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President Donald Trump participates in a Thanksgiving teleconference with members of the U.S. military, at the White House on Nov. 26, 2020. (Andrew Caballero-Reynolds/AFP via Getty Images)

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The Case for Trump to Invoke Insurrection Act to Restore Election Integrity

The Insurrection Act of 1807



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During the presidency of Thomas Jefferson, the 10th Congress enacted the Insurrection Act of 1807.

Jefferson signed the measure into law to foil the plot of Revolutionary War hero Aaron Burr—following the destruction of his political career after he shot and killed Alexander Hamilton in a duel—to raise an army toward establishing his own dynasty in what was then the Louisiana Territory.

The Insurrection Act empowers the president of the United States to deploy U.S. military and federalized National Guard troops to suppress civil disorder, insurrection, and rebellion. Section 252 of the Act states:

“Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.”

Generally, the U.S. military remains free of civil conflicts on U.S. soil, as no one wants U.S. armed forces using physical force against U.S. civilians. Indeed, when President Donald Trump threatened to invoke the Insurrection Act and send the National Guard in response to the George Floyd riots, including, for example, to address Seattle’s failure to restore law and order over the so-called “autonomous zone,” then-Defense Secretary Mark Esper openly stated his disagreement with the president.

Ultimately, the president didn’t then invoke the Insurrection Act. But considering the possibility of the Act’s invocation now, to address “unlawful obstructions” to an attempt to verify ballots, and an “insurrection” surrounding the 2020 election generally, two powerful distinctions must at the outset be noted: (1) Esper is no longer defense secretary, as Trump has replaced him with Christopher Miller, the director of the National Counterterrorism Center, and (2) troops could be deployed to take control over ballots and voting machines in swing states, rather than suppressing and dispersing rioting civilians.

The president’s invocation of the Insurrection Act isn’t a declaration of martial law. The Constitution isn’t suspended. The writ of habeas corpus isn’t suspended. The president would be using troops to enforce the law, not override it.

To understand the case for Trump’s potential invocation of the Insurrection Act, we must consider more broadly the 2020 election and surrounding historical circumstances.

Numerous ‘Badges of Fraud’

In law, fraud is often proved by what are known as “badges of fraud”—telltale signs that a fraud has taken place—short of positive proof of the actual fraud, because fraudsters have a tendency to cover their tracks

a strategy to cover their tracks.

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Case in point: Harry Markopolos. At least seven years before the lid was blown off the \$65 billion Ponzi scheme run by Bernie Madoff, Harry Markopolos, a money fund manager, blew the whistle on Madoff's decades-long Ponzi scheme. Markopolos's "proof" was a single compelling badge of fraud: In his words, Madoff's "impossibly smooth" returns over decades.

Markopolos, who made investments for a living, knew no one could have such a consistent record, with no downturns, no volatility, and for so many years on end. Markopolos [published a book](#) titled "No One Would Listen," remarking, after Madoff's enormous scheme was exposed, "the math was so compelling."

Badges of Fraud in 2020 Election

Consider now—away from the mountains of direct evidence of voter fraud—the "math" involved in the 2020 election:

- Shortly after midnight (Eastern time), Trump was leading in all six of the swing states still at issue: Michigan, Wisconsin, Pennsylvania, Georgia, Arizona, and Nevada, and had racked up, apart from those six states, 232 electoral votes to Biden's 227.
- During the early morning hours of Nov. 4, not one or two, but all six states flipped for Biden.
- The early-morning Nov. 4 "blue-shift" took place only in the six swing states, through a series of "spikes," almost entirely consisting of mailed ballots (made possible due to radical changes in voting laws amid the CCP virus pandemic) in which Biden received the vast majority of the votes. According to an analysis published through Substack, these [spikes include](#):
 - "An update in Michigan listed as 6:31 a.m. Eastern time on Nov. 4, 2020, which shows 141,258 votes for Joe Biden and 5,968 votes for Donald Trump"
 - "An update in Wisconsin listed as 3:42 a.m. Central time on Nov. 4, 2020, which shows "143,379 votes for Joe Biden and 25,163 votes for Donald Trump"
 - "A vote update in Georgia listed at 1:34 a.m. Eastern time on Nov. 4, 2020, which shows 136,155 votes for Joe Biden and 29,115 votes for Donald Trump"
 - "An update in Michigan listed as of 3:50 a.m. Eastern time on Nov. 4, 2020, which shows 54,497 votes for Joe Biden and 4,718 votes for Donald Trump"
- Those four spikes yielded 426,241 Biden votes but only 64,964 Trump votes.
- Somehow Biden did very poorly in all parts of the country except, only and exactly, where it mattered. Out of the 3,000 counties in the United States, 19 so-called "[bellwether](#)" counties have had a perfect record, since 1980, of voting for the winner. Trump won 18 of these 19 counties. For example, Vigo County, Indiana, and Valencia County, New Mexico, each has a perfect record of picking the winning candidate since the 1948 election famously gotten wrong by the Chicago Tribune, which ran a cover declaring "Dewey Defeats Truman." Barack Obama won these two bellwether counties in 2008, yet Trump handily defeated Biden in both and 16 other bellwethers.
- In 2008, Obama garnered 69,498,516 votes, the most ever until Biden topped his record with more than 80 million votes in 2020, yet, Trump this year won the highest share of nonwhite voters of any Republican since 1960: Roughly one-quarter of nonwhite voters cast their ballots for Trump, according to an Edison [exit poll](#).

