

How a lame-duck Trump could imperil the United States, and what Congress can do to stop him.



If he is defeated on Election Day, a lame-duck President Trump could wreak havoc during the eleven weeks before inauguration day write [Jeremi Suri](#) and [Jeffrey K. Tulis](#).

Political opponents of President Donald Trump are rightly worried that he will not concede defeat but will use the period between Election Day and the meeting of the Electoral College on December 14 to subvert the counting of ballots, resorting to intensive litigation to remain in power. The president has reportedly [said as much himself](#), and some of his surrogates [have been frank about the strategy](#).

Trump's opponents have responded to this likelihood by calling for as large a Democratic victory as possible. The bigger the margin of a Biden victory, the reasoning goes, the less feasible Trump's strategy will prove. Bill Kristol recently sketched [the long-term significance of different magnitudes of victory](#), with FDR's in 1932 as an example of one so massive that the election would transform the policy and partisan trajectory of the nation.

We cannot be certain that Trump will lose on Election Day, or that Biden's victory will be definitive, but we must begin now to consider what problems would attend a Biden win.

Kristol's example of a definitive victory for FDR over Herbert Hoover shows that we may soon have another significant problem as serious as Trump's efforts to thwart the legitimate transfer of power.

There was no question that Herbert Hoover would leave office after his electoral defeat. He did not challenge the vote tally or FDR's victory. But Hoover was so committed to a vision of the public interest at odds with that of his opponent that, during the interregnum, he sought to advance it and to thwart the policy designs of the incoming administration with every tool in his constitutional arsenal. This is one of the main reasons the inauguration was moved from March 4 to January 20—so that there would still be enough time for an orderly transition, but less time for preemptive subversion of the democratic will of the people. If someone as public-spirited as Herbert Hoover could be so dangerously anti-democratic in his use of constitutional authority, imagine what a president with no commitment to the common good might do. The legitimate transfer of power remains a serious problem, but the illegitimate use of constitutional authority after electoral defeat now looms as the nation's most serious danger.

Lessons from Herbert Hoover about the damage an outgoing president can cause

To understand the peril that the nation faces from the current president—a man whose office grants him enormous constitutional authority and yet who possesses no coherent conception of government and little actual concern for the public good over his own personal interests—let us review what Herbert Hoover did in those transition months in 1932-33.

During another era of widespread suffering and despair, an incumbent president, who was also a self-proclaimed economic genius, lost his bid for re-election. On November 8, 1932, Americans decisively rejected Herbert Hoover's leadership; he lost the popular vote by 17 percent and the Electoral College by 472 to 59. Franklin Roosevelt won an overwhelming victory, promising hope and government assistance for those in need. Hoover was soundly defeated because he appeared uncaring, mean-spirited, and out-of-touch with the vast majority of voters. Hoover's efforts to frighten voters about his opponent's alleged socialism—[“the witch's caldron which boiled in Russia”](#)—had clearly failed.

Despite his defeat, Hoover was unrepentant, and doubled down on the very actions that voters had rejected. He used the long period between the election and the March 4 inauguration to sow discord, undermine the economy, and constrain his successor's options. Hoover even pressured Roosevelt to abandon his campaign promises and sign on to his own failed policies. The challenges of the Hoover-Roosevelt transition are a historical warning about the dangers of the eleven weeks between tomorrow's election and the next inauguration day, when a defeated and unrepentant Donald Trump continues to occupy the presidency of the United States.

Like Trump, Hoover felt unconstrained by popular opinion. He believed that his critics had lied to the public and distorted the facts. Roosevelt's promised New Deal would undermine the sound basis of the American economy, as Hoover understood it, and he would do everything to prevent the newly elected president from carrying it out. Hoover began by telling his fellow Republicans and foreign allies that he would remain uncompromising in his last months, even on the moderate reforms the Democrats sought around currency devaluation and assistance for banks and local communities. Even after the voting was done, Hoover continued his campaign to undermine public confidence in his successor's relief program.

