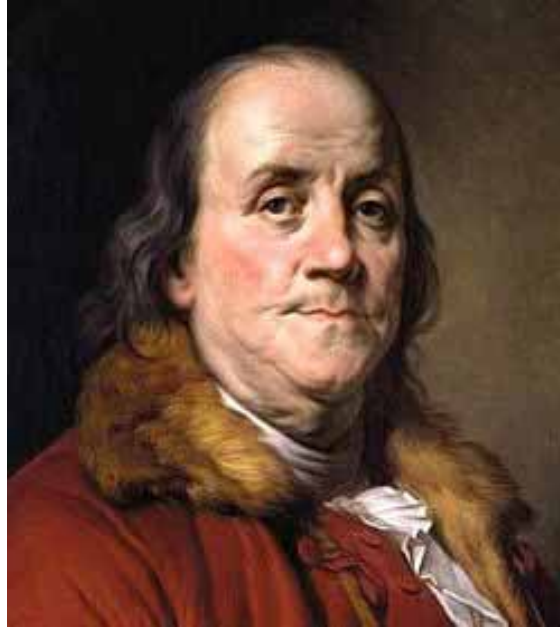


# Franklin's Warning is Coming True

"ALL OF THIS WAS AVOIDABLE"

by [Joseph DeMaio](#), ©2021



(Jan. 7, 2021) — Today may mark the beginning of the end for the constitutional Republic which has existed for 233 years. Benjamin Franklin's [fears](#) may be soon realized.

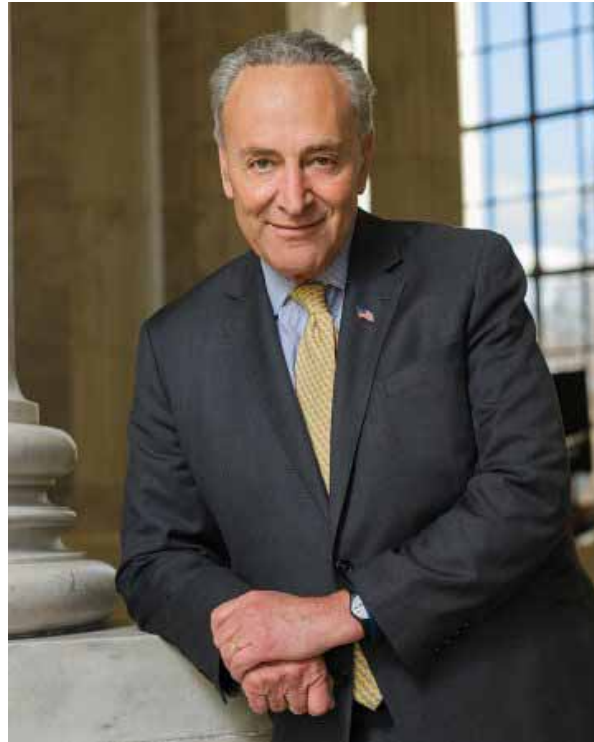
As noted [here](#), today at approximately 3:45 AM – ironically, around the same early morning hour on Nov. 4, 2020, when massive dumps of “discovered” ballots were injected into the vote counting gambit in Michigan, Wisconsin, Pennsylvania and Georgia, purporting to be “lawful” votes for Slow Joe Biden and Ineligible Harris – the Congress and Vice-President Pence certified the electoral vote for them, paving the way for inauguration.

We may all be Americans, but it is now painfully apparent that “they” hate us and, in large part, the sentiment is mutual. Recall that Abraham Lincoln [noted](#), quoting Scripture (Mark 3:25), that “a house divided against itself cannot stand.” Divorce or separation may be the only remaining “semi-amicable” mechanisms to avoid far more problematic events.

Make no mistake, faithful P&E readers, we are teetering on the brink of open civil war, the first shot of which and the first round of tear gas in the rotunda of the Capitol have already been [fired](#). Violence of the sort seen in the Capitol is never justified: but lack of justification rarely stops it.

All of this was avoidable. All of it. But thanks to the actions of Vice-President Mike Pence, on January 20, 2021, the nation will install into office the third usurper of the presidency – a goof named Joe Biden – and the first usurper of the Vice-Presidency, a cunning lawyer named [Kamala Harris](#).

