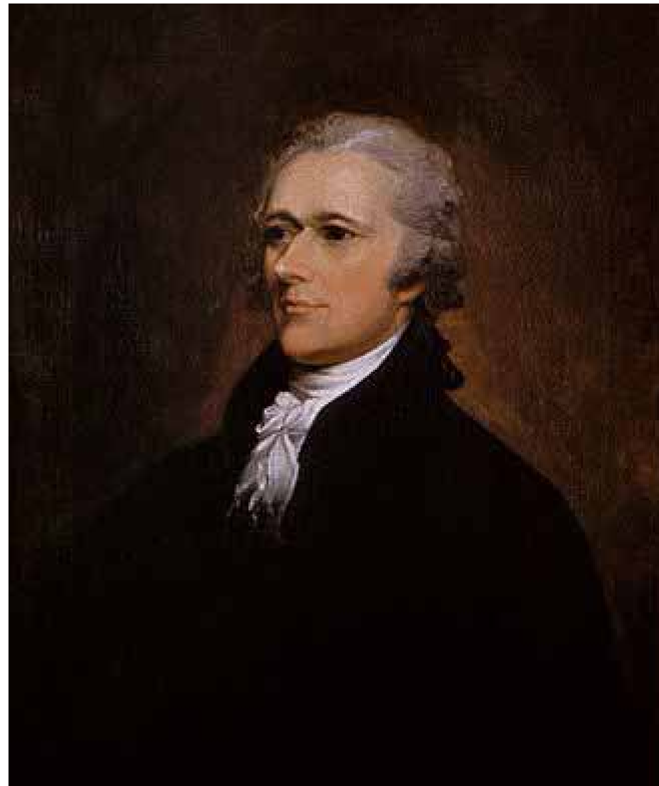
The Faithful Patriot Elector

"THE FATE OF THE REPUBLIC"

by Joseph DeMaio, ©2020



Alexander Hamilton, painted by John Trumbull, public domain

(Dec. 8, 2020) — **INTRODUCTION**

Let us begin by getting one thing out of the way first. If you remember nothing else from this post, remember this: against the backdrop of the 2020 election anomalies, irregularities and apparent frauds showing up in battleground states, particularly Georgia, Nevada and Pennsylvania, Joe Biden and Kamala Harris cannot be allowed – in the absence of a gloves off, no-holds-barred fight – to take control of the United States government and thus, the lives, futures and fortunes of nearly 332 million Americans, less than half of whom participated in the 2020 general election.

Not now; not on January 20, 2021; not ***ever***. Period.

Second, your faithful servant apologizes for the lengthy and sometimes convoluted nature of the following post, but the issues are neither simple nor easily explained. Minds far more vast and wise than the one possessed by your servant – perhaps even jurists now serving on the Supreme Court – will ultimately determine who is "right" and who is "wrong" regarding the 2020 election. For now, however, the following is offered.

Let us also be crystal clear: the 2020 election train-wreck is no longer only about whether President Trump or a common usurper of the office of the president will be inaugurated next January. Not even close. Instead, the issue at hand is whether – as Benjamin Franklin warned back in 1787 – we will be able to keep the Republic as we have known it for the past 233 years.

Make no mistake, the forces now at work in the attempt to upend the Republic by subverting and cannibalizing the 2020 general election, metastasizing it to their own nefarious ends, are as ruthless as they are unapologetic. Moreover, aided and abetted by the mainstream media, these political savages are no longer even concealing their intent: the sooner their preferred usurpers can be installed in office, the sooner the actual dismantling of the Republic can begin in earnest.

And they are not kidding. From statehood for D.C. and Puerto Rico in order to perpetually control the Senate; to stacking the Supreme Court with liberal justices; to abolishing the Senate filibuster; to rendering the First and Second Amendments meaningless; to defunding police forces nationwide; to mandating universal pandemic shutdowns; to codifying *Roe v. Wade* to prevent its overruling by the Supreme Court; and more…. they are deadly serious. If you believe otherwise, you are woefully naïve and kidding only yourself.

Pennsylvania State Senate holds hearing on election issues, November 25, 2020.
Screenshot and video: Right Side Broadcasting

And if you still doubt that the cannibals are out for blood, check out the public meetings recently held in Pennsylvania, Georgia and Arizona delving into the "anomalies" burdening the 2020 "election." Grab some heavily-caffeinated beverage first, because the videos are long. Very long… but worth watching from start to finish.

The reasons these public hearings and meetings are being held is because, virtually without exception, President Trump's legal teams and those attempting to challenge or question the results of the 2020 general election are in large part being prevented from even presenting the evidence to a judicial tribunal. Thus, resort to the court of public opinion has become necessary.

