Tuesday, Oct. 29, 2024 / How Trump could steal the election

[HALF SECOND OF SILENCE]

[BILLBOARD]

NOEL: Candidate Trump, as you’ve likely heard, jimmied the Overton Window up a few inches at a rally in Madison Square Garden on Sunday with racist, sexist, vulgar, wasn’t-even-a-particularly-good-joke, and etc. commentary from speakers.

SCORING IN — Ah, nevertheless - BMC

NOEL: But. Did you hear the really weird part? The Speaker of the House Mike Johnson part?

*<*[*CLIP*](https://www.youtube.com/watch?v=Zmc0EN8XAY8)*> Donald Trump: “He’s such a nice-looking guy. Just a beautiful little face with the glasses*

NOEL: Mmm, also weird, but not actually what I’m talking about. Just a little later Trump turned to Speaker Johnson and said this:

*<*[*CLIP*](https://www.youtube.com/watch?v=Zmc0EN8XAY8)*> Donald Trump. “We can take the Senate pretty easily. And I think with our little secret we’re gonna do really well with the House. Our little secret is having a big impact. He and I have a secret. We’ll tell you what it is when the race is over.”*

NOEL: That comment is making people nervous because Trump DOES have a plan for if he loses this election. A reporter did some digging into it. And that’s coming up next on Today, Explained.

NOEL VMPN: Today, Explained: little secrets. Every weekday whenever and wherever you get your podcasts.

[THEME]

NOEL: Kyle, go ahead, give me your full name and tell me what you do.

KYLE: Sure. I'm Kyle Cheney. I'm a senior legal affairs reporter for Politico.

NOEL: You recently wrote a big piece called The Very Real Scenario where Trump Loses and Takes Power Anyway. And it starts with the claim If Donald Trump loses the election next week, he is going to challenge the results again. Why do you feel comfortable making such a claim?

KYLE: Well, first of all, that was the collective judgment of dozens of people we talked to about what they expected that scenario. But but really, the answer is almost obvious in that Donald Trump is essentially telling us that he has said he can't lose unless there's some kind of massive cheating by Democrats.

*<CLIP> DONALD TRUMP: If the election's not rigged, we're going to win.*

KYLE: He's describing massive cheating by Democrats, even though it's not based on any real evidence.

*<CLIP> DONALD TRUMP: We got to stop the cheating. If we stop that cheating, if we don't let them cheat, I don't even have to campaign anymore. We're going to win by so much.*

KYLE: And he’s expressed such supreme confidence that he's going to win. That is conditioning his supporters to believe that anything other than a win is stolen from him. So he's essentially saying it almost explicitly and it's what we saw four years ago, so everyone expects it to recur.

NOEL: Politico did not write a similar piece about Kamala Harris. Why not?

KYLE: Similarly, the dozens of people we spoke to said, look, if Donald Trump wins the election, he wins. There's you know, you could you'll see some protests. You'll see some legal challenges in a really close state. But if Donald Trump is the winner, he's going to be the winner.

NOEL: All right. Let's go through the chronology as you laid it out in your story. You identified a bunch of discrete stages, starting with right about now, the end of October through November 11th. Where does the potential plan to steal the election start?

SCORING IN—STUDIOUS RED

KYLE: Well, what we said in the story was, you know, if you look at if you count this as step one or phase one, it's already underway. And that is this effort to condition as many people as possible to not trust the election results so that in the event Donald Trump loses, he'll be able to say, we can't believe the numbers that we're seeing. So that's happening that Donald Trump's talking about this new Democrats registering massive numbers of non-citizen voters trying to solicit illegal votes from overseas.

*<CLIP> DONALD TRUMP: Our elections are bad. And a lot of these illegal immigrants coming in, they're trying to get them to vote. They can't even speak English. They don't even know what country they're in practically. And these people are trying to get them to vote.*

KYLE: Again, No evidence of this. There are there are certain parts of the process that are being litigated, I think, in a more legitimate way about how, you know, the different safeguards and what the right safeguards are. But there's no evidence that there's some massive orchestrated plot to get thousands and thousands of unlawful people to register and vote. But he's saying that in part because it creates that noise and pressure that he needs for later phases of the process. So I think that's really step one. Step two is election night itself. When we expect and everyone we talk to expect Donald Trump to either declare victory or at the very least cast doubt if it seems like there's a Harris victory in the offing.

