



# Inside Trump's War on the Vote



**THIRD WAY**



**Donald J. Trump** ✓ @realDonaldTrump · May 1

Don't allow RIGGED ELECTIONS!



**Mollie** ✓ @MZHemingway · Apr 30

Nearly one in five of all absentee and mail-in-ballots between 2012 and 2018 remain unaccounted for, according to data from the federal Election Assistance Commission. [realclearpolitics.com/articles/2020/...](https://realclearpolitics.com/articles/2020/...)



24.8K



38.7K



115.6K



By August, **Trump had made such comments 91 times this year.** The pace of his attacks on the integrity of the vote have only increased since.



# Trump's Plan to Interfere in the Elections

1. Pre-Election: Suppress the Vote
2. Election Day: Make it Harder to Vote
3. Post-Election: Stop the Count
4. January 2021: Throw it to the House

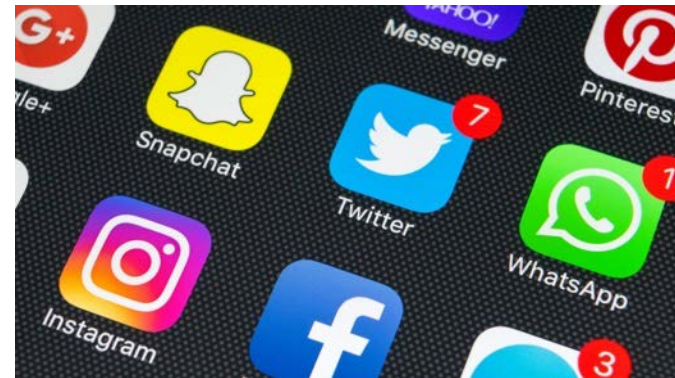


# Trump's Pre-Election Plan: Suppress the Vote



## Purge Voters from the Rolls

Georgia dropped 753,000 before the 2018 vote – about half improperly.



## Use Foreign Misinformation

POLITICO: 2020 attacks feature "harder-to-detect fakes, more countries pushing covert agendas and a flood [of] American groups copying their methods."



## Cripple the Post Office

Trump has opposed emergency funding for the USPS and installed a political crony as Postmaster General who is intent on slowing mail delivery.

# 2

## Trump's Election Day Plan: Make it Harder to Vote



Source: AP

### Shut Down Polling Places

More than 1,700 have been shuttered in GOP states since 2013 Supreme Court case – Covid is making it much worse.



Source: NPR

### Scare Away Voters

Republicans are recruiting 50,000 cops/soldiers as "poll watchers" to intimidate voters.

# Dem Response to Trump Voter Suppression/Election Day Tactics



## **Lawyering Up:**

Attorney Marc Elias leads a group that is waging legal battles in 29 states.



## **Enlisting Allies:**

Stacey Abrams's Fair Fight, the Brennan Center, and many others are working in coordination to push back on voter suppression.



## **Using Power:**

House Dems demanded answers from Trump's Postmaster General.



# 3

## Trump's Post-Election Plan: Stop the Count

### Remember them?

During the FL recount in 2000, a group of GOPers took part in the “Brooks Brothers riot” in Miami’s election office, demanding that the recount be stopped.

This year, Trump’s attempts to shut down the initial count could make that seem like a garden party.



Source: Washington Post



# The Blue SHIFT

This time, the GOP demand to stop the count won't be based on hanging chads, it will be what Prof. Edward Foley has dubbed "the Blue Shift."

Democrats usually improve their vote totals when the counting extends beyond Election Night. For example, Trump's 2016 lead over Clinton in 2016 dropped by more than 23,000 votes between Election Night and the final certified results.

This was not a fluke – in 2012, 2008, and 2004, the Obama and Kerry leads in PA increased by around 24,000. And it's true almost everywhere.

The reasons vary – Dems in cities cast more provisional and absentee ballots, which take longer to count, etc.

In 2018, the Blue Shift was happening in Florida. Trump weighed-in...





**Donald J. Trump**  @realDonaldTrump · Nov 12, 2018

The Florida Election should be called in favor of Rick Scott and Ron DeSantis in 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!

 47.2K

 35.7K

 104.7K





## A Blue Shift or even a ‘Red Mirage’?

- This year, the Blue Shift will be massive, because many more Ds than Rs plan to vote by mail.
- In 12 states, including MI, PA, and WI, state law prohibits the counting of mail-in votes before Election Day. (MI can process, but not count, beforehand.)
- Mail ballots take a long time to count – they must be opened and flattened and certified, and they often have mistakes (like missing signatures) that must be remedied.
- So, even in an election that Biden wins, the Election Night tally could easily favor Trump: some analysts call it “the Red Mirage.”