Accordingly, those who wish to preserve the Republic must adopt some of the same aggressive, outside-the-box and ruthless tactics. The difference, of course, lies in the fact that the Democrats' intellectual cannibals rely on fraud, unlawful and often criminal means to accomplish their ends. The latter defenders of the Republic rely on the Constitution and the rule of law.

And yes, Virginia, time is running out for the identification and implementation of an answer to the question: is the Republic worth saving? Hint: yes, it is.

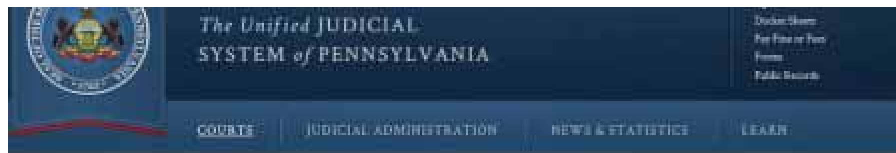
THE LITIGATION

Virtually every day, new evidence surfaces that the 2020 general election results in several "swing" or "battleground" states were "rigged" in favor of Joe Biden and against President Trump. A good summary of a few of the more egregious and obvious examples of that evidence is found here.

From "midnight dumps" of hundreds of thousands of mail-in ballots, bearing, by the way, no signs of folding for placement in voter-signed safety envelopes; to thousands of ballots backdated to fraudulently deceive timely receipt; to ballots appearing from under tables after all poll observers and the press have been "sent home for the night"; to scores of missing "USB" cards documenting electronically-tallied votes; to the use of vote-counting software algorithms which can assign, "on the fly" in real time, a percentage of one vote for Trump as, for example, 1.3 votes – or more – for Biden…, the list goes on…, and on…, and on…..

Only folks with an IQ at or below room temperature would review this tsunami of evidence and conclude: "Move along, folks…, no evidence of irregularities or fraud…, nothing to see here."

That high honor, of course, is now held by the Democrat-commandeered Pennsylvania Supreme Court. That oracle of jurisprudence recently overturned a lower Pennsylvania Commonwealth (trial) court judge's emergency injunction halting any further steps to be taken by Pennsylvania Democrat sycophant operativ… oh, sorry…, my bad …, state election officials to certify Biden (and co-usurper Harris) as the "winners" of the election.



http://www.pacourts.us/courts/supreme-court/

The Pennsylvania higher court's ruling was based not on the merits of the case, but was a result accomplished via a procedural dismissal through invocation of the doctrine of "laches," generally translated as "too late, too bad, so sad." So goes the oracle's rationale, because the plaintiffs had waited too long to file their complaint – which action challenged the constitutionality on state grounds of the "mail-in" ballot measure known as "Act 77" – their action was, purportedly, untimely and was therefore to be dismissed. Move along here…, nothing to see.

Had the plaintiffs filed their action sooner than they did, the likely judicial response would have been "too early, not ripe for adjudication, so sad." The favorite bedtime reading of the Pennsylvania Supreme Court's jurists would seem to be "Catch-22." Memo to the oracle in Harrisburg: actions challenging the intrinsic constitutionality of a law are rarely, if ever, subject to the equitable doctrine of laches.

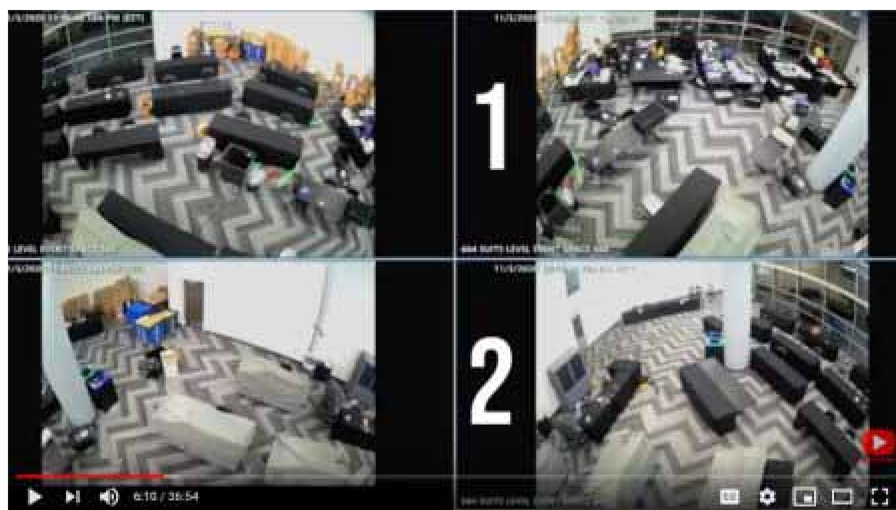
Recall as well that virtually all of the legal challenges and complaints filed in various courts by the Trump legal team – as well as others not directly a part of the formal legal team – have been met by the Democrats' lawyers with a "motion to dismiss." The motion usually asserts that the complaint "fails to state a claim upon which relief can be granted" and/or that the plaintiff bringing the suit "lacks standing" to maintain the action.