Much like December 7, 1941, January 6, 2021 will go down in the history books as a date which will live in infamy..., assuming, of course, that the Democrat rulers and Tech Tyrants will still allow the printing or dissemination of history books containing that analogy rather than censor them as propagating “misinformation.”



Yes, Virginia, we now appear to be headed down a path bearing disturbing similarities to that traversed by Germany in the years leading up to World War II. That path, now nearing a century old, was first littered by [burned books](#); then by smashed windows and [burned buildings](#); and eventually, by [burned people](#).

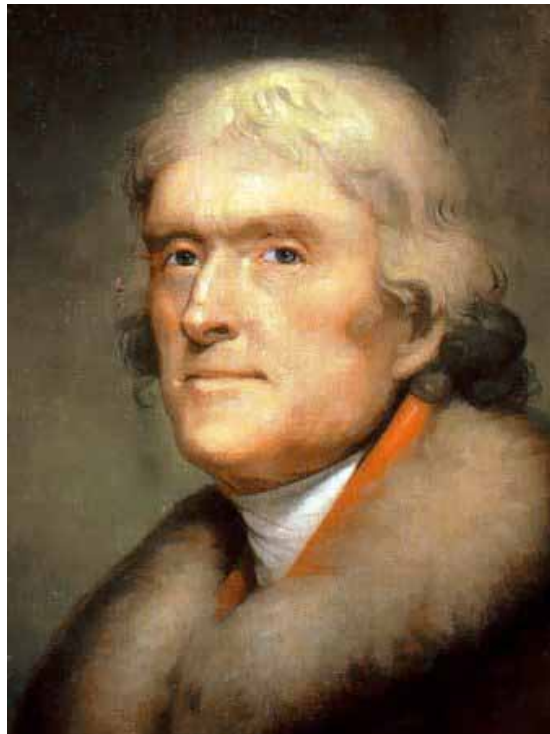
And if you believe that assessment to be hyperbolic, just compare the rhetoric of the Nazis back then to today’s rhetoric from Antifa, black lives matter acolytes, mainstream media talking heads and social media lunatics when referring to law enforcement, Anglos and conservatives of whatever race. Let us see how well Biden’s calls for “healing” and “unity” go. If by the use of those terms, he means “submission” and “obedience” to radicalism, it likely will break bad for him and for what remains of the constitutional republic founded 233 years ago.

While at this point it may be academic, a brief review of one aspect of the Joint Session proceedings may be useful, just for the record. Prior to the opening of the Joint Session,

Vice-President Mike Pence sent a “Dear Colleague” letter to all members of Congress purporting to explain why he was not going to support President Trump’s efforts to overturn the “will of the people.” The letter, of course, makes no mention of unfolded “mail-in” ballots, dead “voters,” tabulator vote-flipping or voters “residing” at post office boxes.

With respect, the letter constitutes an extraordinarily weak excuse for refusing to adopt a course of action suggested [here](#) and even [here](#). Moreover, significant aspects of it are at direct odds with documented historical fact and with the opinion of a law professor directly on point regarding Pence’s claim that “no Vice[-]President in American history has ever asserted such authority (*i.e.*, the authority to unilaterally decide which electoral votes should be counted during the Joint Session of Congress).

In reality, and as a matter of historical, empirical fact, Vice-President Thomas Jefferson, as President of the Senate and presiding officer of the Joint Session of Congress counting the electoral votes following the contested general election of 1800, did *precisely* what Pence claimed has never happened in American history. While the following paragraphs come from your humble servant’s prior [post](#), “How to Avert a Pseudo-Presidency,” they are repeated here for convenience and bear repetition..., for the record and future reference.



Law professor Edward B. Foley, the “Ebersold Chair in Constitutional Law and Director,” Ohio State University Moritz College of Law, provides some prescient and useful insight into these issues.

In his 2019 law review [article](#) “Preparing for a Disputed Presidential Election: an Exercise in Election Risk Assessment and Management,” 51 Loy. U. Chi. L. J. 309 (2019), he notes that the 12<sup>th</sup> Amendment’s use of the passive voice regarding the opening and “counting” of the votes opens the interpretation of the Amendment as meaning that the Vice-President *alone* has the authority to open – or not open – and count – or not count, disregard and exclude from the “count” – any state’s electoral votes.

