



# The U.S. Presidential Election: Managing the Risks of Violence

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*Preventing War. Shaping Peace.*

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# Principal Findings

**What's new?** As the U.S. presidential election approaches, the ingredients for unrest are present. The electorate is polarised, both sides frame the stakes as existential, violent actors could disrupt the process and protracted contestation is possible. President Donald Trump's often incendiary rhetoric suggests he will more likely stoke than calm tensions.

**Why does it matter?** Beyond the implications for any Americans caught up in unrest, the election will be a harbinger of whether its institutions can guide the U.S. safely through a period of socio-political change. If not, the world's most powerful country could face a period of growing instability and increasingly diminished credibility abroad.

**What should be done?** Authorities should be ready to counter voter intimidation and continue polling in the event of disruption. Domestic leaders should make bipartisan calls for a clean election. Foreign leaders should press U.S. counterparts to respect democratic norms. The media and foreign governments should take care not to recognise a winner prematurely.

## *Executive Summary*

As the 3 November U.S. presidential election approaches, the country faces an unfamiliar danger. While Americans have grown used to a certain level of rancour in these quadrennial campaigns, they have not in living memory faced the realistic prospect that the incumbent may reject the outcome or that armed violence may result. That has changed in 2020 because of the emergence of risk factors that would spell trouble in any country: political polarisation bound up with issues of race and identity; the rise of armed groups with political agendas; the higher-than-usual chances of a contested outcome; and most importantly President Donald Trump, whose toxic rhetoric and willingness to court conflict to advance his personal interests have no precedent in modern U.S. history. The risk of unrest may ebb and flow as the final days of the campaign unfold, but it is almost certain to remain, and it will increase if either side forms the impression that the vote has been rigged.

At some level, it should not be surprising that the United States now faces the spectre of electoral violence. The U.S. has seen slavery, civil war, lynching, labour strife and the ethnic cleansing of indigenous peoples. The wounds of those legacies have never fully healed. The country is awash in firearms, has gun homicide levels unmatched by any other high-income country, and is home to a white supremacy movement that, as discussed below, is growing in virulence. Racial injustice, economic inequality and police brutality are chronic sources of tension, which periodically bubbles over into large-scale peaceful demonstrations and, sometimes, civil unrest. By way of recent example, the police killing of an unarmed Black man, George Floyd, in Minnesota state's largest city of Minneapolis on 25 May generated a wave of protests and counter-protests that has diminished but not fully subsided five months later.

Even so, it is rare that U.S. elections threaten to go off the rails in a way that calls into question the capacity and resilience of the country's democratic institutions, or that suggests the use, or threat, of force might influence the outcome. Journalists and historians commonly cite two previous elections that the 2020 contest could come to resemble. The 2000 election was so close that the winner was not apparent on Election Day. The Supreme Court halted a recount in Florida, handing the presidency to George W. Bush. The 1876 election was so contentious that four states sent rival slates of electors to Congress. In neither case, however, did the dispute wind up violent: Bush's opponent Al Gore accepted the Supreme Court decision, while in 1876 one candidate basically traded the White House to the other for an end to federal occupation of the South after the U.S. Civil War (1861-1865) – preserving the peace but ushering in the segregationist Jim Crow era.

Under the circumstances, the responsibility of all officials at every level of government, of foreign partners, of civil society and of the media should be to anticipate sources of friction and grievance within the voting public and move quickly to address them. In the limited time that remains before the election, state and local governments should acquaint themselves thoroughly with the legal tools at their disposal and, with support from civil society, use them as needed so that voting and ballot counting can proceed in an orderly fashion without duress. Traditional and social media should take extra precautions not to pronounce winners prematurely, particularly in “bat-

tleground states” where margins are likely to be thin. They must not provide a platform for candidates to declare themselves victors before the outcome is known, or proliferate pernicious disinformation; some have taken steps in this direction, but the challenge will require constant management.

For their part, foreign heads of state should refrain from offering their congratulations until the institutional process has run its course, regardless of any potential pressure from the U.S. to do otherwise. If events take an ugly turn, both domestic political and foreign leaders with easy access to Trump and his inner circles should tell them privately and publicly that they will have no support if they try to interfere with tabulation of results or, should they lose, the peaceful transfer of power. In the interim, U.S. political leaders at every level should follow the lead of the two Utah state gubernatorial candidates, who recently recorded a public service announcement in which they jointly commit to peacefully upholding the democratic process. Ideally, more leaders representing the country’s two major political parties – Democrats and Republicans – would get together ahead of the vote to make similar public pledges.

The failure of democratic institutions to deliver a peaceful election and, depending on the result, transfer of power in the United States would be bad for the American people, for the country’s governance, for the nation’s credibility and thus its influence abroad, and for foreign partners who (even after four years of Trump) still turn to the U.S. for a measure of stability and security. With luck, and perhaps a little help from its friends, the U.S. could still avoid election trouble and emerge ready to begin repairing the social fractures that have helped bring it to this dangerous place.

**Washington/Brussels, 28 October 2020**

# The U.S. Presidential Election: Managing the Risks of Violence

## I. Introduction

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U.S. presidential elections are often heated affairs. The candidates from the two major parties, the Democrats and Republicans, seek advantage with voters not only by attacking their rivals' records and proposed policies but often by questioning their patriotism, personal integrity or fitness for public office. Still, it is rare that the United States' quadrennial elections seem at risk of spawning, or being influenced by, violent unrest. But 2020 is different. Indeed, commentators tend to identify only two major precedents in the last 150 years.

One occurred at the turn of the current century. A recount in the contested 2000 race between Democrat Al Gore and Republican George W. Bush was marred when conservative protesters swarmed ballot counters in Florida's Miami-Dade County. But little more than contained outrage came of that incident. Bush in effect won the race when the Supreme Court halted the recount and Gore conceded.<sup>1</sup> For Democrats, it was a bitter ending but not one that led to talk of physical confrontations.

Beyond that, commentators tend to reach back to the 1876 contest between Democrat Samuel Tilden and Republican Rutherford B. Hayes for the nearest analogy to the present. Then, four states sent rival slates of electors to the Electoral College, the body constitutionally charged with choosing the president. The resulting deadlock broke only when Tilden agreed to step aside in exchange for a fateful deal to pull federal troops out of the South and abandon the protection of recently freed slaves, spelling the beginning of the segregationist Jim Crow period. This bargain, while it certainly led to violence down the road, averted a prolonged constitutional crisis that could have produced armed clashes around the election itself.<sup>2</sup>

This report explores the factors that have made the 2020 U.S. presidential election potentially dangerous. It describes scenarios in which violence could break out and offers suggestions for how to mitigate the risk that those scenarios come to fruition. It draws upon research conducted from June through October, including remote interviews with former U.S. officials, Congressional staff, legal experts and civil society representatives, as well as experts on the U.S. white nationalist movement and members of that movement. Requests for meetings with the Department of Homeland Security, Federal Bureau of Investigation and Department of Justice were either unanswered or declined. The report builds on Crisis Group's previous work in 2020 on unrest – and the potential for more – in the United States.<sup>3</sup>

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<sup>1</sup> Adam Gabbatt, "Two decades after the 'Brooks Brothers riot', experts fear graver election threats", *The Guardian*, 24 September 2020.

<sup>2</sup> See, eg, Rachel Shelden and Erik B. Alexander, "Americans worry about 2020 being another 2000, but the real worry is 1876", *The Washington Post*, 20 October 2020; and Ron Grossman, "Flashback: All the twists and turns of the election of 1876. Spoiler: We came close to major civil strife", *The Chicago Tribune*, 25 September 2020.

<sup>3</sup> See Crisis Group Statements, "Too Much to Lose: Steering the U.S. Away from Election-related Violence", 22 October 2020; and "To Calm U.S. Turmoil, U.S. Leaders Must Stop Courting Conflict", 4 June 2020.

