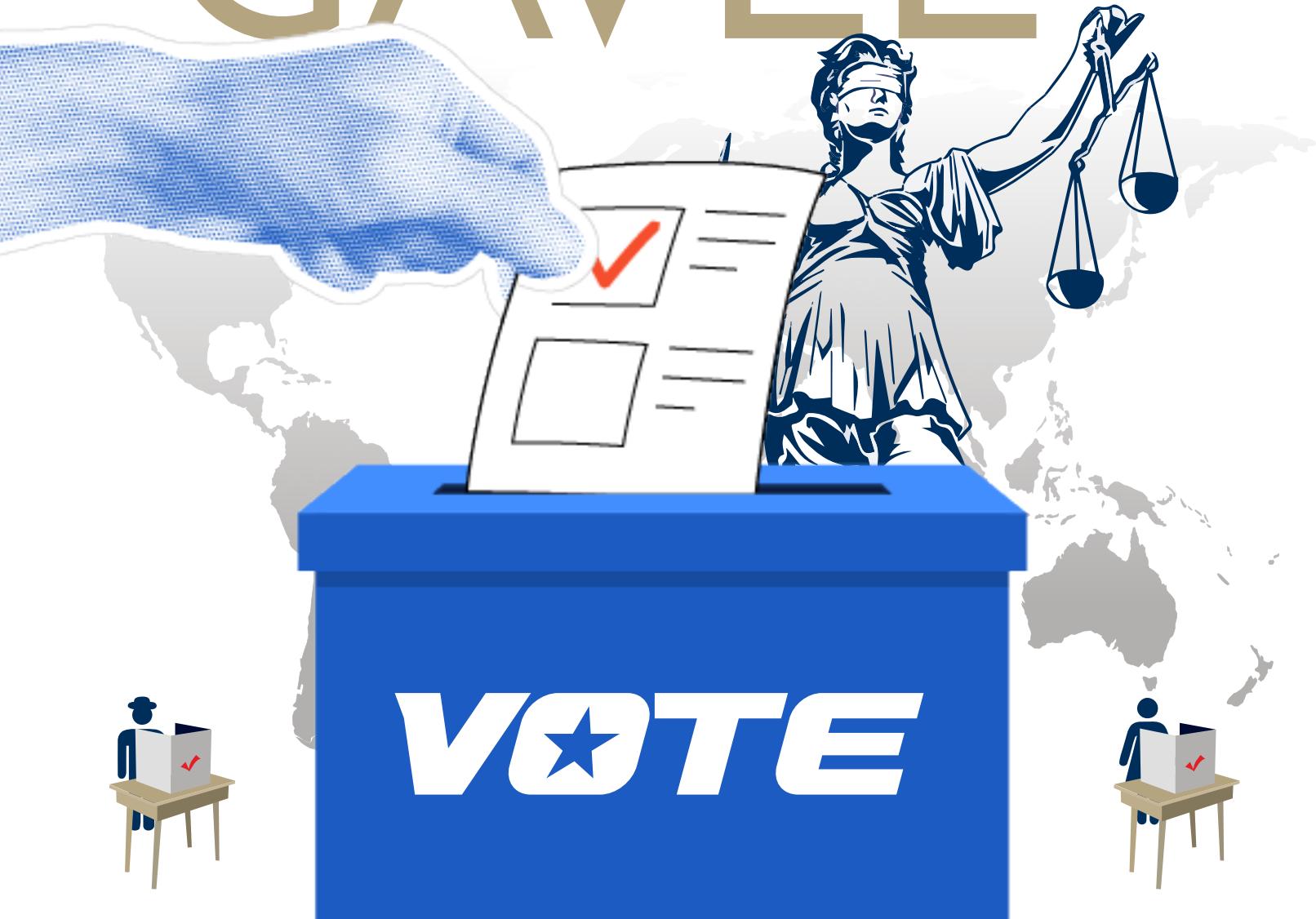




Ave Maria School of Law
Moot Court Board Journal

2024-2025
Volume 17
Issue 1

THE GAVEL



THE LAW OF ELECTIONS





THE GAVEL

Ave Maria School of Law
Moot Court Board Journal

2024-2025 | Volume 17 | Issue 1



EDITOR-IN-CHIEF:

Kendall Coughlin

MANAGING EDITOR:

Emily Winter

ASSOCIATE EDITORS:

Quentin Abbott, Brendan Coughlan, Vincent DeStefano, Heather Ochs, Quinten Zak

FACULTY ADVISOR:

Professor Mark Bonner

GUEST PROFESSOR:

Professor Antony Barone Kolenc

STUDENT CONTRIBUTORS:

Quentin Abbott
Tim Carver
Brendan Coughlan
Kendall Coughlin
Vincent DeStefano
Madison Dietz
Mallory Fernandes
Emily Feyerabend
Taylor Greenwald
Corwin Hooley
William Horth
Grayson Horton
Victoria Kelly
Sawyer Lecius

Heather Ochs
Victoria Porter
Wendell Powell
Brianna Pritts
Lili Rodriguez
Shannon Stamp
Anthony Thompson,
Carmen Trunkett,
Ethan West
Miller Whitten
Emily Winter
Quinten Zak



AVE MARIA
SCHOOL OF LAW

MOOT COURT BOARD JOURNAL

1025 Commons Circle
Naples, Florida 34119

INSIDE THIS ISSUE

| | |
|--|-------|
| Letter From the President | 2 |
| Letter From the Editor | 2 |
| Guest Professor: Antony Barone Kolenc | 3-4 |
| Robert H. Bork: Memorial Appellate Competition | 5 |
| External Competition Highlights | 6-7 |
| Emily Winter: Bipartisanship: Barriers to Third-Party Success | 8 |
| Kendall Coughlin: Show Me the Money: Where Campaign Cash Goes When the Race Ends | 9-10 |
| Vincent DeStefano: Casting a Moral Ballot: Avoiding the Formal Cooperation with Evil According to Classical Natural Law Principles | 10-11 |
| Mallory Fernandes: Democracy Denied: The Unconstitutional and Unethical Reality of Felon Disenfranchisement | 11-13 |
| Brendan Coughlan: Willful Blindness: Federal Manipulation of Electoral Boundaries Through Census Data, Redistricting, and Gerrymandering | 13-14 |
| Victoria Porter: Paths to Presidency and Papacy: Comparing the Electoral College and the College of Cardinals | 14-16 |
| Quinten Zak: Same-Day Voter Registration: Fraudulent or Convenient? | 16-17 |
| Sawyer Lecius: Judicial Review of Absentee Voting Laws: Balancing State Interests vs. Fundamental Rights | 17-18 |
| Quentin Abbott: How A Democratically Elected Senate Intrudes on Individual Liberties: The Case for Repealing the Seventeenth Amendment | 18-19 |
| Shannon Stamp: Changes in Mail-in Ballot Voter Election Laws as an Effect of COVID-19 | 20-21 |
| Ethan West: A Broken Pledge: How Faithless Elector Laws Protect the Voice of the People in the Electoral College | 21-22 |
| Heather Ochs: Pandemic or Powershift? The 2020 Election and Erosion of Legislative Authority | 22-23 |
| Anthony Thompson: Section 230 and Political Speech: A Constitutional Paradox | 24-25 |
| Emily Feyerabend: The Peach State Effect: How a Georgia Runoff Election Led to the 2024 Red Wave | 25-26 |
| Lili Rodriguez: Electoral College v. Popular Vote | 26-27 |
| Miller Whitten: The Elephant and the Star: Can Two Criminals Become President? | 28 |
| Victoria Kelly: Insurrection or Assembly? The 14th Amendment Battle That Nearly Derailed a Presidency | 29-30 |
| Carmen Trunkett: Primaries – What's The Point? | 30 |
| William Horth: Check on Tyranny or a Restraint on Democracy? The Story of the Twenty-Second Amendment | 31 |
| Madison Dietz: The Significance of Judicial Review in Upholding Electoral Integrity | 32-33 |
| Taylor Greenwald: Voter Identification Laws: Beneficial or Burdensome? | 33-34 |
| Wendell Powell: Campaign Finance Reform and its Impact on Modern Elections | 34-35 |
| Corwin Hooley: Artificial Intelligence and Its Impact on Elections, Present and Future | 35-36 |
| Brianna Pritts: No Conviction, No Vote? Pre-trial Detention and the Right to Vote | 36-37 |
| Tim Carver: I Want to be a Judge, "Dawg!" (Or Is It "Dog?") | 37-38 |
| Grayson Horton: The Modern Voter: How Social Media is Reshaping the Electorate | 38-39 |
| Madisen Maring: Strengthening Laws Against Voter Intimidation and False Election Speech | 39-40 |
| Ben Dellacono: The Safeguard American Voter Eligibility Act (SAVE Act) and the Concern about Pushback from the Senate and Current Administration | 40-41 |
| James Mrnacaj: Does Newfound Power Change the Mind of a Voter? | 42 |
| 2024/2025 Moot Court Board | 43-45 |



LETTER FROM THE President

Dear Reader:

A lawyer’s voice possesses immense potential as a tool for advocating on behalf of others. With each persuasive argument or impassioned plea, a lawyer’s voice becomes a catalyst for change, empowering those who are often unheard or overlooked. The Moot Court Board provides an invaluable opportunity for students to gain practical courtroom experience and to learn to develop our voices so we can better advocate for others throughout our legal careers.

As someone who has always wanted to be the voice for others and advocate for the unheard or overlooked, I am forever grateful for my experience on the Moot Court Board. My time here has solidified my passion for oral advocacy and has refined my skills to better prepare me for practice. It has been the greatest honor to serve as the President of the Moot Court Board this past year, and I am proud to have led such an exceptional group of student advocates.

This year, the members of the Moot Court Board embraced the opportunity to improve their advocacy skills and proudly represent this school by competing in numerous competitions— one internal appellate competition and seven external appellate and trial competitions. The Robert H. Bork Internal Appellate Competition is a time-honored tradition; a special thank you to all the professors, alumni, and local attorneys and judges who volunteered their time to help judge the competition. We began our tour of external competitions starting over the Summer with the Robert Orseck Moot Court Competition. We also competed in several other external competitions including the Notre Dame Religious Freedom Tournament, where our team advanced to the quarterfinals, and the John J. Gibbons National Criminal Procedure Moot Court Competition, where our team advanced to the octofinals. Each team upheld the excellence of the Ave Maria Moot Court Board and represented our school in an extraordinary way.

To our coaches, and especially our faculty advisor, Professor Mark Bonner— we are forever grateful for your leadership, insight, and time spent helping us all grow into better advocates. We are all thankful for the knowledge you have instilled in us and the skills we have developed that we will forever carry with us throughout our legal careers. To my fellow executive board members, Kendall Coughlin, Emily Feyerabend, Kennedy Ginaitt, Grayson Horton, and Victoria Kelly—thank you each for your unwavering dedication to the Moot Court Board. I am so grateful for the time we shared together.

In closing, I would like to thank the members of the Moot Court Board for your hard work throughout the year competing, serving on committees, and writing these articles. It has been a pleasure watching you grow into the exceptional advocates that each of you are. Thank you for trusting me to lead this prestigious organization.

Sincerely,
Mallory E. Fernandes
President, Ave Maria Moot Court Board



LETTER FROM THE Editor

Dear Reader:

The theme of the 2024-2025 edition of *The Gavel* is “The Law of Elections,” a topic that could hardly be more timely or consequential in our national discourse. In a year marked by one of the most closely watched elections in American history, our democracy’s legal frameworks have been put to the test in ways both anticipated and unexpected.

Many articles in this collection were researched and drafted in the months leading up to the November 2024 election, capturing a moment of intense anticipation and scrutiny of our electoral systems. Others emerged after the ballots were counted, providing valuable perspective on how our legal institutions responded to the challenges presented. This temporal bridge offers readers a unique opportunity to understand election law not just as a static set of rules, but as a living system that evolves through application and interpretation—sometimes gracefully, sometimes with all the elegance of a bull in a china shop.

The legal architecture of our elections—from campaign finance regulations to redistricting requirements—represents more than mere procedural frameworks. These laws embody our collective commitment to self-governance and equal participation in democracy. They are, in essence, the rulebook for how we peacefully transfer and legitimize power in our republic.

In these divisive times, election law serves as both a battleground and a potential path toward reconciliation. While disagreements about how we conduct elections can be passionate, our shared respect for the rule of law offers common ground upon which we can stand together. It is in this spirit that our Moot Court Board members have approached their scholarly contributions: as thoughtful analysts seeking to illuminate and clarify.

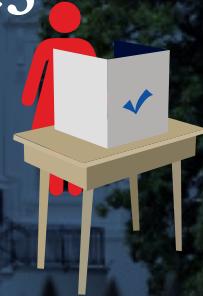
The articles in this edition cover a wide spectrum of election-related legal issues. From exploring the role of the Conclave in papal elections to examining the constitutional dimensions of various voting methodologies, our contributors have produced work that is both intellectually rigorous and practically relevant. These pieces reflect countless hours of research, analysis, and thoughtful writing by our dedicated members.

I extend my sincere gratitude to our President, Mallory Fernandes, my extraordinary Publications Committee, and every member of the 2024-2025 Moot Court Board for their exceptional contributions to this edition. Special appreciation goes to our Faculty Advisor, Professor Mark H. Bonner, whose guidance and expertise have been invaluable throughout this process.

With that, I am proud to present the 2024-2025 edition of *The Gavel*. Thank you for your support, and happy reading!

Yours truly,
Kendall Coughlin
Editor-in-Chief of *The Gavel* and Vice President of Publications
The Moot Court Board, Ave Maria School of Law

Presidential Overreach in Federal Elections?



By Professor Antony Barone Kolenc

It is no surprise that President Donald J. Trump believes the U.S. voting system is broken. Since his loss to Joe Biden in 2020, Trump has railed against fraud in elections, including allegations of voting by non-citizens and improperly counted votes received by mail after Election Day. On March 25, 2025, Trump signed

Executive Order 14248, *Preserving and Protecting the Integrity of American Elections*, to address these concerns. The EO seeks “[f]ree, fair, and honest elections unmarred by fraud, errors, or suspicion” and to ensure “[t]he right of American citizens to have their votes properly counted and tabulated, without illegal dilution.”¹ The EO contains several notable provisions.

To enforce the “prohibition on foreign nationals voting in Federal elections,” the EO directs the Election Assistance Commission (EAC)—a bipartisan, independent agency—to mandate that “its national mail voter registration form” require “documentary proof of United States citizenship, consistent with 52 U.S.C. 20508(b) (3).”² It also directs key executive agencies to help State officials “identify unqualified voters registered in the States” by providing access to critical federal databases; to “review each State’s publicly available voter registration list and available records concerning voter list maintenance activities as required by 52 U.S.C. 20507;” and to “prioritize enforcement of 18 U.S.C. 611 and 1015(f) and similar laws that restrict non-citizens from registering to vote or voting.”³

The EO further directs the Attorney General to facilitate the prosecution of federal election crimes; to “prevent all non-citizens from being involved in the administration of any Federal election;”

and to take action if States “fail to comply with the list maintenance requirements of ... 52 U.S.C. 20507 and 52 U.S.C. 21083.”⁴ In addition, it directs the EAC, “pursuant to 52 U.S.C. 21003(b)(3) and 21142(c),” to “cease providing Federal funds to States that do not comply with” various election laws, including the EO’s mandate to require documentary proof of citizenship; to “amend the Voluntary Voting System Guidelines,” providing that systems “should not use a ballot in which a vote is contained within a barcode or quick-response code” except to accommodate the disabled; and to “review and, if appropriate, re-certify voting systems under the new standards.”⁵

Finally, the EO seeks to “enforce 2 U.S.C. 7 and 3 U.S.C. 1”—the “laws that set the uniform day for appointing Presidential electors and electing members of Congress”—by preventing States from “including absentee or mail-in ballots received after Election Day in the final tabulation of votes.”⁶ To assist in this effort, the EO directs the EAC to “condition” its election funds on States adopting this uniform standard.⁷

With Trump critics alleging that his new EO would “disenfranchise” millions of vulnerable voters, nineteen Democrat-led States and some voting activist groups quickly sued Trump in four consolidated lawsuits, calling his EO an overreach of power.

*The President has ... no authority to regulate elections at all: The Constitution’s Elections Clause vests Congress and the States—not the President—with authority to set rules for federal elections. Congress in turn entrusted the job of maintaining the national mail-in voter registration form ... to the EAC, an independent, bipartisan agency insulated from executive control.*⁸

PRESIDENTIAL OVERREACH IN FEDERAL ELECTIONS?

In contrast, to codify some of the more-controversial provisions of Trump’s EO, Republicans in the House of Representatives passed the *Safeguard American Voter Eligibility (SAVE) Act* on April 10, although the bill’s fate remains doubtful in the Senate.

In truth, as seen in the excerpts above, much of Trump’s EO is a straightforward direction to executive agency heads to enforce existing laws—nothing unusual there. For that reason, regardless of these lawsuits, the majority of the EO should remain intact. The most impactful parts of the EO, however—those requiring proof of citizenship to vote and rejecting mail-in ballots after Election Day—are unlikely to survive without further guidance by the U.S. Supreme Court. These new requirements have been highly disputed for decades, with both Congressional and EAC efforts to adopt them falling short time and again. In the end, Trump might not be able to impose them through presidential fiat.

At the core of the constitutional dispute in these cases is an issue in the crosshairs of some conservative Supreme Court Justices: the propriety of congressional delegations of law enforcement power to independent agencies outside the control of the President. Some conservative scholars believe that these delegations violate the Separation of Powers, with Trump partly blaming them for a “deep state” controlled by unaccountable bureaucrats. Trump has been on a mission to take back that power for the President.

Despite voiced concerns by some conservative Justices in recent years, the Supreme Court has long permitted delegations of congressional power to “multimember expert [independent] agencies that do not

wield substantial executive power.”⁹ Thus, Trump’s EO may be in jeopardy under current case law. For the EO to prevail in directing the EAC to take certain actions, the Supreme Court likely would need to upend case law in existence since the 1930s, or else find that the EAC’s power over elections is the kind of authority that should only be wielded by executive branch officials answerable to the President of the United States.

Neither one of these possibilities is out of the question with the current 6-3 conservative make-up of the Court, with three of the Justices appointed by Trump himself. The Supreme Court might very well conclude that Trump’s EO is merely enforcing the laws in a way the President can. Still, a “save” by Congress in passing the SAVE Act, would be the most enduring way for these requirements to take effect. ○

References:

- 1 EO 14248, Sec. 1.
- 2 *Id.* at Sec. 2(a).
- 3 *Id.* at Sec. 2(b)-(f), Sec. 3(a).
- 4 *Id.* at Sec. 5, Sec. 6(a), and Sec. 3(c).
- 5 *Id.* at Sec. 4(a)-(b).
- 6 *Id.* at Sec. 7(a).
- 7 *Id.* at Sec. 7(b).
- 8 Democratic National Committee, et al. v. Trump, Case Nos. 25-0946, 25-0952, 25-0955, Apr. 7, 2025 (Memorandum in Support of League and Lulac Plaintiffs’ Motion for Preliminary Injunction at p. 1).
- 9 *Seila Law LLC v. Consumer Fin. Protection Bureau*, 591 U.S. 197, 218 (2020) (citing *Humphrey’s Executor v. United States*, 295 U.S. 602, 619–20, 624 (1935)).

