

Trump Might Try to Postpone the Election. That's Unconstitutional.

He should be removed unless he relents.

July 30, 2020

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I have voted Republican in every presidential election since 1980, including voting for Donald Trump in 2016. I wrote op-eds and a law review article protesting what I believe was an unconstitutional investigation by Robert Mueller. I also wrote an op-ed opposing President Trump's impeachment.

But I am frankly appalled by the president's recent tweet seeking to postpone the November election. Until recently, I had taken as political hyperbole the Democrats' assertion that President Trump is a fascist. But this latest tweet is fascistic and is itself grounds for the president's immediate impeachment again by the House of Representatives and his removal from office by the Senate.

Here is what President Trump tweeted:

The nation has faced grave challenges before, just as it does today with the spread of the coronavirus. But it has never canceled or delayed a presidential election. Not in 1864, when President Abraham Lincoln was expected to lose and the South looked as if it might defeat the North. Not in 1932 in the depths of the Great Depression. Not in 1944 during World War II.

So we certainly should not even consider canceling this fall's election because of the president's concern about mail-in voting, which is likely to increase because of fears about Covid-19. It is up to each of the 50 states whether to allow universal mail-in voting for presidential elections, and Article II of the Constitution explicitly gives the states total power over the selection of presidential electors.



It is up to each of the 50 states whether to allow universal mail-in voting. Matt Slocum/Associated Press

Election Day was fixed by a federal law passed in 1845, and the Constitution itself in the 20th Amendment specifies that the newly elected Congress meet at noon on Jan. 3, 2021, and that the terms of the president and vice president end at noon on Jan. 20, 2021. Even if President Trump disputed an election he lost, his term would still be over on that day. And if no newly elected president is available, the speaker of the House of Representatives becomes acting president.

President Trump needs to be told by every Republican in Congress that he cannot postpone the federal election. Doing so would be illegal, unconstitutional and without precedent in American history. Anyone who says otherwise should never be elected to Congress again.

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