

THE BROOKINGS INSTITUTION
BROOKINGS CAFETERIA PODCAST

RACE AND SOCIAL JUSTICE IN THE 2020 PRESIDENTIAL ELECTION

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PROCEEDINGS

DEWS: Welcome to the Brookings Cafeteria, the podcast about ideas and the experts who have them. I'm Fred Dews.

It's three o'clock PM on the East Coast of the United States, two days after the end of voting in the 2020 presidential election. The country is anxiously watching as ballots are counted in Nevada, New Mexico, Georgia, North Carolina and Pennsylvania to see whether Donald Trump is re-elected or Joe Biden becomes the president elect. By the time you hear this episode, the situation may have changed dramatically. But I still wanted to talk to one of our leading experts on politics and campaigns about what happened in the election and what happens next. So joining me in our studio is Elaine Kamarck, senior fellow in Governance Studies at Brookings and founding director of the Center for Effective Public Management.

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Elaine, thank you so much again for joining me on the podcast.

KAMARCK: Fred, happy to do it.

DEWS: All right. Well, as I mentioned, we are all on tenterhooks watching Twitter, watching websites for new ballot counts. But let's start with your thoughts on the election in general--voting ended two days ago. What surprised you? What didn't surprise you?

KAMARCK: Oh, I think I was surprised, as were many people, with the size of the Trump vote, the early polls had led us to believe that Biden was substantially ahead in some of the swing states. And while he may win the presidency by the time this airs even or later tonight, the fact of the matter is that he did not perform as the polls indicated he would.

That being said, Democratic Senate candidates didn't perform. I mean, we had some surprises. For a long time, everybody thought that Susan Collins in Maine would lose her seat. In fact, quite the opposite. It looks like she's won it fairly comfortably. So we've we had a lot of

surprises. It was, all in all, a good night probably for the president, for the president elect Biden, if that happens in the next 12 hours. But it was kind of a disappointing night for Democrats on the other ballots, on the other races.

DEWS: So, as I mentioned, I mean, we're all watching all sources of information. I mean, I think even as we're talking right now, the Georgia secretary of state is giving an update. But there's a real process that has to happen starting from this moment, starting from when the polls closed to today to tomorrow and the next week. There's a real process that states have to go through to certify that this many ballots were cast for this candidate, this many ballots were cast for that candidate. Can you kind of walk through with that formal process is?

KAMARCK: Well, yeah. I mean, it is a we're kind of spoiled, right? Let me let me step back a minute. We're kind of spoiled because we're used to getting election results on election night. And that can only happen if two things are going on, if, in fact, there's a substantial winner, a clear winner in in a state. And frankly, a lot of times there just is. And it's easy for people to predict the win even without—even with just a small amount of the vote cast. When states are very close, when a race is very close, it's really hard to predict the vote on election night. And the reason is that people have to count all the ballots and the ballots vary from county to county. Some counties have more resources than others. I was just seeing on CNN, a reporter in Savannah, Georgia, and they've only got two scanners scanning the ballots. And then whenever the scanner spits one out because there's a problem with it, they have to go a quarter of a mile down the road and they have to get a special team to look at it and adjudicate that ballot.

So, I mean, it's a there's a lot of stuff going on in counting the ballots. And this year there's a particular problem. This year, more than 50 percent of the ballots are being cast, were being cast ahead of time through the mail or through through mail drop boxes or something like that. And frankly, what that did is it completely strained the resources of all the counties in America when it came to counting ballots. I mean, they used to count under 10 percent absentee ballots. Now they're counting the majority absentee ballots. And so we knew going into this this was going to be a big

problem. But they do know how to do it. They just have a lot to do and that's why it's taking so long.

DEWS: And so then I believe there must be some kind of process where maybe the secretary of state of each state or the election office has to certify that these are the final counts.

KAMARCK [00:05:16] Yep. So what happens is that that the counties generally—the counting is done at the county level. The counties will count ballots. They will put them into piles. Right. They'll put them and there will be a pile of ballots called provisional ballots. And these are ballots where there's something wrong with it, like maybe it's a mail in ballot and the address doesn't match the address on the voting rolls. Maybe it's a ballot where they either-it's smudged and you can't tell which circle the voter intended to, you know, fill in. I mean, there's a variety of problems. Now that stack of provisional ballots gets placed aside because obviously it takes a long time to go through those and figure out what the voter was trying to do. Some states actually contact the voter and say, hey, you know, we've got this ballot here. Here's the problem with it. Do you have an explanation? Can you show us your real address or whatever? So that pile of provisional ballots grows as the election count goes on. A lot of times we never even hear about it because the vote is so clear and the margins are so big that the provisional ballots wouldn't make any difference anyway. And in a lot of elections we've had in the past, the absentee ballots wouldn't make any difference anyway. Right now in 2020, we've got a perfect storm, right? We have a very close election. We have incredibly high turnout and we have a huge number of vote by mail ballots. And those three things coming together are turning election night into election week.

