Twitter Thread by Mike Dunford



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I've been trying to think that through - not just legally, but judicially.

The more thinking I do the less serious - and more ludicrous - the entire thing looks. And the more obvious it becomes that this is the proposal of deeply unwell individuals who are not thinking clearly.

> Can you game out where it would go it theoretically Trump did enact some EO demanding the impounding of voting machines? As that\u2019s clearly the game. Like he signs it, then what? Do marshals listen or refuse? Do states sue and get an emergency injunction and that\u2019s the end?
>
> — Bryan Duva (@duva60) December 21, 2020

On the legal side, I read through the list of emergency powers - the whole list - that was assembled by the Brennan Center. Nothing on that list fits. Nothing comes even close.

https://t.co/Po8mcrENnz

It seems extraordinarily unlikely that any executive order along the lines of what has been discussed would be legal. In this case, it can be taken as a given that one or more targeted jurisdictions would dash right off to the courthouse.

Standing would not, it should go without saying, be likely to be an issue. I doubt redressability would either. I think it's very likely that restraining orders and injunctions would be swiftly issued.

That's the legal side, to the extent it's possible to speculate on that at all at this point. Basically, there's no readily apparent legal basis for such a thing, so it probably wouldn't be legal.

That's the easy part. Now for the nuttier side - the logistics.

Let's run through the 5 W's and the H.

1: Who? Who does the seizing. Where do the needed people come from? This is not a small undertaking. Even if we're just talking Dominion, that's tens of thousands of machines spread out over hundreds of jurisdictions.

Who takes on that job? The US Marshals are not a large organization. The nuts already think the FBI is part of the Deep State. The armed forces can't easily be used for such tasks, given constitutional restrictions on domestic use (and are unwilling to follow unlawful orders).

2: What? In addition to the obvious "wait wut," there's also the "what gets seized" question. As I said, there are literally tens of thousands of machines out there.

3: When? This is the week before Christmas - it is much harder than normal to get anything done. That's not a small matter. And by the time the holidays are done, there are a very small number of days left before Congress certifies the EC results.

4: Why? This is a question that judges WILL ask - and they'll ask this question whether this is happening under an Executive Order or as a special counsel (I'll get to that issue at the end.)

You can rest assured that the bigger and less precedented the demand, the more actual evidence courts are going to want to see.

5: Where? (Yeah, I got that out of order.)

Where are they going to put everything, for starters. You're talking about warehouses worth of electronics, all of which needs to be stored carefully and safely. Where are they going to do - whatever it is they're going to do?

6: How?
6a: How are they going to pay for this? From what money?
6b: How are they actually going to figure out the answers to the other 5 questions when they're running with Lin, Sidney, MyPillow and Overstock - when this is too nuts for even Rudy?

That's the EO take. The "make Sidney Powell a special counsel" is a bit trickier. To be honest, that might be a thing he can do. He may have to fire his way down the Department of Justice a bit until he finds someone willing, and that might take a bit, but it could happen.

But even there, the logistical issues all remain. And the legal ones don't evaporate. Even the most rubber-stampy of magistrates is likely to hesitate before OKing a massive grab of voting machines, and, again, affected jurisdictions will have legal recourse to challenge things.

But let's say that it happens. Now we're at the underpants gnomes bit.
1: Make Sidney Powell a special counsel.
2: ????
3: Trump stays President.

Seriously, what goes in step 2? What's the grand plan?

And the answer is, of course, that there isn't one. They really aren't thinking things through. There's nothing I can see that remotely plausibly connects those two steps.

What this whole thing produces is a more chaotic and unhinged end to our most chaotic and unhinged Presidency, but that's all I can see coming out of this.