

Special Issue**The Transition of the Presidency, 2020-2021**James P. Pfiffner^a

Keywords: presidency

The peaceful transition of power from one set of rulers to another is the essence of democracy. The United States has enjoyed the consensus that elections are the means to change leadership of the country for more than two centuries. The 2020-2021 transition of the presidency marks an exception to that consensus. President Trump refused to accept the reality of his 2020 defeat at the polls, despite the fact that Joe Biden won more than 7 million more votes than Trump and won the electoral college by a vote of 306 to 232. Trump declared that he had won the election and that his opponent, Joseph Biden, had conspired to steal the election through fraudulent ballots. This paper will briefly characterize the development of presidential transitions over the past half century. It will then examine the extensive efforts of President Trump to overturn the 2020 election that culminated in the violent attack on the United State Capitol on January 6, 2021. Finally, it will show how Trump tried to thwart the incoming Biden administration. It will conclude that Trump's actions in 2020 and 2021 presented a serious threat to the American polity.

The peaceful transition of power from one set of rulers to another is the essence of democracy. The United States has enjoyed the consensus that elections are the means to change leadership of the country for more than two centuries (with the exception of the Civil War). The 2020-2021 transition of the presidency marks an exception to that consensus. President Trump, elected by a minority of votes in 2016, refused to accept the reality of his 2020 defeat at the polls, despite the fact that Joe Biden won more than 7 million more votes than Trump and won the electoral college by a vote of 306 to 232. Trump declared that he had won the election and that his opponent, Joseph Biden, had conspired to steal the election through fraudulent ballots.

In addition to his denial of reality, Trump made multiple appeals to the judicial system to overturn the election outcome and took actions to make it more difficult for the Biden administration to have a smooth transition into office. This paper will briefly characterize the development of presidential transitions over the past half century. It will then examine the extensive series of actions that Trump took, which culminated in the violent invasion of the Capitol on January 6, 2021. Finally, it will show how Trump endeavored to thwart the incoming Biden administration. It will conclude that Trump's actions in 2020 and 2021 presented a serious threat to the American polity.

I. The institutionalization of Presidential Transitions

For most of United States history, transitions between presidents were low-key and almost casual. When control of the presidency changed political parties, there has often been resentment on the part of the losing candidate and friction between the outgoing and incoming administrations. Nevertheless, they have always been civil, and pre-

vious presidents have not challenged the legitimacy of the electoral process, even in very close elections (such as in 1960, 2000, and 2016). That is, until President Trump's actions in 2020.

Often newly elected presidents-elect took time off after grueling campaigns to rest before assuming the duties of the office (Henry, 1960). After passage of the 20th Amendment to the Constitution in 1933, the inauguration was moved from March 4 (when George Washington was inaugurated) to January 20. Dwight Eisenhower was the first president to have only about 75 days to prepare for taking office, and he ran his transition from the Commodore Hotel in New York City (Henry, 1960, p. 488-489; Pfiffner, 2010).

John Kennedy, a Senator with no executive branch experience, asked Richard Neustadt and Clark Clifford to prepare for him memoranda on a possible transition because, "If I am elected, I do not want to wake up on the morning of November 9 and have to ask myself, 'What in the world do I do now?'" (Pfiffner, 1996, p. 9). During the 1960-61 transition, Kennedy spent more than \$300,000 of his own funds, in addition to funds from the Democratic National Committee, on transition operations. Because of the recognized cost of transition into office, Congress passed the Presidential Transition Act of 1963 to provide funds for hiring staff and other for expenses associated with transitions (its amended provisions will be mentioned below). Richard Nixon, having been vice president for eight years, needed less preparation, but used the federal funds and raised additional funds for his 1968-1969 transition. With the growth in size and scope of the U.S. government in the second half of the 20th century, transitions of the presidency have necessarily become more elaborate.

Jimmy Carter, who had no experience in the national government, was the first president to invest significant resources of his own before the election in order to begin

preparations for a possible transition. In the summer of 1976, he set aside \$150,000 from his campaign for transition planning, including a “Talent Inventory Program” to review possible nominees for offices, should he win the election.

For the next party-turnover transition four years later, transition planning was initiated even earlier, when in April 1980, Edwin Meese asked Pendleton James to quietly begin a personnel recruitment operation in Alexandria, Virginia in preparation for a possible Reagan election victory. After Reagan won the election, his transition operation was the most elaborate to that time, with 588 listings in the transition telephone directory and multiple task forces preparing policy recommendations. Transition teams spread throughout the government to prepare departmental and agency transitions (Pffner, 1996, p. 13-14).

During his transition, President-elect Clinton spent much time on the selection of his cabinet in Little Rock, but in doing so he neglected to make key decisions about his White House staff, a mistake that cost him some time after the inauguration (Burke, 2000, p. 290-295). If there are significant lulls in transition news, the press will ferret out their own stories, which may not portray the transition operation in a kind light, which happened with the Clinton transition in Little Rock in 1992.

The transition of George W. Bush in 2000-2001 was slow to begin because of the delay due to the disputed outcome of the 2000 election. Despite Al Gore’s 500,000 advantage in the popular vote, the 25 electoral votes in Florida would determine the winner of the election. The outcome of the election was not determined until December 12, when the Supreme Court stopped the recount of the votes in Florida and made George W. Bush the president elect. Nevertheless, immediately after the election, Richard Cheney moved to Arlington, Virginia to begin preparing for the new administration to take office; he made a lot of progress before the official transition began with the ascertainment by the General Services Administration that Bush was the apparent president-elect.

The “gold standard” of the smooth transfer of power from one political party to another occurred in 2008-2009, when President Bush ordered his administration to make the transition as welcoming as possible for the incoming Obama administration. In a speech to his cabinet members and White House staff, he said, “This peaceful transfer of power is one of the hallmarks of a true democracy, and ensuring that this transition is as smooth as possible is a priority for the rest of my Presidency . . . all of us must ensure that the next President and his team can hit the ground running” (Kumar, 2015, p. 69). Transition briefings were prepared by each department and agency, and table-top exercises for possible national security emergencies were undertaken.

After Hillary Clinton was defeated by Donald Trump in the 2016 election, President Obama ordered his administration to treat the incoming Trump administration as well as he had been treated by the outgoing Bush administration eight years previously. Despite all of the preparation for the incoming Trump personnel, many agencies waited in vain for Trump transition personnel to turn up and take advantage of the preparations.

In the spring of 2016, former New Jersey Governor Chris

Christie suggested that he would undertake preparing for a Trump transition. Trump begrudgingly agreed, but stipulated that Christy had to raise his own money rather than spend funds that Trump controlled (after the nomination some federal funds became available for transition purposes). Christy hired 130 full time people, as well as hundreds more volunteers, to prepare detailed plans for policy initiatives and vet hundreds of names for possible nomination to executive branch offices (Lewis, 2018).

Yet, as soon as Trump had won the election, he dismissed Christy and discarded the many binders of research and preparation that had been prepared. He decided that Vice President-elect Michael Pence would be in charge of the transition into office, a move that set the new Trump administration behind significantly in taking control of the government (Lewis, 2018, p. 31-32).

II. Trump’s Response to the 2020 Election

Traditionally in the modern presidency, the loser of the election graciously concedes defeat, congratulates the winner of the election, and affirms the results of the democratic process. Never in US history has a president who lost the election attempted to stay in office by undermining the electoral process after the election has taken place. Yet, during the 2020-2021 transition of the presidency, Trump attacked the legitimacy of the election and incited a violent mob to attack a Joint Session of Congress in the Capitol, doing serious damage to the American polity. In his efforts to stay in office illegitimately, President Trump took the following unprecedented actions:

1. He undermined public confidence in the forthcoming election;
2. He falsely claimed that he had won the election;
3. He filed frivolous lawsuits to change voting outcomes;
4. He pressured state and local officials not to certify voting outcomes;
5. He pressured governors and state legislatures to nullify state elections;
6. He attempted to have Congress reverse the election;
7. He considered using military force to overturn the election;
8. He incited a mob to violently invade the Capitol to change the electoral vote count.

1. He undermined public confidence in the forthcoming election

Trump began undermining the legitimacy of US elections shortly after he won the 2016 election with an electoral college victory, despite losing the popular vote by nearly 3 million votes. He was a sore winner, claiming that he actually won the popular vote because Hillary Clinton got 5 or 6 million illegal votes (Pffner, 2019; Struyk, 2017).

