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## US Politics Beyond November 5th

*By Adam Garfinkle*

### SYNOPSIS

*Contrary to the expectations of many, the US elections scheduled for November 5 will not quickly resolve the current campaign season; it will instead lead to an unprecedented period of political uncertainty and possible danger in global security affairs.*

### COMMENTARY

The date November 5 appears to many observers of US politics as a shiny object, seemingly brighter with each passing day, whose radiance will finally end the protracted, odd, enervating, and slightly surreal US campaign season of 2024. Alas, it will not.

Not since the muddled Tilden-Hayes election of 1876 has there been such good reason to doubt that within a short time after the vote we would know who had won, not just the presidency but also the majorities in the two Houses of Congress. Indeed, we will likely arrive not just to but also pass beyond November 5, perhaps *several weeks beyond*, without knowing who the next President will be.

This is without modern precedent and will create novel dangers for the post-election period as regards both domestic civil order and US foreign/national security policy. Even after Inauguration Day on January 20, 2025, some of those dangers may not wholly abate.

### “Stop the Steal” 2.0

The US political system is already feeling the rolling thunder of a Republican “Stop the Steal” sequel to the 2020 version that brought us the January 6, 2021, Capitol

insurrection. This time, things will be partly the same and partly different but even more fraught if Trump loses the election.

They will differ, first, because Trump is not currently the incumbent, so no Republican Vice-President will preside as *president pro tempore* over the meeting of the Electoral College, as Mike Pence did under threat of being lynched.

If Harris wins, she will, according to Article II, Section 1 of the Constitution, preside over the certification of the Electoral College count that would put her in power as had happened four times previously after the elections of 1796, 1800, 1836, and 1988. It is hard to imagine any Federal court validating a manufactured Republican Party – aka the Grand Old Party (GOP) – complaint on this score.

It will be like 2020, too, in that the ultimate GOP aim is to prevent an Electoral College certification of a Democratic victory. To deny a winning Democratic Party ticket the 270 votes it needs, the GOP must create enough doubt via a storm of petty litigious obfuscation, focused on a few key states, to delay an Electoral College result until January 6 – the day the 119th Congress, having sat on January 3, is scheduled to conduct the ritual of hosting the Electoral College count.

If no Electoral College majority can be certified by that date, then according to the 12th Amendment (1804), the election is thrown into the House of Representatives, where each state has a single bloc vote. Since more House state blocs are majority-Republican than majority-Democratic – 26 to 24 – Trump would presumably be elected.

Would the GOP blatantly game the law in this manner? It tried and failed to do so four years ago in an *ad hoc* manner. This time, the GOP's MAGA inner circle has had ample time to hone its plans, during which time the "Stop the Steal" lie from 2020 has, if anything, grown stronger within the Republican voter core as "normies" have either left or been tossed from the party. The gambit brings to mind Sir Walter Scott's memorable line from *Guy Mannering*: "Law's like laudanum; it's much more easy to use it as a quack does, than to learn to apply it like a physician".

Signs of the stage being set are clear. As before the 2020 election, and the 2016 election as well, Trump has insisted that only massive voter fraud could explain his loss. He has refused to answer questions about whether he would again seek to obstruct a peaceful transfer of power; instead, he has recently repeated his threat that if he loses, massive bloodshed would follow. So has his Vice-Presidential running mate refused to answer that question, despite his having earlier rejected Trump's 2020 "Big Lie" as false.

Thus, Republican lawyers have in recent months introduced 318 bills spread over dozens of states to restrict voter access or affect election administration protocols to GOP advantage. Some of these bills have either passed or may pass before November 5 in Georgia, North Carolina, and Arizona.

The GOP stratagem has also included creating biased or bogus pro-Trump polls to be invoked as *post hoc* evidence of fraud if Trump loses. It has readied evidence-thin claims that Democratic state officials let millions of non-citizens vote illegally.

This time, too, the GOP has lawyered up to contest key vote counts that do not favour Republican candidates in Congressional and Senate contests as well as at the presidential level. All such efforts failed after November 2020 for utter lack of evidence, but lack of evidence may not matter as much post-November 5, 2024, for GOP operatives have been quietly recruiting or targeting key local Republican county and state election officials in swing states responsible for certifying vote counts to join the effort. A similar loose and late effort did not work in 2020, but this time around, a more coordinated effort might.

In short, Republican strategists have more thoroughly than in 2020 searched out every possible way to foil or delay accurate vote counting. And if all that fails, GOP operatives may again create bogus slates of Electors in a few states with Republican Governors and try to persuade them to legitimate these slates on the basis of unproven claims of voting fraud.

Above all, most different this time is that protracted uncertainty about the election outcome may occur simultaneously with more diffuse but still significant insurrectionary violence around the country. In that novel context, is the GOP stratagem more likely to succeed? If Trump wins the election, we'll never know, but if he loses, we're bound to find out. The outcome in that case? No one can say.

### **Foreign/National Security Policy Implications**

The sharp polarisation of American politics affects not only prospects for domestic civil order but also US foreign policy. The gist is that a Democratic administration that faces an increasingly isolationist Republican consensus, which is at best agnostic about the well-being of democratic allies and norms abroad, will be more reluctant to pursue policies that risk a protracted use of American force for fear that domestic divisions would undermine both the home-front and the Administration's general capacity to govern effectively.

That constraint may already account in part for the caution of Biden Administration policy toward the Ukraine-Russia war. President Biden has understood that policy postures that could lead to sending US troops into combat might redound to Republican political advantage. He no doubt reasons that if his party ultimately loses the high ground of US domestic politics on November 5, then it would lose with it nearly all influence over foreign and security policy for at least the next four years.

If Kamala Harris becomes President, the security policy constraint caused by the fragility of her majority amid polarised US domestic politics will likely persist, and become hard to disguise. Some foreign leaders may, therefore, conclude that the United States, despite its massive military capabilities, is deterred politically from waging any protracted regional war. Allies and adversaries alike may adjust their calculations as influenced by that perception, letting loose what could be an accident-prone interactive process.

In sum, partisanship no longer "stops at the water's edge" in US foreign policy. Going forward, any President who understands US global interests prudently and properly must expect constraining and routine political opposition to many, if not most, of his

(or her) national security policies. The line between US foreign and domestic policy, never as distinct as most academics imagined, has become thinner than ever.

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