*<CLIP> GLOBAL NEWS: It's the same playbook he used in 2016. and again in 2020, where he still refuses to admit he lost.   
<CLIP> TRUMP AT DEBATE: “if you look at the facts, I would love to have you do a special on it, you can look at georgia, I’ll show you Wisconsin, I’ll show you Pennsylvania..we have so many facts and statics but you know what? That doesn’t matter..*

SCORING OUT

NOEL: Okay. Americans are on edge. We're suspicious. Half the country is suspicious in one direction, half in the other. Where does it go from there?

KYLE: So the next phase in the process after election night, you know, obviously, we'll see some states being called, we might see some states that are too close to call. It could be a couple of days before we get the final results. But assuming we're heading toward a Harris victory, it probably would be a very close one. But the next phase is for the state, county and state election boards to certify those results, canvass and certify the results.Four years ago, we saw Donald Trump try to intervene in that process, lean on allies and state and county boards and tell them not to certify.T hat didn't work. It didn't get him anywhere.

*<CLIP>CBS NEWS: President Trump continued his assault on a 2020 vote today.* *And oreven as he claimed total election corruption in Arizona…BRIAN KEMP: All 15 counties have certified their results. REPORTER: The state's Republican governor was certifying Biden's victory…*

KYLE: But in the intervening four years, we've seen a lot of turnover on these boards, and many of them are now populated with much closer allies.

*<CLIP> DONALD TRUMP: I don't know if you've heard, but the Georgia state election board is in a very positive way. This is a very positive thing, Marjorie. They're on fire.*

KYLE: So if there's a state where Donald Trump wants to protest or reject or challenge the outcome using those boards, he can ask those same officials and make it a different result this time. Now, what's interesting about that is we talked to a lot of secretaries of state and other election chiefs in different states, and they said that's not going to amount to very much. They they will make a lot of noise, but we will go to court and force these boards to certify the election. In their view, that's sort of a successful outcome. But if you're viewing this through the lens of Donald Trump and what he wants to accomplish, in some ways that's actually right on target because that gets him [to] say these state and county boards have been forced to certify an invalid election under pressure and duress by the courts, not because they think the election is legitimate. That's why I need help from other elected Republicans to reverse the outcome.

NOEL: All right, then the next state in your chronological timeline is December 11th. What goes on on December 11th?

KYLE: So that is a really important dividing line in this process. That is called the safe Harbor deadline. It's something set out in federal law that says states have to send their certified election results to the federal government by December 11th in order for the results in their electors to be counted. And so that's when you go from this sort of this very administrative process where you're just tabulating votes and certifying them, and then to the next phase, which is where you have state legislatures and ultimately Congress receiving those results and acting on them. That's when the sort of the counting process is over and you're in this sort of political power process of this this entire situation.

NOEL: What did we see in 2020 that makes you think December 11th is such a key date here?

KYLE: Sure. So. So in 2020, I think what people didn't appreciate was that once the states certified and sent the results in Trump, Donald Trump was not going to be done trying to reverse his defeat. That was when the sort of pressure campaign really ramped up again on state legislatures.

SCORING IN—A SIMPLE REVENGE

*<CLIP> PBS NEWSHOUR: The accusation, like much in the Trump case, is unique. Federal prosecutors point to these seven states which Trump lost, but where they allege he plotted to subvert the results with a false slate of electors…..*

KY:E And this is interesting. And this was a process that was sort of overlooked in 2020 and now is very highly scrutinized. But state legislatures under the Constitution essentially have the power to decide who gets their presidential electors. And now most constitutional experts say they've already made that choice. They've said it's a popular vote. and so the winner of the popular vote gets those electors. But what Donald Trump did was surround himself with a bunch of lawyers who adopted a sort of fringe theory and said those state legislatures can take that power back at any time. They can say we don't trust the election results. We think it's tainted by fraud and irregularities. And we actually want to decide immediately, you know, that we should appoint a different set of presidential electors and send those to Congress alongside the electors certified by the governor.That is the point in the process where that would happen. If the if the governor certifies a slate that Donald Trump disagrees with and he wants an alternative slate, he can lean on those state legislatures to do that.\

SCORING REVERBS OUT

NOEL: What happened with the fake electors after the 2020 election?