## II. Why This Year is Different

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As an organisation that focuses on the prevention of deadly conflict, Crisis Group frequently covers parlous elections around the world, analysing the likelihood that they can devolve into deadly violence. Certain items consistently emerge as red flags, including:

- ❑ a polarised electorate;
- ❑ high stakes that both sides see or portray as existential;
- ❑ the proliferation of hate speech and misinformation through social and other media;
- ❑ pre-existing ethno-sectarian or racial tensions;
- ❑ mutual allegations of cheating or a will to cheat in order to win – coupled with the conviction among many on both sides that a loss is possible only in the event of fraud;
- ❑ distrust of institutions organising the vote or resolving disputes;
- ❑ highly segregated and mutually mistrusted sources of information;
- ❑ the existence of armed non-state actors or militias with easy access to weapons;
- ❑ the prospect of narrow electoral margins and a contested outcome;
- ❑ an incumbent who sees personal legal or financial interests at stake in the preservation or loss of power; and
- ❑ a political leadership that fuels divisions rather than defuses them.<sup>4</sup>

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<sup>4</sup> For coverage of these and other risks in a range of places, see Crisis Group Africa Report N°98, *Liberia's Elections: Necessary but not Sufficient*, 7 September 2005; Latin America Report N°15, *Bolivia at the Crossroads: The December Elections*, 8 December 2005; Africa Report N°129, *Sierra Leone: The Election Opportunity*, 12 July 2007; Africa Report N°143, *Sierra Leone: A New Era of Reform?*, 31 July 2008; Middle East Report N°98, *Lebanon's Elections: Avoiding a New Cycle of Confrontation*, 4 June 2009; Africa Report N°155, *Burundi: Ensuring Credible Elections*, 12 February 2010; Africa Report N°158, *Côte d'Ivoire: Securing the Electoral Process*, 5 May 2010; Africa Report N°162, *Chad: Beyond Superficial Stability*, 17 August 2010; Asia Report N°197, *Indonesia: Preventing Violence in Local Elections*, 8 December 2010; Africa Briefing N°79, *Nigeria's Elections: Reversing the Degeneration?*, 24 February 2011; Asia Report N°203, *Reforming Pakistan's Electoral System*, 30 March 2011; Africa Briefing N°80, *Congo: The Electoral Process Seen from the East*, 5 September 2011; Africa Report N°197, *Kenya's 2013 Elections*, 17 January 2013; Africa Report N°199, *Guinée : sortir du borbier électoral*, 18 February 2013; Africa Report N°220, *Nigeria's Dangerous 2015 Elections: Limiting the Violence*, 21 November 2014; Africa Report N°224, *Elections in Burundi: Moment of Truth*, 17 April 2015; Africa Report N°225, *Congo: Is Democratic Change Possible?*, 5 May 2015; Africa Briefing N°144, *Averting Violence in Zanzibar's Knife-edge Election*, 11 June 2019; Latin America Report N°75, *A Glimmer of Light in Venezuela's Gloom*, 15 July 2019; Asia Report N°307, *An Avoidable War: Politics and Armed Conflict in Myanmar's Rakhine State*, 30 June 2020. See also Crisis Group Statement, "Keeping Violence in Check after Bolivia's Political Rupture", 13 November 2019; and Crisis Group Commentaries, "Sri Lanka Election Sparks Fear of Return to Violent Past", 13 November 2019; "Burkina Faso: Safeguarding Elections amid Crisis", 28 January 2020; and "Côte d'Ivoire: Defusing Electoral Tensions Amid Polarised Politics", 26 May 2020.

The presence of these risk factors, all of which to some degree feature in this year's pre-electoral landscape in the United States, does not in every case mean that conflict or serious violence is inevitable or even likely. But ahead of the forthcoming U.S. election, four of these factors are particularly prominent. Each is cause for concern in itself, but it is the confluence of these factors that makes the 2020 election especially worrying.

A. *Polarisation and Its Progeny*

Undergirding all the risks and negative scenarios that hang over the forthcoming election is a level of polarisation that causes the United States to stand out, even in comparison to other countries with deep political divisions. Scholars Thomas Carothers and Andrew O'Donohue chalk up the polarisation at least in part to the way in which partisan sentiment developed and sharpened in the U.S. They argue that it emerged from the social and political transformation of the 1960s and 1970s – the period during which the civil rights, women's rights and LGBTQ+ movements took off – and percolated from the grassroots up. Civil society, faith leaders and public intellectuals drove both the progressive movement (advocating transformation) and conservative reaction (resisting it), which then merged into the Democratic Party on the progressive left and the Republican Party on the conservative right.<sup>5</sup>

In short, President Donald Trump used the language of grievance and division to harness this polarisation, but the division was already there – deeply rooted in decades of U.S. social, cultural and political life.<sup>6</sup>

Political polarisation in the U.S. is also unusually multifaceted when compared to other democracies, in that it separates voters along multiple axes – including faith, ethnicity and ideology.<sup>7</sup> Other fault lines, for example between urban and rural voters, and those with and without college educations, are also significant. While there is variation in both parties, and leaders from each try to pull in voters from the other, the linkage between these identities and party affiliation is pronounced, and in some respects growing. For example, over the past quarter-century, the Democratic Party has grown more ethnically diverse and decreasingly religious.<sup>8</sup> It has moved to the

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<sup>5</sup> In the 19th century, the Republican Party (which was the party of President Abraham Lincoln, who led the anti-slavery North against the secessionist pro-slavery South in the U.S. Civil War) opposed the spread of slavery and supported post-Civil War reforms to enshrine and protect the rights of newly freed slaves in the South. In the post-World War II era, however, it was the Democratic Party that associated itself with the civil rights movement and racial justice issues more broadly. In the 1960s and 1970s, the Republican Party sought to draw in white southerners alienated by these Democratic positions. See, eg, Becky Little, "How the 'Party of Lincoln' won over the once Democratic South", *History.com*, 18 August 2017 (updated 10 April 2019); Angie Maxwell, "What we got wrong about the Southern strategy", *Washington Post*, 26 July 2019.

<sup>6</sup> Thomas Carothers and Andrew O'Donohue, "How Americans Were Driven to Extremes", *Foreign Affairs*, 25 September 2019.

<sup>7</sup> *Ibid.* Carothers and O'Donohue note: "In most cases, polarisation grows out of one primary identity division – usually either ethnic, religious or ideological. In Kenya, for instance, polarisation feeds off fierce competition between ethnic groups. In India, it reflects the divide between secular and Hindu nationalist visions of the country. But in the United States, *all three* kinds of division are involved".

<sup>8</sup> See "In Changing U.S. Electorate, Race and Education Remain Stark Dividing Lines", Pew Research Center, 2 June 2020. Pew notes that between 1994 and 2019, "the growing racial and ethnic diversity of the overall electorate has resulted in a more substantial change in the composition of the



ideological left on racial and moral justice issues.<sup>9</sup> Support for the Black Lives Matter racial justice movement among Democrats is high, for instance.<sup>10</sup>

By comparison, polling suggests that core support for the Republican party comes from white evangelicals, white men without a college education, rural southerners, weekly religious service attendees and “Gen X” men (ie, men who were between 23 and 38 years of age in 2003).<sup>11</sup> Particularly since Trump’s emergence as its leader, the Republican Party has embraced a platform of economic nationalism: trade protectionism, immigration restrictionism and deep nostalgia for a real or imagined era of national greatness evoked by the “Make America Great Again” slogan.<sup>12</sup> The substantial majority of Republican voters do not support the Black Lives Matter movement.<sup>13</sup>

These differences between the two major U.S. political parties are magnified in rhetoric that can only reinforce a deep sense of division. When they become pitched, Democratic commentators tend to portray Republicans as ethno-nationalists who refuse to squarely confront a deeply flawed past and the systemic inequities that deny opportunity to too many Black and other Americans. Their Republican counterparts tend to characterise Democrats as too dismissive of the United States’ Christian and European cultural heritage and too drawn to globalist policies that, in their view, have already begun to change the nation’s character and cost American workers their prosperity and way of life.<sup>14</sup>

As the country has drifted into political camps with dramatically different visions of both the nation’s past and its future, these fissures have spawned and been fed by

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Democratic Party than in the GOP [Republican Party]: Four in ten Democratic registered voters are now non-white (black, Hispanic, Asian and other non-white racial groups), compared with 17% of the GOP”. The report also says “Democrats increasingly dominate in party identification among white college graduates ... [while] Republicans increasingly dominate in party affiliation among white non-college voters, who continue to make up a majority (57 percent) of all GOP voters”. See also “Changing Composition of the Electorate and Partisan Coalitions”, Pew Research Center, 18 March 2018. This piece notes that religiously unaffiliated voters compose roughly one third of all Democratic voters as of 2018, up from 9 per cent in 1997.

<sup>9</sup> See Thomas Edsall, “Biden is not out of the woods: unanticipated electoral developments are affecting both presidential campaigns in surprising ways”, *The New York Times*, 14 October 2020.