DEWS: Right. And so assuming at some point there is a definitive determination that this many votes for Donald Trump, this many votes for Joe Biden happens in the next day, the next week, what's the next process? I've heard about a December 8th, I think it's December 8th, failsafe date. What is that all about?

KAMARCK: Well, that's the date by which the secretary of state has to say this person won and I'm sending these electors to the state capital to sign the certificate of ascertainment, which is a

quaint 19th century, 18th century, frankly, term. And that's what actually elects the president. It's the elector, each elector for a state signing the certificate and sending it to the president of the United States Senate who opens the ballots and declares the presidential election finished.

People don't realize that electors, the Electoral College is actually composed of real people and they are selected by their political party in the state. So they're very loyal Democrats, very loyal Republicans. And they actually literally meet and they meet and they sign the certificate and the certificate gets sent to Washington. And that's how we elect a president. But of course, we see electors as we just see electoral colleges' votes for the states on television. And it doesn't occur to us that there's this whole process that goes on afterwards.

DEWS: All right. And I assume that the meeting of the electors will have to be virtual, like by Zoom or something. And that happens in mid-December, December 14th or so?

KAMARCK: Yeah, happens December 14th. I don't know how they'll do it. My guess is that in certainly in some states where the virus is raging, they will do it by Zoom. But they might do it in their -- usually it's in the state legislature legislative chambers. So they might have people come in masked and stay far apart, sort of the way they've done some of the votes in the House of Representatives. You know, with—remember, there's not very many electors. I mean, the biggest one is California—55 people. I suspect you can spread out 55 people in the legislature with and keeping them more than six feet apart. Some states, they've got three electors. So I'm not sure how they'll do it. But obviously they'll have to be COVID safe.

DEWS: Now, as I recall, in 2016, there were a few what they call faithless electors who, and I can't remember on which side or who they voted for. But they didn't vote for the candidate they were elected to vote for. Not it didn't make any difference in 2016. But I can imagine there is a scenario where Joe Biden has 270 electoral votes. Donald Trump has 268. All it would take is one Joe Biden elector to be faithless and then we'd have a tie. And then there's a whole other thing that happens that we don't have to talk about. But can you address this question? Do we have to worry about the faithless elector?

KAMARCK: Probably not. And the reason is that the parties are very, very, very careful, to vet the people they make electors. Right. So, so we probably don't have to worry about it. But, you know, it could always happen. And then, of course, there'd probably be a court case. It would probably go to the Supreme Court, get to get there rather quickly. And I have no idea what would happen there. I mean, the Constitution is pretty clear that the electors were supposed to elect the president. So who knows what the court might do about that one faithless elector. But if that happened and you had a 269-269 tie, then it goes to the House of Representatives, which is a whole 'nother thing.

DEWS: It'll be the new House of Representatives, the one that will be seated at the beginning of January, not the current one?

KAMARCK: Right.

DEWS: All right. Well, it's 2020, so strange things are happening. But to be honest, I hope not that one. But let's switch gears here a little bit and look ahead. As all this is going on, and assuming Joe Biden gets the 270 or more electoral votes than he and his team have to begin a presidential transition. Can you explain to listeners what exactly a transition means and how it unfolds?

KAMARCK: Well, the transition is technically the period of time between Election Day, right now, and up through—up until the inauguration. During this time, the president elect does a few things. First of all, he starts to put together his team, his cabinet, et cetera. And there's lots of lots of discussion about that. Secondly, they are authorized to go into the government agencies and get briefings both from the current occupants of the office, but also from the career civil servants who are there. That's why, by the way, all these stories you're going to hear about how Trump's team isn't going to cooperate with the Biden transition team doesn't really matter. I mean, the people that they need to hear from are the senior career civil servants who are, you know, who know what's going on in the agency, what the problems are, what's going to blow up, what's not going to blow

up. I mean, those those kinds of things. So that process starts taking place as soon as there is a president elect.

It used to be that this was a process that they raised independent money for, and then Congress decided that wasn't such a great idea. So now when there's a president elect, the GSA, the Government Services Administration, actually provides a couple million dollars for the transition team, gives them some office space, gives them phones and computers, and pays some salaries so that you're not raising money from special interests during your transition. As you can see, people figured out that was kind of a bad idea. And so now the federal government pays for the transition.

DEWS: It's reassuring to hear you say that the senior executives in government will cooperate with, if it's Biden, a Biden transition team, because, yes, there is a lot of theorizing that an embittered President Trump, outgoing President Trump, could cause trouble but refuse to cooperate.