Specifically, Professor Foley asserts: “Despite its ambiguity, or perhaps because of it, the peculiar passive-voice phrasing of this crucial sentence opens up the possibility of interpreting it to provide that the ‘President of the Senate’ has the exclusive constitutional authority to determine which ‘certificates’ to ‘open’ and thus which electoral votes [are] ‘to be counted.’

“This interpretation can derive support from the observation that *the President of the Senate is the only officer, or instrumentality, of government given an active role in the process of opening the certificates and counting the electoral votes from the states.*

“The Senate and House of Representatives, on this view, have an observational role only. The opening and counting are conducted in their ‘presence’ – for the sake of transparency – but these two legislative bodies *do not actually take any actions of their own in this opening and counting process.* How could they? Under the Constitution, the Senate and the House of Representatives only act separately, as entirely distinct legislative chambers. *They have no constitutional way to act together as one amalgamated corpus. Thus, they can only watch as the President of the Senate opens the certificates of electoral votes from the states and announces the count of the electoral votes contained therein.*” (Emphasis added)

Professor Foley then adds: “This interpretation of the Twelfth Amendment is bolstered, moreover, by the further observation that the responsibility to definitively decide which electoral votes from each state are *entitled to be counted must be lodged ultimately in some singular authority of the federal government.* If one body could decide the question one way, while another body could reach the opposite conclusion, then there inevitably is a stalemate unless and until a single authority is identified with the power to settle the matter once and for all.” (Emphasis added)

Finally, Professor Foley concludes: “Given the language of the Twelfth Amendment, whatever its ambiguity and potential policy objections, ***there is no other possible single authority to identify for this purpose besides the President of the Senate.***” While Professor Foley is not a Justice of the Supreme Court, his analysis makes a lot of sense. Furthermore, as discussed later, there exists the precedent of Vice-President Thomas Jefferson, sitting as the President of the Senate in 1801 and “counting” defective Georgia electoral votes, to eventually elevate himself into position to win the presidency.

In addition to Professor Foley, a law review [article](#) entitled, “Thomas Jefferson Counts Himself Into the Presidency,” 90 Va. L. Rev. 551 (2004) chronicles the events in 1801 following the hotly contested 1800 general election. The scholarly work lays out in

painstaking detail the trail of intrigue, political jockeying and irregularities – sound familiar yet? – whereby Thomas Jefferson, as President of the Senate, took independent, unilateral steps ultimately leading to his winning of the presidency.



*Thomas Jefferson* by Thomas Scully (US Senate)

While Vice-President Pence is not seeking the presidency, he is, after all, seeking another term as Vice-President. The authors of the article posit that, in the event of a future (the article having been written in 2004) similar imbroglio, a future President of the Senate should take some advice.

In addressing the process whereby Jefferson had “opened” the concededly defective Georgia ballots, the article notes: “Nevertheless, there can be no denying that Jefferson did more than ‘open’ the Georgia ballot on that fateful day. *He asserted his authority to decide the merits on a contestable issue. If some future Senate President were to claim a similar authority, he or she would not be wrong in pointing to Jefferson’s precedent.*” (Emphasis added) Accordingly, Pence’s view that he had no authority to act independently and that no Vice-President in American history had ever done what was being suggested he do is, respectfully, flat wrong. Perhaps Pence was too concerned over taking a place in history alongside Thomas Jefferson.

Before producing another “Dear Colleague” letter, Vice-President Pence – “[a]s a student of history who loves the Constitution...” – might consider taking a refresher course on what Vice-President Jefferson actually did in 1801 or hire better researchers.

In addition, Pence’s reliance for his quote from former Supreme Court Chief Justice Joseph Bradley is stunning. The Pence letter quotes Justice Bradley as saying that “the powers of the President of the Senate are merely ministerial...” That quote, of course, completely ignores the Thomas Jefferson precedent. That omission aside, one might be tempted to conclude that the quote came from an opinion of the Supreme Court which Bradley “wrote,” to use the terminology of the letter.

Not so. The quote comes from a portion of Justice Bradley’s memorialized remarks from the “Proceedings of the Electoral Commission and of the Two Houses of Congress in Joint Meeting Relative to the Count of Electoral Votes Cast December 6, 1876 for the Presidential Term Commencing March 4, 1877” (1877) at p. 1020 thereof.