<sup>10</sup> Deja Thomas and Juliana Menasce Horowitz, “Support for Black Lives Matter Has Decreased Since June but Remains Strong Among Black Americans”, Pew Research Center, 16 September 2020. Thomas and Horowitz write: “The partisan divide in support for the Black Lives Matter movement – which was already striking in June [2020] – has widened even more. Among Republicans and those who lean to the Republican Party, about two in ten (19%) now say they support the movement at least somewhat, down from four in ten in June. The share of Democrats and Democratic leaners who support the movement (88%) has not changed considerably”. See also David Weigel, “Three words that Republicans wrestle with: ‘Black Lives Matter’”, *The Washington Post*, 12 July 2016.

<sup>11</sup> “In Changing U.S. Electorate, Race and Education Remain Stark Dividing Lines”, op. cit. Pew notes that 78 per cent of white evangelicals identify as Republican, as well as 62 per cent of white men without a college education, 60 per cent of rural southerners, 57 per cent of weekly religious service attendees and 53 percent of “Gen-X” men.

<sup>12</sup> See Edsall, op. cit. See also Farah Stockman, “Why they loved him”, *The New York Times*, 16 October 2020, discussing the migration of white working-class voters to the Republican Party.

<sup>13</sup> Thomas and Horowitz, op. cit.

<sup>14</sup> For accounts and examples of both sides’ perspectives, see, for example, the Edsall and Stockman pieces cited above; David French, “The growing danger of political violence threatens to destabilise America”, *Time*, 14 October 2020; and Ann Coulter, *Adios America* (New York, 2020).

parallel media ecosystems – represented in the broadcast medium, for example, by the Fox News network on the right and MSNBC on the left. Mainstream outlets like *The New York Times* and *Washington Post* have long been perceived, at least by the right, to tilt decidedly left – a perception encouraged by President Trump, who has sought to undermine their often critical coverage as “fake news”.<sup>15</sup> The mutual delegitimisation of news sources can be an impediment to crisis management, as it has been during the COVID-19 pandemic, when outlets in different places on the political spectrum sent conflicting and confusing messages about the merits of masking and social distancing.<sup>16</sup> It would invariably complicate efforts by state and local authorities to calm any outbreaks of unrest at or in the aftermath of the 3 November polls.

Polarisation has also contributed to a political atmosphere in which each side’s claims that the election stakes are existential can seem all too resonant to their constituents. Both presidential candidates have sounded in this register. Trump has claimed that Biden would “kill your jobs, dismantle your police departments, dissolve your borders, release criminal aliens, raise your taxes, confiscate your guns, end fracking, destroy your suburbs and drive God from the public square”, and Biden that Trump is “literally an existential threat to America”.<sup>17</sup> While Trump is by far the greater offender, each candidate has also pre-emptively delegitimised the other’s victory – with Trump repeatedly saying that “the only way we’re going to lose this election is if the election is rigged” and Biden saying he could lose only through “chicanery” at the polls (a statement he made only once and quickly walked back).<sup>18</sup> Whatever the merits of their underlying arguments, this rhetoric can only contribute to a win-at-all-costs mindset on both sides.

## B. *Armed Groups*

The sense of grievance and alienation that has driven the U.S. toward increasing levels of political polarisation has also created an environment in which non-state groups, cells and actors, some of whom adopt paramilitary trappings, pose an increasing security risk.<sup>19</sup> Although President Trump and other Republican leaders have sought, in their political rhetoric, to suggest that the more significant threat comes from

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<sup>15</sup> See, eg, Van Gordon Sauter, “The liberal-leaning media has passed its tipping point”, *The Wall Street Journal*, 25 May 2020; Margaret Sullivan, “What it really means when Trump calls a story, ‘fake news’”, *The Washington Post*, 13 April 2020.

<sup>16</sup> See, eg, “Fox News anchor downplays science behind ‘this masks thing’”, *Media Matters*, 4 October 2020; Elena Schneider, “The face mask is ‘almost as much of a symbol as a MAGA hat’”, *Politico*, 30 September 2020.

<sup>17</sup> Jemima McEvoy, “No more Christmas, suburbs under siege: Trump escalates claims about a Biden win”, *Forbes*, 19 October 2020; Bo Erickson, “Biden: Trump is an ‘existential threat’ to the US”, *CBS News*, 11 June 2019.

<sup>18</sup> Morgan Chalfant, “Trump: ‘The only way we’re going to lose this election is if the election is rigged’”, *The Hill*, 17 August 2020; Trevor Hunnicutt, “Biden says ‘chicanery’ at polls is the only way he could lose U.S. election”, *Reuters*, 10 October 2020; Rick Hasen, “Biden quickly walks back comments”, *Election Law Blog*, 11 October 2020.

<sup>19</sup> Crisis Group correspondence and interviews with analysts, former government officials, scholars, and far-right militia members, September–October 2020. See also “Standing By: Right-Wing Militia Groups and the US Election”, *Armed Conflict Location and Event Data Project (ACLED)* and *MilitiaWatch*, October 2020; and “Homeland Threat Assessment”, U.S. Department of Homeland Security, October 2020.

Antifa (a phrase that has become shorthand for an amorphous grouping of “anti-fascist” activists), the government’s own analysts, as well as numerous other experts whom Crisis Group interviewed, tell a different story.

An October 2020 report issued by the Department of Homeland Security concludes that “racially and ethnically motivated violent extremists – specifically, white supremacist extremists – will remain the most persistent and lethal threat in the homeland”.<sup>20</sup> The department also reports that 2019 was the most lethal year for domestic extremist group activity since the 1995 Oklahoma City bombing, which claimed 168 lives; of the sixteen lethal attacks in 2019 that it attributes to extremists, it deems white supremacists responsible for half (with the other half being attributed to the full spectrum of other extremist actors), and for 39 of the 48 corresponding deaths.<sup>21</sup> While government and other analysts note that non-right extremists also engage in violence, sometimes blending in with otherwise peaceful protesters to spark rioting, they do not deem these actors to pose the same level of threat as white nationalists and aligned movements.<sup>22</sup>

Some experts note that they have been warning for some time about the potency of white nationalism and arguing that it should be seen as part of a significant movement with the capacity to threaten U.S. democratic institutions.<sup>23</sup> University of Chicago professor Katherine Belew describes this movement as emerging after the Vietnam War and uniting remnants of the Ku Klux Klan with “neo-Nazi, skinhead and other activists”.<sup>24</sup> Many in the movement have aspired to the formation of a transnational Aryan polity and the overthrow of the federal government.<sup>25</sup> While certain actors have faced justice for their actions (eg, in the aftermath of the Oklahoma City bombing), prosecutorial efforts against adherents have been sporadic and often

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<sup>20</sup> “Homeland Threat Assessment”, op. cit., pp. 17-18. Former U.S. counter-terrorism and law enforcement officials from both the Trump and Obama administrations strongly reinforced the report’s findings, expressing alarm at the growth of white supremacist violence as a threat to domestic security, and suggesting that the Trump administration had been too slow to act on it. Crisis Group interviews, former U.S. counter-terrorism and law enforcement officials, September-October 2020.

<sup>21</sup> Ibid.

<sup>22</sup> The Department of Homeland Security October 2020 Threat Assessment says that violent anti-government and anti-authority extremists, sometimes influenced by anarchist ideology, “have been associated with multiple plots and attacks, which included a significant uptick in violence against law enforcement and government symbols in 2020 ... [and] are likely to be emboldened by a perceived success exploiting otherwise peaceful protest movements and concealing violent tactics”. As for the Antifa movement, the ACLED and Militia Watch report describes it in terms that appear to set it apart from more violent actors, noting that “while the specter of ‘Antifa’ looms large in the public imagination, violent activities associated with this non-centralized movement have been minimal, and are often expressed in cyber actions (like doxxing), and with minimal rioting that typically does not involve threats or harm to individuals”. “Standing By: Right-Wing Militia Groups and the US Election”, op.cit.

<sup>23</sup> See, eg, Katherine Belew, *Bring the War Home: The White Power Movement and Paramilitary America* (Cambridge, Mass., 2018); “The plot against Whitmer won’t be the last white supremacist threat”, *Washington Post*, 8 October 2020; and “The right way to understand white nationalist terrorism”, *The New York Times*, 4 August 2019.

<sup>24</sup> “The right way to understand white nationalist terrorism”, op. cit.