Robert H. Bork MEMORIAL APPELLATE COMPETITION



Left to right: Honorable Shannon McFee, Dean John Czarnetsky, Madisen Maring, Madison Dietz, Victoria Porter, Anthony Thompson, Honorable John Steele



Finalists: Anthony Thompson and Victoria Porter



Winners: Madisen Maring and Madison Dietz

EXTERNAL COMPETITION HIGHLIGHTS



TULANE INTERNATIONAL BASEBALL ARBITRATION COMPETITION

Pictured left to right:

Team 1 Ben Dellacono and Quinten Zak

Team 2: James Mrnacaj and Victoria Kelly



JOHN L. COSTELLO NATIONAL CRIMINAL LAW TRIAL COMPETITION

Pictured left to right: Emily Feyerabend, Mallory Fernandes, Wendell Powell II,
Dean Maureen Milliron, and Professor J. Kirkland Miller

EXTERNAL COMPETITION HIGHLIGHTS



HERBERT WECHSLER NATIONAL CRIMINAL MOOT COURT COMPETITION

Professor Tim Tracey, Brianna Pritts, and Carmen Trunkett



JOHN J. GIBBONS CRIMINAL PROCEDURE MOOT COURT COMPETITION

Emily Winter, Lili Rodriguez, and Victoria Porter



NOTRE DAME RELIGIOUS FREEDOM MOOT COURT COMPETITION

Sawyer Lecius, Shannon Stamp, Miller Whitten, Ethan West,
Brendan Coughlan, and Vincent DeStefano

Bipartisanship: Barriers to Third-Party Success



By Emily Winter

In modern American society, people are bombarded with options and choices. Yet, when it comes to presidential candidates, there are only two—Democrat or Republican. A recent Pew Research Study indicated that thirty seven percent of Americans hold unfavorable views of both major political parties.¹ Despite the dissatisfaction with the status quo, many Americans end up voting for who they perceive to be the better option or the lesser of the two evils.

There is nothing inherently wrong with a two-party system, and there are even some benefits. For example, a two-party system is efficient and can elevate the most popular opinions when it upholds democratic principles. Ideally, the most qualified and popular candidates participate in the presidential elections and eventually the debates.

However, the current system makes it near impossible for candidates who fall even slightly outside of binary party lines to succeed in a presidential race. The current system silences third-party voices and deprives voters of options that may better align with their values. Most recently, candidates like Robert F Kennedy Jr., Tulsi Gabbard, and Bernie Sanders faced barriers throughout their presidential campaigns that hindered their success.²

Hardships to third parties begin at the grassroots stage of the campaign due to campaign finance laws. Specifically, the lack of campaign contribution limits makes it incredibly challenging for the average American to run a successful presidential campaign. The Supreme Court in *Citizens United v FEC* held that corporations and other special interest groups have a First Amendment right to contribute to political campaigns without limitation.³ This decision opened the door for the billion-dollar campaigns that exist today. These expensive campaigns, funded by Super PACs, put less established candidates at a great disadvantage. Even millions of small donors cannot compete with the small group of wealthy donors that donate to Super PACs.⁴ It raises the question: Are the candidates with the greatest success the most popular or the most heavily funded?

Further, the polling criteria set forth by the Commission on Presidential Debates (“CPD”) to determine who is eligible to participate in the presidential debates discriminates against third-party candidates. The FEC administers and enforces laws that govern elections for federal office, including presidential debates.⁵ The CPD claims to be a non-partisan and independent non-profit organization whose mission is to ensure that general elections are held every four years for the leading Presidential and the Vice-Presidential candidates.⁶ The CPD’s criteria for presidential debates requires that the candidate must “have a level of support of at least fifteen percent of the national electorate, as determined by five national public opinion polling organizations.”⁷

The D.C. Circuit court currently holds that the CPD’s debate criteria complies with the FEC’s §110.13, which requires objective eligibility criteria. In *Level the Playing Field v. FEC*, the plaintiffs asserted that the CPD eligibility criteria was subjective and biased.⁸ First, the plaintiffs argued that the CPD is an inherently biased organization because its founders are ardent supporters of the Democrat and Republican parties.⁹ The court rejected this.¹⁰ Second, the plaintiffs argued that support from fifteen percent of the national electorate requires money and name recognition that is not realistically achievable for third-party candidates.¹¹ The court stated, “a threshold does not become ‘subjective’ merely because it is difficult to reach.”¹² Third, the plaintiffs suggested the FEC could change their standards completely and deny debate sponsors from using any polling requirement, which the court further rejects.¹³

The Framers of the U.S. Constitution envisioned a republic that leaves room for minority voices.¹⁴ America has strayed from this vision. However, there are multiple routes to return. First, the court could overrule *Level the Playing Field v. FEC*. The court could conclude that CPD is an inherently bipartisan group, and thus unqualified to host the debates, or that the CPD standards violate current FEC rules. Second, the FEC could revise their current rules to make eligibility more accessible to third-party candidates. However, unless the consequences of *Citizens United v FEC* are addressed, this first solution is unlikely to be effective. Of course, the Supreme Court could overrule this precedent and reinstate limits to campaign contribution. Alternatively, Congress could pass laws that require transparency in donating to Super PACs. At a minimum, Americans deserve to know who is funding presidential campaigns. Currently, presidency is only achievable for Democrats, Republicans, or self-made billionaires. But the forgoing solutions will restore our democracy and the vision that the Framers had for the United States of America. ○

References:

- 1 Gabriel Borelli, *Support for more political parties in the U.S. is higher among adults under 50*, PEW RESEARCH CENTER, (Oct. 9, 2023), <https://www.pewresearch.org/short-reads/2023/10/19/support-for-more-political-parties-in-the-u-s-is-higher-among-adults-under-age-50/>.
- 2 Geoffrey Skelly, *Why RFK didn't qualify for the first presidential debate*, ABC NEWS, (Jun. 20, 2024), <https://abcnews.go.com/538/rfk-jr-qualify-presidential-debate/story?id=111276848>.
- 3 *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 310 (2010).
- 4 Daniel I Weiner & Tim Lau, *Citizens United Explained*, BRENNAN CTR. FOR JUST., (Dec. 12, 2019) <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>.
- 5 *How to File a Complaint with the FEC*, FED. ELECTION COMM'N, <https://www.fec.gov/legal-resources/enforcement/complaints-process/how-to-file-complaint-with-fec/#:~:text=The%20Federal%20Election%20Commission%20administers,not%20within%20the%20FEC's%20jurisdiction> (last visited Feb. 25, 2025).
- 6 *The Commission on Presidential Debates: An Overview*, DEBATES.ORG, <https://www.debates.org/about-cpd/overview/> (last visited Feb. 25, 2025).
- 7 11 CFR §110.13(c) (2025).
- 8 *Level the Playing Field v. Fed. Election Comm'n*, 961 F.3d 462 (D.C. Cir. 2020).
- 9 *Id.* at 462.
- 10 *Id.* at 465.
- 11 *Id.*
- 12 *Id.* at 467.
- 13 *Id.*
- 14 See THE FEDERALIST NO. 10 (Alexander Hamilton) (J. Cooke ed., 1961).

Show Me the Money: Where Campaign Cash Goes When the Race Ends



By Kendall Coughlin

When Vice President Kamala Harris raised over \$1 billion in just three months for her 2024 presidential campaign, it begged the question: what happens to all that cash when the confetti settles and the race is over?¹ For most candidates, Election Day is not just the end of their

political aspirations—it is also the beginning of a complex financial unwinding process that, although is about as exciting as watching paint dry, is also incredibly consequential.

In the high-stakes poker game of American politics, the house always wins—but the losers don't get to take their chips home. Instead, they enter a labyrinth of regulations that would make even the most zealous accountant reach for an aspirin. The cornerstone of campaign finance law is crystal clear: no matter how much money you raise, you can't use it to buy that vacation home you've been eyeing. The Federal Election Commission ("FEC") prohibits candidates from converting campaign funds to personal use—a rule that has remained consistent even as other campaign finance regulations have evolved over time.²

Not surprisingly, the biggest rule for these funds is "no personal use."³ However, this was not always the case. Before 1989, retiring federal lawmakers could pocket extra cash for whatever personal luxuries they desired, from new cars to pet grooming services.⁴ The Ethics Reform Act slammed that particular piggy bank shut.⁵ Now, candidates who find themselves with a cash surplus after the ballots are counted have several legal options: pay off any campaign debts and expenses⁶ (a priority for most), return contributions to donors⁷ (rarely the first choice), donate to charitable organizations⁸ (popular with retiring politicians), transfer funds to political party committees⁹ (no limits here!), contribute to other candidates¹⁰ (up to \$2,000 per election), convert the campaign committee to a Political Action Committee,¹¹ or keep those dreams alive and save the funds for a future campaign.¹²

The timing of a campaign's end matters tremendously. When a candidate drops out mid-race—say, after losing a primary but before the general election—additional rules kick in. Contributions specifically designated for the general election must be refunded to donors within sixty days of dropping out if the candidate doesn't advance.¹³ Alternatively, with contributor permission, these funds can be redesignated for other purposes—a bureaucratic dance that campaigns would rather avoid.¹⁴ As Robert Kelner noted, an election law specialist at Covington & Burling, campaigns ideally spend money as it comes in to maximize winning chances, not stockpile it for a rainy post-election day.¹⁵

Super PACs play by slightly different rules. These political committees, which can raise unlimited sums but cannot coordinate directly with candidates, typically return leftover funds to donors after covering their wind-down costs.¹⁶ Nothing illustrates these rules

better than seeing how past campaigns have navigated the aftermath of electoral defeat. Former Senator Joseph Lieberman demonstrated perhaps the most altruistic approach, transferring funds from his Senate campaign to establish a college scholarship fund for Connecticut high school students.¹⁷ He also used some of the funds in his political war chest to organize his papers for donation to the Library of Congress—creating a legacy beyond his legislative work.¹⁸

The 2020 election cycle saw Mike Bloomberg make headlines by funneling a whopping \$18 million from his short-lived presidential campaign into the Democratic National Committee after dropping out, amounting to quite the parting gift.¹⁹ After losing his 2020 bid for Oregon's Fourth Congressional District, Republican Alek Skarlatos took a different approach, using \$93,000 in leftover campaign cash to seed a nonprofit veterans' group.²⁰

But not all campaigns end with a surplus. The 2024 Harris presidential campaign reportedly finished \$20 million in debt despite raising over \$1 billion.²¹ This echoes challenges faced by 2012 Republican primary candidates Newt Gingrich and Rick Santorum, who spent months post-campaign fundraising just to pay off their debts.²² Former presidential hopefuls Rudy Giuliani, Dennis Kucinich, and John Edwards took years to clear their campaign obligations.²³

While federal regulations apply to presidential and congressional campaigns, those running for state and local offices face a different landscape—one that varies dramatically depending on geography.²⁴ For example, Georgia's rules offer more flexibility than federal regulations, allowing leftover funds to be transferred to another campaign, saved for future campaigns, or donated to political parties and charities, all without the strictures of federal contribution limits.²⁵ Also, Oregon permits the use of campaign funds for "any lawful purpose" other than personal use—a broad standard that gives candidates considerable leeway.²⁶ Retiring lawmakers in Oregon might even use campaign funds to help spouses relocate to be near the state capital—something federal rules would scrutinize.²⁷

Enforcement of these regulations also varies widely. The FEC has been described as "an agency that was designed to fail because it requires bipartisan cooperation"—a commodity in short supply these days.²⁸ State oversight runs the gamut from robust to practically nonexistent.²⁹

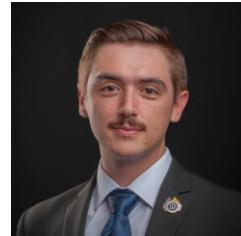
Following the money trail of defunct campaigns reveals more than just accounting practices—it offers insights into candidates' future intentions. Those who donate funds to their party or transfer them to other candidates often plan to remain politically active.³⁰ Conversely, politicians who direct surplus funds to charity are typically signaling their exit from public life.³¹

The rules governing campaign leftovers reflect our democratic values: transparency, accountability, and the principle that politics shouldn't be a path to personal enrichment. But the complex, sometimes contradictory, regulations also mirror our imperfect system. So next time you see a campaign commercial and wonder where your contribution might end up if your candidate doesn't win, remember: what happens in politics doesn't always stay in politics—but the money usually does. ○

References:

- 1 *Harris campaign hits \$1bn in fundraising: Reports*, AL JAZEERA (Oct. 9, 2024), <https://www.aljazeera.com/news/2024/10/9/harris-campaign-hits-1bn-in-fundraising-reports>.
- 2 Ethan Trex, *What Happens to Leftover Campaign Funds When a Candidate Drops Out?*, MENTAL FLOSS (Feb. 12, 2020), <https://www.mentalfloss.com/article/29636/what-happens-leftover-campaign-funds-when-candidate-drops-out>.
- 3 Jess Henig, *Leftover Campaign Funds*, FACTCHECK.ORG, <https://www.factcheck.org/2008/02/leftover-campaign-funds/> (last visited Feb. 10, 2025).
- 4 *Id.*
- 5 See Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716 (1989).
- 6 *Winding Down Costs*, FED. ELECTION COMM'N, <https://www.fec.gov/help-candidates-and-committees/winding-down-candidate-campaign/winding-down-costs/> (last visited Feb. 10, 2025).
- 7 Deborah D'Souza, *What Happens to Campaign Contributions After Elections?*, INVESTOPEDIA (Sept. 23, 2024) <https://www.investopedia.com/articles/markets/042716/what-happens-campaign-funds-after-elections.asp>.
- 8 Emery Winter & Casey Decker, *No, presidential candidates can't do whatever they want with leftover campaign funds*, VERIFY (Jan. 24, 2024) <https://www.verifythis.com/article/news/verify/elections-verify/leftover-campaign-funds-presidential-election-primaries-desantis-haley/536-51543d44-a175-4203-a489-c87689986e75>.
- 9 Hennig, *supra* note 3.
- 10 *Id.*
- 11 See Winter, *supra* note 8.
- 12 See D'Souza, *supra* note 7.
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*
- 16 See Trex, *supra* note 2.
- 17 Richard Briffault, *When presidential campaigns end, what happens to the leftover money?*, THE CONVERSATION (Feb. 12, 2020), <https://theconversation.com/when-presidential-campaigns-end-what-happens-to-the-leftover-money-130042>.
- 18 *Id.*
- 19 Megan Lebowitz, *Here's what happens to candidates' leftover money*, NBC NEWS (Nov. 16, 2022), <https://www.nbcnews.com/meet-the-press/meetthepressblog/s-happens-candidates-leftover-money-rcna57340>.
- 20 Pat Dooris & Jamie Parfitt, *What do candidates do with campaign funds after the election is over?*, KGW8, (Nov. 10, 2022), <https://www.kgw.com/article/news/local/the-story/campaign-funds-cash-spending-after-election-day/283-8f61ea0d-5897-4ba7-bc3b-7010504f27d3>.
- 21 Dwayne Oxford, *How did Kamala Harris's campaign rack up a debt after record fundraising?*, AL JAZEERA (Nov. 14, 2024), <https://www.aljazeera.com/news/2024/11/14/how-did-kamala-harriss-campaign-rack-up-a-debt-after-record-fundraising>.
- 22 See Briffault, *supra* note 17.
- 23 *Id.*
- 24 *Federal campaign finance laws and regulations*, BALLOTPEDIA, https://ballotpedia.org/Federal_campaign_finance_laws_and_regulations (last visited Jan. 28, 2025).
- 25 Chris Grant, *Campaign Finance Laws*, NEW GEORGIA ENCYCLOPEDIA, (Feb. 20, 2013), <https://www.georgiaencyclopedia.org/articles/government-politics/campaign-finance-laws/>.
- 26 See Dooris, *supra* note 20.
- 27 *Id.*
- 28 See Lebowitz, *supra* note 19.
- 29 See *Campaign Finance Regulation: State Comparisons*, NAT'L CONF. OF STATE LEGISLATORS (Oct. 24, 2022), <https://www.ncsl.org/elections-and-campaigns/campaign-finance-regulation-state-comparisons>.
- 30 See Lebowitz, *supra* note 19.
- 31 *Id.*

Casting a Moral Ballot: Avoiding the Formal Cooperation with Evil According to Classical Natural Law Principles



By Vincent DeStefano

*“With great power comes great responsibility. Remember that, Pete. Remember that.”*¹

With issues surrounding the intrinsic dignity of the human person now so frequently on the ballot it has never been more relevant to discuss the moral quality of the political right to vote. According to

Scripture and prescribed by the natural law, governing bodies possess an intrinsic authority over their subjects, and likewise, the governing body owes its subjects an atmosphere conducive to the cultivation of virtue and human flourishing.² The American democratic system, however, presents a unique moral dynamic, that is, the line between the governor and the governed is significantly blurred.³ While the citizen is not *directly* responsible for the laws of the state, he is responsible for vesting that power in an elected official.⁴ This political right to vote, then, carries with it the following twofold duty: (1) the civic/political duty *to* vote, so that there may be elected officials, and (2) the ethical duty to vote *morally*, so as to uphold the common good and promote human flourishing. With this conclusion, the essential question follows: What does ethical voting entail? To answer this question, it is necessary to turn to the writings of St. Thomas Aquinas to understand the natural law, the nature of human action, and the cooperation with evil.

According to Saint Thomas, the natural law, understood morally, is a rational creature's participation in the eternal law, or God's divine providence.⁵ As rational beings, humans are uniquely situated in determining the will and intention of our Creator, and those things that are not in accordance with it, are, effectively, “immoral.”⁶ These natural, moral precepts, then, ought to be reflected and considered by our human laws.⁷ Saint Thomas shows us that the natural law is applied practically in our human laws by way of “determination.”⁸ This determination begins with the raw moral precept that originates from pure human reason, such as “thou shalt not kill (murder).”⁹ The practical and positive application, or determination, of these precepts, however, is a matter of cultural and societal preference and prudence; so long as they sufficiently prohibit the evil conduct or promote goodness.¹⁰ For example, the prohibition of murder and the length of sentencing for murder are of the same *positive* quality but differ radically as to their *moral* content. Accordingly, in following the natural law, one must strive to avoid participation in the implementation of laws that are contrary to the first-order natural precepts reflected in the human law. This, however, raises the next question: What does it mean to “participate” in the implementation of these laws?

