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Trump's last gasp will fail



By [Jerry H. Goldfeder](#)

The assault on our constitutional democracy continues. The Electoral College has met and conclusively voted for Joe Biden over Donald Trump, 306-232. The Supreme Court summarily disposed of the last two legal cases — the Texas attempt to overturn the votes in other states, and the Pennsylvania Republicans' challenge to its own state's results.

This should finally end the matter. But it hasn't. The country's anti-democratic forces — and, frankly, that is the only honest way of characterizing them — are now looking to Congress to nullify the will of the voters. Nothing like this has happened in 58 previous presidential elections, but that is not stopping President Trump and his allies.

Take Pennsylvania, for example. Last week, 64 Republican state legislators from the Keystone State wrote to their congressional delegation, claiming their voting laws were improper or circumvented, and urged Congress to reject the decision of their state's 20 Biden electors when it meets early next year to tally the votes. This gambit will fail, but, of course, the president is egging them on, and I wouldn't be surprised if his allies in other states do the same.

The usual procedure is fairly straightforward. After the presidential electors meet, the chief executive of a state, usually the governor, certifies the results and transmits them to the president of the United States Senate, in this case Vice President Mike Pence. On Jan. 6, presiding over a joint session of Congress, the vice president calls the roll of the states in alphabetical order — from Alabama to Wyoming — and formally counts the electoral votes.

Practically all presidential elections have followed this script without a hitch. But the Pennsylvania Republicans want Congress to invoke an arcane federal law that permits objections to a state's electors. If this happens, the House and Senate — meeting separately — must decide whether to count or reject them.

This law includes another provision, however. If the electors at issue were chosen by the “safe harbor date” (six days before the electors met), they are supposed to be inoculated from objections. Pennsylvania's electors, like almost all throughout the country, were, in fact, selected in time for this protection.

In any event, for an objection to be entertained, it must get the support of one representative and one senator. Even if that occurs, though, it should be ruled out of order because the safe harbor provision is supposed to protect such electors from being challenged.

Biden shouldn't worry. Even if Trump supporters can get the required members of Congress to sign on to such objections, and the safe harbor protections are ignored, these protests will still not change the outcome.

That's because both the House and Senate have to approve any objection, and that will not happen. The new Congress is seated on Jan. 3. The House, controlled by Democrats, will reject any objection. The make-up of the Senate, meanwhile, is still up for grabs. If both Democrats clearly win the Georgia run-offs on Jan. 5, the Senate will be 50-50. It is doubtful that Pence is legally able to break a tie in this circumstance, but if he tries to, or if the Democrats don't prevail in the previous day's elections, the Senate will be Republican. No matter what, though, it is hard to believe that enough Republican senators would approve the objection to Pennsylvania's slate — and it will, therefore, be defeated in both chambers.

But let's adopt Trump's fantasy for a moment that all the Senate Republicans support the objection. Then what? The law includes yet another provision that says if there is a split decision on the objection by the House and Senate, Congress is required to accept the electoral votes certified by the state's chief executive. Pennsylvania's governor is Tom Wolf, a Democrat, who has certified the Biden slate.

Q.E.D.: twenty votes for Joe Biden.

I should add that if this mischief expands to states beyond Pennsylvania, we would see the same result. Every governor — Republican and Democrat alike — has certified their state's electoral college slates. So even if Biden electors are challenged in, say, Georgia or Arizona,

their respective governor's imprimatur will carry the day. Thus, Biden's 306 electoral votes will hold.

This law, known as the Electoral Count Act, was passed in the 1880s, and is obviously messy, almost never invoked, and at odds with the constitutional premise that states determine their own results. Yet obstructionist Republicans are apparently happy to ignore the law and the will of the people to sow doubt where none exists.

Dare we hope that no Republican member of Congress will lend their name to these futile objections? Or will we have to just bide our time as they play out their destructive narrative that President Trump somehow won?

Inauguration Day cannot come soon enough.

***Jerry H. Goldfeder**, is special counsel at Stroock & Stroock & Lavan LLP, specializing in election and campaign finance law. He volunteered as a lawyer for the Biden-Harris campaign. He also teaches Election Law at Fordham Law School and is Chair of the New York State Bar Association's 2020 Presidential Task Force.*

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