

Trump's assault on election integrity forces question: What would happen if he refused to accept a loss?

By **Elise Viebeck** and **Robert Costa**

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President Trump's relentless efforts to sow doubts about the legitimacy of this year's election are forcing both parties to reckon with the possibility that he may dispute the result in November if he loses — leading to an unprecedented test of American democracy.

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With less than four months before the election, Trump's escalating attacks on the security of mail-in ballots and his refusal again this week to reassure the country that he would abide by the voters' will have added urgency to long-simmering concerns among scholars and his critics about the lengths he could go to hold on to power.

“What the president is doing is willfully and wantonly undermining confidence in the most basic democratic process we have,” said William A. Galston, chair of the Brookings Institution's Governance Studies Program. “Words almost fail me — it's so deeply irresponsible. He's arousing his core supporters for a truly damaging crisis in the days and weeks after the November election ”

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Most legal experts said it is hard to envision that Trump would actually try to remain in office after a clear defeat by former vice president Joe Biden, considering the uproar that would follow such a challenge to U.S. democratic norms. Trump has previously said he offers up inflammatory ideas to provoke the media and his critics.

But his unwillingness to commit to a smooth transition of power has forced academics and political leaders — including, privately, some GOP lawmakers — to contemplate possible scenarios.

The resulting turmoil could surpass the contention over the outcome of the 2000 presidential election, confounding the legal system, Congress and the public's faith in how the country picks its leaders. Such a crisis could also have long-lasting consequences for a nation that has already been rocked this year by the coronavirus pandemic, an economic collapse and a reckoning over racial injustice.

Among the possibilities: Trump could claim victory before the vote in key states is fully counted — a process that could take days or even weeks this year because of the expected avalanche of absentee ballots.

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He could also spend weeks refusing to concede amid a legal war over which votes are valid and should be included in the tally, according to legal and constitutional experts who are tracking Trump's statements.

Or he could simply refuse to leave on Jan. 20 — a possibility Biden has discussed publicly.

“This president is going to try to steal this election,” the presumptive Democratic nominee told Trevor Noah of “The Daily Show” last month.

Biden said he is convinced that if Trump loses but won't leave, military leaders “will escort him from the White House with great dispatch.”

Anxiety about Trump's intentions has grown as he seizes on the shift to absentee voting during the coronavirus pandemic as a sign that the election's outcome will be rigged, claiming without evidence that this year's race will be “the most corrupt election in the history of our country,” as he put it last month.

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This year, the president has attacked the security of voting by mail at least 50 times, according to a tally by The Washington Post, repeatedly making unfounded claims that it will lead to rampant fraud.

There is no evidence that mail voting leads to the kind of massive fraud Trump has described. Election officials throughout the country have challenged the president's assertions, saying that with the right safeguards, mail voting is secure. Data from several states with all-mail elections show they have had a tiny rate of potentially fraudulent ballots in recent years.

But in an interview with Fox News's Chris Wallace that aired Sunday, Trump reiterated that he thinks "mail-in voting is going to rig the election" and refused to commit to accepting the results.

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"I have to see," Trump said. "No, I'm not going to just say yes. I'm not going to say no."

His intensifying rhetoric comes in the wake of a chaotic primary season in which many local election officials have struggled to keep up with the deluge of absentee ballots.

Trump's attacks on voting by mail have been amplified by the Republican National Committee and conservative groups, which are spending tens of millions of dollars on a multi-state legal strategy to limit the expansion of absentee voting.

Trump campaign spokesman Tim Murtaugh said the president is acting responsibly when he raises doubts about loosening restrictions on voting by mail.

"We don't know what kind of shenanigans Democrats will try leading up to November," Murtaugh said in a statement. "If someone had asked George W. Bush and Al Gore this same question in 2000, would they have been able to foresee the drawn-out fight over Florida? The central point remains clear: in a free and fair election, President Trump will win."

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The president's allies say they can envision this year's election ending in the kind of protracted legal fight that played out 20 years ago.

“What Trump is saying is that much of what happened in 2000 could play out again, in terms of the election ending up as a Supreme Court case,” former House speaker Newt Gingrich (R) said in an interview. “He’s not saying he wouldn’t accept the results, but he’s saying he could imagine an election so chaotic and with so many contested ballots that you’d be fighting it out all the way to the inauguration.”

In 2000, however, even as Gore and Bush waged a fierce legal fight over the vote count in Florida that ultimately went to the Supreme Court, neither threatened to reject the final outcome.

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Senior Republicans have often distanced themselves from Trump’s claims of a possible “rigged” election, but they have echoed his claims about alleged voter fraud. Speaking last month to CNN, Sen. John Barrasso (R-Wyo.), a member of GOP leadership, did not rebuke Trump and said that there has been “evidence of election fraud in the past and we want to make sure that everything is on the up and up.”