Hoover even tried to blame the worsening of the Depression on Roosevelt, claiming that the president-elect had exaggerated the suffering in the country and discouraged a rapid recovery. Time and again, Hoover demanded that Roosevelt embrace his longstanding commitment to low inflation, low taxes, and balanced budgets. Prospects of profligate spending, high taxation, and currency devaluation, Hoover claimed, were the real source of continued declines in industrial production and consumer confidence. Hoover's closest advisers told him this was untrue, but he continued to push this story into early 1933.

When American banks began to fail because they could not recoup bad loans and cover their depositors, the country entered a truly desperate situation, made worse by Hoover's continued refusal to take action. By February 1933, the entire American credit system was in freefall and the Federal Reserve asked President Hoover to declare a bank holiday to preserve reserves and restore some public confidence. Hoover appealed to the president-elect, demanding that Roosevelt endorse the bank holiday and Hoover's larger economic program. Without a compromise on policy aims to accommodate Hoover's economic orthodoxy, he would not save the banks, and he threatened to blame Roosevelt for their failure.

Hoover's coercive efforts continued as late as the night before Roosevelt's inauguration. Even in the last hours of his presidency, he demanded an agreement from Roosevelt before he took any action to help the banks. When Roosevelt refused to tie his own hands, the outgoing president allowed the economy to continue its tumble.

By the time Roosevelt declared a bank holiday, on March 6, more banks around the country had collapsed and additional Americans had lost their savings. For almost a decade, the American economy remained mired in high unemployment, low production, and widespread poverty—conditions made much worse by Hoover's stubborn refusal to act after his electoral defeat. His last months as a lame-duck president left enduring scars.



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The Twentieth Amendment, ratified in 1933, moved the presidential inauguration to January 20, where it remains. But that still leaves more than two months between the election of the next president and the departure of his predecessor. A defeated but unrepentant and manipulative president, like Hoover, can use this interregnum to try and constrain his successor, pursue an agenda rejected by the public, and harm American society in lasting ways. Even without the cooperation of the lame-duck Congress or the incoming Congress (set by the Twentieth Amendment to start on January 3), the outgoing president retains enormous power. And with a president devoted to his own personal interests above all, the interregnum allows countless opportunities for corruption—including favors to family and friends, attacks on enemies, and the procurement of payments for secrets and other resources controlled by the executive. The time between election and inauguration is a window for bad behavior and long-term damage to the republic.

We can expect that a defeated President Trump, financially and legally desperate, will exploit this window for full value to himself, notwithstanding the harm to the country. He will likely try to pardon his friends, and perhaps even his family and himself, from legal prosecution. He may expand his criminal activities. He will likely lash out at his enemies, including by the use of foreign-authored disinformation, and take actions to enrich his loyalists. Most dangerous, he may make deals with foreign leaders in return for personal favors and ego boosts. Above all, we can be sure that he will not use his last days in power to serve the country. Trump's final presidential actions will likely increase American division, worsening the suffering from COVID-19 and increasing our nation's vulnerability to foreign aggression.

How a lame-duck Trump might be curtailed

So, if Donald Trump is defeated, what can be done to blunt this looming danger?

The first and most important tool in the constitutional arsenal for the victors in this election is civic education. Our first plea would be that officeholders, journalists, scholars, and citizens generally turn their attention from the issue of transfer of power—of literally getting Trump out of the White House on January 20—to ways of countering anti-constitutional behavior between now and the inauguration. The nation has never faced this particular threat so clearly before, and the best resource we have is the collective wisdom of all those who have thought of useful and creative ways to insure a legal and orderly transition of power. The enormously powerful energies of our citizens mobilized to vote must now turn to the task of protecting the Constitution. Voting was only the first step; popular attention should not stray from the continued goal of restraining a dangerous president, still in office for two more months.