KAMARCK: Can I just say that that the way President Trump has treated the career government, right, and the insults he has hurled at them, his inability to staff the government with competent people throughout his administration, believe me, I think most of the career bureaucracy will be very happy to sit down and have a serious discussion about government with a Biden transition. And it doesn't matter what Trump says and it doesn't matter what the people in his agency do and his appointees do.

DEWS: Are there are other kinds of things that an outgoing president could do that worry you?

KAMARCK: No. Frankly, no. And the reason is that I mean, let's go through the big things he could do, right. Other than probably passing a stimulus bill and signing the stimulus bill, there's no chance that this outgoing president is going to pass legislation. Right. Unless the legislation is a great big bipartisan deal worked out by the Democrats and Republicans, I mean there's no way that an outgoing president passes any major piece of legislation. Nobody could do that. So if there you know, I think there will be a stimulus bill and my guess is it'll be bipartisan enough that even if

Trump for some reason decides not to sign it, it could be even veto proof. So you can't do anything legislatively.

He has made a big deal, as have presidents before him, including Democrats, including Barack Obama—he's made a big deal about rolling back regulations and all the things he's done through executive order. Well, guess what? An executive order by one president can be simply remanded by an executive order by the next president. So my guess is that the Biden team is already putting together a list of executive orders that they'll issue on January 22. And those executive orders will be undoing that one, undoing that one, undoing that one.

And even if he does try to sign some new executive orders, usually those executive orders only have teeth if they direct the government to either create or undo a regulation. And the regulatory process itself is defined in law. And it takes a long time. There has to be a public review period, et cetera.

So, there's not very much that Donald Trump can do domestically in this period. The one thing he can do, which I suspect he will do, is he can pardon people. So I wouldn't be surprised if Mike Flynn and Paul Manafort and some of the other people who were convicted as part of the Russia probe, I wouldn't be surprised if they were pardoned. That's sort of an outgoing president's biggest opportunity.

And then finally, there are people are worried about what he might do in foreign policy. But I think that there there's a sort of delicate dance. I mean, the president might say, you know, just even before the election, the president said he was going to bring all the troops home from Afghanistan by Christmas. And guess what? That's not happening. The Pentagon said, no, we can't do that. And his own national security adviser said, oh, that was wishful thinking, that wasn't that wasn't really an order.

So, I mean, there are limits on president's powers all the time, even popular, just-elected presidents. There's a limit on their powers. There's a lot of those limits get to be pretty severe when a president has just been defeated for reelection.

DEWS: Well, Elaine, let's just come back to the present as we wrap up here. Again, it's Thursday afternoon, November 5th. What are you going to be looking for the next hours and days to tell you how this will turn out?

KAMARCK: I think there's three states I'm going to be looking for: Pennsylvania, Arizona and Nevada. Arizona and Nevada alone can put Joe Biden over the top, even if he loses Pennsylvania. Obviously, if he wins Pennsylvania, he's got it. And I think those are the likeliest scenarios. There's also this little business of the 2nd Congressional District in Maine, which is yet to be called, where there's one Electoral College vote. But mostly, frankly, it's going to be those three states, Pennsylvania, Arizona, Nevada. The other two that are still on the board, if you look at the television, are Georgia and North Carolina. I just don't see North Carolina happening. Georgia might happen, but it would be a big surprise, if it does, it'll be razor, razor thin. And my guess is that everybody's going to look at Pennsylvania in the next 24 hours for one simple reason. That state, if Biden wins it, the race is over. He's got it. And one of the only ways that Trump at this point can win is by winning Pennsylvania. So I think that it's come back to Pennsylvania. It started out Pennsylvania and it's coming back to Pennsylvania.

DEWS: Well, Elaine, I want to thank you, as always, for sharing your insights and expertise with us. It's a fast moving story and we're all on pins and needles. And I know that we'll be talking to you and plenty about other colleagues in Governance Studies in the coming weeks, months about these issues. So thank you.

KAMARCK: Thank you, Fred. Bye bye.

DEWS: The Brookings Cafeteria Podcast is possible only with the help of a team of amazing colleagues. My thanks go out to audio engineer, Gaston Reboredo and our intern, Ryan Jacobs; to Bill Finan, director of the Brookings Institution Press, who does the book interviews; to Marie Wilkin, Adrianna Pita, and Chris McKenna for their collaboration. And 26 finally, to Camilo Ramirez and Emily Horne for their guidance and support. 17 The Brookings Cafeteria is brought to you by the Brookings Podcast Network, which also produces Dollar & Sense, The Current, and our

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Until next time, I'm Fred Dews.