<sup>25</sup> Ibid. Crisis Group correspondence, investigative reporter who has tracked white supremacy movements, October 2020; Crisis Group interviews, current and former Oath Keepers members, October 2020.

unsuccessful, allowing the movement to fortify itself over the years.<sup>26</sup> The groups, cells and actors draw from the ranks of military veterans and former law enforcement personnel, who can avail themselves of the nation's permissive gun laws to build their private armouries.<sup>27</sup>

If scepticism about the threat posed by armed right-wing groups has diminished among government experts and national security specialists, it is in large part because the profile, activity and public assertiveness of these groups have surged since Trump emerged as a national political figure in the 2016 campaign. While right-wing militias and other white identity groups and actors traditionally have a strongly anti-government orientation, the ethno-nationalist dimensions of Trump's agenda have visibly resonated with the movement. A recent report by the Armed Conflict Location and Event Data Project (ACLED) and MilitiaWatch identified a "major realignment of militia movements in the US from anti-federal government writ large to mostly supporting one candidate, thereby generally positioning the militia movement with a political party".<sup>28</sup>

An analyst from the Southern Poverty Law Center sees right-wing and white identity groups and actors as "more and more entangled", and notes that "we see them converging. ... There's this sense that we're heading toward some kind of political emergency that would allow them to use extraordinary actions and utilize violence".<sup>29</sup> Another long-time analyst who tracks U.S. extremist groups notes that the convergence has in some respects driven the actors to resolve their differences and move toward a lowest common denominator:

The Oath Keepers [one of the largest right-wing militias], for example. Are they a white nationalist group? No. Is their stated ideology white nationalist? No. But a focus on perceived crises around immigration and terrorism have forced the group to align itself, both in private communication and in real-world operations, with anti-Muslim groups and anti-immigrant groups. In every way they are oper-

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<sup>26</sup> Some analysts believe that the U.S. government's prosecutorial failures with respect to rancher Cliven Bundy, two of his sons, and a Montana militiaman in an armed standoff over grazing rights on public lands sent an empowering signal to the broader militia movement. Crisis Group correspondence, investigative reporter who has tracked white supremacy movements, October 2020. This reporter said "(t)he federal government's failure to bring anyone to justice following the 12 April 2014 standoff at the Bundy Ranch in Nevada made the militias stronger and eager to flex their muscles against the federal government". See also Kirk Siegler, "Cliven Bundy armed standoff case going back to court," National Public Radio, 29 May 2020. This story quoted a former Clinton administration official saying, "If there is no successful prosecution, it's going to encourage a lot of anarchists like the Bundys to take actions that not only are a threat to themselves but threats to the public at large". By contrast, the prosecution of Bundy's son Ammon and other militiamen who occupied the Malheur National Wildlife Refuge in early 2016 may have – according to the aforementioned analyst – "created a chilling atmosphere discouraging involvement. Afterward they were far less likely to engage in public demonstrations, at least until Trump was elected".

<sup>27</sup> Christopher Ingraham, "There are more guns than people in the United States, according to a new study of global firearm ownership", *The Washington Post*, 19 June 2018; Kara Fox, "How US gun culture compares with the world", CNN, 6 August 2019; "Homeland Threat Assessment", op. cit.

<sup>28</sup> "Standing By: Right-Wing Militia Groups and the US Election", op. cit.

<sup>29</sup> Crisis Group interview, Southern Poverty Law Center analyst, October 2020.

ating as brutes-for-hire for any ideology on the far right – even those they say they stand against.<sup>30</sup>

President Trump has appeared to encourage the growing affinity between these coalescing extremists and his own political movement. When white supremacists came together in a militaristic show of force in Charlottesville, Virginia in August 2017 (one backed his car into and killed counter-demonstrator Heather Heyer), Trump's reaction was sufficiently muted and ambiguous that it could fairly have been understood as a form of support.<sup>31</sup> Since then he has followed the same pattern on multiple occasions, with varying degrees of ambiguity. His statements include a defence of vigilante Kyle Rittenhouse, who had reportedly responded to a local militia's call to action, after he shot and killed two racial justice demonstrators in Kenosha, Wisconsin state in August.<sup>32</sup> He also said the street-brawling Proud Boys hate group should "stand back and stand by" when invited to condemn them during his 29 September debate with opponent Joe Biden.<sup>33</sup>

Members of the extremist movement appear to have listened to his words carefully. In 2019, when the president tweeted out comments from right-wing pastor Robert Jeffress suggesting that Trump's impeachment and removal would cause a "Civil War-like fracture in this nation", the Oath Keepers militia responded with a commitment of sorts. "All he has to do is call us up", the organisation posted on its account, adding, "We WILL answer the call".<sup>34</sup> A former senior official who served under Trump in the Department of Homeland Security said she believes the president understands the impact of his words:

Trump is worsening the problem. In 2016, there were articles out there about the dog-whistle effect. I assumed he was an inexperienced politician and didn't know what it means to be on the national stage. ... Four years later, he knows what he's doing; he understands the strategy. He's either wilfully ignored his security offi-

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<sup>30</sup> Crisis Group interview, analyst and investigative reporter who tracks U.S. extremist groups, October 2020.

<sup>31</sup> Trump said, "You had some very bad people in that group, but you also had people that were very fine people, on both sides", and sought to distinguish between white nationalists and neo-Nazis, whom he called "rough, bad people", and "people protesting very quietly the taking down of the statue of Robert E. Lee". Lee was the top military officer for the secessionist Confederacy, which in December 1860 left the Union in order to preserve the institution of slavery, kicking off the U.S. Civil War; an aim of racial justice demonstrators in recent years has been the removal of confederate statues from U.S. public spaces. For a discussion of Trump's remarks, see Glenn Kessler, "The 'very fine people' at Charlottesville: who were they?", *The Washington Post*, 8 May 2020.

<sup>32</sup> For a discussion of the Rittenhouse matter, see, eg, Aaron Blake, "Trump's illuminating defense of Kyle Rittenhouse", *The Washington Post*, 1 September 2020. See also "Standing By: Right-Wing Militia Groups and the US Election", *op. cit.*, p. 16.

<sup>33</sup> For a discussion of Trump's comments at the first 2020 presidential debate, see, eg, Craig Timberg and Elizabeth Dwoskin, "Trump's debate comments give an online boost to a group social media companies have long struggled against", *The Washington Post*, 30 September 2020. As this article notes, "One prominent Proud Boys supporter ... said Trump appeared to give permission for attacks on protesters, adding that 'this makes me so happy'".

<sup>34</sup> See Mary McCord, "Armed militias are taking Trump's civil war tweets seriously", *Lawfare*, 2 October 2019.

cials telling him his rhetoric has shown up in terrorist manifestoes; or he's aware of it and he doesn't care.<sup>35</sup>

At the same time, the Department of Homeland Security, which had been pushed by the White House to focus primarily on immigration enforcement, diverted resources away from domestic extremism and was slow to develop a meaningful strategy for addressing the emerging white nationalist threat.<sup>36</sup> Seemingly buoyed by this environment, many far-right extremists have asserted themselves as a foil to the left-leaning racial and social justice protest movements that surged in the wake of the George Floyd killing in May. Anarchist groups and other anti-state movements attached themselves to these protests, as did right-wing agents provocateurs. As the violence grew, some militia members and movement acolytes injected themselves into tense situations on the streets of Portland, Oregon in the country's north west, Kenosha, Wisconsin in its middle west and Louisville, Kentucky in its centre south – claiming a mission to protect, variously, people, shops and federal buildings – and making already difficult situations that much more dangerous.<sup>37</sup>

Resistance to pandemic-related lockdown, masking and social distancing measures also became a rallying point for these groups, which apparently saw them as intolerable restraints.<sup>38</sup> Months after President Trump exhorted his Twitter followers to “LIBERATE” three states led by Democratic governors – ostensibly from lockdown measures, although the message may have been viewed by some as a call to action – the FBI apprehended a far-right Michigan cell that was plotting to kidnap two of those governors, Gretchen Whitmer of Michigan and Ralph Northam of Virginia.<sup>39</sup>

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<sup>35</sup> Crisis Group interview, Elizabeth Neumann, former assistant secretary for counter-terrorism and threat prevention, U.S. Department of Homeland Security, 25 September 2020. Miles Taylor, a former deputy chief of staff in the department, is more pointed still, asserting that Trump's words “are enabling groups that are violent extremist groups to recruit and organise, by buttressing conspiracies, lies and recruitment techniques that underline these movements. He's aiding and abetting. He's doing it deliberately”. Crisis Group interview, 23 September 2020.

<sup>36</sup> A former senior U.S. counter-terrorism official who served under Obama and Trump told Crisis Group that violence in Charlottesville saw far-right groups emerging “from behind encrypted apps” in 2017 and “bursting forth onto the streets”, but that it took until September 2019 for a dedicated strategy to address these groups to emerge from any part of the Trump administration. Crisis Group interview, former senior U.S. counter-terrorism official, September 2020. According to one-time Department of Homeland Security officials who spoke on background, the administration defunded grant programs aimed at helping localities develop intervention programs to stop locals from being recruited into extremist far-right networks, and reassigned members of an intelligence team who had been focusing on the domestic far-right terror threat. Crisis Group interviews, September-October 2020. See also Betsy Swan and Erin Banco, “DHS in a ‘mad scramble’ to catch up with domestic terror”, *The Daily Beast*, 13 August 2019.