These are the same tactics that were used to defeat complaints challenging the constitutional eligibility of, among others, Barack Hussein Obama, Jr., John McCain and Kamala Harris. Each of those persons were (and are) ineligible to the presidency (or vice-presidency) as none satisfied – or as to Harris, presently satisfy – the "natural born Citizen" requirement of the Constitution…, but that is another story.

In addition, one of the protocols that a court is required to observe when considering a motion to dismiss on those grounds is that all of the well-pleaded facts of the complaint – including facts averred to in supporting affidavits – must be taken as true. If, despite those facts being taken as true, the court still concludes that no claim upon which relief can be granted exists, the motion can, and should, be granted.

By way of simple example, if a person alleges in a fender-bender car accident complaint only that an accident occurred – without also asserting that the defendant caused the accident – and in an affidavit attached to the complaint avers that the defendant breached a lease agreement for a residential house owned by the plaintiff, even if true, the admitted fact that the lease was breached has nothing to do with responsibility for the car accident. Thus, the complaint for damages arising out of the accident fails to state a claim relating to the accident and would be properly dismissed.

But that is ***not*** what is happening here. Faced with factual allegations supported by sworn affidavits that serious, documented and egregious acts of fraud, bribery and other election "anomalies" occurred, the complaints of the President's legal teams are being dismissed right and left on the purported grounds that they "fail to state a claim upon which relief can be granted" against admitted facts that events constituting bribery and/or election fraud and/or other crimes actually occurred. Another favorite defense, often ratified by the courts, is: "So what? The fraud, crime, anomaly, even if corrected, would not change the result. Case dismissed." What is wrong with ***that*** picture?



Rudy Giuliani, "[Common Sense]()," December 4, 2020

It is beyond comprehension – indeed, beyond rational thought – that a court could, for hypothetical example, take as true the sworn, factual assertions in a person's affidavit that, for instance, he/she personally witnessed seven pallets of unfolded, un-creased ballots being unloaded from a U-Haul truck at 3:30 AM and fork-lifted through a back door at the State Farm Arena ballot counting center in Atlanta and offered up as "just discovered" mail-in ballots…, and still rule that the complaint purportedly does not "state a claim upon which relief can be granted."

A cynic might be tempted to conclude that the judiciary is engaged in chicanery. Perhaps even "collusion," one of the cannibals' favorite epithets.

If a plaintiff litigant is barred at the outset from presenting and proving to a court evidence supporting his/her claims – complete with the opportunity for cross-examination and countering evidence by a defendant, if any exists – then the terms "due process of law" and "equal justice under the law" have lost all meaning. To arrive at that destination, one must jettison all sense of reality and reason, which is what cannibals celebrate.

With any kind of luck, once one or more of these cases makes it to the U.S. Supreme Court, even some of the often reality-challenged Justices should be able to see the fraudulent nature of the election as conducted in various of the swing or battleground states, including, in particular, Arizona, Georgia, Michigan, Nevada, Pennsylvania…, and perhaps Wisconsin, too.

If a majority of the currently-populated U.S. Supreme Court cannot see the injustices, frauds and illegalities being perpetrated by the left's cannibals, including those draped in black robes, then get set for the fate portended by Benjamin Franklin.

REDUCING THE COUNT

Constitutional expert and emeritus law professor Alan Dershowitz has commented that one path to ultimate electoral victory for President Trump lies in trying to "flip" states which "appear" to have secured the popular vote for Biden over to the President.

If through litigation in the courts, two or three states with enough electoral votes – say, Pennsylvania (20), Georgia (16) and Nevada (6) – could be judicially switched from Biden to President Trump, that alone would be enough to tip the electoral count to give the President the advantage outright. Disaster averted, case closed.

Even if the prior "Biden" electoral votes were not switched over to President Trump, at minimum, it would reduce Biden's Electoral College vote count to below 270, the "victory" threshold, throwing the contest into the House of Representatives where, under the 12th Amendment, each state is allowed to cast one vote to select – not ***elect*** – the president. Whether that reduction in Biden electoral votes comes as a result of litigation or legislative action remains an unanswered question. More on the legislative option later.

As discussed hereafter, the Constitution reposes the ***exclusive*** authority to appoint presidential electors in the various states' legislatures. More importantly, the Constitution places that power in the states' individual legislatures and ***not*** in the states' congressional delegations.

We the People

Article 1

Since for purposes of the 2020 election there are 29 state legislatures "held" or "controlled" by Republicans and at most, only 21 state legislatures held by Democrats, moving the selection of the President into the House of Representatives is beginning to look like a potentially effective course of action.