In the summer of 2020, President Trump began to lay the groundwork for rejecting the outcome of the November election if he did not win. When asked if he would accept the outcome of the election if he lost, he said “I will look at it at the time” (Healy & Martin, 2016). In the fall of 2020, many states anticipated that, because of the pandemic, many more voters would take advantage of state

laws allowing voters to vote by mail. Democratic voters were more likely to take COVID-19 precautions seriously, and according to opinion polls, were more likely to vote early by mail. It was widely predicted that, on election night, the early reported votes of in-person voting would favor Trump since Republicans were more likely to vote in person on election day. Thus, it would appear that Trump was ahead on election day (a “red mirage”), but that there would be a “blue shift” as mail in ballots were tabulated. (The laws in many states did not allow states to count mail or absentee ballots until election day, thus creating large backlogs of votes to be counted.)

Trump expected this to happen and began to undermine the legitimacy of mail-in ballots. He asserted that mail-in ballots would favor Democrats and would be corrupt. The 2020 election “will be, in my opinion, the most corrupt election in the history of our country” (Haberman et al., 2020). “The only way they can take this election away from us is if this is a rigged election” (Crewley, 2020). In fact, there is no evidence that fraud in US elections is widespread or that voting by mail is any more susceptible to fraud than voting in person. In July 2020 Trump even tweeted about delaying the forthcoming election, “It will be a great embarrassment to the USA. Delay the Election until people can properly, securely and safely vote????” (Burns, 2020).

Arguing that voting by mail would be “fraudulent,” Trump opposed extra funding for the Post Office to handle the expected increase of mail-in ballots due to the COVID-19 pandemic. “They want \$25 billion, billion, for the Post Office. Now they need that money in order to make the Post Office work so it can take all of these millions and millions of ballots” (Kaufman et al., 2020). He Tweeted, “drop the Mail-In Scam before it is too late” (Fandos et al., 2020).

It is unprecedented for a president to equivocate about whether he would accept an election outcome and a peaceful transfer of power. When asked by Fox News Reporter Chris Wallace whether he would “accept the election” outcome in 2020, Trump replied, “I have to see. Look, you – I have to see. No, I’m not going to just say yes. I’m not going to say no” (Edsall, 2020). When asked later whether he would commit to a peaceful transfer of power after the November election, he refused to answer the question directly: “We’re going to have to see what happens. . . . You know that I’ve been complaining very strongly about the ballots, and the ballots are a disaster. . . . Get rid of the ballots and you’ll have a very peaceful – there won’t be a transfer, frankly. There will be a continuation” (Crewley, 2020). During his 2020 debate with Joe Biden, when asked whether he would condemn the actions of the white supremacist group “Proud Boys,” Trump instead urged them to “stand back and stand by,” seeming to encourage them to consider violence if he did not win the election (Thrush & Kanno-Youngs, 2020).

2. He falsely claimed that he won the election

On the day of the election, it appeared that Biden had won sufficient states to win the electoral college, but final counts were delayed, as states tabulated all of the mail-in and absentee ballots. But Trump preemptively claimed victory. At 12:49 a.m., November 4 (of election night). Trump

tweeted, “We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!” No votes were cast after the polls closed, though many were counted after the polls had closed (Kessler & Rizzo, 2020).

The day after the election it became clear that Biden would win the popular vote, and further that he was ahead in several of the battleground states. So, the country waited as those states continued to count ballots. Despite final vote counts not being reported, Trump asserted that mail in votes should not be counted. “A lot of votes came too late. I’ve already decisively won many critical states” (Kessler, 2020, Nov. 5). He claimed that he had won the election “If you count the legal votes, I easily win. If you count the illegal votes, they can try to steal the election from us” (Kessler, 2020, Nov. 5). During a news conference that day, he claimed, “We’re winning Michigan.” “We’re winning Wisconsin.” “Frankly, we did win this election. . . . This is a major fraud on our nation” (Kessler & Rizzo, 2020). On November 5, he tweeted: “STOP THE FRAUD,” and “IF YOU COUNT THE LEGAL VOTES, I EASILY WIN THE ELECTION! IF YOU COUNT THE ILLEGAL AND LATE VOTES, THEY CAN STEAL THE ELECTION FROM US!” (Kessler & Rizzo, 2020).

As the days passed and more states completed counting their votes, Biden’s lead became more firmly established, and on November 7, Biden publicly claimed his victory. But unlike other modern presidential candidates who conceded to their opponents after very close elections, as did Nixon in 1960, Gore in 2000, and Clinton in 2016, Trump declared, “this election is far from over.”

On November 4, Christopher Krebs, the Trump-appointed director of the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA), which is in charge of coordinating with states and local government for national election security, released a statement about the 2020 national elections. Noting that all of the states with close election results had paper records of each vote, the statement said, “There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised” (Cybersecurity and Infrastructure Security Agency, 2020; Krebs, 2020). After the statement, Trump tweeted, “NO WAY WE LOST THIS ELECTION!” Trump removed Krebs from his position on November 17 (Peiseer, 2020). In sum, allegations of computer rigging (Bump, 2020a), ballot “dumps” (Reuters, 2020), and denial of access to Republican observers (Rizzo, 2020) were all thoroughly debunked.

Ironically, the election was not relatively close. Three presidential elections since 1960 have been won by a smaller electoral college vote margin than the Biden margin of victory, and five candidates have won with fewer electoral votes than Biden (Historians’ Letter, 2021).

3. He filed lawsuits to overturn the elections

Presidential campaigns have often been bitter fights, but the tacit understanding of most losing candidates has been that the unity of the country is more important than partisan differences. Contrast President Trump’s unwillingness to accept the reality of his defeat with the following state-

ments of two presidential candidates who won the popular vote but lost narrowly in the electoral college.

In 2000, immediately after the Supreme Court stopped the recount of votes in Florida, Al Gore, despite winning 500,000 more popular votes, congratulated George W. Bush. In his public remarks he said, “Just moments ago I spoke with George W. Bush and congratulated him on becoming the 43rd president of the United States. . . . This is America and we put country before party. We will stand together behind our new president” (“Text of Gore’s Concession Speech,” 2000). In 2016, after a very close election, in which Donald Trump won the electoral college by winning narrowly in three states (though losing the popular vote by 2.9 million), Hillary Clinton called Trump at 2:35 a.m. election night to concede the election. In her concession speech, she said, “I congratulated Donald Trump and offered to work with him on behalf of our country. I hope that he will be a successful president for all Americans” (CNN, 2016).

Even Richard Nixon, despite a very close election in which he could have challenged Kennedy’s margin in Illinois and Texas, refused to do so. When he, as Vice President, presided over the electoral vote count in Congress, he remarked, “I do not think we could have a more striking and eloquent example of the stability of our Constitutional system and of the proud tradition of the American people of developing, respecting and honoring institutions of self-government. . . . In our campaigns, no matter how hard-fought they may be, no matter how close the election may turn out to be, those who lose accept the verdict, and support those who win” (Bockell, 2021).

But Donald Trump was not about to accept the reality of his electoral defeat. rather than concede his loss, Trump and his supporters filed numerous lawsuits to try to reverse the outcome.

In an election involving more than 160 million voters and more than 230,000 polling places in the United States (National Conference of State Legislatures, 2020), it is probable that there would be some irregularities, some miscounting, or other problems. Nevertheless, Trump’s lawyers were not able to document any problems significant enough to question the outcome of the election results in any state. There were scattered instances of individuals trying to cast more than one ballot, including three Republican voters in Pennsylvania. But many searches in response to President Trump’s allegations of widespread fraud were unable to uncover any significant fraud (Helderman et al., 2020). In losing more than 60 lawsuits challenging votes in the election, Trump won no court cases that proved that illegal votes were cast for Biden or that election counting procedures shifted the election away from Trump (Rutenberg et al., 2020).

Trump initiated multiple lawsuits in state and Federal courts to try to stop votes from being counted or to disqualify votes that had been cast. Trump lost all of these challenges, primarily because there was no evidence of significant fraud or irregularities. Republican and Democratic representatives were present at all polling stations and in the offices where the votes were counted. By mid-December, 86 judges (38 of whom were appointed by Republicans) in more than 60 court cases, from state courts through the Supreme Court rejected Trump’s claims of fraud.