<sup>37</sup> All of these incidents are discussed in “Standing By: Right-Wing Militia Groups and the US Election”, *op. cit.*, pp. 9-19.

<sup>38</sup> *Ibid.*, p. 2. “Ahead of the election right-wing militia activity has been dominated by reactions to recent social justice activism like the Black Lives Matter movement, public health restrictions due to the ongoing coronavirus pandemic, and other perceived threats to the ‘liberty’ and ‘freedoms’ of these groups”.

<sup>39</sup> Michael D. Shear and Sarah Mervosh, “Trump encourages protests against governors who have imposed virus restrictions”, *The New York Times*, 29 April 2020.

It is unclear whether the tweet had an impact on the group's planning, which some reports suggest was already under way when Trump sent it.<sup>40</sup>

What role the militias will play in the U.S. election is unknown. Some election officials have expressed concern that President Trump's tweet requesting an "army" of poll watchers to guard against election rigging might lead the militias to engage in voter intimidation on 3 November.<sup>41</sup> But it is not clear how sizeable a response this call will generate – early voting at polling sites appears to be proceeding without major incident thus far – or where exactly it might manifest itself.<sup>42</sup>

More generally, where and whether violence on Election Day or in its aftermath erupts could turn on any number of variables that will unfold in real time. These might include whether a resonant voice on social media networks favoured by these groups sounds an alarm that captures their collective imagination about purported voter fraud at a certain location, or if there is a confrontation between the far-right and other fringe groups at one location and news spreads, triggering activists to intervene at other locations.<sup>43</sup> References to Antifa activity, real or imagined, are particularly potent rallying cries for many right-wing street fighters.<sup>44</sup> At present, however, at least some in the movement prefer instead to focus attention on what they believe the left has in store, particularly if Trump is re-elected. One prominent movement figure told Crisis Group that he believes that if Trump wins, "the violence [from the left] is going to make what has been going on look like kindergarten".<sup>45</sup>

As concerns location, ACLED and MilitiaWatch found, based on monitoring and an assessment of certain key drivers of militia activity, that the states facing the greatest risk of armed militia activity around the election include Georgia, Michigan, Pennsylvania, Wisconsin and Oregon.<sup>46</sup> These findings take into account, among other things, the extent to which a location has seen substantial engagement in anti-coronavirus lockdown protests; attracted the attention of right-wing groups because of ostensible anti-Trump "coup" activities (eg, a racial justice demonstration); has law enforcement personnel with personal relationships with militia members; and/or is a closely contested state for electoral purposes where voter suppression could be effective in tilting the result.

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<sup>40</sup> Haven Orecchio-Egresitz, "Wolverine Watchmen plot to kidnap Michigan Gov. Gretchen Whitmer was born before Trump's April tweet to 'liberate' the state, FBI special agent", *Insider*, 16 October 2020.

<sup>41</sup> Trevor Hughes, "Trump 'army' of poll watchers could frighten voters, incite violence, election officials warn", *USA Today*, 14 October 2020.

<sup>42</sup> Crisis Group correspondence, investigative reporter who has tracked white supremacy movements, October 2020; Crisis Group interviews, current and former militiamen and associated individuals, October 2020.

<sup>43</sup> *Ibid.*

<sup>44</sup> "Standing By: Right-Wing Militia Groups and the US Election", *op. cit.*, pp. 12-13. "Many members of these movements revel at the idea of brawling in the street and have expressly indicated that they enjoy fighting with groups like Antifa, for whom many of these organizations were formed to provoke".

<sup>45</sup> Crisis Group interview, far-right movement leader, October 2020.

<sup>46</sup> *Ibid.*, pp. 17-19. At the next lower tier of risk, according to this report, are North Carolina, Texas, Virginia, California and New Mexico. Of the first-tier states, polls suggest that all but Oregon are closely contested; in the second tier, North Carolina and Texas are the two closest. See the polling averages in "Top Battlegrounds: Trump vs. Biden" at the Real Clear Politics website.

### C. *Prospects for Contestation*

The prospect of a contested election, though neither guaranteed nor necessarily highly likely, emerges from two primary factors.<sup>47</sup>

First, the U.S. electorate is fairly evenly divided between the two major political parties, both nationally and in many states, and can produce close results in which challenges and contestation can reasonably be expected to make a difference.<sup>48</sup> In 2000, Al Gore's decision to seek a recount of the Florida vote reflected a calculation that restoring a relatively small number of excluded ballots could have delivered him a victory in the state, and therefore in the Electoral College.<sup>49</sup> He lost the state by 537 votes, and thus lost the election, even though he won the national popular vote. In 2016, Hillary Clinton's loss in the Electoral College boiled down to very small losing margins in a handful of closely contested states.<sup>50</sup> She also won the national popular vote. Under those circumstances, a candidate who sees an opening to challenge the results in a key state or states may well be tempted to do it.

Secondly, the complex, layered and somewhat ambiguous rules that govern U.S. presidential elections create numerous such openings. To a great extent these are a function of the antiquated Electoral College system. Under the U.S. constitution, presidents are selected not by direct popular vote, but by electors representing each state and the District of Columbia (ie, the federal capital, which by constitutional design is not incorporated into any state). Moreover, as a constitutional matter, the right to select those electors does not rest directly with the people of each state. Rather, under the U.S. constitution, presidential electors are chosen by each state "in such Manner as the Legislature thereof may direct".<sup>51</sup>

All 50 U.S. states and the District of Columbia have enacted laws that cause electors to be allocated in accordance with the popular vote. Normally, it is up to officials in the state's executive branch to appoint electors based on the popular vote outcome. But as discussed below, there could be circumstances, potentially relevant in a contested election, in which a state legislature claims the right to claw back that power – eg, because of claims that the vote count has been tainted by fraud.<sup>52</sup> Theo-

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<sup>47</sup> The discussion in this sub-section draws in part upon Crisis Group interviews and discussions involving legal and civil society experts focused on potential issues relating to the election, September-October 2020.

<sup>48</sup> "In Changing U.S. Electorate, Race and Education Remain Stark Dividing Lines", op. cit. This report notes that nationally "34% of registered voters identify as independents, 33% as Democrats and 29% as Republicans".

<sup>49</sup> Ron Elving, "The Florida recount of 2000: the nightmare that goes on haunting", NPR, 12 November 2018.

<sup>50</sup> Clinton lost Michigan, Pennsylvania and Wisconsin by a total of just under 80,000 votes. "Why Voting Matters: Supreme Court Edition", Axios, 28 June 2018.

<sup>51</sup> U.S. Constitution, Article II.

<sup>52</sup> See, eg, Edward B. Foley, "Could Trump contest even a landslide? That depends on his fellow Republicans", *The Washington Post*, 23 October 2020; Barton Gellman, "The election that could break America", *The Atlantic*, November 2020; Scott R. Anderson, "How to resolve a contested election, part 1: the states and their electors", *Lawfare*, 20 October 2020. As Anderson notes, "In 2000, Florida's state legislature explored appointing electors if the state's contested election results were not resolved in time for the state's electoral votes to be counted, but never chose to do so". Anderson points out that a state legislature seeking to assert the power to appoint a legislative slate rather



retically, it is therefore possible that the different branches of a state's government could send two different electoral slates to Congress.<sup>53</sup>

The Electoral College system also has certain disproportionate and counter-majoritarian features that help prime the pump for contestation. Each state is afforded a number of electors that equals its number of senators (two regardless of size) plus its number of representatives (which is based on population). All but two states have winner-take-all systems under which the state sends to the college a slate of electors who are expected to cast all of their votes for the candidate who achieved a majority, no matter how razor-thin.<sup>54</sup> The outcome of an election generally hangs on a handful of "battleground" states. These features explain why in both 2000 and 2016, the candidates who lost the popular vote (George W. Bush and Donald Trump, respectively) were able to win the presidency.

