

The focus of the
ENTIRE AFL-CIO
at the moment is

LABOR 2020

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COVID-19 SCC Task Force

February 2020

**AFTER THE ELECTION
WE WILL MOBILIZE --
TO DEFEND OUR VICTORY!
TO ADVANCE THE
LABOR MOVEMENT'S AGENDA!**

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COVID-19 SCC Task Force

Election is not 1 election, but 50 state elections.

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11/16/2020



Must be defended, state by state.

The election defense is built around SFs/CLCs.

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12/10/20

Florida 2000 taught us - post-election battles are not legal battles, they are political battles.



Mobilization, Communications and Legal teams will be critical.

Five Phases

1. Now Through Election Day
2. Election Night Through Saturday (ish)
3. Saturday (ish) Through December 8th
4. December 9th Through January 6th
5. January 7th Through Inauguration Day

**Phase One:
Now Through Election Day**

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**Phase Two:
Election Night Through Saturday (ish)**

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Electoral College

What to Expect November 3rd to 4th

- Trump will
 - Claim victory based on early leads and call for no votes to be counted after Election Day, and/or
 - Either claim widespread fraud or focus on urban Democratic strongholds if he is close enough in their states, especially Milwaukee, Detroit and Philadelphia.
 - Encourage his supporters to “watch” election administrators counting the ballots.
- What the Trump campaign and his supporters may do:
 - Intimidation at counting locations and elsewhere
 - Lawsuits
 - Exploiting legal rules to create frivolous delays to the counting process
- This will intensify as ballots counted after Election Day will favor Biden (mail + provisional).

Strategic Considerations

- Trump's vote relative to Biden's will never be better than it will be at 10:59 when polls close on the West Coast.
- Results after that will favor Biden as the majority of the ballots remaining to be counted will be mail and provisional. This will fuel Trump's claims of fraud which will enrage his followers.
- Recent court rulings that allow ballots received after November 3rd if they are postmarked ahead of the election will be another target of fraud claims.
- Unless the election is extraordinarily close in the tipping point state, we should know the voters' choice by Saturday even though not all the ballots will have been counted.
- Arizona, Florida, Pennsylvania, Wisconsin and Michigan are most likely to be hot spots.
- PA, MI and WI have Democratic governors, aggressively anti-democratic legislatures and little or no experience with this much mail voting.
- Florida will likely be counted first.

**Phase Three:
Saturday (ish) Through December 8th**

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Strategic Considerations I: Safe Harbor Day

- The Constitution provides that Governors have until December 8th (“Safe Harbor Day”) to appoint the electors based on their certified results of the election.
- The Electoral Count Act provides that a state's choice of electors will be conclusive if two things are true:
 1. The electors are decided by a process set in state law by Nov 3 (certification by the governor except in Arizona where the secretary of state), and
 2. That state process delivers a result by December 8th (“Safe Harbor Day”)

Strategic Considerations II: State Legislatures

- Article II of the Constitution provides that each state's electors shall be appointed "in such Manner as the Legislature thereof may direct."
- Since the 19th Century, that "manner" has been direct elections.
- If the results are not certified by December 8th, then the state legislature decides on a state of electors.
- Although it has never even been attempted in American history, Trump supporters have argued that Republican state legislatures could appoint Trump electors by declaring that the certified results were poisoned by widespread fraud and use 3 USC 2 to appoint a different state of electors
- Biden wins in Wisconsin, Pennsylvania, Michigan, North Carolina and Arizona could be threatened either way.
- Republican governors could fail to certify by December 8th to create a pretext for state legislative intervention.
- Some states have earlier state certification deadlines that Trump could attempt to exploit
- Governors cannot veto actions by state legislatures— but they are subject to judicial review by both state and federal courts.
- The current Supreme Court is likely to take a broad view of state legislative power in this context.

**Phase Four:
December 9th Through January 6th**

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Strategic Considerations I: The Rules

- The Electoral College Formally Meets December 14th. If a state legislature takes action, there could be two Electoral College meetings that day in a state
- The New Congress Convenes a Joint Session on January 6th, 2021.
- In that session, the electoral votes are accepted and counted. Here are the potentially precarious scenarios:
 - If the count is tied (269 to 269) the House decides, but with each state casting just one vote. Today, that would mean a 26 to 24 Trump win.
 - If neither candidate has 270 electoral votes because a state doesn't send a slate, two are sent and neither is accepted, or another cause it is ambiguous whether the candidate with the majority wins or if it is sent to the House in which case it would be decided as above.

**Phase Five:
January 7th Through Inauguration Day**

Contingencies

- If Congress approves of Biden's election, most believe that both the Supreme Court and the military would resist any efforts to overrule that judgment
- If Congress deadlocks, the Constitution would make the House Speaker president at 1:00 January 20th , 2021 when Trump's term expires (per the Constitution).

Trump's Message Goals

- Set the stage for rejecting the results:
 - Mail ballots are Democrats' fraud
 - Millions of illegal voters
- Depress turnout
 - Your vote might not count
 - Your vote might not matter
 - Divert attention away from his record

How to Respond to Trump

- Everything he says he says because he knows he was losing
- Don't engage his arguments –
 - Debunking his claims means that that they are debatable
 - Attacking him for undermining the election can depress turnout because it conveys that he can reject the election results.

AFL-CIO President Trumka on Labor's Role in Defending Democracy

“The lesson of our history is clear. Democracies are not, in the last analysis, protected by judges or lawyers, reporters or publishers. The survival of democracy depends on the determination of working people to defend it.”

What we'll need to do:

WIN!

DEFEND!

MOBILIZE!