While Saint Thomas himself does not use the language of participation or “cooperation” with evil, early modern thinkers like St. Alfonsus Ligouri and contemporary thinkers like the renowned Thomist, Dr. Steven A. Long, have pieced together a clear-cut theory for him.¹¹ According to Long, there are two categories of cooperation: (1) formal cooperation; and (2) material cooperation.¹² An actor formally cooperates with evil when he provides “direct and essential aid . . . with respect to the object of the agent’s act,” and materially cooperates with evil when the assistance is “purely circumstantial.”¹³ Finally, Long demonstrates that each category operates on a spectrum, that is, an actor’s cooperation may be more or less formal, or more or less material.¹⁴ Along these lines, he introduces the highest level of cooperation, “most formal” cooperation.¹⁵

Now, with the natural law addressed, and the categories of cooperation established, the act of voting can be properly analyzed with respect to its moral quality. All human acts, as opposed to mere “acts of man,” arise out of the rational powers of the intellect and the will.¹⁶ The intellect, through the operation of the speculative powers of man, contributes to the informed nature of the action, whereas the will is directed by human desire and choice.¹⁷ There are few human acts that encompass these powers more than the act of voting in a democratic election. As stated above, American citizens have the unique power to contribute almost directly to how they themselves are governed.¹⁸ As the epigraph of this paper foreshadowed, Americans have a great power to alter the course of their country, and accordingly, they must act with great care in exercising their political right to vote.¹⁹

Accordingly, it is a direct violation of natural law principles to consciously vote for a law or official that will violate a first-order natural law precept, such as “thou shalt not murder.”²⁰ The moral weight and culpability of the cooperation through voting is determined by the requisite knowledge of the voter regarding the law or official. Therefore, if an individual votes for a provision that legalizes and expands access to abortion, he would be in formal cooperation with evil of the unjust taking of human life. Conversely, if an individual, following his moral compass to the best of his ability, votes in favor of a provision legalizing recreational marijuana, he would have likely only *materially* cooperated with any negative effects that stem from its ratification. This is because the act of murder is a self-evident violation of the natural law, whereas the moral quality of smoking recreational marijuana is far more ambiguous and questionable in nature.

When exercising the political right to vote, it is helpful to heed Long’s words when he states, “what is true of *operation*, pertains also to *co-operation*.”²¹ That is, if the voter believes that his execution of the act that the provision or official supports would violate natural law principles, his vote for such a provision or official would also be in formal cooperation with the act, and accordingly, the violation. ○

References:

- 1 SPIDER-MAN (Sony Pictures 2002).
- 2 See *Romans* 13:1-7; *Ephesians* 5:21-33; THOMAS AQUINAS, *SUMMA THEOLOGICA* I-II, q. 90, a. 4 (Fathers of the English Dominican Province trans., Benziger Bros. 1947).
- 3 See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 96-97 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund, Inc. 2010) (highlighting the American citizen’s role in the election of governing officials).

- 4 *Id.*
- 5 AQUINAS, *supra* note 2, at I-II q. 91, a. 2.
- 6 *Id.* at I-II q. 94, a. 4.
- 7 *Id.* at I-II q. 95, a. 2.
- 8 *Id.*
- 9 *Id.*
- 10 See *Id.*
- 11 STEVEN A. LONG, *THE TELEOLOGICAL GRAMMAR OF THE MORAL ACT* 210-11 (2d ed. 2015).
- 12 *Id.* at 211.
- 13 *Id.* at 210.
- 14 *Id.*
- 15 *Id.*
- 16 *Id.* at 67.
- 17 *Id.* at 96.
- 18 See DE TOCQUEVILLE, *supra* note 3.
- 19 SPIDER-MAN, *supra* note 1.
- 20 See LONG, *supra* note 11.
- 21 *Id.*

Democracy Denied: The Unconstitutional and Unethical Reality of Felon Disenfranchisement

By Mallory Fernandes



The ballot box is often seen as the great equalizer in American democracy, where every citizen has a voice. Yet, for millions of Americans, their voice is silenced; not because of age, residency, or citizenship status, but because of a past felony conviction. The practice of

felon disenfranchisement is rooted in a long and often troubling history centered around the balancing act of legal, moral, and social implications. While many citizens still support felon disenfranchisement, others disagree with it in its entirety, leaving lawmakers to continuously question whether the right to vote is entirely inalienable or whether a past mistake should serve as a permanent muzzle on one’s democratic voice.

Felon disenfranchisement is a policy in American law where courts strip voting rights from people who have committed felonies. While supporters argue it protects election integrity, its compatibility with democratic values and constitutional rights remains deeply contested. The Fourteenth and Fifteenth Amendments protect the right to vote, allowing restrictions only under specific conditions.¹ But when those restrictions target specific groups and are enforced indefinitely, they risk violating fundamental principles of fairness and equality. Given the discriminatory history and racially biased impact of felon disenfranchisement laws, these policies undermine core social justice principles and raise serious concerns about excluding convicted felons from the electorate.

From a historical perspective, the roots of felon disenfranchisement laws were developed from the doctrine of “civil death,” a legal concept from English common law.² According to this principle, convicted individuals who committed serious offenses would permanently lose their rights to vote or hold public office positions.³ In the U.S., these

laws expanded significantly during the Reconstruction era, when Southern states deliberately weaponized these laws in response to the abolition of slavery.⁴ In essence, laws were intentionally designed to disproportionately target Black individuals and aimed to effectively revoke their voting rights through harsh legal consequences.⁵ These measures were passed alongside other racially discriminatory tools, such as literacy tests, poll taxes, and grandfather clauses, all aimed at preserving White political dominance.⁶ With this historical backdrop, contemporary felon disenfranchisement practices maintain their ties to racist voter suppression systems.

Unfortunately, the Fourteenth Amendment of the Constitution allows felony-based disenfranchisement to continue, despite its clear conflicts with universal suffrage principles. Section II gives states unrestricted power to determine voting rights restrictions for convicted offenders, a power that has been validated by the U.S. Supreme Court.⁷ The Court established this interpretation through its landmark ruling in *Richardson v. Ramirez*, which affirmed that states are permitted to lawfully prevent convicted felons from voting without violating Equal Protection Clause standards.⁸

However, although the U.S. Constitution allows voting rights limitations, it neither defines nor approves permanent voting exclusion. The Fourteenth and Fifteenth Amendments were designed to expand civil rights and eliminate discriminatory voting barriers, not to create new forms of voter suppression. The decision overlooked the racial and social inequalities embedded in laws that restrict voting rights.⁹ As public awareness of civil and voting rights continues to grow, courts should revisit this precedent. Felon disenfranchisement, especially when applied indefinitely, contradicts the foundational democratic principle that every citizen deserves a voice in the political process.

Furthermore, the racial inequities embedded in felon disenfranchisement laws present one of the strongest constitutional challenges to their continued use. Systemic inequalities in the criminal justice system cause Black and Latino populations to face disproportionate imprisonment rates compared to their White counterparts.¹⁰ As a result of disenfranchisement laws, minority communities lose their voting rights disproportionately, ultimately losing their democratic voice and decreasing their political influence.¹¹ This stands in direct opposition to the protections afforded by the Equal Protection Clause of the Fourteenth Amendment, which states that every citizen should receive equal treatment under the law.¹²

The conflict between felon disenfranchisement laws and the Equal Protection Clause of the Fourteenth Amendment reveals a troubling reality: the laws systematically violate the fundamental rights of marginalized populations while reinforcing historical racial inequalities. By disproportionately impacting communities of color, such policies undermine the very principle of equal protection and stand in direct opposition to core Constitutional guarantees.

The Supreme Court has used its authority in the past to strike down discriminatory voting practices, such as racial gerrymandering, poll taxes, and literacy tests, that suppressed minority participation.¹³ Yet, it continues to uphold felon disenfranchisement law that achieves a

similar result: the denial of democratic representation for millions, particularly within minority communities.

On the other side, many of the supporters of felon disenfranchisement maintain that losing voting rights is the natural consequence of criminal activities. They maintain accountability and maintain the democratic system's integrity. Overall, these arguments overlook how criminal justice goals are built to help rehabilitate offenders while reintegrating them into society.

The goal of rehabilitation through incarceration directly conflicts with permanent disenfranchisement since it means the denial of democratic rights to individuals who aim to become law-abiding citizens. Research indicates that granting voting rights to ex-felons increases civic participation and decreases misdemeanors because it establishes their role in society and may reduce the chance of recidivism.¹⁴ In contrast, social alienation increases through persistent disenfranchisement, so it produces a permanent underclass of people excluded from governance. These policies not only hinder rehabilitation but also violate core Constitutional values.

Under a Catholic social justice perspective, the elimination of voting rights for convicted felons stands as an unacceptable moral policy. Catholic doctrine upholds the inherent dignity of every human being, including those who have committed crimes.¹⁵ Core teachings of the Church emphasize forgiveness, redemption, and reintegration into society; principles that are fundamentally at odds with the permanent social exclusion imposed by felon disenfranchisement.¹⁶ The United States Conference of Catholic Bishops has advocated for comprehensive criminal justice, including the restoration of voting rights for former offenders.¹⁷ Catholic social teaching calls for a special concern for the poor and marginalized, who are disproportionately impacted by systemic injustices.¹⁸ Not only do disenfranchisement laws disproportionately affect racial minorities and economically disadvantaged individuals, they violate both the spirit and substance of Catholic social ethics.

Felon disenfranchisement is an unfair limitation that is contrary to the fundamental democratic principles upon which America was founded. While states currently possess the Constitutional authority to limit felons' voting rights, those policies fail to meet the fair, successful, or current civil rights standards. From a legal and a moral standpoint, the continued disenfranchisement of formal felons is indefensible. A truly democratic society must ensure that all citizens, regardless of their history, have a voice in shaping the future. To uphold the values of justice, equality, and democracy, the United States must abolish felon disenfranchisement and guarantee full voting rights for all its citizens. ○

References:

- 1 U.S. CONST. amend. XIV.
- 2 Pamela Wilkins, *The Mark of Cain: Disenfranchised Felons and the Constitutional No Man's Land*, 56 SYRACUSE L. REV. 85 (2005).
- 3 *Id.*
- 4 Danyelle Solomon, *Systematic Inequality and American Democracy*, THE CTR. FOR AM. PROGRESS, <https://www.americanprogress.org/article/systematic-inequality-american-democracy/> (last visited Mar. 18, 2025).
- 5 *Id.*
- 6 *Id.*
- 7 U.S. CONST. amend. XIV, § 2.

- 8 *Richardson v. Ramirez*, 418 U.S. 24 (1974).
- 9 Manoj Mate, *Felony Disenfranchisement and Voting Rights Restoration in the States*, 22 NEV. L.J. 967 (2022).
- 10 *Report to the United Nation on Racial Disparities in the U.S. Criminal Justice System*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/> (last visited March 18, 2025).
- 11 Chris Uggen, et.al., *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, THE SENTENCING PROJECT (Oct. 20, 2020), <https://www.sentencingproject.org/reports/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>.
- 12 U.S. CONST. amend. XIV.
- 13 *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (U.S.Va. 1966).
- 14 Press Release, *New Report: Restoring Voting Rights for People with Felony Convictions Can Improve Public Safety*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/press-releases/new-report-restoring-voting-rights-for-people-with-felony-convictions-can-improve-public-safety/> (last visited March 18, 2025).
- 15 *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, U.S. CONF. OF CATH. BISHOPS (<https://www.usccb.org/resources/responsibility-rehabilitation-and-restoration-catholic-perspective-crime-and-criminal>) (last visited March 18, 2025).
- 16 *Id.*
- 17 *Id.*

Willful Blindness: Federal Manipulation of Electoral Boundaries Through Census Data, Redistricting, and Gerrymandering



By Brendan Coughlan

“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing— one person, one vote.”¹ The true essence of what these authorities represent invites us

to consider how they can only mean something else—one citizen, one vote. In 2016, the Supreme Court of the United States ruled that the total population for the upcoming 2020 census would include all individuals residing in the U.S., regardless of citizenship.² As of June 2023, the population of illegal immigrants living in the U.S. is estimated at 16.8 million.³ This excludes a horrific year for the U.S. border in 2024.⁴ After the *Rucho v. Common Cause* decision, the federal government has turned a blind eye to political tactics surrounding the census and redistricting,⁵ posing a big problem for the integrity of elections.

The political manipulation of census data and redistricting practices leveraged through the ongoing open-border crisis represents a form of federal gerrymandering. By intentionally changing the electoral boundaries to benefit political interests, this manipulation undermines the democratic process, violates the principle of fair representation, and threatens the integrity of future elections. It grants the executive branch disproportionate power over congressional mapping, making this issue crucial to protecting constitutional guarantees of equal representation.

The total U.S. population count is used for congressional and Electoral College apportionment.⁶ The Supreme Court has determined that all persons residing in the U.S. are counted, including illegal aliens and noncitizens.⁷ The Constitution mandates redistricting every ten years based on census data.⁸ When millions of noncitizens are added to the population count, it inflates, distorts, and reshapes congressional district maps.⁹ Districts with inflated counts gain more representatives in the House, while districts with predominantly U.S. citizens may lose seats. This brings us to gerrymandering, defined as “the practice of drawing the boundaries of electoral districts in a way that gives one political party an unfair advantage over its rivals.”¹⁰

Traditionally associated with state power, gerrymandering originates from former Massachusetts Governor Elbridge Gerry, who in 1812 enacted legislation that unfairly misrepresented the Federalist Party.¹¹ In 2019, Chief Justice Roberts delivered a five to four majority opinion ruling that partisan gerrymandering presents political questions beyond the reach of the federal courts, effectively closing the door on federal judicial intervention in partisan gerrymandering cases.¹² According to the majority, it is up to state legislatures, not the federal courts, to determine when gerrymandering has gone too far.¹³

The *Rucho* decision opened the door to unchecked electoral strategies, particularly for presidential administrations to direct significant populations of noncitizens toward swing states without any judicial oversight. During the Biden administration, large masses of illegal immigrants were directed toward swing states, such as Georgia, Arizona, and Pennsylvania.¹⁴ It is not far-fetched to imagine state actors being used as Presidential pawns to achieve the goals of gerrymandering. As Representative Yvette Clarke (D-NY) remarked during a 2021 hearing, her district “can absorb a significant number of these migrants,” adding, “I need more people in my district just for redistricting purposes.”¹⁵ Similarly, Senator Brian Schatz (D-HI) opposed removing noncitizens and illegal aliens from the census, stating that “it would clearly be a disadvantage to Democrats.”¹⁶ This type of subterfuge, occurring amidst a self-imposed open-border crisis, exemplifies “federal gerrymandering”—a new form of manipulation at the federal level. While this is completely uninterrupted after *Rucho*, the implications it will have on the country are deeply concerning.

As of May 8, 2024, the Equal Representation Act passed the House of Representatives and awaits Senate approval.¹⁷ The Act sets out the following criterion for the 2030 Census and each decennial census thereafter: “[1] to require a citizenship question on the decennial census, [2] to require reporting on certain census statistics, and [3] to modify apportionment of Representatives to be based on United States citizens instead of all individuals.”¹⁸ The constitutionality of this bill hinges on the intent of the Framers. Section Two of the Fourteenth Amendment states:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed . . . But when the right to vote at any election for the choice

of electors . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged . . . the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.¹⁹

The pride of being a United States citizen ought to mean something, and this includes the right to vote without having that right abridged through manipulation by one's own elected representatives. The possibility of fear and nonresponse to the census from households with undocumented individuals does not hold weight; H.R.7109 would introduce a citizenship checkbox, providing a basic understanding of the U.S. population.²⁰ Furthermore, the argument that including noncitizens in the census contributes to more federal resources and GDP is a flawed concept that essentially throws good money after bad.

The goal here is not perfection, or as the Supreme Court has stated, “draw[ing] congressional districts with mathematical precision.”²¹ Instead, it is about safeguarding the fundamental principles of democracy that grant equal representation for every citizen. The manipulation of electoral boundaries through census data and redistricting threatens not only the integrity of our electoral system but also the trust that citizens place in the voting process. The argument that Democrats have not gained seats in the House because of illegal immigration is preposterous—this assertion relies on 2020 Census data, which was collected before Biden's ineffective and incompetent handling of the U.S. border.

The issue of federal gerrymandering reflects a prioritization of political gain over individual rights, masked as virtuous liberation. The federal courts must step in to prevent this manipulation, ensuring that the interests of true Americans take precedence over partisan ambitions. Upholding the constitutional promise of one citizen, one vote requires vigilance and action against those who continue to distort our democracy for their own ends. Only through judicial involvement and vicarious representation can we protect the principles of fairness and equality that are vital to the life of our republic. ○

References:

- 1 Gray v. Sanders, 372 U.S. 368, 381 (1963).
- 2 Evenwel v. Abbott, 578 U.S. 54 (2016).
- 3 Fair Immigration Reform Movement, *How Many Illegal Aliens Are in the United States? (2023 Update)*, FAIR, (June 22, 2023), https://www.fairus.org/sites/default/files/202306/2023%20Illegal%20Alien%20Population%20Estimate_2.pdf.
- 4 American Immigration Council, *Mass Deportation: Devastating Costs to America, Its Budget and Economy*, AIC, (Oct. 2, 2024), <https://www.americanimmigrationcouncil.org/research/mass-deportation>.
- 5 Rucho v. Common Cause, 588 U.S. 684, 699 (2019).
- 6 U.S. CONST. art. I, § 2.
- 7 *Evenwel*, 578 U.S. at 54.
- 8 U.S. CONST. art. I, § 2.
- 9 *Evenwel*, 578 U.S. at 54.
- 10 Brian Duignan, *Gerrymandering*, BRITANNICA (Sep. 21, 2024).
- 11 *Id.*
- 12 *Rucho*, 588 U.S. at 699.
- 13 *Id.*
- 14 American Immigration Council, *New Data Analysis: Immigrants Driving*

Opportunity, Prosperity in the U.S., Including in Swing States, AIC, (June 5, 2024), <https://www.americanimmigrationcouncil.org/news/new-data-immigrants-driving-prosperity-in-united-states-2022>.

15 Lora Ries & RJ Haufman, *Stop Allowing Noncitizens to Determine Congressional and Presidential Representation*, The Heritage Foundation, (Feb. 8, 2024), <https://www.heritage.org/immigration/commentary/stop-allowing-noncitizens-determine-congressional-and-presidential>.

16 Bill Haggerty, *Equal Representation Act*, Bill Haggerty, U.S. Senator for Tennessee, (May 16, 2024).

17 Equal Representation Act, H.R. 7109, 118th Cong. (2024).

18 *Id.*

19 U.S. CONST. art. I, § 2, cl. 3.

20 Equal Representation Act, H.R. 7109, 118th Cong. (2024).

21 *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964).

Paths to Presidency and Papacy: Comparing the Electoral College and the College of Cardinals



By Victoria Porter

Author's note: As this article was going to publication, Pope Francis passed away on Easter Monday, April 21, 2025. The Holy Father leaves behind a legacy of humility and reform within the Church, and he will be greatly missed. May he rest in peace.