In a case Trump brought in Pennsylvania, which Biden won by more than 80,000 votes, a Trump-appointed judge in the U.S. Third Circuit Court of Appeals wrote in his opinion for a unanimous opinion, “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here” (Helderman & Viebeck, 2020). The Supreme Court of Wisconsin, in rejecting a lawsuit to overturn the Wisconsin election, declared, “Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. . . . This is a dangerous path we are being asked to tread” (Liptak, 2020a).

In the fall of 2020, when Trump had the opportunity to appoint a third justice to the Supreme Court, he said that he expected the election to “end up in the Supreme Court. And I think that it’s very important the we have nine justices” (Liptak, 2020b). On December 9, Trump tweeted “OVERTURN,” tacitly admitting that Biden had won the votes necessary to win, but that Trump wanted the Supreme Court to overturn the election outcome. He tweeted that the Supreme Court “has a chance to save our Country” and “The Election was RIGGED” (Helderman & Viebeck, 2020).

In the second of two suits rejected by the Supreme Court, the state of Texas, joined by Trump and the attorneys general of 17 states, argued that the voting procedures in four other states (Wisconsin, Georgia, Michigan, and Pennsylvania) were flawed and demanded that the Supreme Court overturn the election. It was extremely unusual for states formally to challenge the voting laws, procedures, and administration of elections in other states. Even more alarming was the joining of the suit by Republican members of Congress. Initially, 106 House members had signed an *amicus* brief supporting the lawsuit, and after threats by Rep. Mike Johnson (R-LA) that President Trump would retaliate against those who did not sign on, 20 more Republicans, including Minority Leader Kevin McCarthy, signed up to support the suit. Seventeen of the members of Congress who signed the court brief were, in effect, asking the Court to invalidate their own elections.

In rejecting the lawsuit, the Supreme Court (with six conservatives and three Trump appointees) declared that Texas “had not demonstrated a judicially cognizable interest in the manner in which another state conducts its elections” (Edmondson & Broadwater, 2020). After his loss in the Supreme Court, Trump called the decision a “disgraceful miscarriage of Justice,” and tweeted “WE HAVE JUST BEGUN TO FIGHT!!!” (Olorunnipa & Wootson, 2020).

4. He pressured state and local officials not to certify election outcomes

With his lawsuits failing to convince any judges to reverse the vote count in any state, Trump turned to the formal, though usually *pro forma*, procedures for counting votes in presidential elections. After votes are cast in each polling station, the results are tabulated, certified, and then forwarded to the state capital, where Governors must certify the outcome of the election.

Trump tried to intervene at local levels in battleground

states to try to stop vote counts from being certified. Trump lost Michigan by more than 150,000 votes, but after the initial certification of votes in heavily Democratic Wayne county, Trump personally called a Republican member of Wayne County's Board of Canvassers to convince her not to cast her vote to certify the election, though she did. After more pressure from Trump, she tried to rescind her initial vote, but she was not allowed to rescind her vote, which was an administrative duty (Hamburger et al., 2020). Such personal intervention of a president to put pressure on a local election administrator was unprecedented in modern times.

In the close race in Georgia, which Biden won by only about 12,000 votes, Trump pressured the Republican governor, Brian Kemp, to intervene in the vote count. Trump also attacked the Republican Secretary of State, Brad Raffensperger, demanding that he shift the vote count to favor Trump. Despite threats to his life, Raffensperger oversaw a hand recount of the votes and refused to intervene in what he called a free and fair election (Rucker et al., 2020). Raffensperger announced, on December 7, "We have now counted legally cast ballots three times, and the results remain unchanged" (Richard & Corasaniti, 2020). Subsequently, Trump called Raffensperger an "enemy of the people" (Gardner, 2020). Trump's oral attacks were so vituperative that his supporters threatened the Georgia Republican Secretary of State and the Republican voting administrator with violence, and they had to be provided security protection. An audit of more than 15,000 signatures on absentee ballots in Georgia did not find any fraudulent ballots (Niesse, 2000).

Inspired by Trump's claims of fraud, armed protestors threatened state officials, Democrat and Republican, in Michigan, Georgia, Vermont, and Pennsylvania (Armus, 2020; Cassidy, 2020; Wines, 2020). Georgia voting administrator Gabriel Sterling, a Republican who voted for Trump, publicly admonished Trump for inciting his followers to violence to overturn the election, "you have the rights to go through the courts. . . . Stop inspiring people to commit potential violence. . . . Someone's going to get killed. It's not right. . . . Death threats, physical threats, intimidation — it's too much. It's not right." (Greenwood, 2020). "Mr. President, you have not condemned these actions or this language. . . . Death threats, physical threats, intimidation. It's too much. It's not right" (Fausset, 2020). He also specifically refuted allegations of voting improprieties in the Georgia election (Astor, 2021).

Three days before Congress was to meet to count electoral votes, Trump personally called the Georgia Secretary of State and pressured him to "find" enough votes to change the election outcome in Georgia. Urging Brad Raffensperger to change the election outcome, Trump said "there's nothing wrong with saying that, you know, um, that you've recalculated. . . . So look. All I want to do is this. I just want to find 11,780 votes, which is one more than we have because we won the state." He also threatened criminal prosecution. "You know what they did and you're not reporting it. You know, that's a criminal — that's a criminal offense" (Shear & Saul, 2021).

5. He pressured governors and state legislatures to nullify state elections

Article II of the Constitution provides that, "Each State shall appoint, in such Manner as the Legislature thereof may direct" the electors who will cast electoral ballots for president. All states have laws providing that voters in the states determine the slates of electors who cast ballots for president. All states except two have decided that whichever candidate wins the most popular votes in the state will receive the full slate of electors to cast the state's electoral ballots.

After his other attempts to change the election outcome failed, Trump tried to take advantage of this constitutional provision to try to pressure state legislatures to ignore the laws in their states and award their electoral votes directly to Trump, despite his loss in the state elections.

In his efforts, Trump brought the leaders of the Michigan legislature to the White House to try to convince them to have the Michigan legislature throw out the popular vote and appoint their own slate of electors to cast their ballots for Trump. After talking with Trump, they refused to do his bidding (Rucker et al., 2020). He called on the state legislature of Wisconsin to "overturn this ridiculous State Election. . . . We won in a LANDSLIDE" (Olorunnipa et al., 2020).

Despite two recounts that confirmed the initial count of votes, Trump called Georgia Governor Brian Kemp (R) and urged him to have the legislature ignore the popular vote in the state and appoint its own set of electors to cast their ballots for Trump. When Kemp refused because he could not legally do so, Trump called him "hapless" and a "moron," saying "I will easily & quickly win Georgia" and threatened to support a primary rival to Kemp in the 2022 election (Gardner, 2020).

Despite losing Pennsylvania by more than 80,000 votes, Trump personally pressured the speaker of the state House of Representatives to ignore the popular vote and award its electoral votes to him. When legislative leaders said that they did not have the authority to do it, 64 members of the Pennsylvania legislature sent a letter to Pennsylvania's representatives in Congress and urged them to object to their own state's slate of electors when the electoral votes were counted by Congress on January 6, 2021 (Rucker et al., 2020).

As of December 10, 2020, only 15 Republican members of Congress had admitted publicly that Trump had lost the election, and 222 were not willing to admit it publicly (Washington Post Staff, 2020b). The broad acceptance by Republican leaders, particularly 126 members of the House, of the baseless claims of fraud by President Trump led to large majorities of Republicans in the electorate believing that the Biden victory was achieved by foul means (Badger, 2020).

Despite Trump's attempts to overturn election outcomes in six state and recounts in two (Georgia and Wisconsin), Biden's victories were confirmed by multiple officials in each state. Trump attacked the Republican governors of Georgia and Arizona, saying that voters should "vote them out of office!" (Olorunnipa & Wootson, 2020).

6. He attempted to challenge the counting of electoral votes in Congress

Even after the electors had cast their ballots in their state capitals on December 14, and it was clear (as it always had been) that Biden received 306 electoral votes to Trump's 232, Trump continued to deny this reality. Hours after the electoral votes were cast, he tweeted, "Many Trump votes were routed to Biden. This Fake Election can no longer stand. Get moving Republicans" (Elfrink, 2020).