# Stopping the Count

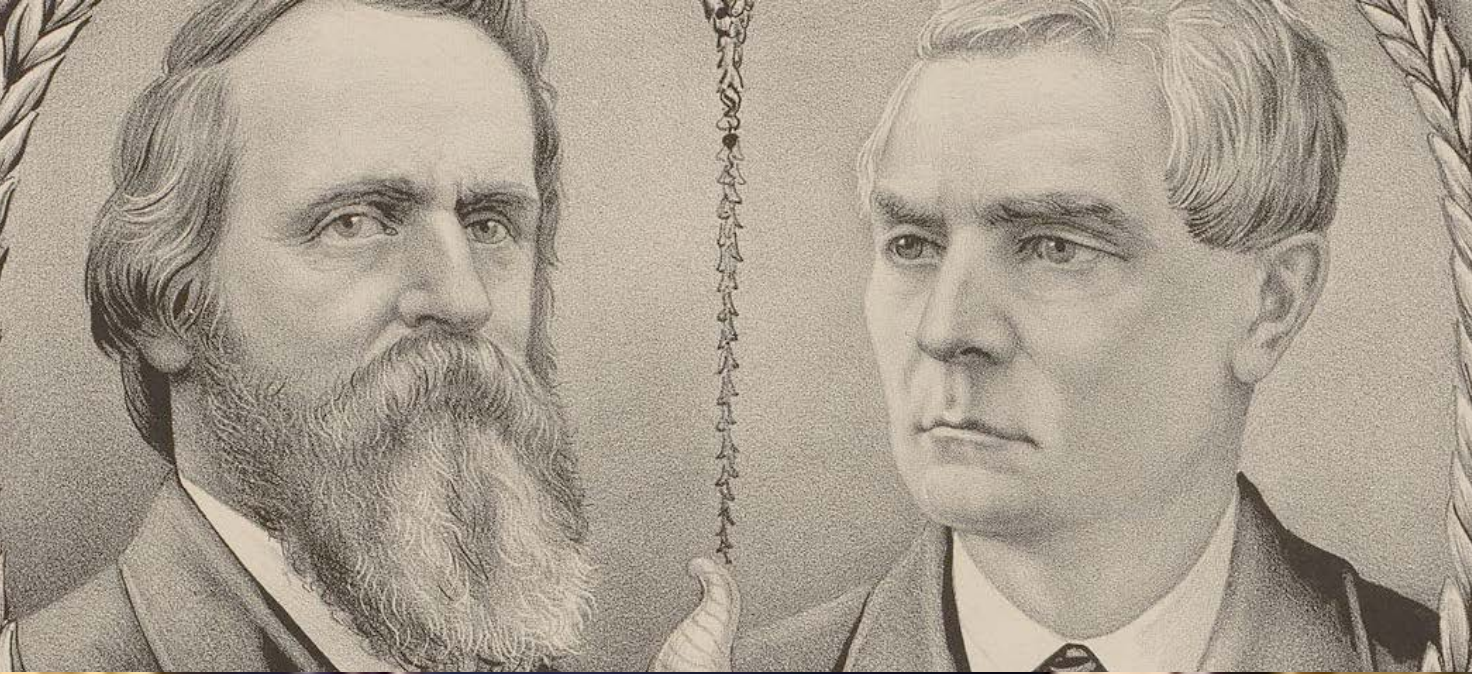
Trump will claim that the Blue Shift is a fraud, and the election is being stolen. He will demand that the count be stopped.

His main attack will come between Election Day and December 8<sup>th</sup>, the date set by federal law by which state officials must certify the results to have them treated as conclusive in Congress. (See below.) That means they attest that the slate of presidential electors pledged to one candidate has won, based on the popular vote.

Here's where it gets a little complicated. We need to start in 1876...







...with the Hayes-Tilden election. It was a debacle, with some states sending two different slates of electors to Congress.

Later, Congress passed the Electoral Count Act (ECA). That established a “safe harbor”: if a state certifies one slate before a date set by law, it cannot be challenged when the electoral votes come to Congress.

### **That’s what happened in 2000.**

The Supreme Court ruled in *Bush v. Gore* on the last day of safe harbor. Among other things, Gore knew he couldn’t challenge the FL slate of Bush electors when it came to Congress, so he immediately conceded the race.



# Safe Harbor Day

**December 8** – Safe Harbor Day – is the date that Trump will be playing for time to reach.

If the Blue Shift is underway in a swing state and he's likely to lose the popular vote there, he will try to stop or slow the count long enough so that he's still technically ahead on Dec 8. The ideas would be to get his own electors certified under safe harbor or prevent Biden's from being so certified.