Moreover, with regard to the likelihood of success on the legal issues presented in the Pennsylvania case, if it makes it to the Supreme Court, Dershowitz's opinion is that the Trump legal team has a "pretty good chance of winning."

Whether or not any of the several state and federal court rulings on these issues makes it into the Supreme Court remains to be seen. But because, literally, the fate of the Republic as we have known it for the past 233 years now hangs in the balance, options other than resort to and reliance upon the judiciary becomes not merely prudent, but mandatory as well.

So, what other paths may exist?

OF FAITHLESS ELECTORS AND THE CHIAFALO PATH

While litigation in the courts will continue, what now appears to be one of the few remaining alternate paths for President Trump's legal team to pursue focuses on the legislatures of various swing or battleground states.

Recall that the Constitution vests exclusive power in the "Legislature" of each state – not in the Executive Branch or the Judicial Branch – to appoint the electors who will participate in the Electoral College proceedings to actually "elect" the President and Vice-President. Pursuant to federal law, and as to the 2020 election, the states are to select their presidential electors on Dec. 14, 2020 and the lawful electors' ballots are to be tallied on Jan. 6, 2021 when – assuming all other controversies are resolved – the president will be actually elected.

In addition, note that the Congressional Research Service ("CRS") has prepared a short summary of the chronology of events constituting the meetings and proceedings of the Electoral College. The "CRS Legal Sidebar" referenced in the CRS summary is found here.

Specifically, Art. 2, § 1, Cl. 2 of the Constitution provides: "Each State shall appoint, ***in such Manner as the Legislature thereof may direct***, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an elector." (Emphasis added).

The term "appoint" in Art. 2, § 1, Cl. 2 has been held by the Supreme Court to encompass "[t]he broadest power of determination" and that this provision of the Constitution "recognizes that the people act through their representatives in the legislature, ***and leaves it to the legislature exclusively to define the method of effecting the object.***" (Emphasis added) *See* *McPherson v. Blacker*, 146 U.S. 1, 27 (1892).

Complicating matters, federal law provides for the creation of a "safe harbor" for the selection of electors, 3 U.S.C. § 5. Assuming for the moment the statute's constitutionality – which some have questioned – it purports to establish "conclusively" a "safe harbor" to insulate from later challenge a state's selection of its presidential electors.

The most recent Supreme Court decision on these issues is *Chiafalo v. Washington*, 591 U.S. ___, 140 S. Ct. 2316 (2020), decided July 6, 2020. The main holding of the case, penned by Justice Kagan, is that states may impose sanctions on so-called "faithless electors" – those appointed electors who cast their ballots for a candidate other than the one they have pledged to vote for – without violating the U.S. Constitution. Those sanctions can include removal of the elector and/or forfeiture of that elector's vote. It is up to each state to determine what sanction, if any, it will impose on such a "faithless elector."

No. 19-465

In the Supreme Court of the United States

PETER BRET CHIAFALO, LEVI JENNET GUERRA, AND
ESTHER VIRGINIA JOHN,

PETITIONERS,

v.

STATE OF WASHINGTON,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON

BRIEF IN OPPOSITION

ROBERT W. FERGUSON
Attorney General

NOAH G. PURCELL
Solicitor General
Counsel of Record

TERA HEINTZ

https://www.supremecourt.gov/DocketPDF/19/19-465/132532/20200210153743606_19-465%20BriefInOpposition.pdf

In addition, the Court has previously held that states can, as a precondition of appointment, require electors to "pledge" that they will vote for the candidate required by state law, usually the one who has garnered the most ***legal*** popular votes in the state. *See* Ray v. Blair, 343 U.S. 214 (1952). Significantly, the *Chiafalo* decision was unanimous, with Justice Thomas authoring a concurring opinion articulating his view that the source of the states' power to impose such sanctions is the 10th Amendment rather than Article 2 of the Constitution.

The *Chiafalo* decision cited and relied heavily upon the *McPherson* case. That case held, among other things, that the appointment and mode of appointment of electors "belong exclusively to the states under the [C]onstitution of the United States." The Court in *McPherson* cited in support of its holding a Senate Report from the 43rd Congress, 1st Session, S. Rep. 395. *See McPherson*, 146 U.S. at 34-35.

There, the Senate Report confirmed: "The appointment of these electors is thus placed *absolutely and wholly* with the legislatures of the several states…. This power is conferred upon the legislatures of the states by the [C]onstitution of the United States, and *cannot be taken from them or modified by their state constitutions* any more than can their power to elect senators of the United States. *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the*

legislature to resume the power at any time, for it can neither be taken away nor abdicated." (Emphasis added).

The Court's adoption of this language from Senate Report 395 clearly underscores the Court's recognition and acknowledgment of the plenary and exclusive right of the state legislatures to act where they deem it prudent and necessary, notwithstanding the potentially contrary provisions of the state's statutes or constitution.