His Holiness Pope Francis has encouraged Catholics in the United States to participate in government, encouraging them in 2024 to vote for “the lesser evil.”¹ However, some voters, Catholic or not, have lost faith in the election system that ultimately depends on electors to determine who will lead the United States for the next four years.² Back in Rome, Pope Francis received his appointment in much the same way: a select group of electors, known as Cardinals, chose him as Bishop of Rome in 2013.³ The Electoral College has been a hot topic in the United States in recent years, particularly considering Donald Trump's controversial election in 2016. As this article is being written during the height of the 2024 election season, Americans once again find themselves asking: what is the electoral college, and does it really work?

The Electoral College and the Sacred College of Cardinals are both, in a sense, republican. Each is an example of an indirect democracy in which a group of individuals represent the entire population and vote to elect a leader on the public's behalf.⁴ These two institutions function similarly, and each has its own critics.⁵

The Electoral College emerged during the Constitutional Convention as a compromise between direct and congressional elections of the President.⁶ Outlined in Article II and the Twelfth Amendment of the United States Constitution,⁷ this system has long been controversial, with critics calling for its abolition, particularly due to concerns it undermines the principle of one person, one vote.⁸ They argue the winner-takes-all approach adopted by most states distorts the individual voting power, leaving many citizens feeling disenfranchised.⁹

Catholics around the world have been calling for reform to the papal

election process. In 1059, Pope Nicholas II published a papal bull that reformed the election process by assigning the task of electing the Pope to the Cardinals.¹⁰ In 1268, the death of Pope Clement IV marked the beginning of an election process that lasted nearly three years and ended only after the cardinals were sequestered in their palace and its roof was removed.¹¹ After this election finally produced Pope Gregory X in 1271, the new Pope sought to further reform the process and avoid such inefficiency in the future. In 1274, at the Second Council of Lyons, he established the conclave as the means of electing future Popes.¹² Pope Boniface VIII incorporated the process into canon law in 1298, and it has remained the standard procedure for papal elections since.¹³

While some voters and lay faithful may well understand the electoral processes, many are blind to the mechanics by which the votes are cast. In the United States, a presidential election takes place every four years.¹⁴ The process is lengthy, with candidates typically registering around eighteen months before election day.¹⁵ Candidates must be natural-born citizens of the United States, be at least thirty-five years old, and have been a resident of the United States for at least fourteen years to register.¹⁶ Electors have fewer requirements: they cannot hold certain offices like Senator or Representative, and must not have engaged in insurrection against the United States.¹⁷ Political parties in each state select electors, often choosing officials or party loyalists.¹⁸ When citizens vote for a candidate in the general election, they are actually voting for that candidate's electors.¹⁹

These electors vote on the first Monday after the second Wednesday in December.²⁰ States vary on how each elector votes.²¹ In Maine and Nebraska, the electors are assigned proportionally to the popular vote,²² while other states award all electoral votes to the popular vote winner.²³ To win the presidency, a candidate must receive 270 electoral votes.²⁴ If no candidate receives the required votes, the vote goes to the House of Representatives.²⁵

Elections in Rome are far less frequent, with a new pope being elected only when the prior pope dies or resigns.²⁶ Unlike many political elections, papal candidates need not declare an intent to run.²⁷ In fact, any baptized Roman Catholic man can be elected as pope, and a layman who is elected would be immediately ordained as bishop.²⁸ The Cardinals are selected by the Pope and serve lifelong appointments, though only those under eighty can vote for a new pope.²⁹ While the laity do not elect Cardinals, papal appointments may reflect broader cultural trends and the Pope's vision for the Church's future.

Voting Cardinals gather in Rome shortly after the death or resignation of the Pope.³⁰ They gather in the Sistine Chapel and take an oath of secrecy.³¹ They vote by secret handwritten ballots, which are then counted out loud.³² Two-thirds of the votes are needed to elect a pope.³³ If no man receives this amount, the process repeats, four times per day until an election is made.³⁴ When a successful election is made and the elected accepts his election, the ballots are burned in a stove with a mixture of chemicals, which produce the white smoke that signals to the world that a new pope has been elected.³⁵

The election process is repeated as many times as necessary, with the longest being the nearly three-year election of Pope Gregory X.³⁶

In Rome, a papal election typically follows the Pope's death. But with Benedict XVI's 2013 resignation, and concerns about Pope Francis's health, just as Americans watch the news on Election Night to see the states turn red or blue, Catholics around the world may soon be focused on the Sistine Chapel, watching for black or white smoke.

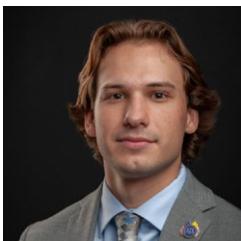
These power transfers significantly affect American Catholics as they are the intersection of law and religion. The President can sign legislation, veto bills, and nominate federal officials. Similarly, the Pope can advocate for the Church's position on important issues, publish guidance to worldwide Church leaders, and appoint bishops and cardinals. While Americans participate directly by voting in the election of the President, Catholic laity can indirectly influence papal selection by voicing concerns to priests and bishops and praying for the electing cardinals. Understanding the form and function of each of these election processes allows individuals to participate in the election processes to the highest extent, making informed decisions while appreciating their impact. ○

References:

- 1 *Press Conference During the Return Flight from Singapore*, THE HOLY SEE (Sept. 13, 2024), <https://www.vatican.va/content/francesco/en/speeches/2024/september/documents/20240913-singapore-voloritorno.html>.
- 2 Jocelyn Kiley, *Majority of Americans Continue to Favor Moving Away from Electoral College*, PEW RESEARCH CENTER (Sep. 25, 2024), <https://www.pewresearch.org/short-reads/2024/09/25/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/>.
- 3 *Biography of the Holy Father Francis*, THE HOLY SEE, <https://www.vatican.va/content/francesco/en/biography/documents/papa-francesco-biografia-bergoglio.html>.
- 4 *Electoral College*, USA.GOV, <https://www.usa.gov/electoral-college#:~:text=In%2048%20states%20and%20Washington,to%20win%20the%20presidential%20election> (last updated Jan. 13, 2025); *How Is a New Pope Chosen?*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, <https://www.usccb.org/offices/general-secretariat/how-new-pope-chosen#:~:text=The%20cardinals%20vote%20by%20secret,two%2Dthirds%20of%20the%20vote;1983%20CODE%20c.349>.
- 5 See *supra* note 2; Thomas Reese, *Pope Francis Needs to Reform Papal Election Process – Carefully*, NATIONAL CATHOLIC REPORTER (Mar. 11, 2024), <https://www.ncronline.org/opinion/guest-voices/pope-francis-needs-reform-papal-election-process-carefully#:~:text=Before%20he%20retires%20or%20dies,pope%20is%20not%20divinely%20inspired>.
- 6 *Electoral College History*, NATIONAL ARCHIVES, [https://www.archives.gov/electoral-college/history#:~:text=The%20Founding%20Fathers%20established%20the,not%20appear%20in%20the%20Constitution.\(Jun.26,2024\)](https://www.archives.gov/electoral-college/history#:~:text=The%20Founding%20Fathers%20established%20the,not%20appear%20in%20the%20Constitution.(Jun.26,2024)).
- 7 U.S. CONST. AMEND. XII.
- 8 Thomas Tai, *One Person, One Vote: How Does the Electoral College Work?*, LEAGUE OF WOMEN VOTERS (Feb. 15, 2024), <https://www.lwv.org/blog/one-person-one-vote-how-does-electoral-college-work>.
- 9 *Id.*
- 10 Pope Nicholas II, Papal Bull *In nomine Domini* (Apr. 1059).
- 11 *Understanding the Role of the Conclave and the Papal Election Process*, LACROIX INT'L (Oct. 12, 2024), <https://international.la-croix.com/religion/understanding-the-role-of-the-conclave-and-the-papal-election-process>.
- 12 Second Council of Lyons, *Constitution on Election and the Power of the Elected Person*, THE HOLY SEE, (1274).
- 13 1983 CODE c.349
- 14 *Overview of the Presidential Election Process*, USA.GOV (last updated Feb. 25, 2025), <https://www.usa.gov/presidential-election-process>.
- 15 *Id.*

- 16 U.S. CONST. ART. II, cls. 1-4.
 17 USCS CONST. AMEND. XIV
 18 *About the Electors*, NATIONAL ARCHIVES, <https://www.archives.gov/electoral-college/electors#selection> (last visited Mar. 2, 2025).
 19 *Id.*
 20 *What is the Electoral College?*, NATIONAL ARCHIVES <https://www.archives.gov/electoral-college/about> (last visited Mar. 2, 2025).
 21 *Id.*
 22 *Id.*
 23 *Id.*
 24 *Id.*
 25 *Id.*
 26 *How Is a New Pope Chosen?*, UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, <https://www.usccb.org/offices/general-secretariat/how-new-pope-chosen#:~:text=The%20cardinals%20vote%20by%20secret,two%2Dthirds%20of%20the%20vote> (last visited Mar. 10, 2025).
 27 *Id.*
 28 1983 CODE c.322.
 29 1983 CODE c.351.
 30 *Id.*
 31 *Id.*
 32 *Id.*
 33 *Id.*
 34 *Id.*
 35 *Id.*
 36 Zenit, *Some of the History of Conclaves*, EWTN GLOBAL CATHOLIC NETWORK, <https://www.ewtn.com/catholicism/library/some-of-the-history-of-conclaves--1846> (last visited Mar. 15, 2025).

Same-Day Voter Registration: Fraudulent or Convenient?



By Quinten Zak

With the technological advances in modern society, life has grown more convenient. It has come to be something people expect, and voting is the same way. Thus, Same-Day Voting Registration (“SDR”) and Election Day Registration (“EDR”) were established. EDR and SDR

allow for people to register and vote in a single action, producing a more convenient voting scheme.¹

As of June 2024, twenty-three states and the District of Columbia allow SDR, which allows voters to both register and vote at the same time.² Further, twenty states and the District of Columbia allow EDR, which allows voters to register and vote on Election Day.³ These states adopted SDR and EDR to increase voter turnout by decreasing the amount of actions needed to vote.⁴ While these convenient voting systems offer benefits, they also carry the potential for negative side effects. The question is whether the convenience of EDR and SDR outweighs the potential negative side effects.

The argument for EDR and SDR is that these systems increase voter turnout because of the convenient and efficient process. In 2008, twelve states permitted some form of SDR.⁵ One of those states, North Carolina, saw an increase of 8% from 2004 to 2008.⁶ Further, in a study conducted on EDR states, there was an increase of about 4% to 6% in overall voter turnout.⁷ Therefore, SDR and EDR do

increase voter turnout by roughly twenty to twenty-six million people.⁸ This increase of voter turnout could produce more accurate results because the elections will survey more of the population.

Similarly, some research reports suggest that registration and voter turnout were higher on average in EDR and SDR states compared to non-EDR/SDR states.⁹ For example, 77.3% of the eligible population was registered to vote in non-EDR/SDR states while 88.8% of the eligible population was registered in EDR/SDR states.¹⁰ Furthermore, in EDR and SDR states, 65.6% of registered voters turned out while only 50.5% of registered voters actually cast their ballot in non-EDR/SDR states.¹¹ That is a 15% increase in registered voter turnout. These results are contributed to the convenience factor of showing up at the polling centers to register and vote instead of figuring out weeks before the election where to register, working through the requirements, and filling out the application materials.¹² The numbers align with the theory that the more convenient voting schemes produce more voters on Election Days.

Conversely, SDR and EDR can leave the voting system vulnerable to fraud, error, and overwhelming administrative burdens. The EDR and SDR voting process become accelerated which leads to errors and opens the door to fraud. For example, in Wisconsin, a federal investigation showed clerical errors, poll worker shortages, and incompetence within the polling centers due to SDR and EDR.¹³ In North Carolina, counties were unable to verify registration cards, which allowed for duplicate votes and by the time the error was caught, it was too late.¹⁴ This is contributed to the way SDR and EDR are set up where one could theoretically vote early in one county, then vote in neighboring counties because of the long processing time.¹⁵ In Michigan, a SDR state, almost every county with over 50,000 people has a registration rate of 100 percent, hinting at there being more votes than people registered.¹⁶ These errors can be contributed to the overload of voter turnout in SDR and EDR states.

SDR and EDR not only lead to error and potential fraud but also increases the administrative burden on poll workers. One reason for the increase of administrative burden is EDR and SDR make it difficult to estimate ballot turnout, which makes it hard to estimate workers needed at each polling station.¹⁷ If underestimated, the influx of EDR voters could lead to more error, duplicates, ineffective identification verification, and fraudulent voting.¹⁸ Further, there is a shortage of poll workers to verify each EDR/SDR voter. States, such as Nebraska, resort to drafting people to meet the polling needs. Poll workers in these states expressed they are overwhelmed by the amount of work on election day.¹⁹ The administrative burden and the lack of poll workers could lead to more inaccurate results or the potential for fraud in EDR and SDR states.

Voting turnout has always been a problem, especially for the younger generations. SDR and EDR seem to be a solution for that problem. SDR and EDR make it convenient for voters because instead of multiple actions to vote, EDR and SDR only require one action. On its face, the numbers show an increase of turnout, but these systems can leave the door open for a slew of problems. Thus, although

SDR and EDR might lead to more accurate results as voter turnout improves, the present system opens the door to voter fraud and more mistakes. With voter fraud on the forefront of people's mind after the 2020 election, it seems SDR and EDR has opened the door to more problems than they have solved. ○

References:

- 1 BARRY C. BURDEN, ET AL., THE EFFECTS AND COSTS OF EARLY VOTING, ELECTION DAY REGISTRATION, AND SAME DAY REGISTRATION IN THE 2008 ELECTIONS (2009).
- 2 *Same-Day Voter Registration*, NAT'L CONF. OF STATE LEGISLATORS (Oct. 25, 2011), <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration>.
- 3 *Id.*
- 4 BARRY C. BURDEN, ET AL., *supra* note 1.
- 5 *Id.*
- 6 *Id.*
- 7 Craig L. Brians & Bernard Grofman, *Election Day Registration's Effect on U.S. Voter Turnout*, in SOCIAL SCIENCE QUARTERLY Vol 82, 170, 170 (2001).
- 8 Aaron O'Neill, *Voting populations and number of votes case in U.S. presidential elections from 1824 to 2020*, STATISTA (Jul. 4, 2024), <https://www.statista.com/statistics/1139763/number-votes-cast-us-presidential-elections/>.
- 9 R. MICHAEL ALVAREZ, ET AL., *Election Day Voter Registration in the United States How One-Step Voting Can Change the Composition of the American Electorate*, CALTECH/MIT VOTING TECHNOLOGY PROJECT (2002).
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 Lorraine Minnite, *Election Day Registration: A Study of Voter Fraud Allegations and Findings on Voter Roll Security*, DEMOS: A NETWORK FOR IDEAS & ACTION
- 14 Anna Pingel, *The Pitfalls of Same-Day Registration*, AFPI (Feb. 26, 2024) <https://americafirstpolicy.com/issues/the-pitfalls-of-same-day-registration>.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*

Judicial Review of Absentee Voting Laws: Balancing State Interests vs. Fundamental Rights



By Sawyer Lecius

Voting is a right granted to all citizens in the United States, encouraging them to participate in the democratic process and make their voices heard. Absentee voting is one method that allows eligible voters to cast a ballot remotely. This mechanism of voting let's citizens vote despite circumstances like illness, schooling, or military service. While expanding voting methods is important and crucial, absentee voting has faced criticism, raising concerns of election security and fraud. States have passed laws to address these concerns. However, these measures potentially restrict access for marginalized groups of voters. To resolve tensions between a state's right to regulate elections and a citizen's fundamental right to vote, courts have engaged in judicial review over absentee voting laws. While different states have varying interests in overseeing elections, judicial review of absentee voting laws ensures the legitimacy of the electoral process by creating a balance of state interests against a fundamental right.

Absentee voting began during the Civil War to ensure that soldiers were not disenfranchised by their military service.

¹Although these early laws are not as contentious as today, there was still opposition between parties then.² Union states, in particular, struggled to pass absentee voting laws due to constitutional conflicts, leading to early examples of judicial review.³ After the Civil War, many of these laws disappeared until 1911 when absentee voting expanded to civilians.⁴ However, by 1924, most states passed legislation imposing limited use of absentee ballots.⁵

Inspired by past legislation and history, the current framework of absentee voting varies across states. Some states require voters to provide a valid excuse for not voting in person, while other states allow voters to give no excuse.⁶ Further, some states have imposed time restrictions, illustrating a more limited perspective of this voting process.⁷ Ultimately, modern lawmakers continue to reconsider the access to absentee ballots because of current political and social trends, such as a global pandemic and heightened political division.

The COVID-19 pandemic generated an increase in mail-in and absentee voting during the 2020 general election. About 65 million votes were cast this way, nearly double the 33.5 million votes in the 2016 election.⁸ The influx in absentee voting led to widespread skepticism, fueling intense debates over how citizens vote. On one hand, voting is considered a fundamental right by many. Constitutional amendments and federal laws ensure that no voter is denied the right to vote based on race, gender, or age.⁹ Absentee voting provides an extra safeguard to this fundamental right. However, on the other hand, some legislatures argue that stricter

voting laws will reinforce confidence in the democratic process.¹⁰ Further, state laws would enhance election security and address fraud, which were prevalent issues during the 2020 election.¹¹ These differences in interests show a need for judicial review to determine if absentee voting is a valid method in place of in-person voting.

Through *Marbury v. Madison*, the Supreme Court established judicial review to examine the constitutionality of laws.¹² Recently, courts have reviewed voting laws to assess whether these laws infringe on voters' rights or impose a burden. Initially, the Supreme Court reviewed these laws using strict scrutiny but switched to the Anderson-Burdick Test, a more flexible balancing approach.¹³ Under this test, courts weigh government interests against the burden on the voter, applying leniency to laws with low voter impact.¹⁴ As political divisions rise, and more states propose new laws, judicial review becomes increasingly necessary. With the expansion of voting methods, it is vital for courts to check legislative powers and ensure all parties' interests are fairly recognized.

The federal case *Democratic Nat'l Comm. v. Bostelmann* demonstrates judicial review concerning the 2020 election.¹⁵ The Democratic National Committee challenged state absentee ballot laws, specifically calling for deadline extensions due to the COVID-19 pandemic.¹⁶ The district judge granted the extension, determining that voters would have difficulty casting their votes because of the pandemic.¹⁷ The state denied this assertion, claiming that voters had months to prepare for this election, and that extending deadlines near the election was impractical.¹⁸ The Seventh Circuit agreed, acknowledging the Supreme Court's determination that, regardless of a pandemic, last minute voters may face consequences.¹⁹ Ultimately, the court concluded that the burden on voters was not greater than the interest of the state.²⁰ If proactive, a Wisconsin voter could still vote, but changing deadlines close to an election risked procedural issues and undermined election integrity.

