Twitter Thread by Elie Honig



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Still lots of concern about what happens on January 6, given the recent conduct of President Trump and many in the House and Senate.

Bottom line: It'll be a ridiculous (maybe worse) political circus but legally it absolutely will not change the outcome of the election.

Thread:

1) Let's start with this VP business (Trump saying he hopes Pence "comes through," the Gohmert lawsuit). That's a big nothing. Under the Constitution, the VP's only role is to "open all the certificates" and, under federal law, to "read" them. It's entirely ceremonial. That's it.

2) Imagine if the VP actually did have the power to unilaterally reject votes. Any VP, in any year, could simply declare his own party the winner. Biden could have declared Hillary Clinton in Jan. 2017 over Trump; Cheney could have declared Romney in Jan. 2009 over Obama; etc.

3) I don't believe Pence will try it. And if he does, it'll be about as effective, constitutionally and legally, as using one of those oversized ceremonial "keys to the city" to actually open up the bank building.

4) Now, Congress. There's a federal law called the Electoral Count Act of 1887. (Note: this is a law but *not* part of the Constitution itself; this comes up again). That law says if one member of the House and one member of the Senate raise objections, Congress must debate.

5) Here's where you'll see much of the theatrics. Senators and Reps can and will take to the floor and go nutty during the "debate." They'll all have their run, Ted Cruz and the like will get the vapors and feign outrage, etc. But it's a show, that's all.

6) The Electoral Count Act law (again, not in the Constitution itself) says Congress then can decline to count certain electoral votes only if there's a majority vote of *both* the Senate and House.

7) This won't happen. More than enough GOP Senators are against this nonsense that there won't be a Senate majority, and there's a 0.00% chance in the Democratic-controlled House.

8) Now, some ask: but what if one party controlled both Senate and House -- could that party unilaterally toss out all votes for the other party's presidential candidate? Under the letter of the Electoral Count Act, yes. BUT:

9) First, there's a legitimate argument that the Act itself is unconstitutional. The argument, in sum, is that it violates separation of powers for Congress to essentially override voters and pick the President (who heads, and according to some conservatives, IS, another branch).

10) Thankfully, neither party has ever tried this. Both have been too fundamentally decent for this kind of craziness. And if one ever did, there would be a legit legal challenge and wind up in federal courts, quickly.

11) Finally, NO, the inauguration cannot be postponed. The Constitution itself sets the end of the President's term for January 20 at exactly noon. It takes a Constitutional amendment (2/3 of House, 2/3 of Senate, 3/4 of states) to change that. Not happening by Jan. 20 (or ever).

12) There's real harm being done here. The President and others are spinning wild lies, hurting our standing in the world, and undermining our democracy. And some are trying to fire up an outburst at the rally in DC tomorrow.

13) So this is all absolutely terrible for the country. But it simply will not succeed, and will not change the outcome of the 2020 election.

END