KYLE: So this is interesting. So in 2020, no state legislature did this. Trump wanted them to. He asked them to over and over again. And they all said, show us your evidence of fraud and we'll think about it. And he can never get them anything that was remotely convincing. And so the state legislatures balked. This is sort of similar to what I said earlier. A lot of those state legislators who stood in his way four years ago are gone and have been replaced by much more compliant, closer Trump allies. That's number one. Number two is what Trump did four years ago with appoint or have his campaign essentially in the state Republican parties assemble slates of active Republican activists who called themselves legitimate presidential electors, signed documents saying they were legitimate presidential electors but were not. And they sent those documents to Congress. And what happened was a lot of the people got charged with crimes for signing false documents.

*<CLIP> FOX 13 NEWS: 16 people in Michigan now facing felony charges for acting as fake electors for Donald Trump during the 2020 presidential election.*

KYLE: And it amounted to nothing because Mike Pence, then presiding over Congress, refused to even recognize them. They had no legitimacy at all. What we point out in the story is if a slate of electors is backed by their legislature, it's a little bit of a different story. They actually have some legitimacy in the sense that a government authority has given them its backing. That was the big thing that was missing in 2020. Could Donald Trump get legislatures to do in 2024 what they wouldn't do in 2020? That could actually change the equation a little bit.

NOEL: And if he did, if he was able to do that in 2024 this year, what would happen next?

KYLE: I mean, then you're going to Congress. Congress receives electors that, you know, after they meet the electors meet on December 17th this year and cast their ballots and send those ballots to Washington. If there are competing slates of electors endorsed by state legislatures, presumably they would meet too, And similarly send their documents to Congress. So when Congress starts counting electors, you may get to a state that has two slates. Now, that presents a sort of unprecedented controversy that we haven't really seen, where you have two government backed slate of electors that come before Congress at the same time. Now, one of the things that's also happened since 2020 is a federal law was passed by Congress and Joe Biden that tries to prevent this scenario basically puts a heavy thumb on the scale in favor of the electors backed by the governor. But there is an open constitutional question about whether state legislatures do have that authority. And it would certainly have to go to court and be back. And it'd be a big battle over whether those alternate electors would also have to be considered by Congress.

NOEL: And and and, as you said, control of who controls Congress would really matter here.

KYLE: This, to me is is probably the most important question of all: who controls Congress? You know, after the votes are counted on Election Day and the days thereafter, because if you have a Democratic-led Congress, number one, Kamala Harris is going to be the one presiding over the January 6th session where they count electors. And so even if she had to introduce a slate backed by a state legislature, there's no universe in which Congress is going to count that alternate slate for Donald Trump in a state where Harris was the popular vote winner. It just doesn't, it doesn't compute. And so if Democrats control the House and even if they narrowly lose the Senate, but you have senators like Susan Collins and Lisa Murkowski and others who have been averse to these efforts by Donald Trump, you are not going to see this plan go anywhere. If you have a Republican House, that's when you get into some of these sort of wild scenarios where where this effort could still succeed.

NOEL: The final date in your timeline is January 6th. Close listeners of the podcast may recall what happened four years ago on January 6th. What would an attempted steal look like on January 6th, 2025?

KYLE: So assuming you have a Republican Congress, assuming all these other steps in the process, go as you sort of again, very hypothetical for many reasons, but that's when you get wild scenarios.

SCORING IN—A SIMPLE REVENGE

It depends on who's the speaker. Is Mike Johnston going to be speaker again? But let's assume that he is the speaker and that he is totally on board with any effort by Trump to continue challenging the election as late as January 6th. Well, then you have you have to have a situation where Mike Johnson says the federal law that passed in 2022 to prevent these election challenges. I don't think it's constitutional. I don't think it binds Congress because if it does bind Congress, then we have to basically accept the results certified by the governors. If we don't accept that it binds Congress, then we have a much messier situation where we may have to think about these legislatively endorsed electors. We may not have to accept the process for challenging electors and which ones we're supposed to accept. We can actually prevent Congress from counting electors for Kamala Harris. And if we prevent both either candidate from reaching 270 electoral votes, then the election goes to the House. But in a weird sort of way, where instead of a just a majority vote, it's actually a vote by state where each state gets one vote. And that process favors Republicans pretty heavily. And so that's the scenario. That's sort of the ultimate capper on this. If you get to that contingent election, they call it, you probably have a Donald Trump presidency.