Finally, the *McPherson* decision noted that "[t]he question before us is not one of policy, *but of power*…," (emphasis added) (146 U.S. at 35), adding that "[d]oubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the chief executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, *they were so chosen simply to register the will of the appointing power in respect of a particular candidate.*" (Emphasis added). *Id.* at 36.

It is particularly noteworthy that the Court in *McPherson* stated that the electors were selected in order "to register *the will of the appointing power…*" (Emphasis added) rather than the will of the voters. This language again underscores the plenary and exclusive role of the state legislatures, as representatives of those who elected them, to act on behalf of the state and to the exclusion of their respective executive and/or judicial branches.

So what does this all mean?

As law professor and constitutional law expert John Eastman stated when testifying in the recent hearings before the Georgia Legislature delving into the "anomalies" characterizing the general election there, it means that whenever – and at *any* stage of the process leading up to the actual casting of ballots by the selected electors – a state legislature determines that exigent circumstances require that the legislature "resume the power" over the appointment of electors, it may do so free of any otherwise contrary provisions of the state's statutes or the state's constitution. That is the teaching of *McPherson*.

Screenshot and video Politikot

Those exigencies could include, for example, massive irregularities and documented evidence of fraud or violations of and/or noncompliance with state election laws, clouding and irretrievably compromising the actual result regarding which candidate actually won the popular *legal* vote in the state.

And because the power to appoint presidential electors is reposed "absolutely," "wholly" and "exclusively" in the state legislatures (*see McPherson*, 146 U.S. at 34-35), intervention or "meddling" in the exercise of that legislative power by the governors or courts of the state is forbidden by the U.S. Constitution.

Significantly, Professor Eastman was asked by President Trump's lawyer, Rudy Giuliani, at the Georgia hearing whether as part of the plenary and exclusive power of a state legislature to appoint the state's electors, the legislature could make findings of fact in support of its actions. Professor Eastman answered "yes."

If the judiciary cannot see the problems with the 2020 election – problems thus far exposed which could be instantly identified as such by a deaf, mute, blind Martian – an argument can be made that it is long past due for the state legislatures in the swing states to reclaim their constitutional role in the process…, assuming, of course, that they can discover the courage and backbone to do so, a matter yet to be determined.

Lamentably, many Republican leaders and Republican-controlled legislatures suffer from the pernicious tendency to "go along to get along" which pervades contemporary politics. The Democrats trashed and discarded that tendency long ago and an argument can be made that it is well past time for the Republicans to do the same. Stated otherwise, when Biden and the Democrats disingenuously lecture that it is "time to ***heal***," what they really mean is that it is "time to ***heel***." One commands a dog to "heel;" it is ill-advised and dangerous to tell an American to do the same.

Accordingly, against this backdrop of Supreme Court holdings, CRS summaries and opinions of constitutional law professors Dershowitz and Eastman, several hypothetical scenarios and options emerge with regard to the question: "What could be next?"

Option 1

One scenario could envision the state legislatures in the swing states of Arizona, Georgia, Michigan, Nevada, Pennsylvania and, potentially, Wisconsin, after making various state-specific findings of fact – and without regard to conclusions of law (*e.g.,* fraud, statutory or constitutional violations, etc.) emanating therefrom – name and appoint by resolution its slate of "final post-election electors," any prior slates notwithstanding, and condition their appointment on a pledge to cast their ballots for … President Trump. That slate would be delivered as required by the Constitution.

This option, while bold and likely correct if all of the fraudulent and otherwise illegal acts burdening the integrity of the 2020 election vote count are ultimately proved, would surely create volcanic blowback from the cannibals and their democracy-hating agents in the

mainstream media. It could also generate potential civil unrest. For those reasons alone, the various swing state legislatures might be reluctant.

As already noted, for many years, one of the main characteristics of the GOP and its leaders has been the impulse to "go along to get along." Indeed, the Speaker of the Arizona House of Representatives has already indicated that he will not entertain such an option, so scratch that state – for now – from the ones willing to step up to the Option 1 plate. One is reminded of the anonymous advice, sometimes attributed to Democrat former Illinois Senator Everett Dirksen, that what the country needs is more statesmen and fewer politicians.

NEWS RELEASE

Arizona House of Representatives
Speaker of the House Rusty Bowers (R-25)
1700 West Washington • Phoenix, Arizona • 85007

Friday, December 4, 2020
FOR IMMEDIATE RELEASE

Speaker Bowers Addresses Calls for the Legislature to Overturn 2020 Certified Election Results

STATE CAPITOL, PHOENIX – Arizona House Speaker Rusty Bowers today made the following statement:

This week, Rudy Giuliani, Jenna Ellis, and others representing President Donald Trump came to Arizona with a breathtaking request: that the Arizona Legislature overturn the certified results of last month's election and deliver the state's electoral college votes to President Trump. The rule of law forbids us to do that.