Absentee voting has become a crucial method, separate from in-person voting, to ensure voters' fundamental rights in today's society. However, with this expansion, absentee voting has also faced heavy criticism, causing citizens to question election integrity. As a result, states continuously impose new laws to regulate elections, hoping to offer security to voters. But these laws can have adverse effects on marginalized groups who might not be able to vote in person. Due to an increase in voting laws and the raising concerns in the United States, judicial review has become a crucial process to balance the fundamental rights of voters against state interests. As the U.S. continues to face political turmoil, combined with a lack of confidence in the citizenry, courts must play an important role in respecting and acknowledging the perspectives of both voters and states. ○

References:

- 1 John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. MICH. J.L. REFORM 483, 494 (2003), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1415&context=mjlr>.
- 2 *Id.* at 495-496.
- 3 *Id.* at 500-501.

- 4 *Id.* at 503.
- 5 *Id.* at 506.
- 6 *Absentee Ballot Rules*, VOTE.ORG, <https://www.vote.org/absentee-voting-rules/> (last visited Jan. 15, 2025).
- 7 *Id.*
- 8 Drew Desilver, *Most Mail and Provisional Ballots Got Counted in Past U.S. Elections—But Many Did Not*, PEW RESEARCH CENTER (Nov. 20, 2020), <https://www.pewresearch.org/politics/2020/11/20/the-voting-experience-in-2020/>.
- 9 *Voting Rights Laws and Constitutional Amendments*, USA.GOV (2024), <https://www.usa.gov/voting-rights> (Aug. 22, 2024).
- 10 Gwenevere Tatara, *Understanding the Absentee Voting Debate*, THE ALL FOR CITIZEN ENGAGEMENT (Jun. 28, 2023), <https://ace-usa.org/blog/research/research-democratic-governance/understanding-the-absentee-voting-debate/>.
- 11 *Id.*
- 12 *About the Supreme Court*, USCOURTS.GOV, <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about> (last visited Jan. 28, 2025).
- 13 Alexander Egber, *The Anatomy of an Anderson-Burdick Challenge*, ARIZ. STATE L. J. (Mar. 31, 2022), <https://arizonastatelawjournal.org/2022/03/31/the-anatomy-of-an-anderson-burdick-challenge/>.
- 14 *Id.*
- 15 *Democratic Nat'l Comm. v. Bostelmann*, 977 F.3d 639 (7th Cir. 2020).
- 16 *Id.* at 641.
- 17 *Id.* at 642.
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*

How A Democratically Elected Senate Intrudes on Individual Liberties: The Case for Repealing the Seventeenth Amendment

By Quentin J. Abbott



As may be known, United States Senators were originally elected by the legislatures of their respective States.¹ However, in 1913, a majority of the States ratified the Seventeenth Amendment to the U.S. Constitution,² which provided for the direct, popular election of Senators.³ The

new Amendment represented an important change to the Framers' original conceptualization of the relationship between the States and the Federal Government in Washington,⁴ and it greatly affected how individual rights and liberties were adjudicated by the federal courts.⁵ However, democratic participation in senatorial elections can tend to politicize the federal courts,⁶ and it is for this reason primarily that the Seventeenth Amendment should be repealed.

As originally envisioned, the Senate was composed of two members elected by the legislature of each State.⁷ By giving State governments a direct say in the "selection of federal officers,"⁸ the Constitution empowered the States to act as a counterforce against federal laws contrary to the will of a simple, popular majority.⁹ The Constitution also allowed the States to participate in the confirmation of federal judges, who are responsible for interpreting the Constitution and the Bill of Rights.¹⁰ However, the original system also had its defects,

as elections to State legislatures often served as “proxies” for elections to the U.S. Senate.¹¹

One need only think of how the political and partisan composition of federal courts would change if State legislatures still enjoyed the power of electing U.S. Senators. As of now, Republicans control twenty-eight state legislatures, and Democrats control eighteen.¹² Without the Seventeenth Amendment, the composition of the U.S. Senate would be fifty-eight to thirty-six,¹³ assuming state legislatures would vote along party lines.¹⁴ However, with the popular election of Senators, the current Senate is fifty-three Republicans, forty-five Democrats, and two Independents.¹⁵ Given philosophical differences between the two parties, a different political breakdown in the Senate could have significant implications for the makeup of the federal judiciary.¹⁶

In 2024, popular trust in the U.S. Supreme Court continued to deteriorate, and this is not due solely to some of the Court’s latest unpopular decisions, such as that in *Dobbs v. Jackson’s Women’s Health Organization*,¹⁷ but also to the fact that more people see the Court as partisan.¹⁸ To some extent, the high Court has generally become more conservative in its jurisprudence—due in part to the three appointments to the Court made during the first Trump Administration.¹⁹ Additionally, there is often talk about the Supreme Court taking away fundamental rights.²⁰ However, under the old system, there was, at least in theory, an added constitutional layer of political insulation for federal judges.²¹ Yet, if the body responsible for confirming federal judges²² is itself composed of members whose elections may not be sufficiently insulated against factious majorities, it may make sense—though perhaps not fully explain—why the public has an increasingly partisan view of the Court.²³

If the original proponents of the U.S. Constitution were correct, then designing the upper house of Congress in such a way as to procure “the double advantage of favoring a select appointment, and of giving to the State governments such an agency in the formation of the Federal Government as must secure the authority of the former,”²⁴ ought to mean ensuring that those nominated to serve the Nation as judges are as far removed from popular, factious majorities as possible, lest the character of the institution charged with deciding the scope of individual liberties and governmental powers become mired in political debate.²⁵ Electing U.S. Senators by popular majorities²⁶ contradicts this purpose. For this reason, the Seventeenth Amendment should be repealed. ○

References:

- 1 U.S. CONST. art. I, § 3, cl. 1.
- 2 David N. Schleicher, *The Liberal Case for the Seventeenth Amendment*, NAT’L CONST. CTR., https://constitutioncenter.org/the-constitution/amendments/amendment-xvii/interpretations/147?gad_source=1&gclid=Cj0KCQjwr9m3BhDHARIsANut04ZHfuNnhVA4755jktB61XIysowH2-bxt45jZoo7v-442lrRB6suTqsaAv7AEALw_wcB (last visited Feb. 20, 2025).
- 3 U.S. CONST. amend. XVII.
- 4 Adam Reed Moore, *Publius’s Protectors of Liberty: A Still-Important Role for States*, 48 B.Y.U. L. REV. 1961, 1987-88, 1995 (2023) (citing to THE FEDERALIST No. 45, at 238 (James Madison) (George W. Carey & James McClellan eds., 2001)).
- 5 *Id.* at 1995-96.
- 6 *Trust in U.S. Supreme Court Continues to Sink*, ANNENBERG PUB. POL’Y CTR., U. PENN. (Oct. 2, 2024), <https://www.annenbergpublicpolicycenter.org/trust-in-us-supreme-court-continues-to-sink/>.

- 7 U.S. CONST. art. I, § 3, cl. 1.
- 8 Adam Reed Moore, *supra* note 4, at 1987-88, 1995 (citing to THE FEDERALIST No. 45, at 238 (James Madison) (George W. Carey & James McClellan eds., 2001)).
- 9 *Id.* at 1964, 1988. *See also* THE FEDERALIST No. 10, at 72, 75, 78 (James Madison) (George W. Carey & James McClellan eds., 2001).
- 10 *Id.* at 1987-89 (citing to THE FEDERALIST No. 62, at 320 (James Madison) and No. 78, at 402 (Alexander Hamilton) (George W. Carey & James McClellan eds., 2001)). *See also* *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (holding that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”).
- 11 David Schleicher, *The Seventeenth Amendment and Federalism in an Age of National Political Parties*, 65 H.S.T.L.J. 1043, 1055 (2013).
- 12 *State Partisan Composition*, NAT’L CONF. STATE LEGISLATURES (Jan. 31, 2025), <https://www.ncsl.org/about-state-legislatures/state-partisan-composition>. Nebraska technically has a nominally non-partisan legislature. *See Unicom Focus*, NEB. LEGISLATURE, <https://nebraskalegislature.gov/education/lesson3.php> (last visited Feb. 18, 2025).
- 13 *Id.*
- 14 *See id.* The remaining States of Michigan, Minnesota, and Pennsylvania currently have divided legislatures, making it difficult to predict exactly how they would each vote in U.S. Senate elections without the Seventeenth Amendment. *See State Partisan Composition, supra*, note 12.
- 15 *Senators*, U.S. SENATE, <https://www.senate.gov/senators/> (last visited Feb. 20, 2025).
- 16 U.S. CONST. art. II, § 2, cl. 2. *See also* U.S. CONST. amend. XVII.
- 17 *Dobbs v. Jackson’s Women’s Health Org.*, 597 U.S. 215 (2022).
- 18 *Trust in U.S. Supreme Court Continues to Sink, supra* note 6.
- 19 Lawrence Hurley, *Trump built the Supreme Court’s conservative majority, but it doesn’t always rule in his favor*, NBC News (Jan. 3, 2024, 11:41 AM), <https://www.nbcnews.com/politics/donald-trump/trump-built-supreme-court-conservative-majority-loses-rcna131956>.
- 20 *See, e.g.*, Ben Beckett, *5 Things Democrats Can Do About the Supreme Court’s Unchecked Power*, JACOBIN (June 27, 2022), <https://jacobin.com/2022/06/democrats-supreme-court-roe-v-wade>.
- 21 U.S. CONST. art. II, § 2, cl. 2.
- 22 *Id.*
- 23 *Trust in U.S. Supreme Court Continues to Sink, supra* note 6.
- 24 THE FEDERALIST, No. 62, at 375 (James Madison) (Clinton Rossiter ed. 1961).
- 25 *Marbury v. Madison, supra* note 10, at 177.
- 26 U.S. CONST. amend. XVII.

Changes in Mail-in Ballot Voter Election Laws as an Effect of COVID-19



By Shannon Stamp

The rapid changes and increased litigation surrounding mail-in and absentee voting laws during and after COVID-19 created a conflict between ensuring voter access and upholding electoral integrity. The changes in election law during COVID-19 created lasting adverse effects on the stability

and trust in the electoral system. These changes also challenged uniformity among state mail-in and absentee electoral laws. In Florida, the significant increase in litigation required swift action before election day. As a result, Florida struggled with where to draw the line on accessibility and accountability for mail-in ballots to maintain voter integrity and trust in the system.

Nationwide, the COVID-19 pandemic forced states to adjust their election laws quickly to account for the national health crises.¹ The mail voting rates soared compared to the last election term. For instance, in 2018, 25.6% of voters voted by mail and the rate almost doubled in 2020.² These rapid shifts in election laws also caused a significant increase in emergency litigation in federal courts and time-sensitive cases.³ The influx of election-related litigation caused substantial issues with the management of caseloads.⁴

In Florida, several civil rights organizations sued Governor Ron DeSantis, Secretary of State Laurel Lee, and the Florida Elections Canvassing Commission to ask the state for increased voter accessibility and outreach to expand mail voting deadlines.⁵ For example, in one notable lawsuit in March 2020, *Williams v. DeSantis*, the plaintiffs sought a temporary restraining order because the state failed to take proper emergency measures.⁶ However, the court found an injunction would be adverse to public interest because voting had already begun.⁷

Subsequently, the *Nielson v. DeSantis* case emerged in May 2020, in which the plaintiffs alleged that Florida's laws and emergency measures were inadequate and harmful to voters.⁸ The case was dismissed in June, but the plaintiffs filed an amended complaint adding a hundred and thirty-four county Supervisors of Elections and County Canvassing Boards as defendants and raised additional complaints regarding voter eligibility issues.⁹ The plaintiffs alleged that the inconsistent county policies regarding paid postage and different drop box locations were unconstitutional.¹⁰ However, the court held that these variations did not rise to the level of constitutional violation and dismissed the claims.¹¹ This case was among many that arose in Florida during COVID-19 that required swift action due to the impending election.¹²

Additionally, cases related to technological and procedural issues regarding voting arose. In *Namphy v. DeSantis*, the plaintiffs sued after a voter registration website was inoperable on the last day of

voter registration.¹³ Although the deadline was extended, thousands of voters were prevented from registering because they were never notified of the extension.¹⁴ In addressing the issue, the *Namphy* court relied on the United States Supreme Court decision in *Purcell v. Gonzalez*, which emphasized the importance of avoiding voter confusion resulting from last-minute changes to election procedures.¹⁵ The *Namphy* court concluded that the interference of a court order did not outweigh the voter confusion that an injunction would cause.¹⁶ This case highlighted the difficulty Florida courts faced in deciding electoral law issues amid unprecedented times.

However, the concern over inadequate electoral laws amid COVID-19 did not end in Florida courtrooms. For example, the 2020 presidential election sparked concerns among the public regarding the accuracy of the polls.¹⁷ Many feared that voter intimidation and unlawful "assistance" were occurring in the home, where vote-by-mail procedures lacked the ballot privacy and protections against electioneering or coercion that are typically present at in-person polling places.¹⁸

In addition, there were concerns nationally over rejected mailed ballots not being counted.¹⁹ According to the Election Administration and Voting Survey (EAVS), rejected ballots are often due to signature matching, eligibility, missing verifications, and incomplete ballots.²⁰ However, in the 2020 U.S. general election, approximately 98.8% of absentee or mail-in ballots were submitted, with about 0.8% rejected.²¹ In Florida, specifically, the EAVS reported that of the mailed ballots received, only 0.3% were rejected.²² The large ballots received in the 2020 election and the minimal amount rejected caused concern among Florida voters about voter authenticity and fraud in 2020 and future elections.²³

Accordingly, Florida election laws were adjusted in response to the rising concerns of voters.²⁴ Previously, Florida state law allowed vote-by-mail requests to remain valid for two election cycles.²⁵ However, after the 2020 election, Governor Ron DeSantis signed new legislation requiring that all standing vote-by-mail requests must be renewed each election cycle.²⁶ This change prompted urgent efforts by political parties and advocacy groups to inform voters to submit new requests in time.²⁷ It also made it difficult to predict how the change would specifically affect mail-in-voting in the 2024 election.²⁸ Since the 2022 midterms, mail-in ballot requests in Florida have decreased significantly.²⁹ In 2022, over four million voters requested mail ballots, whereas only two million requested ballots for the 2024 election.³⁰ COVID-19 impacted Florida's electoral laws and still prompts changes amid voter fears and distrust following the 2020 presidential election.³¹

Overall, the COVID-19 pandemic has left its mark on Florida courtrooms and voters for the foreseeable future. The increased legislation forced courts to weigh the merits of judicial interference against upholding voter's trust and the state's electoral integrity. Even as the immediate public health crisis recedes, voter apprehension continues to shape Florida's evolving electoral landscape and will likely remain a critical factor in mail-in-ballot changes in the future. ○

References:

- 1 *Election Administration and Voting Survey (EAVS) Comprehensive Report*, UNITED STATES ELECTION ASSISTANCE COMMISSION, https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf (last visited Feb. 15, 2025).
- 2 *Id.*
- 3 *Election Litigation Covid-19 and Emergency Election Litigation*, FEDERAL JUDICIAL CENTER, <https://www.fjc.gov/content/350168/covid-19-and-emergency-election-litigation> (last visited Feb. 15, 2025).
- 4 *Id.*
- 5 *Id.*
- 6 *Williams v. Desantis*, 2020 U.S. Dist. LEXIS 212950 (N.D. Fla. Mar. 17, 2020).
- 7 *Id.*
- 8 *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261 (N.D. Fla. 2020).
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Namphy v. Desantis*, 2020 U.S. Dist. LEXIS 212949 (N.D. Fla. Oct. 6, 2020).
- 14 *Id.*
- 15 *Purcell v. Gonzalez*, 549 U.S. 1 (2006).
- 16 *Namphy v. Desantis*, 2020 U.S. Dist. LEXIS 212949 (N.D. Fla. Oct. 6, 2020).
- 17 Hans von Spakovsky, *Four Stolen Elections: The Vulnerabilities of Absentee and Mail-In Ballots*, THE HERITAGE FOUNDATION (July 16, 2020), <https://www.heritage.org/election-integrity/report/four-stolen-elections-the-vulnerabilities-absentee-and-mail-ballots>.
- 18 *Id.*
- 19 Election Administration and Voting Survey (EAVS) Comprehensive Report, *supra* note 1.
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 Gary Fineout, *Florida Republicans moved to make vote by mail harder. It worked.*, POLITICO (June 5, 2024), <https://www.politico.com/news/2024/06/05/florida-mail-voting-changes-00161022>.
- 25 *Id.*
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 *Id.*

A Broken Pledge: How Faithless Elector Laws Protect the Voice of the People in the Electoral College

By Ethan West



The United States Constitution requires that every state appoint electors.¹ The Twelfth Amendment of the U.S. Constitution further describes the elector's role: "The Electors shall meet in their respective states and vote by ballot for President and Vice-President."² Modern

political parties have required party pledges from presidential electors to vote for the party's presidential candidate regardless of the elector's personal preference. *Ray v. Blair* is a notable U.S. Supreme Court case that affirmed the practice of expecting the presidential electors to support the party's presidential candidate and that there was "no federal constitutional objection" for doing so.³ States thus not only expect "party-picked electors" to vote for the party's nominee, but that the electors must vote for their party's nominee.⁴

A few years ago, the U.S. Supreme Court revisited the issue of enforcing party pledges on presidential electors in *Chiafalo v. Washington*.⁵ In *Chiafalo*, three presidential electors in Washington State chose to break their pledge and not vote for their party's presidential nominee in the 2016 presidential race.⁶ Washington State then enforced its faithless elector law and fined the three presidential electors \$1000.00 each.⁷ The three presidential electors contested the penalty arguing that they should be free to vote for whomever they choose.⁸ The Supreme Court ultimately held that a State may enforce an elector's pledge to vote for his or her respective party nominee for the United States Presidency and that presidential electors are not permitted to vote for whomever they please.⁹ The Supreme Court further noted that several States have a law "designed to keep the State's electors in line with its voting citizens."¹⁰ For States to ensure that the presidential electors are honoring their party pledges, which in turn honor the voters' preferences for a presidential candidate, faithless elector laws are enforced with certain penalties imposed on the presidential electors.

The first of these penalties is to void the faithless elector's vote and replace the faithless elector with another. The State of Florida's statute is one example: "A presidential elector's refusal or failure to vote for the candidates for President and Vice President of the party the presidential elector was nominated to represent constitutes his or her resignation of the position. The vote he or she cast may not be recorded, and his or her position as a presidential elector must be filled"¹¹

One penalty adopted by several states is to not only void the faithless elector's vote and replace said elector, but to also fine the faithless elector. A North Carolina statute states: "Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which

nominated such elector, for President and Vice-President of the United States . . . shall forfeit and pay to the State five hundred dollars . . . [and] constitut[ing] a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy”¹²

Another penalty is to convict the faithless elector under a criminal law. The State of New Mexico’s statute is one example: “Any presidential elector who casts his ballot in violation of the provisions contained in Subsection A of this section is guilty of a fourth-degree felony.”¹³ However, the statute does not mention whether the faithless elector’s vote is void, or if the elector’s spot is vacated.