According to the Constitution, the Vice President of the United States is the President of the Senate, though the Vice President can only cast a vote if there is a tie in the votes of Senators. The law governing the counting of electoral ballots, the Electoral Count Act (3 USC 15), provides that Congress must meet in a joint session on January 6 after each election year.

With the Vice President of the incumbent administration presiding, the electoral ballots that have been certified and sent from each state capital are formally counted. If a member of the House, along with a member of the Senate, challenges in writing, the validity of any state's slate of electors, each house meets separately and must return with its judgment within two hours. If both houses agree that the slate of electoral votes is invalid, those votes are not counted; otherwise the certified ballots remain valid.

With Trump's active support, some of his supporters in Congress threatened to challenge slates of electoral votes during their formal counting in the joint session of Congress. With the support of Vice President Pence, eleven Senators promised to challenge the electoral vote count, based on vague allegations of fraud, but without any specific evidence. Senator Mitt Romney (R-UT) said, "I could never have imagined seeing these things in the greatest democracy in the world. . . . Has ambition so eclipsed principle?" (Broadwater, 2021).

Such objections were not unprecedented; in 2001 and 2017, Democratic House members challenged electoral ballots, but no Democratic Senators would join them, so their objections were overruled. In 2004, Representative Stephanie Tubbs Jones (D-OH) and Senator Barbara Boxer (D-CA) objected to Ohio's electoral votes. Boxer made it clear that her objection was "not about overturning the election" (Blake, 2020), and the Senate voted 74 to 1 against the challenge (Edmundson & Crowley, 2020). The losing candidate in 2004, John Kerry, had already admitted his defeat and did not support or vote for the challenge. Notably, these precedents were purely symbolic acts and did not attract much public attention because counting electoral votes had long been considered a *pro forma* recognition of the electoral vote outcomes in the states. Most importantly, each of the Democratic presidential candidates had already conceded the elections and publicly recognized the Republican candidates as presidents-elect.

The difference in 2020, however, was that President Trump had continued to claim, without evidence, that the election was invalid because of fraud perpetrated by Democrats (Fandos & Schmidt, 2020). His challenges to the 2020 election were serious, and were intended to overturn the election. It is the duty of the states, according to their laws, to decide which slate of electors to send to Congress;

it is not the role of Congress to choose electors. The only provision for questioning electors is a written objection raised by a Representative and a Senator, which triggers separate votes by each House, and unless both houses agree, the electoral votes certified by the states stand.

In the very close elections of 1961 and 2001 (compared to Biden's margin of more than 7 million popular and 74 electoral votes in 2020), Vice Presidents Nixon and Gore, as Presidents of the Senate and candidates for the presidency, overruled challenges from their own parties. Importantly, they had quickly admitted that their opponents had won the election, despite the extreme closeness of each election. In 2017 Vice President Biden overruled several objections from Democrats and declared Donald Trump president-elect. "It is over," he stated (Flegenheimer, 2017).

In addition to the planned objections to slates of electors in 2021, Trump supporters planned another ploy to reverse the electoral outcome. On December 14, the day that electors met in their capitals to formally cast their ballots, Trump aide Stephen Miller announced that in some states, the slate of Trump electors (who had no legal status because they lost the popular votes in their states) would nevertheless meet themselves to vote for Trump and transmit their ballots to the Senate (Bump, 2020b). These "votes" had no legal significance, because they were not chosen according to the laws in their states.

In several states, the Republicans who were electors who would have cast their votes for Trump, had he won the vote their states, met and purported to cast electoral votes to send to the President of the Senate, Vice President Pence (Cheney, 2020). Representative Louie Gohmert (R-TX) filed a lawsuit in Texas arguing that the Electoral Count Act was unconstitutional and that the Vice President had, "sole discretion in determining which electoral votes to count for a given State, and must ignore and may not rely on any provisions of the Electoral Count Act that would limit his exclusive authority" (Cheney, 2020). On January 1, 2021, the suit was dismissed by a Federal judge in Texas who had been appointed by President Trump.

Their claim that the Vice President could ignore the validly cast electoral ballots and proclaim President Trump the winner of the election was unconstitutional and illegal. The Electoral Count Act of 1887 (3 U.S. Code 15) provides that the President of the Senate (Vice President Pence), presiding over a joint Session on January 6 shall count the electoral votes ascertained by the executive of each state. If such ascertainment, "shall have been made at least six days before the time fixed for the meeting of the electors" (which all were) according to the laws of the states, the electoral vote count for the state "shall be conclusive" (3 U.S. Code 5). Thus, the role of the Vice President is merely ministerial – to count votes and declare the winner – and the role of Congress is only to assure that the electoral votes delivered from the states are authentic, not to judge the outcome of the election (Foley, 2020). If the Vice President could change the outcome of the election, Vice Presidents Nixon (in 1961) and Gore (in 2001) could have made themselves president despite having lost their elections.

Nevertheless, the day before the joint session of Congress, President Trump incorrectly asserted that "The Vice President has the power to reject fraudulently chosen elec-

tors” (Haberma n & Karni, 2021). He urged Pence to, “come[s] through for us” in the joint session. “He’s a great guy. Of course, if he doesn’t come through, I won’t like him quite as much” (Fauset et al., 2021). He called Senators not supporting his objection the “surrender caucus.”

7. He considered using military force to “rerun” the election

In late December, President Trump continued his efforts to overturn the election. On December 18, he met in the White house with former General Michael Flynn, who had resigned as his first national security adviser, and Sydney Powell (one of his lawyers), to discuss conspiracy theories about how the election was stolen. Powell had argued that there was a Venezuelan plot to rig voting machines to switch votes from Trump to Biden (Haberma n & Kanno-Youngs, 2020). Flynn had publicly suggested that Trump could impose martial law in the swing states and, “he could take military capabilities, and he could place those in states and basically rerun an election in each of those states” (Sonmez et al., 2020).

At the same White House meeting, Trump suggested that voting machines from the swing states could be seized by officials of the Department of Homeland Security to investigate them for fraud, though DHS does not have the authority to seize voting machines in any states (Sonmez et al., 2020). Attorney General Barr said that he saw “no basis now for seizing machines by the federal government” (Olorun-nipa et al., 2020).

There is a strong norm that the US military should not be used within the United States except in exceptional circumstances. Although the President can use regular military troops domestically in the United States, several laws, including the Insurrection Act of 1807 and the Posse Comitatus Act limit the circumstances in which he can do so. The White House discussions of the use of military force to change the election outcome worried U.S. military leadership so much that the Secretary of the Army, Ryan Mc-Carthy, and the Army Chief of Staff, General James C. Mc-Conville, felt it necessary to issue a public statement declaring, “There is no role for the U.S. military in determining the outcome of an American election” (Sonmez et al., 2020). Chairman of the Joint Chiefs of Staff, General Mark Milley, said in a speech, “We do not take an oath to a king or a queen, a tyrant or a dictator. We do not take an oath to an individual. No, we do not take an oath to a country, a tribe or a religion. We take an oath to the Constitution” (Sonmez et al., 2020). Never before had military leaders felt compelled to reassure the nation that military force would not be used to affect the outcome of an election.

Trump’s consideration of using military force was so alarming that all 10 of the living former Secretaries of Defense wrote a public letter stating that, “any efforts to involve the U.S. armed forces in resolving election disputes” would be dangerous and potentially criminal. They argued that the Trump appointees in the Defense Department were bound by oath to facilitate the transition of the incoming administration and “refrain from any political actions that undermine the results of the election or hinder the success of the new team” (Carter et al., 2021).

8. He incited a mob to violently attack the Capitol to change the electoral vote count

On January 6, President Trump incited a violent mob to attack the Capitol in order to stop the Joint Session of Congress from carrying out its legal and Constitutional duty to count the electoral votes.

The attack on the Capitol was not a spontaneous uprising. In fact, it had been well planned by leaders of the mob and had been encouraged by President Trump ever since the election. On November 3, election day, when it became likely that Biden would win, Trump asserted that the election had been stolen. That same day the “Stop the Steal” movement began and its adherents grew to 320,000 until it was shut down by Facebook, though the movement continued to grow on other social media platforms (Barry & Frenkel, 2021). President Trump continued to lie about supposed fraud that prevented him from winning the election. Millions of his followers believed him.