Mr. Giuliani and Ms. Ellis made their case here at least twice—on Monday, at an unofficial public gathering hosted by a small group of legislators; and again on Tuesday, during a closed-door meeting at the State Capitol with Republican leaders from both chambers of the Legislature. Both times, the Trump team made claims that the election was tainted by fraud but presented only theories, not proof. U.S. Attorney General William P. Barr said on Tuesday that he, too, has "not

https://www.azleg.gov/press/house/54LEG/2R/201204STATEMENT.pdf

In this regard, the Arizona House Speaker's statement as to the appointment of electors suffers from the same misapprehension that the "votes" which were tallied and purportedly mathematically "certified" are "legal votes," a matter which has not yet been proven to be true.

Although a certification of votes after a canvass (which has occurred in Arizona as well as in most other states) creates a rebuttable presumption that the votes and results are "lawful," if a reasonable challenge attempting to overcome that presumption is disallowed from even being made at the outset, then, as noted above, the terms "due process of law" and "equal justice under the law" have been drained of all meaning.

Option 2

A second option, with a slight twist, could be for the battleground state legislatures to inform the President of the United States Senate – Vice-President Michael Pence – that, because of the time constraints of the Constitution and federal laws applying to the Electoral College, coupled with specific and disturbing findings of fact, it has become impossible to submit the

names of ***any*** electors for participation in the opening and tallying of the ballots on Jan. 6, 2021.

The *bona fides* of any and all electors previously nominated and/or "elected" to represent the Democrat Party in the Electoral College would be voided as a consequence of the unresolved election anomalies, but there would be no effort to legislatively "flip" the state's electoral votes to President Trump as proposed under Option 1. Again, however, this would require the discovery of a backbone and the courage to make that representation by the state's legislature.

Whether or not the option of failing to designate electors at all – as opposed to informing Vice-President Pence as President of the Senate that all electors of the state should be awarded to President Trump, as suggested in Option 1 – is sufficiently different to address the "go along to get along" tendencies of GOP-controlled state legislatures again remains to be seen. However, the one sure way to ensure failure of the option is to forego any attempt in the first place.

Currently, everyone believes that Biden's electoral vote count stands at 306 and President Trump's stands at 232. In this hypothetical option, if, for example, the Georgia Legislature made a determination of the "fatal compromising" of the 2020 general election results because of the myriad "anomalies" in the vote there, the candidate who (purportedly) "won" the popular vote in that state – Biden – would lose 16 electoral votes. That would drop his media-calculated total to 290. President Trump's total would remain unchanged. This would be consistent with Professor Dershowitz's "erode the Biden vote count" litigation theory already discussed.

If then, say, the Pennsylvania Legislature arrived at the same conclusion, *i.e.,* that the "irregularities" which characterized the election there had so damaged the integrity of the vote that it, too, was unable to submit a list of electors for the Jan. 6, 2021 opening and tallying of ballots constituting the actual "election" of the president, Biden would then lose an additional 20 electoral votes, dropping his electoral total to 270. President Trump's total would remain at 232. Again, this would be consistent with the Dershowitz hypothetical.

Image: Wikipedia

At that hypothetical point, it would take only one – yes, Virginia…, only ***one*** – additional "faithless elector" from one of the other "Biden" states to stand up to the fraud mob that has hijacked and cannibalized the Republic's 2020 general election and actually cast his/her ballot on Dec. 14, 2020 for someone *other* than Biden.

That act, of course, would subject that elector to whatever sanction, if any, required by his/her state, but it would also drop the Biden electoral vote count to 269…, below the 270 required to lawfully claim the presidency. It would also forever lock in history the name of the one Democrat elector who placed the future of this Republic ahead of politics.

Under this hypothetical scenario, because neither Biden nor President Trump had received the requisite 270 electoral votes to assume the presidency, the matter would, under the 12th Amendment, then proceed into the House of Representatives.

There, each state having one vote, the "states" would select – not "elect" – the president. As confirmed in the *McPherson*, *Ray* and *Chiafalo* Supreme Court decisions, the votes to be taken in the House are required to be determined by the state *legislatures* and not by the states' congressional *delegations*. For example, if both houses of a particular state legislature are controlled by Republicans, but a majority of the state's congressional delegation consists of Democrats, it is the will of the Republican-controlled state legislature, rather than the will of the Democrat-majority congressional delegation, which controls.

As already noted, because Republicans control 29 state legislatures, while Democrats control, at most, only 21, the outrageous fraud and cannibalization of the 2020 election process could be corrected. This, of course, assumes that the legislatures of Pennsylvania and Georgia (or, for that matter, Michigan as well, since like Georgia, it has 16 electoral votes) would be willing to "step up to the Option 2 plate" and that no electors pledged to vote for President Trump would themselves bolt to become a "faithless elector" by voting for Biden.