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- Trump improved his 2016 performance (just shy of 63 million votes) by 20 percent in 2020 (more than 74 million votes). No incumbent president in U.S. history has ever improved his original performance that much and lost. For example, Obama garnered 3.5 million fewer votes in 2012, yet won a second term.

In sum: Six swing states were won by Trump on Election Day, and all six shifted to Biden by virtue of early-morning Nov. 4 spikes in mailed-in ballots that overwhelmingly favored Biden; but somehow Biden didn't win elsewhere in the country; Trump won nearly all (18 of 19) of the historically accurate bellwether counties; Biden, campaigning from his basement, after obvious signs of cognitive decline and the hugely damaging Hunter Biden scandal breaking, running with a vice presidential candidate who had to drop out of the Democratic nomination race while polling at 5 percent, somehow topped Obama, the first black U.S. president, by more than 10 million votes, even as Trump won more of the nonwhite vote than any Republican candidate in the past 60 years.

As Markopolos said of Madoff's Ponzi scheme, the "math was so compelling," but no one would listen. The same is true of the 2020 election.

Mountains of Proof of Fraud

Aside from these compelling badges of fraud, mountains of direct evidence of [widespread voter fraud](#) have been uncovered:

- Radical change to universal mail-in ballots—a weaponization of the CCP virus pandemic.
- Dramatic ease of mail-in restrictions.
- A dramatic drop in mailed ballot rejection rates.
- Sworn affidavit of "perfect black bubbles" filled in on mailed ballots.
- Sworn affidavits of ballots counted multiple times.
- Refusal of election authorities to perform simple signature checks on mailed ballots.
- Sworn affidavits of mailed ballots having been backdated.
- Sworn affidavits of "pristine ballots."
- Sworn testimony of a Pennsylvania trucker concerning massive numbers of ballots shipped to Pennsylvania from Bethpage, New York.
- Ballots from out-of-state voters.
- Ballots from voters listing fraudulent addresses.
- Poll watchers denied access in violation of the law.
- Video evidence of cases of hidden ballots.

Dominion Software

On top of the badges of fraud, compelling math, and actual proof of voter fraud, powerful evidence has emerged that the Dominion vote-counting software, in use in 28 states, has been compromised:

- Sworn testimony that Dominion is linked to Smartmatic, which was allegedly developed at the request of Venezuela's Hugo Chavez to ensure his election victories.

the request of President Trump to ensure the election integrity.

- Evidence that in many cases, the Dominion machines were [connected to the internet](#) and thus made vulnerable to hacking, including by foreign actors.
- Evidence that Dominion machines were not “[hardened](#)” (secured against hacking).
- Evidence that Dominion components were made in China.

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Election Officials Are Partisan Political Hacks

No objective observer would contend that the election officials are anything but partisan political hacks. They have no interest in a fair and honest election and are only concerned with a Biden win, no matter how fraudulently procured.

Sadly, this sort of hyper-partisanship has extended to elected officials, including some Democratic governors, such as Pennsylvania’s Tom Wolf, who has shown he’s set on certifying Pennsylvania’s fraudulent results—which now have Biden winning, despite a nearly 800,000-vote Trump lead on Election Day, and despite mountains of evidence of fraud.

Courts Demonstrate Reluctance to Intervene

Many court cases have been brought in response to the widespread voter fraud, some by the president and others by disenfranchised voters represented by independent lawyers and lawyers who work for public interest groups.