To encourage the disruption of the congressional count of electoral votes, Trump tweeted to his followers to come to Washington on January 6, when Congress would count the electoral votes.

December 19: “Big protest in D.C. on January 6th. Be there, will be wild.” (Barry & Frenkel, 2021)
 December 27: “See you in Washington, DC, on January 6th. Don’t miss it.” (Barry & Frenkel, 2021)
 December 30: “JANUARY SIXTH, SEE YOU IN DC!” (Barry & Frenkel, 2021)
 January 1: “The BIG Protest Rally in Washington, D.C. will take place at 11:00A.M. on January 6th. Location details to follow. StopTheSteal!” (Barry & Frenkel, 2021)
 January 5: “I will be speaking at the SAVE AMERICAN RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early – doors open at 7AM Eastern. BIG CROWDS! (NBC News, 2021)

In response to Trump’s tweets, his followers continued to plan more concretely for the riot on January 6. On January 2, more than 100 Republican representatives and 12 Senators promised to object to the vote count in Congress, misleading Trump supporters into believing that Vice President Pence and Congress could somehow overturn the election (Barry & Frenkel, 2021). The crowd of thousands that turned up at the White House on January 6 included members of the Proud Boys, neo-Nazis, other white supremacists, and QAnon members (who believe that the United States is run by a conspiracy of satan-worshiping pedophiles), many of them carrying Confederate and Trump flags (Barry & Frenkel, 2021).

About noon, Trump addressed them in the Ellipse south of the White House. In his remarks, Trump said, “all of us here today do not want to see our election victory stolen by bold and radical left Democrats which is what they are doing. We will never concede. It doesn’t happen. You don’t concede when there’s theft involved” The crowd chanted, “Fight for Trump. Fight for trump” (ABC News, 2021).

In a phone call to Vice President Pence before the rally, Trump said, “You can either go down in history as a patriot. . . or you can go down in history as a pussy” (Baker et al., 2021). In his remarks to the mob, Trump lashed out at the

Vice President, saying that Pence did not have “the courage to do what should have been done to protect our country and our Constitution.” In response to Trump the mob chanted, “Hang Mike Pence. Hang Mike Pence” (Hsu et al., 2021).

Trump went on to say, “We are going to have to fight much harder. . . . you will never take back our country with weakness.” Then “We will never give up. We will never concede. It doesn’t happen. You don’t concede when there’s theft involved. Our country has had enough. We will not take it anymore, and that’s what this is all about” (Baker, 2021; Barry & Frenkel, 2021; Haberman, 2021). He said that the crowd needed to give the Republicans, “the kind of pride and boldness that they need to take back our country.” He concluded, “Now it is up to Congress to confront this egregious assault on our democracy. And after this, we’re going to walk down [to the Capitol] and I’ll be there with you” (ABC News, 2021). Trump counselor Rudolph Giuliani told the crowd, “Let’s have trial by combat” (Baker, 2021). As Senator Josh Hawley (R-MO) went to the Capitol for the Joint Session, he raised his clenched fist in solidarity with the mob approaching the Capitol (Bellware, 2021).

The joint session to count the electoral votes began at 1:00 p.m. and, as both Houses were separately considering the Republicans’ objection to the electoral vote from Arizona, the Capitol police were unable to stop the rioters, many of whom said that they were sent by President Trump. As the mob entered the Capitol building, it threatened the safety of members of Congress, and at 2:00 p.m. Capitol police and the Secret Service took the Vice President and members of Congress to safe locations within the Capitol complex. The Trump supporters occupied the Senate and House chambers and roamed throughout the building, vandalizing congressional offices. Five people died as a result of the riot.

President Trump’s advisors and other Republican leaders implored him to make a public statement to quell the violence. Trump resisted, but finally agreed to record a scripted statement. In his statement, Trump deviated from the script to justify the violence. “These are the things and events that happen when a sacred landslide election victory is so unceremoniously and viciously stripped away from great patriots who have been badly and unfairly treated for so long,” He finished with, “Go home with love and in peace. Remember this day forever!” (Haberman, 2021). In his recorded video, he said: “I know you’re hurt. . . . We had an election that was stolen from us. It was a landslide election and everyone knows it, especially the other side. But you have to go home now. We love you. You’re very special” (Haberman, 2021).

When the violence subsided, some Republican leaders denounced the President. The third highest ranking Republican in the House, Liz Cheney (R-WY), said on Fox News, “We just had a violent mob assault the U.S. Capitol in an attempt to prevent us from carrying out our constitutional duty.... There’s no question the president formed the mob, the president incited the mob, the president addressed the mob. He lit the flame.” Senator Mitt Romney (R-Utah) said, “We gather due to a selfish man’s injured pride and the outrage of supporters who he has deliberately misinformed for the past two months and stirred to action this very morning. . . . What happened here today was an insurrection in-

cited by the president of the United States” (Helderman et al., 2021). Majority Leader Mitch McConnell (R-KY) said, “If this election were overturned by mere allegations from the losing side, our democracy would enter a death spiral” (Baker, 2021).

After the violent mob had been cleared from the Capitol, the counting of electoral votes continued. Despite the violent attack, 139 House Republicans and eight Senators voted to challenge several slates of electors that had been certified by the states (Armus, 2021). After the challenges failed, Joe Biden’s status as president-elect was confirmed by Congress; the session adjourned at 3:45 a.m., January 7, 15 hours after it convened (Helderman et al., 2021). In closing the joint session, Vice President Pence stated, “To those who wreaked havoc in our Capitol today, you did not win. Violence never wins. Freedom wins. This is still the people’s house” (Helderman et al., 2021).

The Aftermath of the violence at the Capitol

In response to President Trump’s incitement of the mob to violence, the House of Representatives moved swiftly to impeach the president. The one article quoted some of Trump’s incendiary words and concluded that Trump should be removed from office, because, “He threatened the integrity of the democratic system, interfered with the peaceful transition of power, and imperiled a coequal branch of Government.” All Democrats and 10 Republicans voted in favor of the article

In preparation for the inauguration of President-Elect Biden, streets around the Capitol were cordoned off and 25,000 National Guard troops were mobilized to secure the ceremony. Refusing to recognize the legitimacy of the 2020 election, Trump was the only president since Andrew Johnson in 1869 to refuse to attend the inauguration of his successor. At noon on January 20, 2021, Joseph Biden was sworn in as 46th President of the United States.

III. Trump’s Attempts to thwart the Biden administration

Trump’s frustration at his electoral defeat led him to neglect pressing public policy issues, attack members of his own administration, delay transition laws from taking effect, and take actions to thwart the transition to the incoming Biden administration.

After the election, Trump ignored the deteriorating economy and the COVID-19 crisis that had claimed more than 300,000 lives (400,000 by the time he left office) and focused on his grievances and his efforts to overturn the results of the election. In the fall of 2020, US intelligence agencies determined that Russia was the perpetrator of the most serious infiltration of government and business computer systems in US history and that the infiltration had gone on since March 2020. Trump, however, made no public response to the discovery, aside from suggesting that the hacking might have been done by China rather than Russia. Trump also spent much of his time issuing pardons to his friends and allies as well as those who had refused to testify against him during the Mueller investigation.

Trump attacks his own appointees

As it became evident that it was unlikely that he would be able to overturn the election, Trump became increasingly more desperate in his fruitless battle to stay in office. In an interview at the end of November, Trump even implied that his own administration had plotted against him and refused to investigate supposed fraud in the election. “This is total fraud. And how the F.B.I. and Department of Justice — I don’t know, maybe they’re involved — but how people are allowed to get away with this stuff is unbelievable. This election was a total fraud. . . . There’s no way Joe Biden got 80 million votes” (Shear & Martin, 2020).

On December 1, Attorney General Barr announced that Justice Department investigations had, “not seen fraud on a scale that could have effected a different outcome in the election” (Benner & Schmidt, 2020). Angering Trump, Barr also refused to appoint a special counsel to investigate allegations of Hunter Biden having avoided paying taxes, judging that normal DOJ procedures were sufficient to assure a just outcome of the investigation. By mid-December Barr had resigned.

