Twitter Thread by Derek T. Muller



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1/ I want to briefly tease out Cruz's statement, which will help set expectations about what might happen January 6:

2/ At its heart, the presser states, "we intend to vote on January 6 to reject the electors from disputed states as not ‘regularly given' and ‘lawfully certified' (the statutory requisite), unless & until that emergency 10-day audit is completed."

3/ How does a10-day emergency audit happen? Congress would need to enact a statute to amend the Electoral Count Act before January 6, when it's compelled by law to meet. That seems unlikely.

4/ Cruz et al. seem to hold a "thick" view of the Electoral Count Act, adhering to the "statutory requisite," which means that Congress would need to amend or adhere to the statute.

5/ A 10-day audit is impossible under the current statute. Objections to a state are limited to 2 hours' debate. Adjournments are fixed in the statute, too--no recess if you've hit five days: https://t.co/uvgCoIGR6X

6/ Cruz et al. appear to seek to raise a compound objection: the electors' appointments were not "lawfully certified," & that their votes were not "regularly given." These are, I think, best understood as two separate questions.

7/ If objection is that the appointment was not "lawfully certified," then elector has not been appointed. That may take them out of the denominator of the 12th Amendment determining whether a candidate "majority of the whole number of electors appointed" https://t.co/NalCPhsJaa

8/ If the vote was not "regularly given" (as Boxer & Tubbs raised in 2005) then it may simply mean that the appointment is valid, but there is no vote for the candidate, & a candidate still needs 270 electoral votes to win.

9/ (I say "may," because these are all questions Congress has not had to answer in the past &, at times, steadfastly refused to answer.)

10/ In 1969, the objection was to a Nixon elector in North Carolina who cast a vote for Wallace--that his vote was not "regularly given," excluding that vote from the overall count. (I think this is the best way to way to understand the Greeley votes in 1873, too.)

11/ Of course, Cruz, Hawley, & everyone else recognizes this is performative. Congress will count 306 votes for Biden-Harris, & 232 votes for Trump-Pence. It's only a question of how Congress gets there, & what precedents it raises.

12/ One last detail, the presser is coy about "disputed states." Unclear if that's going to be 1, 7, 51, or whatever.