Adding to the complexity is the Electoral Count Act of 1887, a complex statute enacted by Congress in the aftermath of the Hayes-Tilden deadlock. The act creates certain incentives and deadlines to help make sure that the electoral process produces a winner well in advance of the end of the current presidential term, which the constitution says takes place at noon on 20 January. By way of motivation for states to move quickly in counting votes and cleaning up disputes, the act provides that if a state determines its electoral slate by an early December "safe harbour" date (8 December in 2020), in accordance with laws in force before Election Day, then Congress is required to defer to that determination.<sup>55</sup> It also provides that on 14 December electors must convene in state capitals to cast their votes for president. Finally, it creates procedures for the newly constituted Congress to formally count the votes that have been cast on 6 January.

In a year where the prospect of contestation looms large, these and other dates prescribed by a combination of the U.S. constitution and federal law are significant among other things because they serve a forcing function – alternately motivating and requiring states to move with some alacrity through the process of counting ballots and to resolve any disputes about the validity of those ballots. The dates are also important because they have the potential to cut off processes that may represent the path to victory for one of the candidates. In the context of the 2000 election, the Supreme Court's decision to end the Florida recount, closing off Al Gore's prospects and handing the win to George W. Bush, was based on its finding that the recount could not be duly concluded before the safe harbour date.<sup>56</sup>

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than deferring to the popular vote could itself be subject to challenge on various U.S. and state constitutional grounds.

<sup>53</sup> Ibid.

<sup>54</sup> Nebraska and Maine have adopted rules whereby they assign one elector to the plurality winner in each of their respective congressional districts (Nebraska has three, Maine two) and two electors to the candidate who commands a state-wide plurality. The District of Columbia currently enjoys three electors under a formula established by the U.S. Constitution's 23rd Amendment. "How to resolve a contested election, part 1", *op. cit.*

<sup>55</sup> By requiring that disputes be resolved by states in accordance with state laws enacted *prior to* Election Day, the safe harbour provision seeks to avoid motivating state legislatures to pass result-oriented statutes that would favour the party in power after votes have been preliminarily counted.

<sup>56</sup> "Bush v. Gore", 531 U.S. 98 (2000), December 2000.

Against this backdrop, there is much that can go wrong in any year, but 2020 presents particular challenges because of the pandemic and the massive increase in early mail-in voting.<sup>57</sup> Depending on their level of preparation and potential glitches beyond their control, state-level counts may be slowed, making it difficult or impossible to meet early December deadlines. Disputes over the proper filling-out of mail-in ballots could occasion litigation and recount demands and, potentially, the annulment of ballots.

Moreover, according to a story in *The Atlantic* magazine, Republicans in some states have been exploring the possibility of using disputed or protracted vote counts as a pretext for Republican-controlled state legislatures to appoint electors under their own authority.<sup>58</sup> Under this scenario, some commentators have suggested the possibility that in hotly contested states where the legislature and governorship are controlled by different parties (eg, Pennsylvania), a Democratic executive branch might conceivably seek to appoint electors on the basis of one assessment of the popular vote count, while a Republican-controlled legislature might put forward a slate of its own.<sup>59</sup>

Because of all the inflection points and ambiguities that the process involves, the potential for protracted contestation could extend the dispute up to 6 January and beyond under some scenarios.<sup>60</sup> All the while, tensions between the two sides could both build and become more dangerous, particularly if activists stage mass demonstrations to pressure one or the other candidate to back down.<sup>61</sup>

#### D. *The Trump Factor*

When it comes to assessing the prospects for election-related unrest, perhaps the most concerning risk factor is President Trump himself. While electoral politics at the presidential level are fierce and sometimes dirty, Trump's style of divisive rhetoric and action has no parallel in modern U.S. history. Multiple facets of his record spell potential trouble in the event of a close or contested election.

First, as noted above, Trump's reaction to militia activity over the course of his four years has been marked by a tendency to on one hand minimise its importance and on the other offer cryptic statements that can be viewed as a form of support.<sup>62</sup>

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<sup>57</sup> Rules for early voting, whether by mail or in person, are set by the states, and vary from state to state. Because of the pandemic, many states have added or expanded options for mail-in or in-person voting prior to Election Day. Roughly 40 per cent of Americans have suggested that they are likely to vote by mail. Early voting already well exceeds levels in any prior election. See, "Voting & COVID-19" (state-by-state voting rules) on [Vote.org](http://Vote.org); Miles Parks, "Early voting analysis: huge turnout by Democrats", NPR, 18 October 2020; "Ballot Casting: Tracking How Americans Plan to Vote", Democracy Fund Voter Study Group, 23 October 2020; Brittany Renee Mays and Kate Rabinowitz, "The U.S. has hit 120% of total 2016 early voting", *The Washington Post*, 20 October 2020.

<sup>58</sup> "The election that could break America", op. cit.

<sup>59</sup> See "The election that could break America" and "Could Trump contest even a landslide?", respectively, op. cit.

<sup>60</sup> See Scott R. Anderson, "How to resolve a contested election, parts 2 and 3", *Lawfare*, 22 and 23 October 2020.

<sup>61</sup> See discussions in "Could Trump contest even a landslide?", "The election that could break America" and "How to resolve a contested election", respectively, op. cit.

<sup>62</sup> See footnotes 35-37 and the accompanying text.

Whether or not he actively encourages far-right militias to disrupt proceedings, there is precious little to suggest that he will seek to discourage their actions if they do.

Secondly, he shows little deference to norms that have insulated the military from domestic political affairs, or respect for the judgment of local officials about how to police their own states and cities. When protests swept through U.S. cities following the George Floyd killing, Trump threatened to invoke authorities (including the 1807 Insurrection Act) that under certain circumstances permit the president to commandeer National Guard troops – who normally answer to state governors – and deploy both them and active-duty military personnel to quell civil unrest.<sup>63</sup> Although he backed away from those steps in the face of fierce resistance from some former military brass, he and his team did order the National Guard to patrol parts of Washington and security forces to clear protesters out of Lafayette Square Park directly north of the White House with pepper spray.<sup>64</sup> He subsequently sent non-military federal security forces to Portland, Oregon, over the objection of local authorities, and to other cities.<sup>65</sup>

Finally, Trump's statements with respect to the election itself betray an inclination to delegitimise any loss, and to seek advantage through words and deeds that disenfranchise the Democratic electorate. He has, among other things, baselessly suggested that mail-in ballots (which more Democrats than Republicans favour by a wide margin) are a likely vehicle for voter fraud; proclaimed that his opponent and his family constitute a "criminal enterprise" in front of crowds chanting that they should be locked up; appeared to suggest that he might seek to postpone the polls, notwithstanding that a delay would require an act of Congress; and, through his drive to recruit an "army" of what he calls poll watchers, created the prospect of a militarised, intimidating proliferation of militiamen at voting places.<sup>66</sup> Of greatest potential consequence for U.S. democratic institutions, he has also repeatedly refused to commit to a peaceful transfer of power if the vote does not go his way.<sup>67</sup>

Just how far President Trump will go in seeking advantage at the polls, or, failing a win, to contest the results and obstruct a succession, is unclear. But through his record he has signalled the kinds of rhetoric and measures he considers to be in his toolkit.

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<sup>63</sup> See Crisis Group Statement, "To Calm U.S. Turmoil, U.S. Leaders Must Stop Courting Conflict", op. cit.

<sup>64</sup> Lauren Egan, "Secret Service now says that it did use pepper spray to clear protesters during the Trump church photo-op", NBC News, 13 June 2020.

<sup>65</sup> Isaac Chotiner, "Trump's dangerous attempt to create a federal police force", *The New Yorker*, 26 July 2020.

<sup>66</sup> See, eg, Aaron Blake, "Trump unleashed a torrent of voter fraud disinformation at the debate", *The Washington Post*, 1 October 2020; Brooke Seipel, "Rally crowd chants 'lock him up' as Trump calls Biden family 'a criminal enterprise'", *The Hill*, 18 October 2020; Rebecca Shabad, "Trump floats delaying the election, but he can't do that", NBC News, 30 July 2020; W.J. Hennigan and Vera Bergengruen, "Trump's calls for an 'army' of poll watchers is renewing fears of voter intimidation", *Time*, 22 October 2020.

<sup>67</sup> See, eg, Michael Crowley, "Trump won't commit to 'peaceful' post-election transfer of power", *The New York Times*, 23 September 2020.