Throughout December Trump became more frustrated that more of his allies were not fighting strongly enough to overturn the election. He even thought that Mike Pence and his counsel, Pat Cipollone, were not sufficiently loyal (Swan, 2020). After Senate Majority Leader McConnell congratulated Joe Biden on being president-elect, Trump accused him of being “the first one off the ship” (Swan, 2020).

As it became obvious that Trump could not stay in power, he began to take actions that would thwart the incoming Biden administration.

The Presidential Transition Act of 1963 and Amendments

The Transition Act of 1963 has been updated a number of times, and provides the framework for transition to a new president. Among other things, the Act provides funds to an incoming administration (about \$6 million in 2020-2021) for staff, travel, information technology services, etc. It also provides that office space will be provided by the General Services Administration (GSA). It requires that coordinating councils be set up prior to the election to ensure that departments and agencies prepare for a possible transition of the presidency. It requires that agencies set up succession plans for political appointees that may leave the administration during the transition to a new one. In addition to government funds, the incoming transition can solicit private funds, though contributions are limited to \$5,000 per person. It also provides that incoming national security personnel can get expedited security clearances so that they can be briefed on sensitive and classified intelligence issues (Hogue, 2020; Kumar, 2020a, 2020b).

Despite these provisions in law, most of them cannot take effect until the Administrator of GSA “ascertains” the “apparent successful candidate” who won the election (3 U.S.C. 102; Public Law 87-829, Sec. 871(b). Normally, the GSA ascertainment would occur immediately after the outcome of the election was evident. However, the GSA administrator, presumably under the direction of President

Trump, refused to “ascertain” the apparent winner of the election as Joe Biden until November 23, 20 days after the election, long after it had become clear that Biden had won both the popular vote and the electoral college vote. This formality by the GSA allows the legally mandated cooperation between departments and agencies and the Biden “agency review teams” (formerly called transition teams or landing teams). Allowing the formal transition to begin, however, did not mean that Trump admitted defeat: “This election was lost by the Democrats. They cheated” (Rucker et al., 2020).

By custom, the outgoing president allows the president-elect to receive the President’s Daily Brief (PDB), the summary of the latest top-secret intelligence collected by the intelligence community. In 2000, despite the uncertainty of the election outcome, President Clinton gave George W. Bush access to the PDB well before the Supreme Court called the election in Bush’s favor. Obama offered the PDB to Trump immediately after the 2016 election. President Trump, however, did not allow Biden access to the PDB until November 30 (Priess, 2020).

After formal ascertainment of the apparent winner, career civil servants worked with Biden’s Agency Review Teams to coordinate with agencies and brief incoming teams about ongoing issues, legal deadlines, contract decisions, and other activities and intended to help facilitate a seamless transition. Despite general cooperation across the government, political leaders at the Office of Management and Budget and the Department of Defense were less forthcoming. On December 18, acting Defense Secretary Christopher Miller abruptly cancelled DOD briefings for Biden personnel, saying that there would be a mutually agreed-upon delay over the holidays, a claim denied by Yohannes Abraham who was the executive director of the Biden Transition (Kaplan, 2020; Wang et al., 2020). Biden said that his team was encountering “roadblocks” and not getting information in “key national security areas,” and that his team “needs a clear picture of our force posture around the world” and “full visibility into the budget planning underway at the Defense Department” (Wang et al., 2020).

In addition, political leaders of the U.S. Trade Representative refused to meet with Biden agency review teams as of December 24, so Biden representatives could not be brought up to date on pending negotiations, for instance with the U.K. about Brexit (Bade, 2020).

Schedule F

Each new president can make about 4,000 political appointments: at the highest level, 1242 require Senate Confirmation; 472 without confirmation (primarily White House staff); 761 Senior Executive Service; and 1,538 Schedule C appointees (mid-level management and below (Pffner, 2020)). This overlay constitutes a much larger layer of political personnel than any other modern democracy (Pffner, 1996). The vast majority of the 2 million executive branch employees belong to the professional career services, whose employment is based on qualifications rather than party affiliation.

In October 2020, President Trump issued Executive Order 13957 creating “Schedule F,” a new category of federal

employees whose hiring and firing would be subject to much greater political control than the other employees in the merit system, who are required to be qualified for their jobs (White House, 2020). The employees would be those “employed in positions of a confidential, policy-determining, policy-making, or policy-advocating character,” a definition normally characterizing traditional political (not career) appointments. Political heads of agencies were directed to reclassify (non-political) career employees into the new Schedule F, which would allow much tighter political control and politicize hiring and firing in the broader civil service. In preparation for implementation, the Office of Management and Budget classified 88 percent of its employees as potentially in the new Schedule F (Adams, 2020). Although it was likely that, after his inauguration, Biden would reverse the executive order, it might have taken significant resources to undo possible major disruptions to the government’s personnel systems.

After the election, despite objections from the Federal Reserve, Treasury Secretary Steven Mnuchin demanded that the Fed return money that Congress authorized to provide insurance and loans for businesses severely affected by the pandemic. Near the end of the year, Republicans insisted on writing the restrictions into law, depriving the Fed of the flexibility to use more than \$400 billion in emergency spending authority (DeBonis et al., 2020; Siegel, 2020). This change in policy narrowed the flexibility of the incoming Biden administration in dealing with the economic effects of the COVID-19 pandemic (Smialek & Rappeport, 2020). In a compromise on the bill, federal aid to state and local governments was also deleted.

In another, last minute, attempt to undermine the apolitical career services, the Secretary of Health and Human Services imposed 5-year term limits on 60 senior career positions in the Food and Drug Administration and the Centers for Disease Control. The new rule would make it easier for political appointees to influence the professional career staff (Weiland & Sanger-Katz, 2021).

Conclusion: Threats to the Constitution and Democracy

Trump’s denial of his loss to Biden was important in itself, but the impact on the United States was made much worse by the refusal of most Republican members of Congress to admit the reality of Biden’s win. As of December 6, after a survey of all 249 Republican members of Congress, only 26 admitted that Biden had won; two said that Trump had won; and 221 refused to answer, demonstrating the power of Trump to intimidate members of his party (Washington Post Staff, 2020a). Even after the violent riot in the Capitol, 139 Representatives and eight Senators voted against counting the electoral votes that provided Biden’s win.

The 2020 election put the US constitutional system under extreme pressure. Though many norms of the political system were shattered (Pfiffner, 2021), the constitutional framework survived:

- State and local officials of both parties fulfilled their duties;
- Some Republicans spoke out against Trump’s efforts

to overturn the election;

- State and federal courts, including the Supreme Court, rejected bogus claims of fraud;
- Voting outcomes were certified by the states;
- Electors cast their ballots.

After the violent attack on the Capitol, the electoral votes were duly counted and Biden was declared president-elect.

On the other hand, President Trump found flaws in the system that allowed him to refuse to admit his electoral defeat. He rejected customary civility of defeated candidates in dealing with his successor. Most importantly, most of the members of his party in Congress refused to recognize the outcome of the election and supported Trump’s specious claims. Consequently, the broad base of the Republican Party believed their leaders and denied the legitimacy of the election. These fervent beliefs, along with Trump’s incitement, led to the violent occupation of the Capitol by the mob.

The Constitution was not designed for chief executives like Donald Trump in a polarized era. The Framers of the Constitution feared the concentration of power and especially the prospect of a chief executive becoming a tyrant. Yet they felt that there had to be an independent executive to prevent Congress from abusing its power. They nevertheless gave Congress most of the authority in the new Constitution (Article I, Section 8). But over more than two centuries political power has accreted to the executive (Pfiffner, 2008).

The Framers of the Constitution feared, in Alexander Hamilton’s words,

When a man unprincipled in private life desperate in his fortune, bold in his temper, possessed of considerable talents, having the advantage of military habits—despotic in his ordinary demeanour—known to have scoffed in private at the principles of liberty—when such a man is seen to mount the hobby horse of popularity—to join in the cry of danger to liberty—to take every opportunity of embarrassing the General Government & bringing it under suspicion—to flatter and fall in with all the non sense of the zealots of the day—It may justly be suspected that his object is to throw things into confusion that he may “ride the storm and direct the whirlwind. (Hamilton, 1792/1967)

More ominously, in 1787, one prominent Pennsylvanian identifying himself only as “An Old Whig,” wrote about the danger of demagogues in *Antifederalist 70*:

suppose . . . that this man is without the virtue, the moderation and love of liberty which possessed the mind of our late general [Washington]. . . . We may also suppose that like Caesar, he may be at once ambitious and poor, and deeply involved in debt. Such a man would die a thousand deaths rather than sink from the heights of splendor and power, into obscurity and wretchedness. (*Anti-Federalist 70*, 1787)

Such a man would likely try to cling to office and become the tyrant that the Framers of the Constitution feared might become chief executive.