**Short of that, he will try to throw a wrench into the works. Here's how:**

November							January						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
1	2	3	4	5	6	7	1	2					
8	9	10	11	12	13	14	3	4	5	6	7	8	9
15	16	17	18	19	20	21	10	11	12	13	14	15	16
22	23	24	25	26	27	28	17	18	19	20	21	22	23
29	30						24	25	26	27	28	29	30
							31						

DECEMBER / 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2
3	4	5	6	7	8	9

**Tuesday, Dec 8<sup>th</sup> 2020**

# A

# Get Courts to Step In



As he's already said, his first stop will be the courts. He might even get DOJ to intervene.

If Trump gets a court to agree to stop the count, **that would bolster his case** that he had won the popular vote in that state by virtue of his Election Night lead. It would be a stunning and preposterous thing for a court to do, but it's possible.

If the court orders the governor to certify a popular vote victory for Trump, that could end the process for that state.

“Now we’re counting on the federal court system to make it so that we can actually have an evening where we know who wins. Not where the votes are going to be counted a week later or two weeks later.”

President Trump, Sept. 19, 2020





# B Use Legislative Interference

If he fails in the courts, Trump could try to get the state legislature to decide.

Under the Constitution, electors are appointed “in such Manner as the Legislature thereof may direct.” Conceivably, they could try to stop the count and make the appointment themselves.

This has never happened and is almost certainly illegal, but here’s what some scholars think the legislatures could try to do:



# How A State Legislature Could Interfere

1. Call the Blue Shift a fraud

5. *The gov signs and sends one Trump certificate to Congress*

2. Claim election night tally is controlling

6. **In MI, NC, PA, and/or WI:** The Dem governor fights the legislature's attempt to disenfranchise voters

3. On or before 12/8, the legislature "certifies" the Trump electors

7. At the end of the count, the governor certifies a Biden slate

4. **In AZ and/or FL:** GOP governor sides with legislature/Trump

8. *Two dueling certificates go to Congress*

# But, But, But...



**Could they do it?** Would a court allow the legislature to take back a power they had given to voters *after* the election? That would violate the state law that existed on election day. And it would be taking a democratic right away during an election, which seems like a clear violation of the 14<sup>th</sup> Am and federal law. So could they take it back?

**We don't know.** But the ECA says legislatures can step in if there's a "failed" election. The Rs would be sure to call it that, falsely claiming fraud.

**Yet even if they could...**

**Would they do it?** Would a legislature stop the counting of votes and substitute their own judgement for that of the voters of their state? And would a governor go along?"