However, several states do not have laws that impose any penalty against faithless electors. The State of Alaska, for example, only requires that presidential electors take a pledge, but the statute does not list any penalty if the presidential elector breaks the pledge. It simply states “[t]he party shall require from each candidate for elector a pledge that as an elector the person will vote for the candidates nominated by the party of which the person is a candidate.”¹⁴ Alaska does require vacancies to be filled if caused by “ineligibility, or other cause” but no penalty is explicitly stated against a faithless elector.¹⁵

In sum, the need for laws addressing faithless electors is essential in today’s political climate. Political parties provide presidential candidates which in turn are chosen by electors representing the constituents’ preference for a presidential candidate. An elector deciding to subvert the constituents’ preference ultimately disenfranchises the constituents. As such, a state law that not only requires a pledge from the presidential elector to vote for the party’s candidate but also penalizes the presidential elector for breaking the pledge, will deter an elector from acting in a rogue manner. Every state having a faithless elector law will ensure that the state’s citizens will have their votes counted in the current partisan political landscape in America. ○

References:

- 1 U.S. CONST. art. II, § 1.
- 2 U.S. CONST. amend. XII.
- 3 *Ray v. Blair*, 343 U.S. 214, 231 (1952).
- 4 *Chiafalo v. Washington*, 591 U.S. 578 (2020).
- 5 *Id.*
- 6 *Id.* at 586.
- 7 *Id.*
- 8 *Id.* at 587.
- 9 *Id.* at 597.
- 10 *Id.*
- 11 FLA. STAT. § 103.021(6).
- 12 N.C. GEN. STAT. § 163-212 (2005).
- 13 N.M. STAT. ANN. § 1-15-9 (2023).
- 14 ALASKA STAT. § 15.30.040 (2023).
- 15 ALASKA STAT. § 15.30.080 (2023).

Pandemic or Powershift? The 2020 Election and Erosion of Legislative Authority

By Heather Ochs



The 2020 presidential election did more than ignite disputes over ballots and outcomes—it put the very foundation of the constitutional separation of powers to the test. In response to the COVID-19 pandemic, several states modified election procedures without legislative authorization. Measures such as expanding mail-in voting, extending ballot deadlines, and relaxing signature verification rules were implemented to address public health concerns. However, these actions sparked broader debates over how far executive and judicial powers can extend when regulating elections during times of crisis.

At the center of this controversy is the constitutional framework for the separation of powers, as outlined in the first three Articles of the United States Constitution.¹ Specifically, Articles I and II assign primary authority over elections to state legislatures.² Article I, Section 4, Clause 1—commonly referred to as the Elections Clause—authorizes state legislatures to regulate the “Times, Places and Manner of holding Elections for Senators and Representatives.”³ Similarly, Article II, Section 1, Clause 2 grants state legislatures exclusive authority to determine the method for appointing presidential electors.⁴ Although these provisions address different elections, there is a functional overlap, as procedures enacted under Article I are often applied to presidential contests as well.⁵

Traditionally, state-level executive officials and courts play subordinate roles to legislatures in regulating elections.⁶ Executives enforce election laws, and courts interpret them, but neither branch may legislate.⁷ In particular, state courts are confined to “the ordinary bounds of judicial review” when considering laws that govern the “Times, Places, and Manner” of elections.⁸ These constitutional constraints are designed to preserve both the integrity of elections and the legislature’s primary authority over election procedures.⁹

Yet, in the lead-up to the 2020 election, legislative authority was arguably bypassed in battleground states such as Pennsylvania and Michigan. In Pennsylvania, concerns over COVID-19 and an anticipated surge in mail-in voting led to a lawsuit challenging the state’s mail-in ballot requirements.¹⁰ The law required that ballots be clearly postmarked and received by 8:00 p.m. on Election Day.¹¹ The Pennsylvania Supreme Court extended the receipt deadline by three days and permitted ballots to be counted even if they lacked a legible postmark.¹² Opponents argued that this ruling exceeded the courts’ authority and infringed upon the legislature’s power under the Elections Clause.¹³ Although the decision was appealed to the U.S. Supreme Court, a deadlocked bench left the state court’s ruling intact.¹⁴

In Michigan, the Secretary of State responded to similar pandemic-related concerns by sending unsolicited absentee ballot applications to all registered voters.¹⁵ While the action was upheld as constitutional on grounds of expanding voter access,¹⁶ opponents argued that it infringed on legislative power under Article II.¹⁷ A dissenting state judge specifically noted that Michigan law “explicitly [gave] local clerks the power to distribute absentee ballot applications, not the Secretary of State.”¹⁸ The Secretary also issued guidance directing clerks to presume signature validity unless clearly inconsistent with voter records.¹⁹ In this instance, the judiciary determined that the Secretary exceeded her authority by issuing guidance that conflicted with state election law.²⁰

Notably, these executive and judicial actions in Pennsylvania and Michigan were part of a broader shift with national implications. Legal scholars, elected officials, and other states warned that such interventions threatened the constitutional principle of separation of powers.²¹ This growing concern led to an unprecedented legal battle, as multiple states sought to restore the constitutional balance governing election oversight.²²

In December 2020, Texas sued four states, including Pennsylvania and Michigan, in the U.S. Supreme Court over these pandemic-related election changes.²³ Texas argued that election integrity was undermined by procedures being changed without legislative approval.²⁴ Seventeen other states filed an amicus brief in support of Texas.²⁵ The Court was asked to block presidential elector certification in the defendant states, invalidate their election results, and return the selection of electors to the state legislatures.²⁶ However, the Court declined to hear the case, ruling that Texas lacked standing to challenge how other states conducted their elections.²⁷ Despite the dismissal, the constitutional questions it raised about executive and judicial encroachment on legislative authority remain the subject of national debate.²⁸

The 2020 election exposed constitutional tensions surrounding the separation of powers in election administration. Executive and judicial interventions in states like Pennsylvania and Michigan sparked disputes about the limits of non-legislative authority under the Elections Clause and Article II. The failed Texas lawsuit, supported by several states, highlighted the need for clearer boundaries between the branches of government. Ultimately, the 2020 election serves as an important reminder that even in times of crisis, constitutional safeguards are essential to preserving the integrity of American democracy. ○

References:

- 1 U.S. CONST. art. I–III.
- 2 *Id.* arts. I–II.
- 3 *Id.* art. I, § 4, cl. 1.
- 4 U.S. CONST. art. II, § 1, cl. 2.
- 5 Michael T. Morley, *The Intratextual Independent “Legislature” and the Elections Clause*, 109 *Nw. U. L. Rev.* 79, 132 (2015).
- 6 Artl.S4.C1.2 States and Elections Clause, Analysis and Interpretation of the U.S. Constitution, CONST. ANN., https://constitution.congress.gov/browse/essay/artI-S4-C1-2/ALDE_00013577/ (last visited Feb.15, 2025).
- 7 *Separation of Powers: An Overview*, NAT’L CTR. STATE LEGISLATORS, <https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview> (last visited Mar. 01, 2025).

8 Artl.S4.C1.2, CONST. ANN., *supra* note 6.

9 *Id.*

10 Marie Albiges, *U.S. Supreme Court allows 3-day extension to count Pennsylvania mail-in ballots*, SPOTLIGHT PA (Oct. 19, 2020), <https://www.spotlightpa.org/news/2020/10/pa-mail-ballots-republican-voters-donald-trump/>.

11 *Id.*

12 *Id.*

13 Amy Howe, *Supreme Court leaves in place order requiring Pennsylvania to count absentee ballots after Election Day*, SCOTUS BLOG (Oct. 19, 2020), <https://www.scotusblog.com/2020/10/supreme-court-leaves-in-place-order-requiring-pennsylvania-to-count-absentee-ballots-after-election-day>.

14 *Id.*

15 Ryan Jarvi, *Court of Appeals Rules Secretary Benson Acted Lawfully in Mailing Absentee Voter Ballot Applications to Registered Voters*, MICH. DEP’T ATT’Y GEN. (Sept. 16, 2020), <https://www.michigan.gov/ag/news/press-releases/2020/09/16/court-of-appeals-rules-secretary-benson-acted-lawfully-in-mailing-absentee-voter-ballot>.

16 *Davis v. Benson et al*, No. 3:2020cv12130 – Document 19 (E.D. Mich. 2020).

17 *Id.*

18 David Eggert, *Appeals court: Mass mailing of absent ballot applications OK*, AP NEWS (Sept. 16, 2020), <https://apnews.com/general-news-e24fda0b161d1f7739310ac180d32cb3>.

19 Caroline Llanes, *SOS signature-matching guidelines for absentee ballots ruled “invalid” by judge*, MICH. PUBLIC (Mar. 17, 2021), <https://www.michiganpublic.org/law/2021-03-17/sos-signature-matching-guidelines-for-absentee-ballots-ruled-invalid-by-judge>.

20 *Id.*

21 Joshua Douglas, *Undue Deference to States in the 2020 Election Litigation*, 30 WM. & MARY BILL RTS. J. 59 (2021).

22 *Texas v. Pennsylvania*, Motion for Leave to File Bill of Complaint at 1, No. 22O155 (U.S. Dec. 7, 2020).

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Texas v. Pennsylvania*, 2020 U.S. LEXIS 5994, 1.

28 Douglas, *supra* note 21.

Section 230 and Political Speech: A Constitutional Paradox



By Anthony Thompson

When major social media platforms began fact-checking political content during the 2020 election cycle, it ignited the conversation about online platforms' power to moderate political speech.¹

The focus of this conversation is on Section 230 of the Communications Decency Act,

which essentially tells courts they cannot hold websites responsible for what users post or for taking down content they find objectionable.² This protection, which originally meant to foster internet growth, now sits at the center of heated debates about fair elections and free speech.³ As voters increasingly get their political information online,⁴ they face an uncomfortable reality where unelected tech executives make consequential decisions about political speech that would be unconstitutional if made by government officials.⁵

The United States has historically regulated political speech in the media. The Communications Act of 1934 (the "Act") established the Equal Time Rule to ensure fairness in political broadcasting,⁶ which required radio and television stations to allocate equivalent opportunities to all candidates.⁷ If a station gave one candidate airtime, it had to offer a similar opportunity to opposing candidates.⁸

In 1959, Congress amended the Act to create specific news exemptions for bona fide newscasts,⁹ interviews, documentaries, and on-the-spot coverage, while maintaining equal time requirements for other political content.¹⁰ These regulations reflect that public interest in electoral fairness may justify the restrictions placed on broadcasters.

Today, we are looking at a completely different landscape. Modern digital platforms enjoy protection under Section 230's immunity provision, which shields them from liability for user-generated content.¹¹ With this protection, these platforms can censor or permit whatever content fits their agenda with minimal legal risks. This creates a disparity between the regulatory framework governing traditional broadcast media and the freedom digital platforms have when handling political speech.

Section 230(c)(1) states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."¹² Meanwhile, Section 230(c)(2) protects platforms from liability for actions taken to restrict access to content they consider "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."¹³ This immunity enables platforms to make unrestricted decisions about political content. A platform can restrict one political candidate's speech while allowing nearly identical speech from another candidate. Unlike broadcast media, which must provide equal time, digital platforms can freely promote or restrict political speech based on their criteria or guidelines. This creates a system where voters increasingly rely on platforms which do not have any obligation

to ensure equal access to competing political viewpoints.¹⁴

Traditional broadcast regulation balanced First Amendment rights with the public interest in electoral fairness. The Supreme Court recognized in *Red Lion Broadcasting Co. v. FCC* that regulations ensuring diversity of political viewpoints serve "...the right of the public to receive suitable access to social, political, moral, and other ideas and experiences."¹⁵ Section 230 disrupts this balance by creating a paradoxical situation: the government cannot restrict political speech because it is protected by the First Amendment, however, social media platforms may restrict the same speech with legal immunity.

Although these platforms operate as private companies and are not technically bound by First Amendment constraints, they have undeniably become the dominant channels for most political discourse and campaign messaging. When candidates primarily communicate with voters through these platforms rather than traditional media, this distinction becomes increasingly consequential for our democratic process.

President Trump elevated this debate by repeatedly calling for the repeal or significant modification of Section 230 and eventually by issuing an executive order, "Preventing Online Censorship," which directly challenged platform immunity after X (formerly Twitter) began fact-checking his election-related tweets.¹⁶ He argued that platforms who act as "publishers" under the First Amendment by moderating content should lose immunity protection.¹⁷ Furthermore, Trump stated that Section 230 should only shield platforms that maintain political neutrality.¹⁸ His proposal would condition immunity on platforms showing complete neutrality in their treatment of political speech.¹⁹

While his executive order faced significant legal challenges and was ultimately revoked by Former President Biden,²⁰ it highlighted a persistent critical question: Should platforms wielding enormous influence over political discourse be allowed to selectively moderate political speech while retaining immunity? The First Amendment prevents the government from selectively censoring political speech to ensure voters have access to diverse viewpoints. However, with Section 230 protection, platforms can effectively filter the political information available to voters without these constraints. When such decisions occur on platforms where millions of Americans obtain their news, they potentially influence voters' access to information and, ultimately, their decision-making.

The commitment to the democratic process predates the rights of corporations against government regulations. As we navigate the digital transformation of our public square, the priority must shift to protecting the integrity of democratic process, rather than simply balancing corporate autonomy against government oversight. When social media platforms function as the primary channels for election information, they assume a public function that our current legal framework fails to recognize. Section 230 was not designed for a world where a handful of private companies would control access to political information for millions of voters. This immunity shield should be reevaluated to reflect the democratic process our nation rests upon. ○

References:

- 1 Kate Conger & Mike Isaac, *Twitter Adds Labels to Trump's Tweets for First Time*, N.Y. TIMES (May 27, 2020), <https://www.nytimes.com/2020/05/27/technology/trump-twitter-fact-check.html>.
- 2 Kelly O'Hara & Natalie Campbell, *What is the Section 230 and why should I care about it*, INTERNET SOCIETY (Feb. 24, 2023), https://www.internetsociety.org/blog/2023/02/what-is-section-230-and-why-should-i-care-about-it?gad_source=1&gclid=Cj0KCQjw1um-BhDtARIsABjU5x7pAE7Tgb-CNntOthpgBQZn4iM69233yQDCLQRjcTIHYVImE15BmwoaAk5NEALw_wcB.
- 3 47 U.S.C. § 230 (1996).
- 4 Justin Hendix & Ben Lennett, *Seeing Rising Election Misinformation, Americans Say Social Media Platforms May Bear Responsibility for Political Violence*, TECH POLICY (Nov. 1, 2024), <https://www.techpolicy.press/seeing-rising-election-misinformation-americans-say-social-media-platforms-may-bear-responsibility-for-political-violence/>.
- 5 *Id.*
- 6 Communications Act of 1934, Pub. L. No. 73-416, 48 Stat. 1064 (codified as amended at 47 U.S.C. § 315(a)).
- 7 Shannon K. McGraw, *Equal Time Rule*, FREE SPEECH CENTER, <https://firstamendment.mtsu.edu/article/equal-time-rule/> (Nov. 8, 2024).
- 8 *Id.*
- 9 *Why Are We Letting the Media Pick our Leaders?*, INDEPENDENT VOTER NEWS, <https://ivn.us/2016/03/25/why-are-we-letting-the-media-pick-our-leaders> (Oct. 16, 2022).
- 10 Act of Sept. 14, 1959, Pub. L. No. 86-274, 73 Stat. 557 (amending 47 U.S.C. § 315(a)).
- 11 O'Hara & Campbell, *supra* note 2.
- 12 47 U.S.C. § 230(c)(1).
- 13 47 U.S.C. § 230(c)(2)(A).
- 14 Pew Research Center, *News Consumption Across Social Media in 2023* (Aug. 2, 2023), <https://www.pewresearch.org/journalism/2023/08/02/news-consumption-across-social-media-in-2023/>.
- 15 Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969).
- 16 Exec. Order No. 13,925, 85 Fed. Reg. 34,079 (May 28, 2020).
- 17 Bobby Allyn, *Stung by Twitter, Trump Signs Executive Order to Weaken Social Media Companies*, NPR (May 28, 2020, 4:59 PM), <https://www.npr.org/2020/05/28/863932758/stung-by-twitter-trump-signs-executive-order-to-weaken-social-media-companies>.
- 18 *Id.*
- 19 *Id.*
- 20 Benjamin Kahn, *Biden Revokes Trump-Era Executive Order Designed to Crack Down on Big Tech*, BROADBAND BREAKFAST (May 17, 2021), <https://broadbandbreakfast.com/biden-revokes-trump-era-executive-order-designed-to-crack-down-on-big-tech/>.

The Peach State Effect: How a Georgia Runoff Election Led to the 2024 Red Wave



By Emily Feyeraabend

For nearly fifty years, Georgia was a conservative stronghold, voting for Republican candidates in most national elections.¹ In 2020, however, a drastic shift occurred that inevitably shaped two of the most consequential elections in the twenty-first century.

It may come as no surprise that many Americans were faced with significant challenges in 2020. The Covid pandemic, nationwide shutdowns, and a spike in racial tensions all served as forces driving a larger political discussion surrounding the country's future. Georgia was no exception; the Peach State faced turmoil with ongoing protests, riots, and lawfare.² Republican Governor Brian Kemp warred with local government officials over these issues for the better part of a year, all while Republican Senators David Perdue and Kelly Loeffler campaigned alongside President Trump in hopes of resecurating their respective seats.³

At that time, Georgia law provided that when a candidate does not win a majority of votes in the general election, the two frontrunners must participate in a special runoff election to be held nine weeks following the general election.⁴ Thus, the race was on: President Trump desperately needed Georgia's 16 electoral votes, and incumbent Senators Perdue and Loeffler needed a majority vote against Democrats Jon Ossoff and Raphael Warnock, respectively. Democratic presidential candidate Joe Biden, in a highly publicized and contested Georgia race, allegedly squeezed past President Trump with a 0.3% marginal victory that ultimately led him to the presidency and became a source of immense legal controversy for years to come.⁵

The Senators, not winning their requisite majorities, had nine weeks to campaign for their seats.⁶ Donations poured in from every corner of the country as those two Senate seats would either grant Republicans a fighting chance at the federal level, or they would allow Democrats the enormous power of controlling the House, the Senate, and the Presidency. Any Georgian will tell you that life during those nine weeks was all-consuming by yard signs, phone calls, emails, texts, and advertisements begging voters to return to the polls to decide the fate of Georgia, and thus, the country. Unsurprisingly, the exhaustion, distrust, and emotional draining of the runoff drama caused hundreds of thousands of registered Republicans in Georgia stayed home on the day of the runoff election. This allowed for a shocking Democrat victory, the repercussions of which were soon felt throughout the country.⁷

Following President Biden's inauguration alongside Senators Warnock and Ossoff, federal spending increased significantly. The Inflation Reduction Act, passed in August 2022 with Vice President Harris's tie-breaking Senate vote,⁸ allocated billions to climate

initiatives, manufacturing, taxes, and drug pricing reforms.⁹ The legislation faced criticism from economists and citizens who noted the irony of rising inflation after its implementation.¹⁰ Many opined that it could trigger a recession similar or worse to that of 2008,¹¹ and two years later, forty-one percent of Americans cited inflation or high living costs as their primary voting concern.¹²

The Georgia election law that cost Republicans the Senate prevented crucial legislation, particularly immigration reform, as illegal border crossings reached record levels.¹³ The consequences were monumental, exemplified by the February 2024 murder of nursing student Laken Riley by an illegal immigrant at the University of Georgia.¹⁴ Wars raged across continents; violent crime surged in urban centers and small towns alike; millions of undocumented immigrants poured over the U.S. southern border; and costs of living became essentially unbearable.¹⁵ A partisan check at the federal level might have prevented Americans from reaching their breaking point. Americans would have been safer, richer, and for some, still alive, had the Republicans controlled the Senate during the Biden's presidency.