During the constitutional convention, impeachment was

seen as an extreme remedy for a president who abused his power. James Madison argued that “some provision be made for defending the Community agst. the incapacity, negligence or perfidy of the chief Magistrate” (Farrand, 1966, p. 65). In Federalist 65 Hamilton said, “offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust” would lead to impeachment and removal from office. Yet President Trump demonstrated that in a polarized era, if a president is backed by his party in one house of Congress the threat of impeachment and removal from office is nullified.

If one of the major parties in a two-party system refuses to accept the clear-cut outcome of an election, the democratic system is in trouble (Levitsky & Ziblatt, 2018).

The full extent of the damage that Trump did to the United States by his refusal to accept the outcome of the 2020 election and his incitement of a violent mob will de-

pend on whether the precedents he has set will be followed by other American politicians.

.....

Paper prepared for presentation at symposium on the US Presidential Election and Public Administration at the Graduate School of Public Administration of Seoul National University, January 14, 2021.

Acknowledgements

For comments on an earlier draft of this paper the author would like to thank Mark Rozell, Katie Dunn Tenpas, and Michael Tuszka.



This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CCBY-ND-4.0). View this license's legal deed at <https://creativecommons.org/licenses/by-nd/4.0> and legal code at <https://creativecommons.org/licenses/by-nd/4.0/legalcode> for more information.

REFERENCES

- ABC News. (2021, January 7). President Trump speaks at Save American Rally in Washington. *ABC News*.
- Adams, G. (2020, December 7). Kneecapping the Biden White House. *The Hill*.
- Anti-Federalist 70. (1787, December 11). The Powers and Dangerous Potentials of His Elected Majesty. *The New York Journal*. <http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/70.htm>
- Armus, T. (2020, December 14). Michigan closes legislative buildings due to ‘credible threats of violence’ ahead of electoral college vote. *Washington Post*.
- Armus, T. (2021, January 7). House rejects challenge to Biden’s win in Pennsylvania. *Washington Post*.
- Astor, M. (2021, January 4). Georgia election official debunked Trump’s claims of vote fraud, point by point. *New York Times*.
- Bade, G. (2020, December 22). Trump-appointed staff at USTR delay Biden transition. *Politico*.
- Badger, E. (2020, November 30). Most Republicans Say They Doubt the Election. *New York Times*.
- Baker, P. (2021, January 6). A Mob and the Breach of Democracy: The Violent End of the Trump Era. *New York Times*.
- Baker, P., Haberman, M., & Karni, A. (2021, January 12). Pence Reached His Limit With Trump. It Wasn’t Pretty. *New York Times*.
- Barry & Frenkel. (2021, January 6). ‘Be There. Will be Wild!’: Trump all but Cirled the Date. *New York Times*.
- Bellware, K. (2021, January 7). Sen. Hawley rebuked by hoe state paper as having “blood on his hands.” *Washington Post*.
- Benner, K., & Schmidt, M. (2020, December 1). Barr Acknowledges Justice Dept. Has Found No Widespread Voter Fraud. *New York Times*.
- Blake, A. (2020, December 18). GOP inches toward an unprecedented attempt to overturn the 2020 election. *Washington Post*.
- Bockell, G. (2021, January 2). “Grace and Humor”: The vice presidents who certified their own election losses. *Washington Post*.
- Broadwater, L. (2021, January 2). Pence Welcomes Futile Bid by G.O.P. Lawmakers to Overturn Election. *New York Times*.
- Bump, P. (2020a, November 12). Trump grasps at a new set of Straws: Computers rigged his election loss. *Washington Post*.
- Bump, P. (2020b, December 14). Trump’s two remaining points of leverage on the election and how he may use them. *Washington Post*.
- Burke, J. (2000). *Presidential Transitions: From Politics to Practice*. Lynne Rienner Press.
- Burns, A. (2020, July 30). Trump Attacks an Election He Is at Risk of Losing. *New York Times*.
- Carter, A., Cheney, D., Cohen, W., Esper, M., Gates, R., Hagel, C., Mattis, J., Panetta, L., Perry, W., & Rumsfeld, D. (2021, January 4). The time for questioning the elections results has passed. *Washington Post*.
- Cassidy, J. (2020, December 8). Trump’s Attacks on Local Officials Are Spreading Hatred and Inciting Violence. *New Yorker*.
- Cheney, K. (2020, December 28). Gohmert suite may force Pence’s hand in effort to overturn Trump’s defeat. *Politico*.
- CNN. (2016, November 9). Hillary Clintons concession speech. *CNN Politics*.
- Crewley, M. (2020, September 23). Trump Won’t Commit to “Peaceful” Post-election Transfer of Power. *New York Times*.
- Cybersecurity and Infrastructure Security Agency. (2020, November 12). *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*. Department of Homeland Security. <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>
- DeBonis, M., Stein, J., & Siegel, R. (2020, December 20). Lawmakers reach compromise over GOP proposal to rein in Fed’s powers. *Washington Post*.
- Edmondson, C., & Broadwater, L. (2020, December 11). Rallying Behind Trump, Most House Republicans Joined Failed Lawsuit. *New York Times*.

- Edmundson, C., & Crowley, M. (2020, December 30). Hawley Answers Trump's Call for Election Challenge. *New York Times*.
- Edsall, T. B. (2020, July 22). The Whole of Liberal Democracy Is in Grave Danger at This Moment. *New York Times*.
- Elfrink, T. (2020, December 15). After electoral college backs Biden, Trump continues falsely insisting he won. *Washington Post*.
- Fandos, N., Rappeport, A., Vogel, K. P., & Edmondson, C. (2020, August 20). Former Postal Governor Tells Congress Mnuchin Politicized Postal Service. *New York Times*.
- Fandos, N., & Schmidt, M. (2020, December 13). Trump Allies Eye Long-Shot Election Reversal in Congress, Testing Pence. *New York Times*.
- Farrand, M. (1966). *The Records of the Federal Convention of 1787: Vol. II*. Yale University Press.
- Fauset, R., Rojas, R., & Astor, M. (2021, January 5). George Official Denounces Trump on Eve of Runoffs. *New York Times*.
- Fausset, R. (2020, December 2). Georgia Election Official Lashes Out At Trump for Not Condemning Threats. *New York Times*.
- Flegenheimer, M. (2017, January 6). "It Is Over": Democrats' Efforts to Deny Trump Presidency Fail. *New York Times*.
- Foley, E. B. (2020, December 29). Sorry, President Trump. January 6 is no an election do-over. *Washington Post*.
- Gardner, A. (2020, December 20). How Trump drove the lie that the election was stolen, undermining voter trust in the outcome. *Washington Post*.
- Greenwood, M. (2020, December 1). Georgia elections official slams Trump over voter fraud claims, warns of potential violence. *The Hill*.
- Haberman, M. (2020, June 24). Trump's False Attacks on Voting by Mail Stir Broad Concern. *New York Times*.
- Haberman, M. (2021, January 6). Trump told Crowd 'You Will Never Take Back Our Country With Weakness.' *New York Times*.
- Haberman, M., & Kanno-Youngs, Z. (2020, December 20). Trump Discussed Making Conspiracist Special Counsel. *New York Times*.
- Haberman, M., & Karni, A. (2021, January 6). Pence Said to Tell Trump that Votes Can't be Blocked. *New York Times*.
- Hamburger, T., Ruble, K., Fahrethold, D., & Dawsey, J. (2020, November 19). Trump invites Michigan Republican leaders to meet him at White House as he escalates attempts to overturn election results. *Washington Post*.
- Hamilton, A. (1967). Enclosure: [Objections and Answers Respecting the Administration], [18 August 1792]. In H. C. Syrett (Ed.), *The Papers of Alexander Hamilton: Vol. 12: July 1792-October 1792* (pp. 229–258). Columbia University Press; Founders Online, National Archives, 2018. <http://founders.archives.gov/documents/Hamilton/01-12-02-0184-0002> (Original work published 1792)
- Healy, P., & Martin, J. (2016, October 19). Donald Trump Won't Say if He'll Accept Result of Election. *New York Times*.
- Helderman, R., Demirgian, K., Kim, S. M., & DeBonis, M. (2021, January 7). Congress affirms Biden's presidential win following riot at U.S. Capitol. *Washington Post*.
- Helderman, R., Swaine, J., & Lee, M. Y. H. (2020, December 23). Despite Trump's intensive hunt for voter fraud, officials in key states have so far identified just a small number of possible cases. *Washington Post*.
- Helderman, R., & Viebeck, E. (2020, December 11). "The last wall" How dozens of judges across the political spectrum rejected Trump's efforts to overturn the election. *Washington Post*.
- Henry, L. (1960). *Presidential Transitions*. Brookings.
- Historians' Letter. (2021, January 4). *Historians' Statement on Congressional Certification of the 2020 Presidential Election*. <https://www.politico.com/f/?id=00000176-d218-d162-a7ff-f31c5b8c0000>
- Hogue, H. (2020). *Presidential Transition Act: Provisions and Funding*. Congressional Research Service.
- Hsu, S., Weiner, R., & Marimow, A. (2021, January 14). Retired firefighter accused of attacking police, man carrying Confederate flag charged in Capitol riots. *Washington Post*.
- Kaplan, T. (2020, December 28). Biden Admonishes Trump Administration Over 'obstruction.' *New York Times*.