The only better thing would be if the "faithless elector's" surname were "Franklin."

THE "FAITHFUL PATRIOT ELECTOR" OPTION

As a final option – admittedly a long-shot, but are we not already entering "hail-Mary" territory? – let us consider recognizing a new creature on the political scene: the "Faithful Patriot Elector." That elector or electors, acting on his/her/their own judgment and willing to stand up as an American rather than as a partisan Democrat – or, for that matter, Republican – and "take one for the nation" by voting for preservation of the Republic as it has stood for 233 years instead of parroting the party line, particularly against the backdrop of events documenting the nationwide cannibalization of the 2020 election laws, procedures and protocols, would be hailed as a true patriot.

Stated otherwise, the elector would be recognized as being faithful to the Republic rather than being labeled as being "faithless" to an irretrievably and potentially corrupt dictate to vote for a usurper of the presidency.

To be specific, it is important to remember that Justice Kagan notes in *Chiafalo* that fifteen (15) states back up their "elector pledge" statutes with "sanctions." *See* 140 S. Ct. at 2322, n. 2. She then states that "[a]lmost all of them immediately remove a faithless elector from his position, substituting an alternate whose vote the state reports instead." *Id.*

On examining footnote 2 of her opinion, of the 15 states listed, three of them can be considered "swing" states for purposes of this discussion, *i.e.*, Arizona, Michigan and Nevada. Notably, the states of Georgia, Pennsylvania and Wisconsin are *not* listed among those states imposing a sanction on a faithless elector of (a) a fine, and/or (b) removal and replacement with a "compliant" elector.

Of the three sanctioning swing states, Arizona sanctions a faithless elector with removal and replacement, but not a fine. *See* A.R.S. § 16-212(C). Michigan does the same under Mich. Comp. Laws § 168.47. Nevada joins the other two under Nev.Rev.Stat. § 298.075(2)(b).

Thus, as a technical matter, the "faithless elector" no longer exists in the swing states of Arizona, Michigan or Nevada, because as soon as he/she departs from the party line – whether by renunciation of the pledge before the vote or by attempted actual vote at variance with the pledge – the elector is immediately removed and replaced by one who will "toe the line" as dictated by the political party selecting him/her as an Electoral College member. And if that elector has attempted to actually "vote" by casting a "non-compliant" ballot, the vote is voided and the ballot is not counted.

As a side-note and purely academic exercise – Supreme Court jurisprudence aside – go back, faithful P&E reader, and examine Federalist 68 by Alexander Hamilton and the U.S. Court of Appeals for the 10th Circuit's opinion in the companion case to *Chiafalo*, *Baca v. Colorado Department of State*, 935 F.3d 887 (2019). The 10th Circuit's *Baca* decision – holding that Colorado elector Micheal Baca's removal as a "faithless elector" was unconstitutional – was reversed in a *per curiam* decision by the Supreme Court. *See* Colorado Dept. of State v. Baca, No. 19-518 | Casetext Search + Citator). After that review, ask yourself if those sources comport with your understanding of what the Founders' intent was when they created the Electoral College.

Ask yourself as well if you really believe specifically that they intended the electors, in selecting the person to occupy the station of the "Chief Magistrate" of the nation, to be (a) mere automatons transmitting the "party narrative" as is now the general practice, or (b) instead intended them to be, as Hamilton articulated in Federalist 68, persons "most capable of [analyzing] the qualities adapted to the station, and acting under circumstances [favorable] to deliberation and to a judicious combination of all the reasons and inducements, which were proper to govern their choice" and who "will be most likely to possess the information and discernment requisite to so complicated an investigation." Let your faithful servant know which interpretation is believed to more closely align with the original intent of the Founders. I'll wait.

Never mind: I just channeled Hamilton and he said the answer is "(b)."

Returning to the *Chiafalo* decision, if Justice Kagan's law clerks and researchers are correct, there remain 35 states and the District of Columbia – a total of 36 jurisdictions possessed of electoral votes – which do ***not*** impose sanctions on "faithless electors," either in the form of a fine, as in Washington, or – significantly – in the form of removal and replacement of the elector. Stated otherwise – again, assuming the accuracy of the research conducted by

Justice Kagan in footnote 2 of the *Chiafalo* decision – the potential for the continued existence of faithless electors seems to remain alive and well in a majority of the states, both "red" and "blue."

Guess what, faithful and attentive P&E readers: even ***without*** intervention by a state legislature as guaranteed by the Constitution, if there were 36 (or more) individual "faithless electors" – a better term under 2020 conditions would be "Faithful Patriot Electors" – in one or more of the "non-sanctioning" ***blue*** states – *i.e.*, states "awarded" by the media to Biden which allowed and did not immediately remove or disqualify an elector for casting a "faithless vote" –, once cast, those electors' votes would be required to be counted as those of "faithless electors," but nonetheless valid votes in the Electoral College balloting process.