Trump’s loyalists have gone further. “It’s perhaps Joe Biden’s failures as a

candidate that animate the left's desire to get these vote-by-mail provisions in coronavirus legislation," Rep. Matt Gaetz (R-Fla.) told Fox News in April, warning of "the greatest opportunity for fraud in our election system."

Top Democrats and Biden supporters are now bracing for what former Ohio governor Ted Strickland said could be "dark days going forward."

"I fear this election could lead to civil unrest in this country because Trump would happily be a cheerleader for that kind of response," said Strickland, a Democrat. "We are facing circumstances in this country we have probably never faced in our history, because we have a president who has no regard for our constitutional system of government. . . . He is fully capable of putting his own ego and perceived self-interest above what's right for the country."

A pattern of raising doubts

Since entering political life, Trump has questioned the integrity of the country's voting system and suggested he might not accept an electoral loss.

“I will totally accept the results of this great and historic presidential election if I win,” Trump said in October 2016 at a rally in Delaware, Ohio.

He said something similar in a debate with Democratic nominee Hillary Clinton that month.

“What I’m saying now is I will tell you at the time,” Trump said. “I will keep you in suspense, okay?”

Winning the presidency did not stop Trump from claiming that millions of votes were fraudulent. He blamed his defeat in California on voting by undocumented immigrants, providing no evidence for the claim. He said he lost in New Hampshire because thousands of Massachusetts voters were bused there to cast ballots illegally, offering no proof.

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This year, Trump began issuing salvos against mail ballots in March, just as states announced they were relaxing restrictions on absentee voting for the primaries in response to the pandemic. As his poll numbers began to slide this spring, the attacks became a mainstay of his Twitter presence and a refrain in his interviews and remarks to supporters.

Attorney General William P. Barr has echoed Trump's allegations about fraud, making unfounded claims that foreign governments could hijack the election with counterfeit mail ballots.

At times, Trump and his allies have said he would not challenge a loss in November.

After Biden's comments last month suggesting Trump might refuse to leave office, the president told Fox News: "Certainly if I don't win, I don't win. I mean, you know, go on and do other things."

His campaign was also definitive, with Murtaugh calling the imagined scenario of Trump refusing to leave the White House "another brainless conspiracy theory from Joe Biden."

"President Trump has been clear that he will accept the results of the 2020 election," Murtaugh said in a statement then.

But Trump appeared to reverse that position during the Fox News interview that aired Sunday.

"Are you suggesting that you might not accept the results of the election?" Wallace asked.

Trump responded: "No. I have to see."

In GOP circles, private talk about Trump's assertions veers from alarm to shrugging off his comments as simply incendiary political salvos. One moderate Republican House member, who spoke on the condition of anonymity to comment candidly and avoid Trump's wrath, said he expects Trump to "leave quickly" if it is a blowout defeat. But he said he worries about a narrow election and whether Trump would go

to extreme lengths to “protect his personal brand.”

“It’s something we’d all rather not think about, but it’s there,” he said.

The president is being backed by a bustling Republican operation in 15 states to monitor voting locations and ensure a heavy GOP presence at polling sites.

Trump’s reelection campaign and the RNC are working together to recruit 50,000 volunteers to serve as “poll watchers,” according to advisers to both groups, with \$20 million set aside for courtroom fights, underscoring the legal arsenal at the party’s disposal.

Democrats and voting rights advocates, meanwhile, are mustering their own legal effort to make it easier to cast ballots by mail, filing more than 50 lawsuits in 25 states. They argue changes are needed to make sure that voters are not disenfranchised because of factors outside their control or arbitrary enforcement of the rules.

Though there is no evidence that absentee voting benefits one party over another, the president’s rhetoric is persuading some GOP voters that mail ballots are untrustworthy.

Veteran conservative activist Richard Viguerie called this year’s shift in voting practices “terrifying to us.”

“Every conservative is concerned about these mail-in ballots,” he said. “And our issue isn’t whether he leaves office but whether Democrats will accept the legitimacy of a Trump reelection. They didn’t in 2016 with the resistance and the Russia investigation and all of that, in our view. Will they let him govern if he wins again, or will they be the ones saying it’s illegitimate?”

Experts across the political spectrum worry that Trump's latest remarks not only will erode confidence in this year's election but could further weaken the democratic norms that have long held the country together.

"We're headed into an election where it's reasonable to expect logistical challenges due to the pandemic," said Yuval Levin, a conservative policy expert at the American Enterprise Institute. "Leaders should prepare the public to expect that and help them understand that logistical problems do not mean an election is illegitimate. To see the president doing the opposite is a big problem."

Bracing for possible chaos

It would be historically unprecedented for an incumbent president not to accept a loss. Even in presidential elections with close margins — such as John F. Kennedy's defeat of Richard M. Nixon in 1960 or Bush's defeat of Gore in 2000 — the losing candidate has always conceded the race.