- Kaufman, E. (2020, August 13). Trump says he opposes funding USPS because of mail-in voting. *CNN Politics*.
- Kessler, G. (2020, November 5). Trump's White House statement: Falsehood upon falsehood. *Washington Post*.
- Kessler, G., & Rizzo, S. (2020, November 5). President Trump's false claims of vote fraud: A chronology. *Washington Post*.
- Krebs, C. (2020, December 1). Trump fired me for saying this, but I'll say it again: The election wasn't rigged. *Washington Post*.
- Kumar, M. (2015). *Before the Oath: How George W. Bush and Barack Obama Managed a Transfer of Power*. Johns Hopkins University Press.
- Kumar, M. (2020a). *Rules Governing Presidential Transitions* [Report 2021-05]. White House Transition Project. <https://whitehousetransitionproject.org/wp-content/uploads/2020/06/WHTP2021-05-Rules-Governing-Presidential-Transitions.pdf>
- Kumar, M. (2020b, December 10). *The Elements of Presidential Transitions* [Testimony before the House Subcommittee on Government Operations].
- Levitsky, S., & Ziblatt, D. (2018). *How Democracies Die*. Crown.
- Lewis, M. (2018). *The Fifth Risk*. Norton.
- Liptak, A. (2020a, December 8). Supreme Court Rejects Republican Challenge to Pennsylvania Vote. *New York Times*.
- Liptak, A. (2020b, December 12). Justices Deny bid by Texas to Subvert Vote. *New York Times*.
- National Conference of State Legislatures. (2020). *Polling Places*. <https://www.ncsl.org/research/elections-and-campaigns/polling-places.aspx>
- NBC News. (2021). *Trump to address D.C. rally where as many as 30,000 people are expected*. <https://www.nbcnews.com/politics/congress/live-blog/electoral-college-certification-updates-n1252864/ncrd1252964#blogHeader>
- Niese, M. (2000, December 29). No fraud: Georgia ausit confirms authenticity of absentee ballots. *Atlanta Journal-Constitution*.
- Olorunnipa, T., Dawsey, J., Helderman, R., & Brown, E. (2020, December 21). Trump assembles a ragtag crew of conspiracy-minded allies in flailing bid to reverse election loss. *Washington Post*.
- Olorunnipa, T., & Wootson, C. (2020, December 12). In challenging election defeat, Trump cements his control over the Republican Party. *Washington Post*.
- Peiseer, J. (2020, November 30). Trump lashes out as former top DHS official reasserts that election was 'secure.' *Washington Post*.
- Pfiffner, J. (1996). *The Strategic Presidency: Hitting the Ground Running*. University Press of Kansas.
- Pfiffner, J. (2008). *Power Play: The Bush Presidency and the Constitution*. Brookings.
- Pfiffner, J. (2010). Presidential Transitions. In G. C. Edwards & W. G. Howell (Eds.), *The Oxford Handbook of The American Presidency* (pp. 85–107). Oxford University Press.
- Pfiffner, J. (2019). The Lies of Donald Trump: A Taxonomy. In C. Lamb (Ed.), *The Trump Presidency and Executive Power* (pp. 17–40). Palgrave Macmillan.
- Pfiffner, J. (2020). *The Office of Presidential Personnel* [Report 2021-26]. The White House Transition Project. <https://www.whitehousetransitionproject.org/wp-content/uploads/2020/08/WHTP2021-26-Office-of-Presidential-Personnel.pdf>
- Pfiffner, J. (2021). Donald Trump and the Norms of the Presidency. *Presidential Studies Quarterly*, 51(1), 96–124. <https://doi.org/10.1111/psq.12698>
- Priess, D. (2020). *The President's Daily Brief and Presidents-Elect*. Lawfare.
- Reuters. (2020, November 10). Vote spikes in Wisconsin, Michigan and Pennsylvania do not prove election fraud. *Reuters*.
- Richard, F., & Corasaniti, N. (2020, December 8). After Three Counts, Georgia Recertifies Biden's Win. *New York Times*.
- Rizzo, S. (2020, November 19). The Trump campaign was not denied access to Philadelphia's ballot count. *Washington Post*.
- Rucker, P., Parker, A., Dawsey, J., & Gardner, A. (2020, November 28). 20 days of fantasy and failure: Inside Trump's quest to overturn the election. *Washington Post*.
- Rutenberg, J., Corasaniti, N., & Feuer, A. (2020, December 27). Trump's Failed Crusade Debunks G.O.P.'s Case For Voting Restrictions. *New York Times*.

Shear, M. D., & Martin, J. (2020, November 30). In his first one-on-one interview since losing to Biden, Trump baselessly cast more conspiracy theories. *New York Times*.

Shear, M. D., & Saul, S. (2021, January 4). On Tape, Trump Pushes Georgia to 'Find' Votes. *New York Times*.

Siegel, R. (2020, December 22). Stimulus dispute thrusts the Fed into political limelight it seeks to avoid. *Washington Post*.

Smialek, J., & Rappeport, A. (2020, November 19). *Mnuchin to End Key Fed Emergency Programs, Limiting Biden*.

Sonmez, F., Dawsey, J., Lamothe, D., & Zapotosky, M. (2020, December 20). A frustrated Trump redoubles efforts to overturn election result. *Washington Post*.

Struyk, R. (2017, May 11). Fact-Checking Trump's Repeated Unsubstantiated Claim of Widespread Voter Fraud. *ABC News*.

Swan, J. (2020, December 19). Trump turns on everyone. *Axios*.

Text of Gore's Concession Speech. (2000, December 13). *New York Times*.

Thrush, G., & Kanno-Youngs, Z. (2020, September 30). Refusing to Categorically Denounce White Supremacists, Trump Falsely Says Extremist Violence in 'Not a Right-Wing Problem.' *New York Times*.

Wang, A. B., Johnson, J., & Lamothe, D. (2020, December 28). Biden accuses Trump appointees of obstructing transition on national security issues. *Washington Post*.

Washington Post Staff. (2020a, December 6). Where Republicans in Congress stand on Trump's false claim of winning the election. *Washington Post*.

Washington Post Staff. (2020b, December 15). Where Republicans in Congress stand on Trump's false claim of winning the election. *Washington Post*.

Weiland, N., & Sanger-Katz, M. (2021, January 18). Last-Minute Rule Change Seeks to Add 'Term Limits' to Top Health Positions. *New York Times*.

White House. (2020). *Executive Order on Creating Schedule F In The Excepted Service*. Executive Order 13957, October 21.

Wines, M. (2020, December 4). State Election Staffs Bombarded by Threats. *New York Times*.