Elections have consequences, as demonstrated by the 2020 Georgia runoff that proved that active democratic participation matters. The Biden presidency left a sting that still burns for many, and that sentiment influenced the November 5, 2024, election outcome. Pre-election polls consistently showed Americans prioritizing inflation, the economy, and immigration.¹⁶ Trump's campaign emphasizing American greatness and a return to normalcy resulted in a sweeping victory across swing states, the electoral college, and the popular vote.¹⁷ The American public had spoken. This comprehensive Republican triumph, including regaining control of both the House and Senate, represented a direct rejection of Democratic policies stemming from the 2020 Georgia runoff election. ○

References:

- 1 See *Georgia Presidential Election Voting History*, 270TOWIN, <https://www.270towin.com/states/georgia> (last visited Jan. 23, 2025).
- 2 See Melissa Macaya, et. al, *George Floyd protests spread nationwide: Live updates*, CNN, <https://www.cnn.com/us/live-news/george-floyd-protest-updates-05-28-20/index.html> (May 30, 2020, 8:56 PM).
- 3 See Vanessa Romo, *Georgia Gov. Brian Kemp Sues Atlanta Mayor Keisha Lance Bottoms Over Face Mask Order: Coronavirus Updates*, NPR (July 16, 2020, 7:19 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/07/16/892109883/georgia-gov-brian-kemp-sues-atlanta-mayor-keisha-lance-bottoms-over-face-mask-or>.
- 4 See O.C.G.A. § 21-2-501(a) (2017).
- 5 *Georgia Election Results and Maps 2020*, CNN (2020), <https://www.cnn.com/election/2020/results/state/georgia>.
- 6 O.C.G.A. § 21-2-501(a) (2017).
- 7 See Mark Niesse & Jennifer Peebles, *Georgia election analysis shows 752,000 voters skipped the key Senate runoff in January*, AJC POLITICS (Feb. 2, 2021), <https://www.ajc.com/politics/turnout-dip-among-georgia-republicans-flipped-us-senate/IKWGEGFEEVEZ5DXTP7ZXOROI/>.
- 8 Pub. L. No. 117-169, 136 Stat. 1818 (2022).
- 9 See *Nat'l Infusion Cr. Ass'n v. Becerra*, 116 F.4th 488, 494 (5th. Cir. 2024); see also Amanda Chu, *Critics warn US Inflation Reduction Act could keep prices high*, FINANCIAL TIMES (April 14, 2023), <https://www.ft.com/content/3f8cdb59-587b-4809-80a9-1f950d0f5bce>; see also Christopher Rugaber & Fatima Hussein, *Inflation is down, but the Inflation Reduction Act likely doesn't deserve the credit*, PBS NEWS (Aug. 16, 2023, 4:51 PM), <https://www.pbs.org/newshour/economy/inflation-is-down-but-the-inflation-reduction-act-likely-doesnt-deserve-the-credit>.

- 10 *Id.*
- 11 *Id.*
- 12 See Jeffrey M. Jones, *Americans Continue to Name Inflation as Top Financial Problem*, GALLUP (May 2, 2024), <https://news.gallup.com/poll/644690/americans-continue-name-inflation-top-financial-problem.aspx>.
- 13 See Lucy Gilder, *How many migrants have crossed the US border illegally?*, BBC NEWS (Sept. 29, 2024), <https://www.bbc.com/news/articles/c0jp4xqx2z3o>.
- 14 See Meredith Deliso, *Timeline: Laken Riley's last moments retraced during trial on Georgia nursing student's murder*, ABC NEWS (Nov. 20, 2024), <https://abcnews.go.com/US/laken-riley-case-murder-trial-texts/story?id=116009547>.
- 15 See *Biden's 20 Percent Inflation Tax Costs American Families Over \$17,000 Per Year*, HOUSE BUDGET COMMITTEE (June 28, 2024), <https://budget.house.gov/press-release/bidens-20-percent-inflation-tax-costs-american-families-over-17000-per-year>.
- 16 See *Issues and the 2024 election*, PEW RESEARCH CENTER (Sep. 9, 2024), <https://www.pewresearch.org/politics/2024/09/09/issues-and-the-2024-election/>; see also Megan Brenan, *Economy Most Important Issue to 2024 Presidential Vote*, GALLUP (Oct. 9, 2024), <https://news.gallup.com/poll/651719/economy-important-issue-2024-presidential-vote.aspx>.
- 17 See *Election 2024: Presidential results*, CNN, <https://www.cnn.com/election/2024/results/president?election-data-id=2024-PG&election-painting-mode=projection-with-lead&filter-key-races=false&filter-flipped=false&filter-remaining=false> (last visited Jan. 10, 2025).

Electoral College v. Popular Vote



By Lili Rodriguez

The Electoral College was instated based upon the original intent of the United States Constitution.¹ The Founding Fathers believed that the Presidential Election should be conducted via the Electoral College process, which begins on election day, to give every eligible voter the opportunity to cast their vote.² This vote is called the “general election” and it determines which political party will nominate the state’s “Electors.”³ Each state’s Electors meet to cast their ballots as a representation of the state’s popular vote for President.⁴ The Electors’ votes are sent to Congress, who count them and announce the new President and Vice President.⁵

Recent Polls indicate that about 60-75% of voters want to amend the Electoral College system or redact it completely.⁶ Additionally, according to a poll taken by the American Bar Association, 69% of lawyers in 1987 agreed with this majority.⁷ Considering that a high percentage of U.S. citizens want to see the Electoral College process changed, it is imperative that voters understand the origin, purpose, and duties of the Electoral College so that they can make the decision for themselves – Electoral College, popular vote, or another alternative. As a voter, it is our responsibility to be educated on the process of the Presidential election. Further, by understanding the Electoral College and other countries’ election systems, a sufficient alternative can be addressed.

The Electoral College was created in Article II, Section 1, Clauses 2 and 3 of the United States Constitution.⁸ *Federalist Paper No. 68*, written by Alexander Hamilton, captivates the Founding Father’s rationale behind creating the Electoral College System.⁹ The system was created with the intention that:

[T]he 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.¹⁰

Hamilton also reasoned that the decision was to be made by several appointed electors, rather than one individual, in order to avoid possible “tumult and disorder” – a dreaded evil corruption that comes from one individual holding all of the election power.¹¹ The Founding Fathers decided to use Electors rather than prominent politicians (like in the Senate or House of Representatives) to avoid any biases.¹² Overall, the Federalist Paper emphasizes that conducting the election in this way “affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.”¹³ After the election of 1800 resulted in a tie, the Twelfth Amendment refined the Electoral College procedure to provide a solution for this potentiality.¹⁴

Electoral votes are allocated among the states based on the population of the state provided by the Census.¹⁵ These number of votes equal the number of Senators and Representatives of each state in the Congress.¹⁶ The Electoral College process starts on election day with every eligible voter having the opportunity to cast their vote – what is called the “general election” – for the state to determine which political party nominates the state’s “Electors.”¹⁷ Electors are chosen after the general election in the state occurs.¹⁸ Once a political party has won the majority of votes in a state, their slated potential electors are appointed.¹⁹ These Electors meet to cast their ballots as a representation of the state’s popular vote for President.²⁰ If the Electors do not represent their state’s popular vote, they can be penalized, as decided after the 2016 election in *Chiafalo v. Washington*.²¹ The Elector’s votes are sent to Congress, who count them and announce the new President and Vice President on January 6th.²²

While most Americans see the Electoral College as unnecessary or complicated, most other major democratic nations use a similar system.²³ Out of the twenty most populous democratic countries in the world, fourteen of them use a two-step process for elections, via their legislature or an electoral college system.²⁴ The other six most populous democratic countries in the world conduct a direct popular vote election.²⁵ While a direct popular vote is advertised as more efficient and simpler, countries that use the direct vote system generally must take a second round of votes, called a runoff vote, due to two candidates emerging closely in popularity.²⁶ For example, this occurred in Chile’s, Colombia’s, France’s and most recent elections.²⁷

A President has only won the election without the popular vote five times in the history of the United States—two of these times being in *this* century, causing many more Americans to question the reliability of the electoral college system.²⁸ Most recently, this occurred in the 2016 election when Donald Trump became President over Hillary

Clinton.²⁹ While the Electoral College and popular vote has become an increasingly debatable topic among Americans, it is crucial for voters to understand why and how the Electoral College functions, as well as what alternate democratic countries utilize to truly assess the best option for themselves. ○

References:

- 1 THE FEDERALIST NO. 68 (Alexander Hamilton).
- 2 U.S. CONST. amend. XII.
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 Jocelyn Kiley, *Majority of Americans continue to favor moving away from Electoral College*, PEW RESEARCH CENTER (Sept. 20, 2024), <https://www.pewresearch.org/short-reads/2024/09/25/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/>.
- 7 *Electoral College History*, NATIONAL ARCHIVES (June 26, 2024), <https://www.archives.gov/electoral-college/history>.
- 8 U.S. CONST. art. II, § 1, cl. 2-cl. 3.
- 9 THE FEDERALIST NO. 68 (Alexander Hamilton).
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 U.S. CONST. amend. XII.
- 15 *Distribution of Electoral Votes*, NAT’L ARCHIVES (October 24, 2024), <https://www.archives.gov/electoral-college/allocation>.
- 16 *Id.*
- 17 *What is the Electoral College?*, NAT’L ARCHIVES (July 6, 2024), <https://www.archives.gov/electoral-college/about>.
- 18 Hamilton, *supra* note 1.
- 19 *Distribution of Electoral Votes*, *supra* note 15.
- 20 U.S. CONST. art. II, § 1, Cl 2
- 21 *Chiafalo v. Washington*, 591 U.S. 578 (2020).
- 22 *What is the Electoral College?*, *supra* note 17.
- 23 *The CIA’s World Factbook*, EXECUTIVE BRANCH, <https://www.cia.gov/the-world-factbook/field/executive-branch/>, (last visited Apr. 7, 2025).
- 24 *What Do Other Countries Do?*, SAVE OUR STATES, <https://saveourstates.com/npv/what-do-other-countries-do-threats> (last visited Apr. 7, 2025).
- 25 *Id.*
- 26 The CIA’s World Factbook, *supra* note 23.
- 27 *Id.*
- 28 *Electoral College History*, NAT’L ARCHIVES (June 26, 2024), <https://www.archives.gov/electoral-college/history>.
- 29 *2016 Presidential Election, 270ToWin*, <https://www.270towin.com/2016-Election/> (last visited Apr. 7, 2025).

The Elephant and the Star: Can Two Criminals Become President?



By Miller Whitten

Leading up to the 2024 election season there had been many first-time events. Although the United States is no stranger to the wild unpredictability that comes with election season, this year was unique. For the first time in United States history, a criminal to some, a hero to others, was one of the leading candidates on the ballot. In May 2024, Donald Trump became the first former president to become a “convicted felon.”¹ But did this status ruin his chances of becoming the second US President to serve nonconsecutive terms? If we zoom out, and look beyond our sweet land of liberty, a republic to our south may show us just how a people’s voice can overlook political lines and past malfeasances.

Luiz Inácio da Silva, or “Lula,” the 35th and 39th President of the Brazilian Republic has had an interesting political career. From 2003 to 2011, Lula served consecutive terms as Brazil’s president and leader of the Worker’s Party. Lula was very popular among Brazilians. He was charismatic, reduced unemployment, and helped Brazil’s economy grow.² Much like Donald Trump, Lula was a businessman turned politician, serving on a Steel Workers’ Union before entering the political jungle. But, in 2016, after having his home raided, Lula was charged with corruption, money laundering, and bribery – leading to his arrest and convictions.³ Of course, there were many Brazilians who felt Lula was just another victim of political rivals who simply wanted to keep him from reaching the presidency again, while others felt Lula should stay in prison because he actually broke the law.⁴ Again, very similar to Americans today who feel that Donald Trump’s felony indictments are unjust or unfair, while others feel he was rightfully convicted and should be removed from the ballot.⁵ What made the Brazilian People think that a former criminal was their best option? Although his convictions were annulled, could Lula really get over the hump of being imprisoned and make his return to the presidency?⁶

No administration is without problems. Sometimes an incumbent can overcome any challenges he or she faced during their first term, while other times they are voted out by the people. For both Jair Bolsonaro and Donald Trump, a major issue they faced during their presidency was the COVID-19 pandemic, and the backlash that occurred for their treatment of the pandemic.⁷ In the following elections, both the United States and Brazil voted to switch up the leadership and try something different. The United States chose former Vice President Joe Biden in 2020, and Brazil chose the old “Companheiro,” Lula in 2022.

For Lula, it seemed that the Brazilian people were tired of the Bolsonaro Administration and the COVID-19 pandemic was just one of a couple major factors that led to this reestablished trust.⁸ Brazil is a country that is rich in natural resources. One of the keystone

resources is the Amazon. Under the Bolsonaro Administration, the Brazilians felt that the Amazon was not being as well protected as it should have been.⁹ The fumbling of the previous administration seemed to be enough for 50.9% of Brazil to trust Lula again, even after everything that has happened.¹⁰

Last year, Joe Biden stepped down and did not run for a second term, but his “number two,” Kamala Harris, was the leading candidate for the Democratic Party to face Former president, then newly indicted, Donald Trump for the 2024 Presidential Election. To the surprise of both Democrats and Republicans, the race was close until election night.¹¹ Democrats felt that a criminal had no business being on the ballot, let alone a chance to become the next president. Likewise, Republicans felt that Harris would have been an extension of Biden’s policies, and they were ready for things to change. Both candidates tried to convey the message that they were the next best fit, but Former President Trump undoubtedly had a much harder battle trying to defend his image and reputation to potential voters. Many attack-ads were produced to remind the viewer that Donald Trump was an indicted felon.¹²

People vote with their hearts just as much as their minds. At the ballot box, a candidate can only hope that a voter chooses them based on what they have seen, heard, or researched. Did image really affect voters to the point where he, or she refused to hear what is being said by a candidate? It didn’t stop the Brazilians from voting for Lula. Nor did it stop America from electing Donald Trump as the 47th President of the United States. ○

References:

- 1 *Tracking the Trump criminal cases*, POLITICO (June 13, 2023), <https://www.politico.com/interactives/2023/trump-criminal-investigations-cases-tracker-list/>.
- 2 *Luiz Inácio Lula da Silva president of Brazil*, BRITANNICA (last updated Apr. 17, 2025), <https://www.britannica.com/biography/Luiz-Inacio-Lula-da-Silva>.
- 3 *Id.*
- 4 Thomas Traumann, *Traumann Report: Brazil Vote 2022*, TRAUMANN CONSULTORIA (Nov. 8, 2022), <https://mailchi.mp/thomastraumann/traumann-report-08nov-ingles-16596404?e=958696eb69>.
- 5 Isabella Murray, *Half of Americans think Trump’s guilty verdict was correct, should end campaign: POLL*, ABC NEWS (June 2, 2024), <https://abcnews.go.com/Politics/plurality-americans-trumps-guilty-verdict-correct-hush-money/story?id=110744698>.
- 6 Reuters & Ricardo Brito, *Brazil’s Supreme Court confirms decision to annul Lula convictions*, REUTERS (Apr. 15, 2021), <https://www.reuters.com/world/americas/brazils-supreme-court-confirms-decision-annul-lula-convictions-2021-04-15/>.
- 7 Ciara Nugent, *How Lula Won the Most Crucial Election in Brazil for Decades*, TIME (Nov. 2, 2022), <https://time.com/6226269/how-lula-won-brazil-election/>.
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Donald Trump v Kamala Harris: who’s reading the polls?*, THE ECONOMIST (last updated Apr. 22, 2025), <https://www.economist.com/interactive/us-2024-election/trump-harris-polls>.
- 12 Reid J. Epstein, *Biden Campaign Ad Calls Attention to Trump’s Felon Status*, THE N.Y. TIMES (June 17, 2024), <https://www.nytimes.com/2024/06/17/us/politics/trump-felon-biden-ad.html>.

Insurrection or Assembly? The 14th Amendment Battle That Nearly Derailed a Presidency



By Victoria Kelly

Section III of the Fourteenth Amendment bars anyone from holding public office in the U.S. if they previously swore an oath to uphold the Constitution but later participated in or supported an insurrection or rebellion.¹ However, Congress can override this ban with a two-thirds vote in both houses.²

Dating back to the Reconstruction Era, the United States government added Section III to the 14th Amendment to keep Confederate sympathizers out of elective office as citizens were fearful that the confederacy would take over post-Civil War. The original language of Section III only applied to those who had fought in or supported the war.³

President Lyndon B. Johnson objected to the Senate's original language used in Section III, claiming the provision violated the Sixth Amendment, which includes the right to a fair and speedy trial. Johnson believed the original language in the Section punished those tied to the Confederacy without due process. Congress fought those objections, ultimately framing Section III as a qualification to hold office rather than a punishment. Congress at the time argued that to qualify for office, one could not have previously incited an insurrection.⁴

Fast forward over one hundred and fifty years later and the country faces the same question: Should a candidate, who has enticed an insurrection, be able to run for presidency? Since January 6, 2021, Democrats and the corporate media have mischaracterized the word “insurrection” to portray the events of that day as an effort to overthrow the federal government. But the Merriam Webster definition of “insurrection” is as follows: “an act or instance of revolting against civil authority or an established government.”⁵ Following a Civil War that left between 620,000 to 750,000 Americans dead, it is doubtful the lawmakers of our country in 1866 would consider a four-hour protest in a government building on a Wednesday afternoon as an “insurrection.” But that has not stopped top lawmakers and candidates from comparing January 6 to the Civil War. President Joe Biden, during a State of the Union address, claimed that on January 6, 2021, “our democracy faced its greatest threat since the Civil War.”⁶

Following what many Americans believe—and still believe—was a fraudulent presidential election, thousands of supporters of Donald Trump gathered outside the U.S. Capitol building in Washington.⁷ Some protesters were involved in confrontations with police, but the overwhelming majority engaged in First Amendment-protected political activity to demonstrate against the election.⁸ Following four hours of a mix of chaos and peaceful assembly inside the building, the media immediately designated the protest an “insurrection”

incited by then-President Trump.⁹ Since then, the same political and media interests have fixated on the four-hour disturbance that only temporarily delayed the proceedings that afternoon: the certification of the Electoral College results in each state. The government was not overthrown; Congress officially certified the election of Joe Biden and Kamala Harris at approximately 3:00 a.m. on January 7. But that did not stop Trump's foes from using the events of January 6 to prevent him from running for office.