**Maybe not.** It's a big and crazy thing to do. But we've learned in the Trump era, such things are possible.

And if they do, after that, **we move to Congress...**



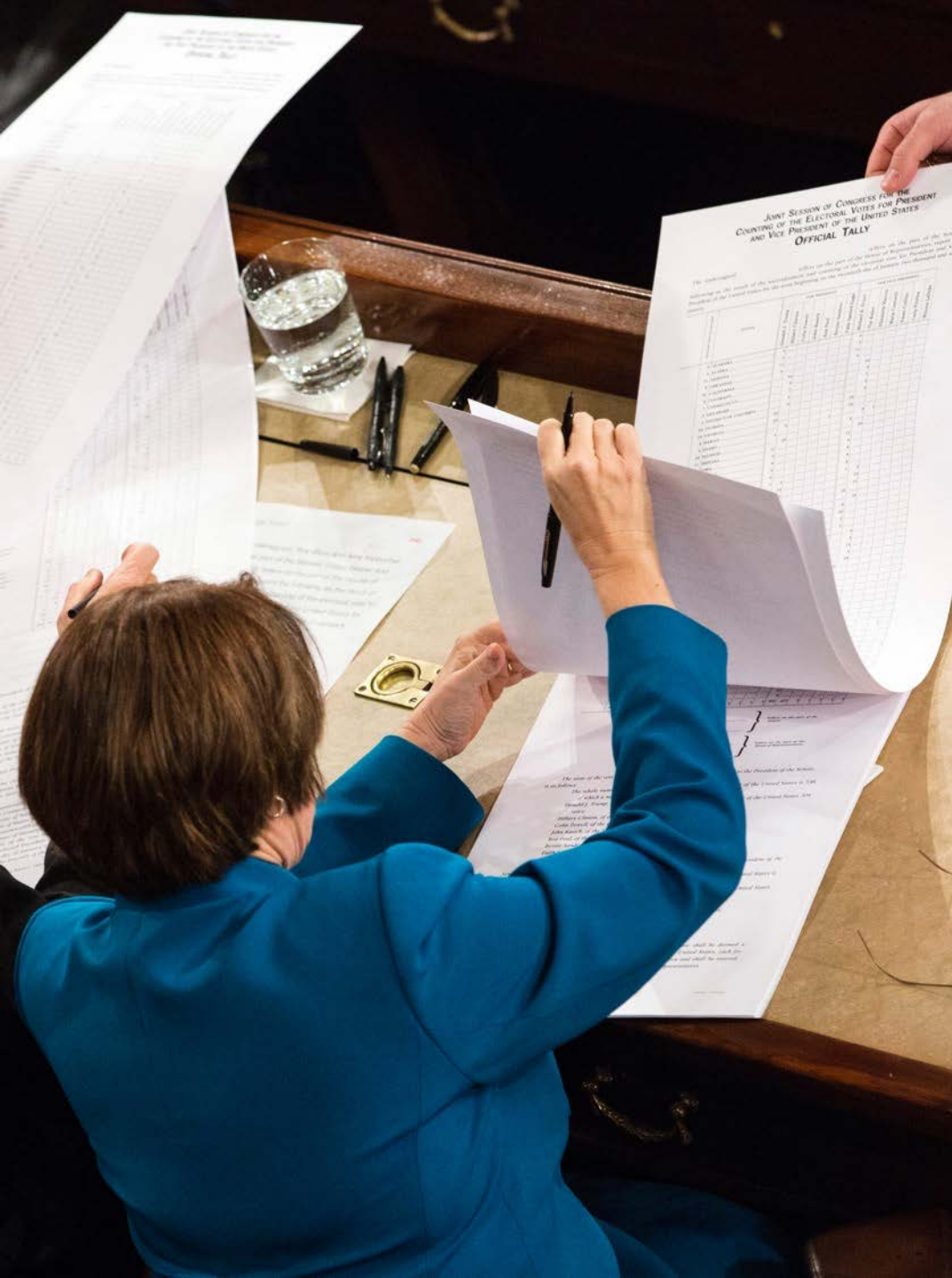
# 4

## Trump's January Plan: Win in Congress



The new Congress meets in joint session on January 6, with Mike Pence presiding. Usually, this counting of Electoral Votes is pro-forma, but this time, it would involve a LOT of drama.

And it's not at all clear how Congress would view or resolve questions about disputed electoral slates.



# Pence Favors GOP Electors

Trump would try to get Pence and congressional Republicans to tip the scales their way.

**If a disputed slate comes from a state with a Republican governor:** Pence/the Rs would argue that it counts, since the governor had certified it, especially if that happened on or before December 8. If it was certified after 12/8, the Democrats would argue that it's fraudulent, since it doesn't reflect the actual popular vote.

**If two disputed slates of electors came from a state with a Dem governor:** Pence would say that the legislature's pick prevails, citing their Article II power. Democrats would say that the governor's certification matters, so the Biden slate should prevail.

Either way, it's a mess, since there's no clear process under the Act for resolving such disputes.





For states with Democratic governors, Pence might argue that both the Trump and Biden slates from that state should be thrown out. This could benefit Trump, because tossing those electoral votes may not change the requirement that **one candidate get to at least 270 EVs**. (The rules for calculating the denominator aren't clear.) If neither does (which could happen if a big state's votes aren't counted), the House decides.

That might sound good for Democrats, who have a large majority in the House. But it's not. Under this rule, they vote by delegation.

Republicans currently control **26 delegations**, **Democrats control 23**, and **one is tied**.

That could change. Assuming Democrats don't suffer dramatic losses, delegation majority control will depend on the outcome of some tightly contested House races in currently R districts. But Democrats would need to win a least one district in four of these five states: **AK, FL, MI, MT, PA**. Flipping all four is a long-shot if Biden isn't already crushing it in the Electoral College, so Trump would likely prevail in a delegation vote.

# The House Decides

Current Delegation Control:  
**26 R | 23 D | 1 Tied**



# What Comes Next?

## *Bedlam*

It's more likely that a dispute would devolve in a completely novel partisan battle. **No one knows how it would be resolved.** The ECA has rules, but some are unclear, and there's no guarantee Congress would follow them. If the two sides can't agree, the Supreme Court might intervene (like in 2000), but who knows how or when?

If there is still no result by January 20<sup>th</sup>, the Presidential Succession Act would seem to suggest that the Speaker would become the Acting President at 12:01 p.m., with no clear path to finding a more permanent solution.



# Groups Working to Thwart Election Interference

Trump is going to try to steal the election, using the tactics laid out above and maybe others. These and other groups are working to stop it.

**Democracy  
Docket  
Action Fund**







**THIRD WAY**