SCORING OUT

NOEL: Donald Trump and his associates are famously disorganized. They have been in the past. Does the Trump campaign know everything that you're saying? Or are you giving them ideas?

KYLE: Yeah, that's come up in a couple of my interviews. They know all this. They're they've gamed these scenarios out in 2020. Some of the lawyers who were involved in that process are still out there saying similar things. Some of the things I've talked about were scenarios they contemplated but didn't come to pass, partly because those legislatures never acted for them. Mike Pence, in one of his memos, his final memo from his lawyer before January 6th, said, look, if a state legislature gives the green light to an alternate slate, we might have to consider them. But it never happened because no legislature did that. And so they're well aware of these these plans. And so are the Democrats, too. And they're also gaming out these contingencies and these these wild scenarios, I think because they some of them feel crazy to say, but some of but we almost saw them come to pass four years ago and they think they don't want to get caught flat footed should crazy things happen.

SCORING IN—THE DAY THE GREEN TEACUP DIED

NOEL: Politico’s Kyle Cheney. Coming up: the plan to let’s not do any of this please.

[BREAK]

[BUMPER]

NOEL: It's Today, Explained. We're back with Kyle Cheney of Politico. Kyle wrote a recent piece called The Very Real Scenario Where Trump Loses and Takes Power Anyway. Kyle, we talked in the first half of the show about how Donald Trump could attempt to steal this election. There has been a lot of preparation for that scenario. What kind of safeguards do we have in place four years later?

KYLE: Well, the number one safeguard is the federal law that passed in 2022, signed by Joe Biden and passed by the Democratic led Congress, called the Electoral Count Reform Act.

*<CLIP> NEWSCHANNEL 34:: Buried in the 4000 page $1.7 trillion spending bill is the Electoral Count Reform Act, which Maryland Democrat Steny Hoyer says HOYER: Will ensure that we never see a repeat of the shameful and malicious attack on our democracy.*

KYLE: And what that did was it looked at the experience of 2020 and tried to close off as many routes as possible to stealing an election in 2024 and beyond.

SCORING IN—ROWING WESTWORD

It affirms that the vice president's job on January 6th is administrative. It's ministerial, is the buzz word. And that just means she opens the envelopes, reads what the number says and counts them. Essentially, she doesn't have any discretionary role in deciding what to count or what not to count or how the process should work. a lot of Democrats believe that was the case in 2020, but they wanted it explicitly written into the law. It hardened some of the deadlines throughout December for when states must certify, when the electors must meet, which is a double edged thing. It's a ensures that there's no gamesmanship on these things, but also means if you miss a deadline, that could have pretty severe consequences. And that's, you know, one of the things we didn't really talk about was if there are lone wolf attacks or bomb threats or riots or efforts to block some of these procedures from moving forward, and you miss a deadline as a result, that creates a whole different sort of chaos. But those deadlines are meant to ensure that there's no gamesmanship around when these steps in the process take place.

SCORING OUT

NOEL: Okay. So we do have this new federal or national law. What about at the state level? Are there any new safeguards there?

KYLE: There are. I think a bunch of states saw the chaos of 2020 and realized that they had to update their processes. And so that includes things like pre canvassing votes that were received early. A lot of states didn't even look at the votes they received until the votes, the polls closed on election night. And what that did was lead to massive delays in counting votes. And of course, what that does is fuel conspiracy theories. All these sudden vote drops overnight. And the you know, why are we counting votes after Election Day? And like there will be absolutely be some of that this time around, too. However, I think most of the states have accounted for that in an attempt to at least limit or minimize that.