In some cases, the courts have, tragically, operated as partisan appendages of the Democratic executive branches of state governments. For example, the Supreme Court of Pennsylvania, in a 4–3 decision, overrode the GOP-majority-controlled Pennsylvania Legislature’s duly enacted law setting 8 p.m. on Election Day as the deadline for mail-in ballots.

That decision was a brazen violation of the U.S. Constitution, as Supreme Court Justice Samuel Alito has suggested, referring to a provision that vested with [state legislatures the exclusive authority](#) to determine the manner of selecting electors.

In other cases, courts have demonstrated a reluctance to get involved. While I don’t agree with this approach, it’s understandable, given the separation of powers inherent to our constitutional republic. Many judges simply don’t want to tell the executive branch of a state government how to run their elections even if they see compelling evidence of rampant fraud.

Can Biden Run Out the Clock?

The Electors Clause of the Constitution grants each state legislature the exclusive power to decide the “manner” in which the state’s presidential electors are chosen. That means the legislatures have the constitutional power to select Trump-pledged electors if they believe a fraudulent vote was certified or to disavow the Biden-pledged electors certified by the state’s governor.

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What's less clear is whether the state lawmakers can do either at any time up until the Jan. 20 inauguration, or whether they are [foreclosed from doing so](#) after the Electoral College is convened, which this year will be held on Dec. 14. The Electoral College date is set by congressional statute, not by the Constitution, and to the extent that statute, as applied, constrains constitutional powers of the state lawmakers, it may be adjudged unconstitutional by the Supreme Court.

Still, in the absence of timely clarification from the Supreme Court, the state lawmakers may be persuaded that they lack a constitutional power they truly possess, or they just may be frustrated in exercising that power by Democratic governors refusing to call a special session of a state's legislature.

Trump Proposes 'Landmark' Election Overhaul

While being careful never to say that he would resist a peaceful transition of power, the president in a pre-recorded speech—which he dubbed the “most important” he has ever made—declared that our election system was under “coordinated assault and siege.”

Later, the president [proposed](#) “landmark election reform” and overhaul of election security systems, but that would only occur if and after Republicans won the Senate, and presupposes a Trump victory.

[Speaking at his recent rally](#) supporting the GOP candidates in the Georgia Senate runoff elections—businesswoman Sen. Kelly Loeffler (R-Ga.) and former business executive Sen. David Perdue (R-Ga.)—Trump said of their opponents, “These people want to go further than socialism, they want to go into a communistic form of government, and I have no doubt about it.”

The president warned, “As Chuck Schumer said rather infamously, ‘First, we take Georgia, then we take America.’”

DOJ, FBI Have Shown Reluctance to Get Involved

Although the Department of Justice (DOJ), through special counsel Robert Mueller and the FBI, spent years and interviewed more than 500 witnesses to investigate the Russia–Trump collusion hoax, Attorney General William Barr took a few weeks to go out of his way to state to the press that he hadn't found evidence of voter fraud on a scale that would overturn the election result.

According to the president's lawyer, Rudy Giuliani, the FBI is “missing in action.” Of course, it strains credulity that the DOJ could possibly have conducted any sort of real investigation into a national election involving 150 million voters in anywhere near the time frame that Barr took to make his comments.

Pennsylvania Lawmakers Seek to Void Biden Electors

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Sixty-four Pennsylvania state senators, representatives, and members-elect of the General Assembly, including Speaker of the House Bryan Cutler and majority leader Kerry Benninghoff, [issued a letter \(pdf\)](#) on Dec. 4 asking Pennsylvania's congressional delegation to object to the 20 Electoral College votes certified by Gov. Tom Wolf for Biden, because of the profound evidence of fraud in Pennsylvania (in which Trump's 800,000-vote Election Day lead was overcome).

The lawmakers noted the unlawful blocking of GOP poll watchers, the trucker's shocking testimony regarding the delivery of thousands of ballots to Pennsylvania from Bethpage, New York, and the Pennsylvania Supreme Court's unconstitutional and hyperpartisan overriding of the Pennsylvania Legislature's 8 p.m. Election Day deadline for mailed ballots.

Mainstream Media, Social Media as Co-conspirators

No objective person would say the mainstream media and social media have been journalistically objective. Indeed, no objective person would deny they have been active co-conspirators in stealing the election.

