



Alan Dershowitz at the White House in Washington on Jan. 28, 2020. (Mandel Ngan/AFP via Getty Images)

Dershowitz: Biden Is Not the President-Elect

By Mimi Nguyen Ly

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Harvard Law professor Alan Dershowitz said that Joe Biden isn't the president-elect but is entitled to describe himself as such.

"The president-elect doesn't get named as president-elect until at least he has 270 state certification of electors, or his opponent concedes. Neither of that has happened, as of now," the high-profile lawyer told NTD News.

"I think that he is entitled to describe himself as the president-elect. At the moment, he's won 305 or so electoral votes and President Trump is entitled to dispute that. That's freedom of speech. That's politics. Neither is entitled as a matter of law or constitutionality to say that they are the president-elect."

Dershowitz, who served on Trump's legal team during the Senate impeachment trial earlier this year, said he believes the Trump team is seeking to have the election forced into the House of Representatives, by not letting Biden reach the 270 Electoral College votes required to secure the presidency. Republicans have a 26–23–1 state delegation majority in the House.

One possible way the Trump campaign can legally get electors not to vote is that if the challenges in court haven't been resolved, some state secretaries of state, many of whom are Republican, may refuse to certify the vote by mid-December, Dershowitz said.

"That will be challenged in court. And that will be a mess, it would create a constitutional crisis of a kind we haven't had before," he said.

He noted that Trump's lawyers are counting on a constitutional provision that moves the election to the House of Representatives if there is no definitive winner in the Electoral College by mid-December.

"I understand why the Trump legal team is trying to have the election thrown into the House of Representatives. That's their constitutional right. And I can't condemn them for using every possible legal recourse. That's what lawyers do." "I think that the lawsuits, in the end, will not bring about a reversal of fortune for Donald Trump," he said. ***"I think that on January 20, Biden will be elected president and inaugurated as President of the United States, but I have no criticism of the Trump team for fighting and battling and trying everything they can legally, ethically, constitutionally politically, to try to preserve his presidency."***

Trump's campaign or legal team haven't publicly described what specific kind of strategy they are employing. Broadly speaking, there are **two kinds of lawsuits** that have been filed by the Trump campaign in several states, according to Dershowitz.

- "One I call the kind of wholesale constitutional lawsuits, like in Pennsylvania, where they're challenging legally, whether all the votes that came in after Election Day have to be discounted, even if they were voted, even if they were submitted before Election Day," he said. "That's a constitutional challenge based on Article Two of the Constitution. It's wholesale and involves many, many thousands of votes. And that has a good chance of succeeding."
- "The other challenges are retail challenges. They are case-by-case in a few people who shouldn't have been eligible to vote, vote. Was there fraud? Was there a computer glitch? Those are much harder, because those require actual trials, witness evidence, and they will take time, and it will be very hard for them to succeed," he said.

He said he is aware that Trump's lawyers have spoken about potential computer anomalies that, **if they turn out to be true, could trigger a "major disruption and shift."**

*"We've never had anything like this before, because we've never had computers play such a major role in the election ... **The big challenge is whether or not there were computer malfunctions that turned many, many thousands of votes away from Trump and toward Biden, if that turned out to be true.** And again, I haven't seen the evidence. I've just heard the lawyers talk about it. **That would change a lot of things.**"*

"And, of course, the American public would be very upset because they've been told by the networks who the winner is already. **Remember that the networks don't declare the winner, legally and constitutionally.**"