Justice Bradley – upon whose intellect Vice-President Pence apparently relies – was a member of the 1877 [Electoral Commission](#) addressing the electoral vote controversy between Rutherford B. Hayes and Samuel J. Tilden. This is the same species of commission advocated by Senator Ted Cruz for resolution of the manifest irregularities surrounding the [2020 election](#), which proposal has been discarded onto the trash pile by Vice-President Pence, relying on his status as “a student of history who loves the Constitution...”

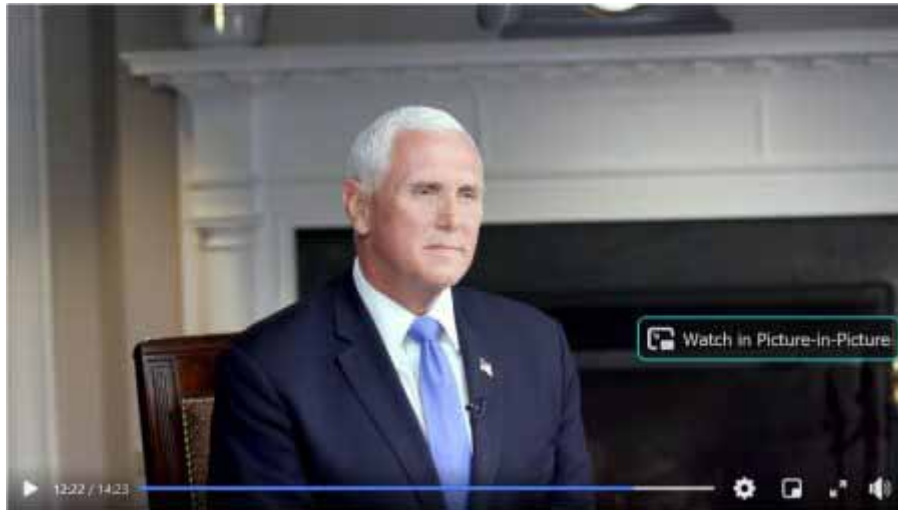
But the really stunning statement from Justice Bradley is contained at pp. 1021-1022 of the record of the 1877 proceedings. There, Justice Bradley stated that “the findings and recorded determinations of the State board or constituted authorities [should be] binding and conclusive since the State can only act through its constituted authorities[.]”

With regard to the question of whether this meant that Congress must accept potentially fraudulent results in the appointment of electors, Justice Bradley concluded that Congress has no jurisdiction to do otherwise because “*it is entirely within the state’s jurisdiction to prevent frauds.*” (Emphasis added) See Colvin and Foley, “*The Twelfth Amendment: A Constitutional Ticking Time Bomb*” 64 U. Miami L. Rev. 475, 509 (2010).

Faithful P&E readers, let that statement sink in: according to the authors of the review article, including Professor Foley, a Justice of the U.S. Supreme Court was asserting that Congress has no jurisdiction or discretion and must accept the various states’ appointment of its electors *even if they are recognized and acknowledged as being the products of fraud*. Justice Bradley justifies that conclusion by adding that it is “entirely within the state’s jurisdiction to prevent frauds.” Really?

That statement might make sense where the fraud originates externally, elsewhere than within the states’ own structure. In that instance, the state is in a position to “prevent frauds” which arise externally.

But when the origins of the fraud lie within the states' *own election officials*, the statement makes no sense *at all*. Stated otherwise, where the election officials of a state are themselves the architects, engineers, project managers, schedulers and construction supervisors over systems specifically designed to yield a fraudulent end result, it is beyond absurd to claim that Congress and the Vice-President as the President of the Senate and presiding officer of the Joint Session have only the ministerial duty to “open the envelopes” and arithmetically “count the votes.” A blind Martian could see that..., but apparently not Vice-President Pence.



In short, Vice-President Pence appears to have confirmed – lamentably – that he is, after all, a “go-along-to-get-along” politician. It is a sad day for the Republic... and likely the first of many more sad days to come, at least for the next four years or until the Deep State decides to trigger the 25<sup>th</sup> Amendment and install the nation’s Fourth Usurper-in-Chief, Kamala Harris.

One is reminded of Edmund Burke’s [observation](#) that the only thing necessary for the triumph of evil is for good men to do nothing. I channeled Ben Franklin last night... and he concurs.