*<CLIP> CLICK ON DETROIT: And more news tonight. A late night deal in Lansing will give local clerks more time to process absentee ballots before Election Day.*

KYLE: Number two you have state courts have recognized that some of their processes were too slow post-election. You have very tight windows, very tight deadline that we just talked about. And if courts aren't operating at the speed of those deadlines, you may have challenges that linger and that fuels conspiracy theories, too. Why aren't the courts taking up our challenges? Why are they looking at the evidence? What are they? You know, what are they afraid of? So courts have expedited their election related proceed procedures to ensure that challenges get heard. The Electoral Count Reform Act that we mentioned actually includes a provision on that, that if a presidential candidate wants to challenge the outcome in a state, it gets expedited through the courts in a different way than it has in the past. So that should help as well. At least show everyone that those challenges are being taken seriously.

NOEL: And then finally, we have the other candidate. What is the Harris team doing to stop an attempted steal? How ready are they?

KYLE: I mean, she was asked about this. And I think the problem is they don't want to talk about what happens if Donald Trump has to steal an election because they're worried about winning in the first place.

*<CLIP> KAMALA HARRIS: And I'm very much grounded in the present in terms of the task at hand. And we will deal with election night and the days after as they come. And we have the resources and the expertise and and the focus on that as well.*

KYLE: So they're hesitant to get into these sort of war gaming scenarios if I win. But Donald Trump doesn't accept that. They just want to say we need to win first. So, you know, she has expressed confidence that she has teams of lawyers ready for every contingency, I think. I think that's true. You know, both parties have really marshaled their best lawyers for all of these processes. What we don't know is, you know, who's the sort of team that will be around Trump if he takes some of these extreme steps. He had a team four years ago, you know, John Eastman and Ken Chesebro and some of the people who have actually been charged criminally over some of their actions at that time. Who's going to step in and fill those roles this time? And, you know, I assume they will have learned from what was deemed to be criminal last time and would operate a bit differently. But they may still have strategies that get to they get into some of these parts of the process.

NOEL: The attitude of the Harris campaign right now, how would you categorize it? Confident? Nervous? What do you think?

KYLE: I think confident that they're prepared for these contingencies. ~~A~~but I think they are expressing at the very least, like they have people whose job it is to think about these things. And that includes not just lawyers for the battles, but people in Congress who are strategizing how to handle the January 6th session and, you know, allies in states that… that they're particularly confident because every secretary of state is either a Democrat or a Republican who has shown that they're serious about the process, like a Brad Raffensperger in Georgia are not going to fold as these sort of undemocratic efforts.

*<CLIP> CBS NEWS: For the record.This year, if.The presidential candidate of.The other party wins, will.You enforce election certification for that winner?*

*<CLIP> BRAD RAFFENSBURGER: I'm going to make sure that whoever wins this race, that is what gets certified. I'm going to follow the law and follow the Constitution. I'm going to do my job. And that's what the people of Georgia have elected me to do.*

NOEL: You have laid out that this is a long shot scenario. It is a long shot scenario for Donald Trump to successfully steal the election should he lose. There will be a lot of steps here. Why indulge this? How concerned should we be that this long shot scenario becomes reality?

KYLE: I think I think it's important to keep that in mind. It is a longshot scenario. It really depends on a lot of things falling into place in exactly the right way. The reason to take it seriously is because of what we saw four years ago.

SCORING IN—THE DAY THE TEACUP DIED

the system has adapted to that and tried to do things that would prevent it again. But it's not impossible. We've seen, you know, extremism on the rise. Threats on the rise at every phase of the process. We see a candidate who's going to be more motivated than ever should he lose, to try to again claim fraud and be do whatever he can to reverse it. Because one thing, you know, this is just an obvious fact you pointed out. Donald Trump loses. He's staring down four criminal cases that could define the rest of his life. And so he, at the very least, is going to be highly motivated in a scenario where he thinks he have a path to reverse an election to do that. It's worth being aware of all of these eventualities. And we know people are thinking about them at every level, states Congress at every phase. They're thinking about these already. So it's important to sort of air out the things that they're thinking about and concerned about.

SCORING BUMP

CREDITS: Politico’s Kyle Cheney. Miles Bryan produced today’s episode. Matthew Collette edited. Patrick Boyd and Andrea Kristinsdottir engineer. I’m Noel King. It’s Today, Explained.

[10 SECONDS OF SILENCE]