Long before Election Day, Twitter and Facebook were aggressively suppressing factual articles adverse to Biden, including Twitter blocking the New York Post's breaking news story about the contents of the Hunter Biden laptop, and shutting down the Post's Twitter account for weeks. The New York Post was founded in 1801 by Alexander Hamilton.

The mainstream and social media also repeatedly suppressed news of Biden's mental acuity and frequent stunning gaffes.

Mainstream media voting polls suppressed Trump voters by reporting that a Biden win was a foregone conclusion.

On Election Day, the mainstream media displayed obvious bias, calling states for Biden prematurely and interminably delaying calls of Trump's victories in Florida, Texas, Ohio, and South Carolina. Even formerly conservative cable news outlet Fox News shamefully called Arizona for Biden on Election Day, when no objective observer would have done so.

Almost all news outlets "called" the election weeks ago, and repeatedly refer to Biden as "president-elect." Very few outlets—The Epoch Times the most notable—have refused to call the election while six swing states remain in dispute.

The actions of the media and social media are more than bias; they amount to the active and substantial assistance of a co-conspirator. Consider this recent gem from The [New York Times](#) in a supposed hard news story, with the clear objective of stopping lawmakers and the courts from considering the evidence of fraud:

"The final days of the Trump presidency have taken on the stormy elements of a drama more common to history or literature than a modern White House. His rage and detached-from-reality refusal to concede defeat evoke images of a besieged overlord in

some distant land defiantly clinging to power rather than going into exile or an erratic English monarch imposing his version of reality on his cowed court.”

Few objective voters could or would even try to make a case for Biden truly possessing the leadership abilities to serve as the leader of the free world.

Biden, who graduated near the very bottom of his law school class, has held political office for 47 years with virtually no accomplishments to speak of. He was forced to withdraw from the 1987 presidential race after admitting to plagiarism, and lost to Obama in 2008.

Biden is on tape bragging about having successfully threatened the president of Ukraine into firing a prosecutor who was [investigating the company](#) Burisma, which had employed his son Hunter for more than \$50,000 a month, and Ukraine knuckled under, fired the prosecutor, and dropped the investigation.

Shortly before the election, the Hunter Biden laptop scandal broke, during which evidence emerged that Hunter had taken millions from the Chinese Communist Party, which emails allegedly show he committed to share with his father, the “big guy.”

What Biden really offers, everyone knows, is a pliable empty vessel that the left can do with what they please. He serves as a figurehead and nothing more.

While this alone isn’t a reason to overturn the election, it draws a highlighter through the risk of civil war, because it makes Biden’s fraudulent election part of a broader scheme—i.e., an insurrection.

47 Percent of US Voters Say Election Stolen: Poll

A [Rasmussen poll](#) shows that 47 percent of U.S. voters believe that “Democrats stole votes or destroyed pro-Trump ballots in several states to ensure that Biden would win.” This is a staggering result. It’s one thing for voters to say they have no confidence in the winner. It’s another for them to say the election was stolen.

I believe, like the “shy Trump” voter, the true percentage of voters who believe the election was stolen has to be much higher. Indeed, it’s hard to understand how any well-informed Democrat could come to any other conclusion.

Trump has claimed that he’s been privately called by many foreign leaders who have expressed similar sentiments.

Australia’s Sky News has repeatedly reported aggressively on the obvious fraud in the U.S. election.

Case That Insurrection Is Unfolding Is Compelling

The confluence of events now evident, it can be cogently argued, presents a compelling case for the president’s invocation of the Insurrection Act.

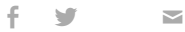
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On the one hand, there's a statistically impossible election outcome coupled with vast evidence (more than 1,000 sworn affidavits) illustrating specific voter fraud and vote-counting software and hardware—designed for communists to permit voter fraud through voter-intention-changing algorithms—containing Chinese components and using foreign-based servers, connected to the internet.

And, on the other hand—following a nearly four-year-long attempted nonviolent coup (including the bogus Mueller investigation and failed impeachment attempt)—there's a conspiracy unfolding in the days following Election Day. Political hacks, corrupt and complicit news and social media outlets, and partisan or gun-shy courts have worked together to bring about a massive, fraudulent post-Election Day “blue shift” only where it mattered, and the conspirators then collaboratively “running out the clock” without the truth about election fraud ever having been determined.

Add to that equation an electorate that about half of which (and likely far more) sees the election as having been stolen, foreign leaders saying the same, and formerly mainstream Democrats threatening to pack the Supreme Court, end the filibuster, give statehood to D.C. and Puerto Rico, and finally to enlarge the electorate through amnesty for millions of illegal aliens, all for the purpose of achieving a one-party communist totalitarian state. That all indicates it's no longer a stretch to say that the country is facing a coordinated insurrection that presents an existential threat to the republic.