Second, Speaker Nancy Pelosi; Chuck Schumer, very possibly the next Senate majority leader; and President-elect Joe Biden must assemble a bipartisan coalition for emergency government. Normally, the president-elect would be building a transition team that would work relatively cooperatively with the existing political appointees throughout the government. A normal transition cannot be taken for granted. Democrats must reach out to congressional adversaries to reestablish the power of the first branch, the legislature, to superintend the executive branch. Between the election and the first week of January that would mean that Democrats should reach out to defeated congressional Republicans as well as those who have retained their seats. With nothing left to lose, defeated Republicans would be in a position to help resist Trump's anti-constitutional and illegal actions as they occur. They can back oversight hearings with teeth. They can remember that their oath was to the Constitution, not their defeated party.

There is some reason for hope, already, that cooperation between the Democrats and Republicans in Congress may be possible. Quietly, transition preparation is already underway, with political appointees as well as career officials hard at work on it. The existing statute for transitions is, thus far, [being followed by the Trump administration](#), including a mandated council of political appointees chaired by the White House chief of staff. Donald Trump's disruptive campaign rhetoric has not been reflected in the actions of political and career officials responsible for the transition. But it is also possible that Trump does not actually *know* that a normal transition is underway, given his distaste for briefings and for the routine duties of governance, and his failure to attend to news beyond the commentary of his favorite sycophants.

Congressional damage control

Faced with an actual loss, Trump's behavior will be unpredictable, as it has been with managing the pandemic. Pelosi, Schumer, and other leaders need to prepare themselves and the American people for a disruptive transition and for unprecedented actions by the president that fall outside the purview of standard transition matters. Traditionally, the transition teams prepare briefing books on the ongoing activities of the array of governmental institutions. It is quite possible that these normal and needed aspects of transition might proceed while Donald Trump focuses on openings to enrich himself and his family, ways to punish perceived political enemies, and general opportunities to abuse the constitutional power he holds during the interregnum. This is why political oversight and immediate accountability are so vital.

If Senate Majority Leader Mitch McConnell refuses to cooperate and continues to enable Trump, potentially responsible Republicans—senators who see themselves as responsible—such as Susan Collins, Lisa Murkowski, Mitt Romney, and Ben Sasse, should form a temporary Independent GOP caucus that would vote with the Democrats to remove Mitch McConnell as majority leader during the remainder of the lame-duck session and thus expedite the transition.

On the House side, if Speaker Pelosi finds it impossible to form an emergency government coalition with a significant number of her Republican colleagues and ideally the GOP House leadership, she should create a special bipartisan impeachment inquiry. The point of this committee would be to unlock the powers of impeachment to compel testimony and documents for as robust oversight as possible. The committee should revive [the congressional power of inherent contempt](#)—with which executive branch officials who fail to respond to subpoenas are taken into custody by the Congress's own law enforcement, quickly tried in the House, and [held in the D.C. jail](#) until they are willing to comply.

The House and Senate should use their appropriations powers to deny funds to agencies of the government acting for the personal protection or financial benefit of Donald Trump when budget negotiations begin again after the election due to the pending expiration of the continuing resolution funding the government now. Special focus should be on the Justice Department and the Department Homeland Security, where partisan leadership has misused resources to attack protesters and presidential critics while protecting presidential loyalists and dangerous right-wing extremists. Congress must use its power of the purse to starve dangerous appointees who continue to act as Trump's henchmen.

A bipartisan resolution should be passed that instructs the government to cooperate with the incoming administration—and in particular, to invite the president-elect to designate members of the Trump administration to brief him on the pandemic crisis and to inform the American people regularly on federal efforts to contain its spread.

Perhaps none of this will be necessary. Maybe Trump will again confound the pollsters and win the election. Or maybe he will lose and will show an uncharacteristic quietude. But now is the time to think seriously about countering his potential malfeasance during an interregnum. Congressional leaders must show a willingness to step in and control a defeated Trump before he does more damage. That is the clear will of the American people, and the obvious constitutional duty for elected officials, including those at the end of their current service.

Deference to a dangerous, defeated president in these circumstances would not only be cowardly, but would threaten a constitutional transition of power. The losers do not get to burn down the government before they leave. Trump must be highly constrained in this interregnum, by Congress, the courts, the civil service, and the expectations of the American people.

- *A version of this article first appeared at [The Bulwark](#).*

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