This is exactly what happened in the *Chiafalo* case: Peter Chiafalo, Levi Guerra and Esther John – the electors – each voted for Colin Powell instead of the candidate to whom they had pledged their votes in the 2016 presidential election, Hillary Clinton…, but their votes for Colin Powell were counted. They were each fined a $1,000 penalty under Washington law for violating their pledge…, but their votes counted.

Realizing that the counting of their votes for Powell was not sufficiently deterred by a fine, Washington has since repealed the statute limiting the sanction to a $1,000 fine and replaced it with a more draconian statute to enforce the pledge by "removing and replacing faithless electors. *See* Wash. Rev. Code § 29A.56.090(3) (2019)." *See Chiafalo*, 140 S. Ct. at 2322, n. 3.

Hulloooo…. as of the date of this post, Georgia has not amended its statutes to remove and replace faithless electors, nor has Pennsylvania.

Translation: the electors in Georgia and Pennsylvania, despite having been picked by a particular political party, remain free to deliberate and "vote their conscience" consistent with Federalist 68 without fear of being fined or having their votes voided. Moreover, while the Washington electors' 2016 "Colin Powell" gambit failed, there were four other "faithless electors" located in other states who also broke their pledge, but had their votes counted. *See Chiafalo*, 140 S. Ct. at 2322.

Thus, insofar as the 2020 election is concerned, and assuming that no judicial decision ultimately voids the vote totals in any of the swing states, if enough faithless electors from the remaining 35 states (calculated from footnotes 2 and 3 of Justice Kagan's *Chiafalo* opinion) are prepared to step up as Americans first and partisans second, they will become "Faithful Patriot Electors" instead of maligned "faithless electors." In that event, even without judicial assistance, President Trump could emerge victorious on January 6, 2021, when the results of the Electoral College voting are officially tallied.

Granted, this may be a long-shot, since, once again, the tendency among the GOP leadership is to "go along to get along" and the tendency among present-day Trump Derangement Syndrome Democrats to select only rabid Democrat automatons. But it is still possible…, and the only sure way of guaranteeing its failure is to forego the attempt.

LATE-BREAKING DEVELOPMENT

As a late-breaking significant development, note that the State of Texas has just filed in the U.S. Supreme Court an original jurisdiction "Motion for Leave to File Bill of Complaint" against the states of Georgia, Michigan, Wisconsin and the Commonwealth of Pennsylvania. The bill is a well-pleaded and extremely persuasive challenge to both the "popular" votes as well as the consequential "electoral" votes in Georgia, Michigan, Wisconsin and Pennsylvania.

No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Ken Paxton*
Attorney General of Texas

Brent Webster
First Assistant Attorney
General of Texas

Lawrence Joseph
Special Counsel to the
Attorney General of Texas

https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/SCOTUS Filing.pdf

In addition, as opposed to seeking the nullification of the entire 2020 election results nationwide, the Texas action prudently seeks only the nullification of the results in those four states and, importantly, proposes as one remedy as to those states which have already selected their electors, that the Court direct them to "appoint a new set of presidential electors in a manner that does not violate the Electors Clause and the Fourteenth Amendment, ***or to appoint no presidential electors at all.***" (Emphasis added) *See* Texas Bill of Complaint at 40, Prayer for Relief, ¶ "E."

This is precisely what is contemplated under Option 2, discussed above, as it would drive the "selection" of the president into the House of Representatives, where the GOP legislatures dominate and thus, where President Trump would finally get a fair shake.

If this option works, it will give new meaning to the phrase: "Don't Mess With Texas."

CONCLUSION

Your faithful servant once penned a post here at the P&E analyzing the issue of who is, and who is not, properly seen to be a "natural born Citizen" under the Constitution's presidential Eligibility Clause, Art. 2, § 1, Cl. 5 and how the principle of Occam's Razor applied to the analysis. The present topic – the tarnished and cannibalized legitimacy of the 2020 election in the battleground states – merits a similar analysis.

Occam's Razor is a principle of parsimony which, reduced to its essence, articulates the proposition that the simplest answer or explanation for a result is the one relying on the fewest assumptions. Moreover, the principle postulates that such answer or explanation will likely be the correct one.

"A Republic, madam, if you can keep it"

Applying Occam's Razor to the situation at hand, the simplest explanation for why Joe Biden presently is portrayed by the cannibals as the "winner" of the 2020 election boils down to three elements: fraud, lawlessness and corruption. If the Republic is to survive, those elements must be addressed and eliminated from the result.

And where, pray tell, is the first Faithful Patriot Elector with the surname "Franklin?"