To Count or Not to Count

"IF COURAGE PREVAILS"

by Joseph DeMaio, ©2020

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(Dec. 31, 2020) — Faithful P&E readers, as we approach that day of reckoning – Jan. 6, 2021, when the Joint Session of Congress will gather for the "counting" of the electoral votes from the various states to determine who (if anyone) will be the next President of the United States – it would do well to examine again what might take place.

Specifically, your humble servant has already suggested in an open letter to Vice-President Pence that, as a threshold matter and under the 12th Amendment alone – even before considering the issue of competing or "dueling" slates of electors from particular states are considered – the primary issue of whether a particular candidate has met the 270-vote "victory" threshold should be first addressed.

That open letter posited that, under the commonly-accepted definition of the word "regular," none of the electoral votes from certain "swing" or "battleground" states should in included in the tally if the electoral votes were premised and based on irredeemably tainted popular vote totals.

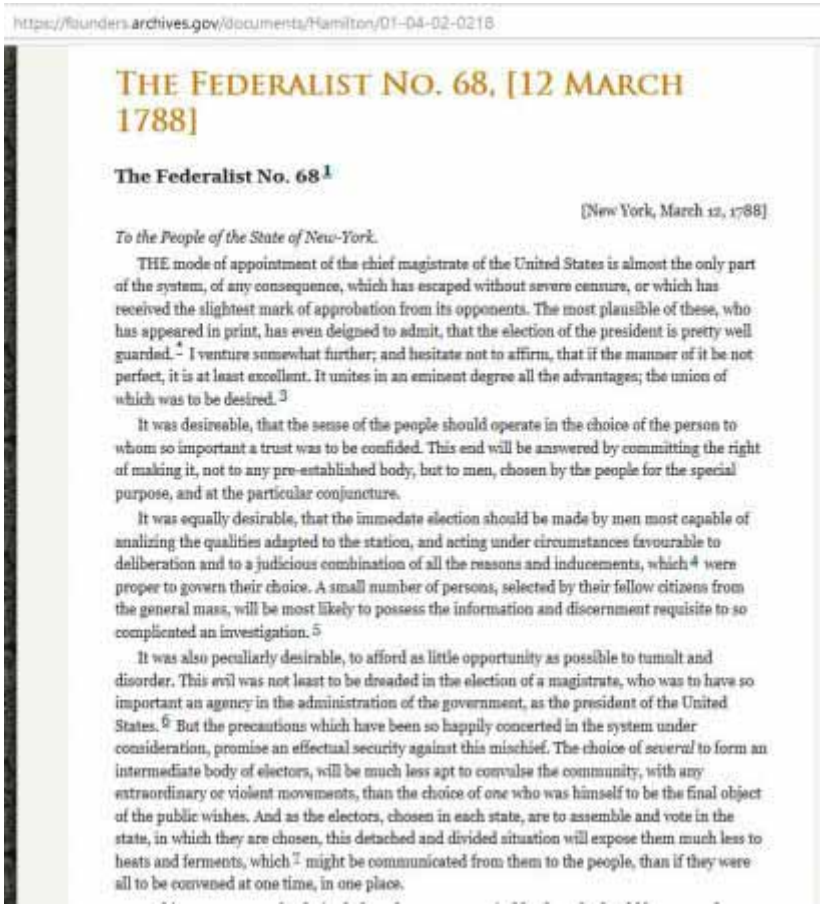
The main point to be made was that such votes could not be seen as having been "regularly given" under the terms of 3 U.S.C. § 15 – even if that statute applied, a questionable supposition – and should therefore be disregarded. And unless you are completely brain-dead (or wear a black robe), the existence of 2020 election fraud and voting irregularities is manifest. To use a legal term, *res ipsa loquitur*: the 2020 swing state election fraud "speaks for itself."

But wait…, there's more.

Expanding on the "regularly given" issue, the following offering posits that other words in the 12th Amendment further support disregarding tainted electoral votes. In this

regard, the phrase "the votes shall then be counted…" appearing in the 12th Amendment is intended to convey far more than a mere mechanical, arithmetic summing of the votes as many would carelessly argue.

To the contrary, given the backdrop of the entire process and history of Electoral College proceedings – from the principles of Federalist 68 to Art. 2, Sec. 1, Cl. 2 of the Constitution, the "Electors Clause" to the 12th Amendment – the mere mathematical adding of votes is (or should be) plainly secondary to the question of whether the votes of the "swing" states, purportedly for Slow Joe Biden, were legitimate or illegitimate and fraudulently obtained. Indeed, the mere mechanical summing of votes by addition is not a "principle" at all: instead, it is a ministerial, arithmetical exercise.


https://founders.archives.gov/documents/Hamilton/01-04-02-0218

THE FEDERALIST NO. 68, [12 MARCH 1788]

The Federalist No. 68 [1]

[New York, March 12, 1788]

To the People of the State of New-York.

THE mode of appointment of the chief magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit, that the election of the president is pretty well guarded.[2] I venture somewhat further; and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages; the union of which was to be desired. [3]

It was desireable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men, chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analizing the qualities adapted to the station, and acting under circumstances favourable to deliberation and to a judicious combination of all the reasons and inducements, which [4] were proper to govern their choice. A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation. [5]

It was also peculiarly desirable, to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government, as the president of the United States. [6] But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of *several* to form an intermediate body of electors, will be much less apt to convulse the community, with any extraordinary or violent movements, than the choice of one who was himself to be the final object of the public wishes. And as the electors, chosen in each state, are to assemble and vote in the state, in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which [7] might be communicated from them to the people, than if they were all to be convened at one time, in one place.