### III. Negative Scenarios – Variations on Three Themes

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The risk of unrest around the U.S. elections will diminish in the event that one or the other candidate appears headed for a decisive victory. That outcome is hardly assured, however, and in the event of a close race one or more of the factors discussed above could contribute to the sense of a rigged election, feed into grievances on both sides of the polarised electorate, and drive both peaceful protesters and armed actors onto the streets. Three potential scenarios (and variations on these) seem to raise the greatest risk of escalating unrest:

**Armed monitoring of polling stations and other sites.** As noted, President Trump’s call for an “army” of poll watchers is likely to draw at least some supporters to voting facilities. While trained poll watchers are normally citizens who monitor polling places to provide an extra measure of comfort that the vote is being cleanly administered, experts worry that Trump’s use of martial language will signal a desire for supporters, untrained in poll watching, to strike an intimidating posture to deter Democratic voting.<sup>68</sup> In some cities, activists are reportedly already making plans to patrol polling places and (to protect against the real or imagined prospect of looting) city streets on 3 November.<sup>69</sup>

While by itself this phenomenon could have a troubling suppressive effect on the vote – potentially exacerbating longstanding problems of voter suppression in some places – the gravity of this scenario might be compounded. For example, armed militiamen or other Trump supporters might travel *en masse* to predominantly Democratic urban districts in battleground states, ostensibly to protect the vote or the vote count, and wind up disrupting it.<sup>70</sup> As noted above, based on Crisis Group’s conversations with present and former militiamen, the likelihood that they would heed a call to congregate in this way could increase if accounts begin to circulate on social media that Antifa protesters were on the scene.<sup>71</sup> Journalist Barton Gellman spelled out one arguably worst-case scenario for how this might unfold:

Suppose that caravans of Trump supporters ... converge on big-city polling places on Election Day. ... Counter-protesters arrive, fistfights break out, shots are fired, and voters flee or cannot reach the polls. Then suppose the president declares an emergency. Federal personnel in battle dress ... move in to restore law and order. ... They close the streets that lead to the polls. They take custody of uncounted ballots in order to preserve evidence of fraud.<sup>72</sup>

**Aggressive delegitimisation and disqualification of mail-in ballots.** The pandemic-driven surge in mail-in voting figures in many escalatory scenarios. Because of the enormous split between Democrats and Republicans when it comes to

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<sup>68</sup> See, eg, “Trump’s calls for an ‘army’ of poll watchers is renewing fears of voter intimidation”, op. cit.

<sup>69</sup> Marc Fisher, “Amid fears of election day chaos”, *Washington Post*, 19 October 2020.

<sup>70</sup> For materials and resources relating to voter suppression, see “Voter Suppression”, Brennan Center for Justice, n.d.

<sup>71</sup> Crisis Group interviews, present and former militiamen, October 2020.

<sup>72</sup> “The election that could break America”, op. cit.

mail-in voting, with half of all Democrats surveyed in August saying that they would like to vote by mail versus only one quarter of Republicans, the large-scale disqualification of mail-in votes almost certainly would favour President Trump's chances.<sup>73</sup>

Seemingly aware of this eventuality, Trump has already seeded the baseless narrative that mail-in voting will occasion massive fraud and sought to delegitimise post-Election Day vote counting. But by necessity, many of the mailed ballots will be tallied after 3 November. Some key battleground states, like Pennsylvania and Wisconsin, have laws that prohibit officials from counting such ballots before Election Day; because of the volume and labour required, the count is likely to take days if not weeks following Election Day to complete.<sup>74</sup> Given that Election Day voting is likely to favour Trump, and mail-in voting Biden, Trump might well appear to be in the lead in some crucial states throughout Election Day, only to see that lead reversed as counting proceeds in the ensuing period.<sup>75</sup>

The combination of Trump's words and this pattern could create a sense among Trump supporters that a win is being stolen from them. Particularly if Trump were to declare victory prematurely on 3 November or shortly thereafter on the basis of same-day voting, some diehard supporters might therefore reject any other outcome. Tensions could then rise as lawyers for both candidates bring suits to have ballots disqualified or restored on technical grounds or in districts where either side is calling for recounts or investigations. These struggles could take place against the backdrop of aggressive efforts by each side to discredit the other and efforts to pressure administrators, for example by harassing vote counters. Protesters from both sides could take to the streets in order to signal their resolve and pressure the other side to back down, risking confrontation between them.

To the extent that litigation affecting a key state's Electoral College votes reaches the U.S. Supreme Court, it could be decided by newly appointed conservative Justice Amy Coney Barrett, whose end-of-term confirmation following the September 2020 death of liberal Justice Ruth Bader Ginsburg has caused considerable acrimony among Democrats, who argue that the appointment should have been delayed until after the election.<sup>76</sup> Coney Barrett did not commit to recuse herself from election-related cases during her confirmation hearing. Should she be the deciding vote in favour of President Trump, the result could well be seen as illegitimate by many Democrats, fuelling their sense of grievance.<sup>77</sup>

**Manipulation of deadlines.** Finally, the deadlines imposed by the Electoral Count Act create opportunities for manipulation that, while low in probability, have worried experts in part because (as noted above) Republican operatives were reported to be discussing them.<sup>78</sup> Scenarios that focus on this theme take into account that the December deadlines imposed under the act – 8 and 14 December in 2020, as noted

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<sup>73</sup> Mackenzie Lockhart, Seth J. Hill, Jennifer Merolla, Mindy Romero and Thad Kousser, "There's a growing gap in how Democrats and Republicans plan to vote", *Washington Post*, 8 October 2020.

<sup>74</sup> Crisis Group interviews, U.S. legal and civil society experts, September-October 2020.

<sup>75</sup> See, eg, "The election that could break America", op. cit.; and "Preventing a Disrupted Presidential Election and Transition", Transition Integrity Project, 3 August 2020.

<sup>76</sup> Irin Carmon, "Honoring her wish", *New York Magazine*, 23 October 2020.

<sup>77</sup> Crisis Group interviews, Democratic voters, summer and autumn 2020.

<sup>78</sup> See "The election that could break America", op. cit.

above – create an imperative for states to certify electoral slates and send them to Congress by that time. The deadlines could in theory be used as a pretext to truncate the counting of mail-in ballots that might shift a battleground state from the Trump to the Biden column.<sup>79</sup> (The converse is also possible but less likely, if nothing else because of the extent to which mail-in ballots are likely to favour Democrats.)

In theory, protracted fights over which ballots should be counted could result in the appointment of parallel slates as legal deadlines draw near. For example, if there is a dispute over mail-in ballots in a battleground state that remains unresolved with the 8 December date approaching – eg, because of an investigation or court fight – a Republican legislature might put forward to Congress a slate that reflects the popular vote as tallied without the full complement of mailed-in Democratic ballots. If the governor of that state is a Democrat (a political split that is the case in several key battleground states), he or she might look for a basis to certify the slate based on the disputed ballots. The laws and rules governing how Congress would resolve this on 6 January are complex and leave considerable room for uncertainty.<sup>80</sup> Presumably some combination of the parties, Congress and the courts would struggle over the situation and eventually sort it out, but in the meantime, aggrieved voters could choose to vent their mutual frustrations on the street.

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<sup>79</sup> “Preventing a Disrupted Presidential Election and Transition”, *op. cit.*, pp. 6-7.

<sup>80</sup> “How to resolve a contested election, parts 1, 2 and 3”, *op. cit.*

#### IV. Recommendations and Conclusion: Reinforcing the Guardrails

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Just because the guardrails that have helped keep the U.S. from devolving into election-related unrest in the past are being tested in 2020 does not mean that they will fail. There are, in fact, a number of reasons to believe in their resilience.

One is the apolitical military: the chairman of the Joint Chiefs of Staff, General Mark Milley, has signalled very clearly that he will resist any efforts to draw it into an electoral dispute.<sup>81</sup> Although the president controls other security forces (such as the Department of Homeland Security forces he sent to Portland and other cities in July) and state governors control National Guard units, the national military's non-involvement remains important. A second source of resilience is the decentralisation of electoral administration, which, while creating myriad opportunities for foul play, also provides some insurance against coordinated manipulation. Third is that the American people, for all their polarisation, have not entirely lost confidence in the system. Notwithstanding anxiety about modes of voting this year, at least some polling suggests that most early voters are confident that their ballots will be accurately counted.<sup>82</sup>

Fourthly, there is a well-articulated framework of federal, state and local laws to protect election integrity and fend off voter intimidation. Fifthly, the press and civil society remain independent, have all provided meaningful checks on executive power during this administration and are highly focused on violence prevention efforts.

Perhaps more significant than any of these institutional features, however, is a circumstantial one: the narrative that has begun to set in among some Republicans that Trump could well lose. Senators Lindsey Graham, Ted Cruz and Ben Sasse have all speculated about it.<sup>83</sup> That leading Republicans are entertaining this prospect without delegitimising it could make it more difficult for Trump to argue that the Biden team cheated its way to victory if the election does not go his way; it could also suggest that these Republican leaders are concluding that they would be ill served by a prolonged electoral challenge when it appears their candidate has lost.

