full Senate votes on them.

In this era of polarized politics, without Feinstein's vote the committee is deadlocked and cannot recommend a judicial confirmation to the full Senate.

This has put more than 20 Biden nominees in limbo — including, let me add, many women whose careers have been put on hold. Nine percent of federal judgeships remain vacant.

The judiciary has become almost as partisan as has everything else in American politics. Republican-appointed judges tend to decide differently than Democratic-appointed judges on a range of highly important issues — gun control, antitrust, labor unions, civil rights, voting rights, climate change, abortion, and gerrymandering. In the past few weeks, Republican-appointed judges have issued rulings that would restrict the distribution of pills used to end pregnancies.

When they have the power, Republican presidents and senators have been especially aggressive in finding and nominating right-wing judicial candidates and getting them confirmed. In his four years as president, Trump — with the aid of Mitch McConnell — appointed more federal judges than any other recent president did in his first term.

As a result, 51 percent of today's appeals courts judges were appointed by Republicans, and only 43 percent by Democrats.

Feinstein's absence has tipped this imbalance even further, which is why Senate Republicans have refused

to allow Chuck Schumer, the Senate majority leader, to temporarily replace her with another Democrat on the Judiciary Committee. And as long as Senators Kyrsten Sinema and Joe Manchin aren't willing to carve out an exception to the filibuster to allow Schumer to make this replacement with just 51 votes, Democrats — and America — are stymied.

Hopefully — given this afternoon's news that Feinstein is now en route back to Washington — she will be able to resume her duties. If she cannot, she must resign. For the good of America.

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