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In a matter as important as the election and/or "selection" of a president, matters of far greater import and gravitas than simple arithmetic are implicated in Federalist 68, in the Constitution and in the 12th Amendment.

For example, with respect to the role to be played by the electors, Publius (aka Alexander Hamilton) noted in Federalist 68 that "the immediate election should be made by men 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. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the ***information and discernment requisite*** to such complicated investigations." This language bespeaks of a far more cognitive activity than simply adding a series of Arabic numbers.

While over the years, the role of Electoral College electors has evolved into one of mere automatons following the commands of their "leaders," it is the constitutional duty of the Vice-President, as President of the Senate and Presiding Officer of the "counting of the votes," to ensure that the dictates of the Constitution – as opposed to the dictates of those who are accessories before and after the fact of voting fraud – are observed. To that end, a brief examination of the 12th Amendment's phrase "the votes shall then be counted…" is in order.

In particular, both the Constitution (prior to its amendment in 1804 by the 12th Amendment) as well as the 12th Amendment itself, use the term "counted." That term is merely the past tense variant of the transitive verb "count." Webster's Dictionary provides several definitions of the term "count" thusly: "1. to indicate or name by units or groups so as to find the total number of units involved… 3. to include or exclude by or as if by counting."

Under Webster's definition # 1, a mere mathematical procedure is contemplated. Under this approach, for example, one can go to the grocery store, open a carton of a dozen eggs and "count" how many eggs are present, arriving in due course at the number "12." This is the simple, ministerial task involving approximately zero "analyzing," "deliberation," "judicious combination of reasons" or "information and discernment requisite" to determining how many eggs are in the carton. All that is needed is eyesight and the ability to add sequential numbers.

On the other hand, quite apart from the arithmetic sum of individual eggs in the carton, it would be prudent for the shopper to also check to ascertain, for example, if any of the eggs are cracked or broken open; or if any of the eggs are stained by spilled orange juice; of if the eggs are being improperly offered for sale past their "sell by" date. Arithmetic "counting" of the number of eggs in the carton is peripheral to the quality, desirability and wholesomeness of the eggs, ultimately leading to a conclusion as to whether they should be "included or excluded" in a decision to buy them.

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Stated otherwise, under Webster's definition # 3 of "count," the shopper exercises judgment, analysis, deliberation and discernment of known information to arrive at a conclusion to either (a) purchase the carton of a dozen "good" eggs, or (b) examine another carton to make sure both that there are the requisite 12 eggs ***and*** that those eggs are of the quality expected and demanded. By close analogy to what a shopper at the grocery store should do, these are the principles and concepts which Hamilton addresses in Federalist 68.

By further analogy to the issue at hand, whether or not the electoral votes to be "counted" on Jan. 6, 2021 are "good" enough to meet the "regularly given" standards required for the valid election (or selection) of a President is a matter properly to be determined at the very outset of the proceedings under the protocols of the 12th Amendment, with no need to invoke the statutory mechanisms of 3 U.S.C. § 15.

There are, of course, lawsuits still pending challenging the constitutionality of 3 U.S.C. § 15 as violating the Electors Clause and/or the 12th Amendment such as here. However, the ultimate fate of the litigation remains undetermined and, in any event, it is unlikely that any decision or result will be forthcoming before Jan. 6, 2021.

Accordingly, if Vice-President Pence were to determine, as a threshold "point of order," that the "counting" of the electoral votes at the Joint Session necessitated – under the protocols of the 12th Amendment ***alone*** – a preliminary determination of whether any particular state's electoral votes should (or should not) be "counted" as the amendment requires and coupled that point of order with the opportunity for objections and debate, there would be no need to resort to 3 U.S.C. § 15 at all, questions relating to its constitutionality aside.

If following the point of order objections and debates – including the exercise by the assembled Senators and Representatives of analysis, judgment and discernment of information – it became evident that Mr. Biden's electoral vote total was so tainted and irredeemably disqualified, dropping his vote total to below the 270-vote "victory" level, Vice-President Pence could then seemingly proceed directly to the 12th Amendment's "one-vote-per-state" protocol whereby the "selection" of the President by the Members of the House of Representatives present could take place.

Whether (or not) this scenario will ever take place remains to be seen. Much will depend on the courage and resolve of Vice-President Pence and the commitment of various members of the Senate and House to put the interests of the nation ahead of partisan politics.

Vice Presid*ent Michael Pence, public domain*
(Official Wh*ite House Photo by D. Myles Cullen)*

Senator Josh Hawley has courageously announced that he will lodge objections at the Joint Session. He will likely be joined by others, including both Senators and Representatives. It will then seemingly be up to Vice-president Pence to take the next step…, if courage prevails over indifference.

Do not bet the farm, Virginia, that this approach will guarantee the defense of the Constitution, the 12th Amendment or the Electoral College. Recall that the "home" of the Deep State is… the Swamp next to the Potomac and that the highest land-mass in the Swamp is located on Capitol Hill, precisely where the Joint Session will take place.

Recall as well that the blind and irrational hatred for President Trump within the cabal of "go-along-to-get-along" politicians there is virtually bottomless, so marching down the path suggested above will take a lot of courage. But the only way to ensure defeat is to surrender before the battle.

Soon, we will know whether Benjamin Franklin's warning will come true. If Slow Joe's tainted electoral vote total is allowed to stand, Franklin's warning will likely become a tragic, brutal reality…, perhaps even qualifying as the Republic's epitaph.

Sad.