Still, it would be a mistake for those with a stake in U.S. stability to assume that things will go smoothly on and following 3 November. The risks are too significant, the negative scenarios too realistic and the potential too great for unrest that damages confidence in the democratic institutions that underwrite U.S. stability and prosperity.

In gauging what they can do should the need arise, domestic officials at every level of government, foreign leaders, traditional and social media, and civil society should be guided by the principle that the more that U.S. voters believe that they are participating in a clean and inclusive election, the less cause they will have to turn their frustrations against the system and each other. Identifying and moving quickly to

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<sup>81</sup> Richard Sisk, "Zero' chance of military intervention in disputed election results, Milley says", *Military.com*, 12 October 2020.

<sup>82</sup> Nathaniel Persily and Charles Stewart III, "Most voters confident their vote will be counted, poll finds. But partisans disagree on election threats", *Washington Post*, 7 October 2020.

<sup>83</sup> Sahil Kapur, "A Republican bloodbath': GOP senators voice fears of a painful Trump defeat", *NBC News*, 19 October 2020.

address legitimate causes of potential friction and grievance among voters should therefore be the top priority.

The greatest responsibility will rest on the shoulders of state and local officials, who will be the primary administrators of the electoral process. First and foremost, these officials should, in the very short time that remains before the election, become as familiar as possible with the tools and resources that are at their disposal to fend off voter intimidation if the need arises, as well as the mechanisms they can use to extend polling hours and make other accommodations should voting be slowed or disrupted for any reason.<sup>84</sup> Often these matters are a function of state law, and some towns are assembling teams of lawyers to help with any contingencies that may come up.<sup>85</sup> Civil society organisations can help, too, by supporting local officials who need assistance in protecting their constituents' right to vote free of intimidation, or advising citizens when local officials are not doing their jobs.

The flow of information about the race will also be important. Traditional and social media should take extra precautions not to pronounce winners prematurely, which can create the impression that the result has been fixed, or, conversely, foster resentment in the event the call has to be reversed. It will be especially critical to exercise caution in the coverage of battleground states with razor-thin margins. For their part, social media platforms should avoid providing a forum for candidates to declare themselves winners before the electoral process has played itself out, or for the sharing of pernicious disinformation. Twitter and Facebook have taken important steps, among other things suspending accounts that they found were engaging in “platform manipulation” (among other things, the users constructed false identities as Trump supporters) (Twitter) and restricting the posting of political ads (Facebook), but the challenge will require constant vigilance and management.<sup>86</sup>

Foreign leaders should also be mindful that their words could be manipulated for purposes of political messaging. As noted above, Trump could decide to declare premature victory as part of a strategy to discredit Democratic mail-in ballots. Foreign heads of state and government should not allow themselves to be seen as validators of this tactic, regardless of the pressure the White House might exert upon them, and regardless of their fears of retribution should Trump emerge as the ultimate winner.

Should things take a turn for the worse, Washington's traditional overseas allies may also be in the best position to remind U.S. leaders – both in the executive branch and in Congress – how much is at stake in terms of the country's global standing and its ability to claim to serve as a model of democratic governance for others. If things start to go poorly, these partners should make clear that they would see electoral vio-

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<sup>84</sup> See, eg, the Stanford-MIT Healthy Elections Project. This website has links to tools and information about voter protection, election administration and related issues. See also “Addressing the Rise of Unlawful Private Paramilitaries: State Fact Sheets”, Georgetown Institute for Constitutional Advocacy and Protection, n.d. The Institute has created fact sheets for all 50 states explaining “the laws barring unauthorized private militia groups and what to do if groups of armed individuals are near a polling place or voter registration drive”.

<sup>85</sup> Jennifer A. Kingson, “Cities brace for Election Day chaos”, *Axios*, 20 October 2020.

<sup>86</sup> Kari Paul, “Twitter suspends accounts for posing as Black Trump supporters”, *The Guardian*, 13 October 2020; Zen Soo, “Facebook curbs political ads – for 7 days before US election”, *Associated Press*, 3 September 2020; Barbara Orutay and David Klepper, “Is Facebook ready for the 2020 election”, *Associated Press*, 18 October 2020.



lence and the breakdown of the democratic process as steps toward political instability, with significant potential implications for international peace and security. Should the need arise, those with access to Trump and his inner circles should tell them privately and publicly that they will have no support if they try to interfere with tabulation of results or, in case they lose, the peaceful transfer of power. Others should echo those messages.

U.S. political leaders should of course do the same. At the very least, senior members of Trump's own party should, at the first hint of a problem, underscore to him and his family just how bad it would be for both the country and his legacy if he were to steer the U.S. into prolonged institutional crisis, let alone force an outcome that is not seen as representing the will of the people. They should make clear that if he foments unrest or otherwise seeks to manipulate the outcome of the election, he will be on his own.

While Congressional Republicans appear to have done little over the past four years, at least in public, to check the president's behaviour, the threat of a protracted election crisis, and the enormous damage to U.S. democracy and to its power and global influence that would bring, ought to spur far more determined efforts.

Democrats and Republicans can help set the right tone by following the lead of Utah's Lieutenant Governor Spencer Cox, a Republican, and his opponent, Chris Peterson, a Democrat, who recently filmed a joint public service announcement in which they committed to respect and uphold democratic norms and a peaceful transition of power.<sup>87</sup> It is the kind of simple but effective measure that U.S. officials traditionally have encouraged in foreign states facing a parlous election; now it is needed at home.

Finally, whether or not the U.S. dodges a bullet this Election Day, it will need over the longer term to confront and address the factors big and small that brought it to this point. Some of these may be technical matters as simple as changing the state-level rules that govern the counting of mail-in ballots – so that the process can begin earlier and be completed in a timelier way. Others will likely involve dedicating more resources to addressing the traditionally under-examined threat posed by violent white supremacy organisations. But the bigger issues go far deeper and relate to the polarisation that has torn at the social and political fabric of a fast-changing country. Whether U.S. political leaders and democratic institutions are up to the enormous challenge of bringing the poles closer together remains to be seen. Navigating the 2020 presidential election with a minimum of unrest would be a step in the right direction.

**Washington/Brussels, 28 October 2020**

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<sup>87</sup> Sophie Lewis, "Republican and Democrat running against each other for Utah governor united for joint ad", CBS News, 20 October 2020.

Appendix A: Map of the United States



## Appendix B: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early-warning bulletin, providing a succinct regular update on the state of play in up to 80 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by President & CEO of the Fiore Group and Founder of the Radcliffe Foundation, Frank Giustra, as well as by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord (Mark) Malloch-Brown.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in seven other locations: Bogotá, Dakar, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Addis Ababa, Bahrain, Baku, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Jerusalem, Johannesburg, Juba, Kabul, Kiev, Manila, Mexico City, Moscow, Seoul, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Emergency Trust Fund for Africa, European Union Instrument contributing to Stability and Peace, Finnish Ministry of Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Global Affairs Canada, Iceland Ministry for Foreign Affairs, Irish Department of Foreign Affairs, Japan International Cooperation Agency, the Principality of Liechtenstein Ministry of Foreign Affairs, Luxembourg Ministry of Foreign and European Affairs, Norwegian Ministry of Foreign Affairs, Qatar Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, Swiss Federal Department of Foreign Affairs, United Nations Development Programme, UK Foreign, Commonwealth and Development Office, and the World Bank.

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**October 2020**

## Appendix C: Reports and Briefings on TK since 2017

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### **Special Reports and Briefings**

*Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid*, Special Report N°3, 22 March 2017.

*Council of Despair? The Fragmentation of UN Diplomacy*, Special Briefing N°1, 30 April 2019.

*Seven Opportunities for the UN in 2019-2020*, Special Briefing N°2, 12 September 2019.

*Seven Priorities for the New EU High Representative*, Special Briefing N°3, 12 December 2019.

*COVID-19 and Conflict: Seven Trends to Watch*, Special Briefing N°4, 24 March 2020 (also available in French and Spanish).

### **United States**

*Deep Freeze and Beyond: Making the Trump-Kim Summit a Success*, United States Report N°1, 11 June 2018 (also available in Chinese and Korean).

*How to Save the U.S. Refugee Admissions Program*, United States Report N°2, 12 September 2018.

*Time for a Modest Deal: How to Get U.S.-North Korean Talks Moving Forward*, United States Briefing N°1, 17 December 2018.

*Ending the Yemen Quagmire: Lessons for Washington from Four Years of War*, United States Report N°3, 15 April 2019.

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