Yet with the dramatic shift to absentee voting, the division of partisan power in swing states and weaknesses in the law that governs how Congress handles disputed presidential elections, the circumstances of this year's general election could converge in a way that allows Trump to foster public doubt about the outcome, experts said.

Lawrence R. Douglas, a professor at Amherst College and author of the new book "Will He Go?: Trump and the Looming Electoral Meltdown in 2020," said there are a range of scenarios that could leave the country without a clear victor.

One possibility, Douglas said, is that Trump has a lead on Election Day that erodes as mail-in ballots come in over the subsequent days, breaking for Democrats in what experts have called the “blue shift.”

Many states have seen record-busting totals of absentee ballots in this year’s primaries, prolonging their vote counts. Pennsylvania processed 1.5 million mail ballots, compared with 84,000 in its 2016 primary. In Nevada, this year’s number was 483,788, compared with about 25,000 in 2016.

New York election officials have spent weeks tabulating some results for last month’s primary after voters requested more than 1.7 million absentee ballots, compared with about 115,000 submitted during the 2016 presidential primary.

In November, if Trump tries to declare victory before all those absentee ballots are counted, he could pressure Republican legislatures to certify slates of electors who would support him. And in turn, if Democratic governors of those states disagree, Congress could receive conflicting electoral certificates — something that has happened a handful of times in U.S. history, Douglas said.

Trump has a history of casting doubt on the validity of absentee ballots that are tallied after the Election Day vote.

In 2018, as ballots in Florida’s U.S. Senate and gubernatorial races were being recounted, days after voters had gone to the polls, the president tweeted that Senate candidate Rick Scott and governor hopeful Ron DeSantis should be declared the winners.

He claimed that “large numbers of new ballots showed up out of nowhere, and many ballots are missing or forged.”

“An honest vote count is no longer possible — ballots massively infected. Must go with Election Night!” he tweeted. Both Scott and DeSantis won their races in the
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If Trump chooses to make similar comments as the vote is being counted in November, he could weaken public confidence in the process and cause his supporters to doubt the ultimate result, Douglas said.

“We have a president who, really for years now, has been running down the trustworthiness of our electoral process,” he said. “It certainly has gained traction with his base, but it is also incredibly dangerous.”

More-complicated scenarios could involve the Electoral Count Act of 1887, which was passed in response to the contested presidential election of 1876 and attempts to clarify what Congress should do in case of a dispute over a state’s electoral-college votes.

The law directs the House and Senate to separately debate and vote, but a scholarly consensus has declared the law defective for several reasons, including its failure to define what makes an electoral vote legitimate for counting purposes.

Douglas warned that the deficiencies in the law could make an electoral crisis worse, not better. Its provisions have been triggered only once, after a faithless Republican elector from North Carolina cast a vote for George Wallace instead of Nixon in the 1968 presidential election.

“In 2000, when the ECA threatened to kick in, jurists and commentators were unable to agree about the meaning of even its most basic provisions,” Douglas wrote in his book, referring to the contested Bush-Gore election.

The law was not triggered because Gore, “to his credit,” provided closure before that became necessary, Douglas said.

'There is a process'

The way to avoid such a crisis, Democrats say, is for Biden to win in a landslide, by a margin so large that legal challenges contesting ballots in various states would be moot.

The Constitution's 20th Amendment helps provide for the peaceful transition of power, ordering that the president's term "shall end at noon on the 20th day of January . . . and the terms of their successors shall then begin."

In a Monday interview on MSNBC's "Morning Joe," House Speaker Nancy Pelosi (D-Calif.) said of Trump: "Whether he knows it yet or not, he will be leaving."

"There is a process," Pelosi added. "It has nothing to do with [whether] the certain occupant of the White House doesn't feel like moving and has to be fumigated out of there."

To that end, Biden's campaign is pushing for a decisive victory in key battleground states, aware that the comfortable lead he has in polls now could shrink, according to his advisers.

The former vice president also said this month that his campaign had recruited 600 lawyers to fight possible "chicanery" and protect voter access. The campaign has also received volunteer sign-ups from 10,000 people and plans to train them to "be in a polling place" on Election Day, he said.

"It's going to be hard. And if it's close — watch out," Biden said at a July 1 fundraiser.

Legal and political experts said it is important to wrestle with the possibilities of what could unfold in November — however unlikely.

Dan Baer, senior fellow in the Europe program at the Carnegie Endowment for International Peace and a former Democratic Senate candidate in Colorado,

compared the thought experiments to insurance.

“It is unlikely that our house is going to burn down this year, but we still buy insurance against that,” said Baer, who recently wrote a piece titled “[How Trump could refuse to go](#)” for the website UnHerd.

“One of the lessons of this presidency is that we should think about the most insidious opportunities, the most egotistical course of action and make sure we’ve thought through what could follow from that,” he said. “If we haven’t done that at this point, shame on us.”

Matt Viser contributed to this report.

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Updated July 24, 2020

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