The outcomes are binary: Either some combination of the courts and state legislatures will take steps that result in either a Trump victory or a contingent election in the House that Trump then wins, or the statistical anomalies and proof of voter fraud are never addressed because the conspirators run out the clock, and Biden wins.

Either outcome is fraught with danger.

If Trump wins by either overturning election results in court, or through a contingent election following state lawmakers' sending dueling electors or simply disavowing their own election results, Democrats, including radical groups such as Antifa, could, and likely would, revolt openly and violently.

Conversely, if Biden successfully runs out the clock, and the fraudulent results are certified without any real audits having taken place or the evidence addressed or explained, the silent majority isn't likely to remain silent a moment longer.

Trump supporters could take the streets, and violence doubtless would erupt.

Either way, massive property damage and deaths would ensue, while the [CCP virus](#) would likely spike further.

If U.S. [election integrity](#) isn't restored, the standing of the United States as the greatest democracy the world has ever known would come to an immediate end. We could never again wag our finger at the likes of communist China, Venezuela, or Cuba, because we could be guilty of exactly the same rigged elections.

On the other hand, if election integrity is restored, the risk of civil war could be averted, and our international stature could be salvaged—no matter who is determined to be the winner.

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What Would Invoking Insurrection Act Look Like?

As students of U.S. history know, in 1878, Congress enacted the Posse Comitatus Act, aimed at preventing federal troops from interfering with elections in Southern states during the period of Reconstruction following the Civil War.

But the Posse Comitatus Act didn't repeal the above-quoted section 252 of the Insurrection Act. Regardless, Trump could invoke the Insurrection Act surgically, not to redo the election in all 50 states, or even in the six swing states in dispute.

Instead, he could simply invoke the Insurrection Act to have U.S. armed forces seize control of crucial electoral evidence—ballots, envelopes, and Dominion voting machines and servers—and order the military to conduct an immediate and thorough forensic audit of the votes, so that all lawful ballots are counted, and unlawful ballots are disqualified, in strict accordance with prevailing state law.

Notably, this would be a very surgical and nontactical use of the military; no force would be used against any U.S. citizens. The armed forces would merely be taking hold of crucial evidence before it's destroyed or otherwise tampered with, and running an independent forensic audit to both determine lawful versus unlawful ballots—again in strict accordance with prevailing state law—and to manually count those ballots. Given our experiences of the past four years, neither the DOJ nor FBI should be anywhere near this process. They simply cannot be trusted.

The object of such a surgical military intervention would be to take the burden off the struggling courts and state legislatures to make sure all legal votes were counted and no illegal votes were counted—in the six involved states. The president would presumably pledge to be bound by the results of the military audit. Hopefully, Biden would as well.

The object of the intervention would be to stop the insurrection—which very well may involve foreign actors, given the voting machine vulnerabilities—as well as preventing the disenfranchisement of lawful voters, and restoring the confidence of U.S. voters (and the world) in the integrity of U.S. elections.

Without this limited military intervention, a cloud would hang over whoever is ultimately elected president, and the United States could never again complain, on the world stage, of a rigged communist election.

Insurrection Act Could Force Supreme Court's Hand

Were the president to invoke the Insurrection Act in this or some similar surgical manner, that would doubtless spawn lawsuits by Biden and the Democrats. Some or at least one of

these lawsuits would undoubtedly make its way to the Supreme Court. The high court would then have two interesting options:

- Decide in favor of Trump on some of his challenges, but rule that his invocation of the Insurrection Act was an unconstitutional infringement of the state legislatures’ powers under Article II, Section 1, to control the manner of choosing their electors, or
- Decline to consider either Trump’s challenge to the election or his invocation of the Insurrection Act, effectively leaving all parties where they stand.

Interestingly, the first option could have the effect of empowering those state legislatures—moved by the evidence of fraud at the legislative hearings—to “decertify” a Biden win in their states or to send a competing set of electors.

In other words, invoking the Insurrection Act would serve as a test to the power of the state legislatures under the Electors Clause and, therefore, could—even if it were overturned by SCOTUS—prove instrumental in unstealing the 2020 election.

Stephen B. Meister is a lawyer and an opinion writer. Twitter @StephenMeister. Opinions expressed here are his own, not his firm’s.

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