In March 2024, the Supreme Court of Colorado used Section III of the Fourteenth Amendment against President Trump, contending that “Section III of the Fourteenth Amendment to the Constitution prohibits former President Donald J. Trump, who seeks the Presidential nomination of the Republican Party in this year's election, from becoming President again.”¹⁰

The Court's ruling came after a small group of Colorado voters filed a lawsuit seeking that the Colorado Secretary of State remove Trump from the Republican presidential primary ballot.

Why? According to the Colorado Supreme Court, President Trump “disrupted the peaceful transfer of power by intentionally organizing and inciting the crowd that breached the Capitol as Congress met to certify the election results on January 6, 2021.”¹¹ Although President Trump asked his supporters to “peacefully and patriotically make your voices heard,” backed by the fundamental right to assemble and protest protected by the First Amendment of the United States Constitution, the Colorado Supreme Court insists that these words were enough to eliminate President Trump from the state's ballot completely.¹²

However, the Supreme Court of the United States struck down this ruling from the Colorado Supreme Court, ruling that President Donald Trump must be placed on Colorado's 2024 ballot.¹³ The reasoning behind SCOTUS's reversal is that the Constitution makes *Congress*, not the States, the enforcer Section III.¹⁴ This decision was made by a nine-to-nothing vote of the United State Supreme Court Justices.¹⁵

On November 6, 2024, Donald Trump won the presidency with most of the electoral college and a majority of the popular vote, representing a landslide victory.¹⁶ Trump's decisive victory appears to have thwarted plans by Democrats in Congress to invoke Section III of the Fourteenth Amendment against the president elect. As far as we know, they still may very well try. But will this work the way the Left thinks it will? ○

References:

- 1 U.S. CONST. amend. XIV, § 3.
- 2 *Id.*
- 3 Jesse Greenspan, *The 14th Amendment's Disqualification Clause and Its Long History*, HISTORY (Sept. 7, 2023), <https://www.history.com/news/14th-amendment-section-three-disqualification-clause-confederates>.
- 4 *Id.*
- 5 *Insurrection*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/insurrection> (last visited Dec. 10, 2024).
- 6 Fred Lucas, *Fact Check: Biden Calls Jan. 6 Worst Attack on Democracy Since Civil War*, THE DAILY SIGNAL (Feb. 7, 2023), <https://www.dailysignal.com/2023/02/07/fact-check-biden-calls-jan-6-worst-attack-democracy-civil-war/>.
- 7 Kat Lonsdorf, et. al., *A timeline of the Jan. 6 Capitol attack — including when and how Trump responded*, NPR, <https://www.npr>.

[org/2022/01/05/1069977469/a-timeline-of-how-the-jan-6-attack-unfolded-including-who-said-what-and-when](https://www.bbc.com/news/articles/cn5w9w160xdo) (last updated Jan. 5, 2024).

8 *Id.*

9 *Id.*

10 *Trump v. Anderson*, 601 U.S. 100 (2024).

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 James FitzGerald, *Just how big was Donald Trump's election victory?*, BBC NEWS (Nov. 23, 2024), <https://www.bbc.com/news/articles/cn5w9w160xdo>.

Primaries – What's The Point?



By Carmen Trunkett

Heading into the 2024 election cycle, Joe Biden was expected to make the run for President as the incumbent. Yet in a shocking twist, Joe Biden announced on X on July 21, 2024, that he would not be running for reelection,¹ simultaneously endorsing Vice-President Kamala Harris as

his replacement.² Kamala Harris announced her campaign that same day, merely weeks before the Democratic National Convention.³ The DNC then selected Harris as their nominee, despite never having won a single primary.⁴ Though Donald Trump ultimately won the election, questions remain as to why Kamala Harris was selected without a primary and the propriety of such a candidate installation.

Only once before has a non-primary-winning candidate secured the Democratic nomination, with neither succeeding in the general election.⁵ In 1968, Herbert Humphrey entered the race late on April 27 as the incumbent Vice-President and was chosen when Lyndon B. Johnson decided not to run.⁶ Unlike Biden, Johnson never announced reelection intentions despite winning some primaries.⁷ Humphrey also entered the race four months before the Convention, not mere weeks like Harris.⁸ Most importantly, primaries then were largely symbolic, with only ten to fifteen states participating; they did not become today's binding contests until the 1970s.⁹

While the similarities are clear, there are stark differences between Herbert Humphrey's 1968 campaign and Harris' 2024 campaign, most notably being the purpose and power of the delegates.¹⁰ Primaries today allow voters to vote for their preferred candidate.¹¹ The state in which the primary is held would then take the results of the primary race into account when awarding delegates at the (in this case) Democratic National Convention.¹² However, the delegates duty to select an individual is not absolute, with the Delegate Selection Rules for the 2024 Democratic National Convention stating, "Delegates elected to the national convention pledged to a presidential candidate shall in all good conscience reflect the sentiments of those who elected them."¹³ So, while typically the delegate sections *should* mirror the votes of the people, in this case no vote was held, and the delegates took it upon themselves to vote with what they believed to be the sentiment of the people.

How these primaries are conducted vary by state, yet the results should remain the same, with the delegates selecting the candidate chosen by that state's citizens.¹⁴ However, the language of the rules adopted by the Democratic National Committee left the door open for this exact situation to occur.

The Republican National Convention rules state that "[a]ny statewide presidential preference vote . . . must be used to allocate and bind the state's delegation to the national convention in either a proportional or winner take all manner . . ." ¹⁵ The clear distinction between the two party's rules is that the Republican National Committee requires that a state's primary, caucuses, or state convention results must be used to allocate the delegation¹⁶ while the Democratic National Committee only needs to "vote in good conscience" to reflect the people they represent.¹⁷

Stated plainly, Democrats create their own rules with few limitations beyond self-imposed ones. Though citizens vote for preferred presidential candidates, the party establishment largely controls who becomes the nominee. While Harris's 2024 presidential run may have been unusual, the fact that the Democratic National Convention's rules allow for delegates to follow the will of the people "in good conscience" enables them to pledge their votes to a candidate of their own choosing under the guise of representing voter sentiment. Yet, both parties face this issue since they create and govern their own rules, resulting in minimal external regulation of the nomination process. ○

References:

- 1 Joe Biden (@JoeBiden), X, <https://x.com/JoeBiden/status/1815087772216303933> (last visited Feb. 21, 2025).
- 2 *Id.*
- 3 *Kamala Harris presidential campaign*, 2024, BALLOTPEdia, https://ballotpedia.org/Kamala_Harris_presidential_campaign_2024 (last visited Feb. 21, 2025).
- 4 Rebecca Morrin & Joey Garrison, *Harris makes history as first black woman, Asian American presidential nominee*, USA TODAY (Aug. 4, 2024), <https://www.usatoday.com/story/news/politics/elections/2024/08/02/kamala-harris-democrat-presidential-candidate/74631136007/>.
- 5 *See United States Presidential Election Results*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/topic/United-States-Presidential-Election-Results-1788863> (last visited Feb. 21, 2025).
- 6 *United States Presidential Election of 1968*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-1968> (last visited Feb. 21, 2025).
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 Scott Bomboy, *A brief history of presidential primaries*, NAT'L CONSTITUTION CTR. (Mar. 1, 2024), <https://constitutioncenter.org/blog/a-brief-history-of-presidential-primaries>.
- 11 *Id.*
- 12 *Presidential primaries and caucuses*, USA.GOV, <https://www.usa.gov/primaries-caucuses> (last visited Feb. 21, 2025).
- 13 *Id.*
- 14 *Delegate selection rules*, DEMOCRATS.ORG, <https://democrats.org/wp-content/uploads/2023/03/2024-Delegate-Selection-Rules.pdf> (last visited Feb. 22, 2025).
- 15 *Rules of the Republican Party*, REPUBLICAN NAT'L COMM. (2024), <https://democrats.org/wp-content/uploads/2023/03/2024-Delegate-Selection-Rules.pdf> (last visited Feb. 22, 2025).
- 16 *Id.*
- 17 *Delegate selection rules*, DEMOCRATS.ORG, <https://democrats.org/wp-content/uploads/2023/03/2024-Delegate-Selection-Rules.pdf> (last visited Feb. 22, 2025).

Check on Tyranny or a Restraint on Democracy? The Story of the Twenty-Second Amendment



By William Horth

The idea of term limits is all about the balancing of power—making sure no one person can hold the presidency indefinitely. The Twenty-Second Amendment, passed in 1951, locks in this principle by limiting presidents to two terms. It is a move designed to keep democracy healthy and

prevent any drift toward tyranny.

The practice of limiting presidents to two terms started with George Washington. After serving two terms, he chose to step aside, worried about what could happen if any president held on too long. Washington knew that too much power concentrated in one person's hands was risky for a democratic system.¹ His decision set an unofficial rule that most presidents respected, even though a few like Ulysses S. Grant and Theodore Roosevelt thought about breaking it.

Franklin D. Roosevelt shattered that tradition by winning four terms during the crises of the Great Depression and World War II. He argued that consistency was crucial to stabilize the nation, but his decision stirred concerns. To some, his extended presidency felt necessary for the times. To others, it looked like a dangerous drift away from democratic norms. This tension sparked a serious debate in Congress and beyond about the risks of allowing too much power in the executive branch.²

Roosevelt's unprecedented four terms made lawmakers act. Michigan Representative Earl Michener introduced House Joint Resolution 27 in 1947, calling for a constitutional amendment to limit presidents to two terms. Supporters argued that official term limits would prevent another FDR situation, restoring the checks and balances that keep power in line. But not everyone agreed. Some thought limiting terms was too restrictive, potentially denying voters their choice. Despite the debate, the amendment passed in Congress in 1947 and was ratified by the states in 1951, locking in the two-term rule.³

The amendment's wording is straightforward: "no person shall be elected to the office of the President more than twice."⁴ While it mentions being elected to the position, the amendment goes as far as closing caveats to individuals who end up holding office without an election by stating, "No person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once."⁵ It also allows any sitting president at the time to have a chance at another term if they were elected before it took effect. By drawing this line, the amendment aimed to preserve continuity without risking a monopoly on power.

The Amendment's Legacy Right off the bat, the amendment meant no future FDRs in the White House. Over time, the amendment has shaped presidential campaigns and forced presidents to think about their legacies within an eight-year limit. Critics and supporters of the amendment still debate its value—some say it curtails voter choice,

while others argue it is essential for protecting democratic principles.⁶

After the nation's most recent election, President Trump is now sitting for his second term in office. With a plain reading and no case law, he will be barred from a third term. Recently, Congressman Ogles introduced a motion to the House to amend the Twenty-Second Amendment to allow a three-term limit, giving the President a chance at a third term in office.⁷ The reasoning for the proposed amendment is to allow a president who will be able to "[reverse] the nation's decay and restore America . . . and he must be given the time necessary to accomplish that goal."⁸

While some argue that the Twenty-Second Amendment serves as a check on tyranny, we have seen in other nations that abolishing or extending term limits can lead to power consolidation, as in the cases of Vladimir Putin, Xi Jinping, and Ismaïl Omar Guelleh, the president of Djibouti.⁹ Putin has been able to wage a war in Ukraine with peaceful dissidence being detained for speaking out.¹⁰ Ji has used his power to silence dissidence. Ren Zhiqiang, billionaire retired real estate tycoon spoke out against Ji and his handling of the Covid pandemic in China.¹¹ Shortly after the criticisms were made Ren disappeared, only to be brought back into the public eye with a myriad of charges and a looming sentence to eighteen years in prison.¹²

The United States broke tradition by electing FDR to term after term. In times to come, the American people will be forced to do one of two things: overcome the intentionally high hurdle of ratifying The Constitution or elect another executive. That election can come with unintended consequences. The times may call for stability in leadership, challenging the delicate balance between continuity and democratic principles. In times of uncertainty, the nation may seek stability in leadership, weighing the risk of change against the comfort of familiarity. As the saying goes, it is better the devil you know than the one you don't. But in a democracy built on change, is clinging to the familiar a safeguard? Or a step toward stagnation? ○

References:

- 1 George Washington, President, United States of America, Farewell Address (Sept. 19, 1796), https://avalon.law.yale.edu/18th_century/washing.asp.
- 2 84 N.C.L. REV. 1253
- 3 55 DRAKE L. REV. 971.
- 4 U.S. CONST. amend. XXII
- 5 *Id.*
- 6 83 MINN. L. REV. 565.
- 7 Press Release, *Rep. Ogles Proposes Amending 22nd Amendment to Allow Trump to Serve Third Term*, U.S. House of Representatives (Jan. 2025), <https://ogles.house.gov/media/press-releases/rep-ogles-proposes-amending-22nd-amendment-allow-trump-serve-third-term>.
- 8 *Id.*
- 9 See John Temin, *When Leaders Override Term Limits, Democracy Grinds to a Halt*, LAWFARE (Oct. 29, 2020), <https://www.lawfaremedia.org/article/when-leaders-override-term-limits-democracy-grinds-halt>; see also *China's Xi Allowed to Remain 'President for Life'*, BBC NEWS (Mar. 11, 2018), <https://www.bbc.com/news/world-asia-china-43361276>.
- 10 Press Release, *Russia: Brutal Arrests and Torture, Ill-Treatment of Anti-War Protesters*, HUMAN RIGHTS WATCH (Mar. 9, 2022), <https://www.hrw.org/news/2022/03/09/russia-brutal-arrests-and-torture-ill-treatment-anti-war-protesters>.
- 11 Steve Jiang, *Chinese tycoon who criticized Xi Jinping's handling of coronavirus jailed for 18 years*, CNN Business (Sept. 22, 2020), <https://www.cnn.com/2020/09/22/asia/china-ren-zhiqiang-xi-jinping-intl-hnk/index.html>.
- 12 *Id.*

The Significance of Judicial Review in Upholding Electoral Integrity



By Madison Dietz

Judicial review is the procedure by which courts analyze legislative and executive acts to ensure conformity with the Constitution. This authority is vital in ensuring that elections are free, fair, and follow preexisting laws and constitutional requirements. The judiciary also has an important role in

settling election disputes and responding to accusations of election fraud, irregularities, or misconduct. This process may affect the legitimacy and stability of democratic processes.

Prior elections have highlighted the importance of judicial review in guaranteeing electoral integrity. The 2020 U.S. presidential election saw numerous legal battles regarding the validity of outcomes and allegations of fraud, similar to those seen in *Bush v. Gore*.¹ Because of the questioned legitimacy of the 2020 election, public debate on the fairness and transparency of elections has heightened calls for effective judicial oversight to protect democratic processes.

Marbury v. Madison established the precedent of judicial review in the United States of America—giving courts the authority to decide on the constitutionality of laws and executive acts.² The importance of judicial review for elections is to ensure that election processes and outcomes comply with legal and constitutional requirements. Courts can intervene where there is electoral malpractice, abuse of process, or procedural irregularity to advance a valid and just electoral process.³ Judicial review offers a neutral basis for resolving election disputes, upholding democratic values, and protecting electoral rights. The process ensures the validity of electoral outcomes and increases public confidence in democratic institutions.

Certain landmark cases show the impact of judicial review on electoral integrity. In *Bush v. Gore*, the U.S. Supreme Court resolved the 2000 presidential election result dispute in Florida.⁴ The 2000 presidential election highlighted judicial review's significance in ensuring equal elections. The very close election in Florida brought a recount, leading to legal battles over ballot validity and counting processes.⁵ The Supreme Court later intervened—halting the recount and in effect deciding the election for George W. Bush.⁶ The Court also decided on the authority of the Equal Protection Clause of the Fourteenth Amendment by ruling the process of the recount was not specific enough to be applied consistently to ballots and so violated the equal protection rights of voters.⁷ This decision emphasized the absolute necessity of well-delineated, uniform standards in recount processes to maintain the fundamental right to vote. While the ruling is controversial, *Bush v. Gore* reiterated the responsibility of courts to uphold electoral integrity and ensure that future elections remain fair by maintaining clearly defined laws and impartial application of those laws. In response to the 2000 election, Congress passed the Help America Vote Act (“HAVA”) in 2002 to remedy deficiencies highlighted by the case.⁸ HAVA established new

requirements for election administration, like voting equipment and voter registration aimed at ending future controversy and instilling greater faith in the electoral process.⁹

Various other statutes afford a basis for judicial review of election issues. The 1965 Voting Rights Act was passed to end the racial discrimination experienced in voting.¹⁰ The Voting Rights Act was established to mandate the enforcement of protections of voting rights and open access to the ballot box equally.¹¹ Another statute accomplishes a similar goal. The 1993 National Voter Registration Act (“NVRA”) requires all states to make voter registration a part of providing driver's license opportunities and applications for social services.¹² The NVRA permits judicial oversight of voter registration procedures to protect against disenfranchisement.¹³ Further, the U.S. Election Assistance Commission Act of 2002 created the Election Assistance Commission to manage and improve election administration.¹⁴ Judicial review of the Commission's decisions provides a guarantee that actions capable of undermining electoral integrity have a forum to challenge them.

The 2020 election once more placed the role of the courts in formulating standards for recounts and intervening in suspicious election practices in the spotlight. Both *Bush v. Gore* and the 2020 U.S. presidential election involved legal challenges to vote-counting practices and had extensive controversy over the Supreme Court's role in elections. Like *Bush v. Gore*, the 2020 election also featured legal disputes within states as President Trump alleged widespread voting fraud and irregularities. However, unlike in *Bush v. Gore*, the Supreme Court did not directly get involved in any of these cases and left state election officials and state courts to work out the difficulties.¹⁵ The 2020 presidential election, plagued by numerous challenges and allegations of fraud, exemplified the continuing relevance of *Bush v. Gore* in election contests. Even as the Supreme Court's approach in 2020 differed, the case reminded everybody of the potential of legal contests to influence the outcome of elections and the imperative of easy and uniform standards of vote-counting procedures.

As elections are increasingly subject to heightened scrutiny and inquiry into allegations of fraud and manipulation, judicial review becomes increasingly vital. Courts have to evolve to address these new challenges by making sure the legal system and current processes sufficiently address new threats to electoral integrity. There should be a robust and effective judicial review system to defend democratic principles and ensure that elections remain free and fair to reflect the people's will. ○

References:

- 1 *Bush v. Gore*, 531 U.S. 98 (2000). See also Owen Averill et al., *Widespread Election Fraud Claims by Republicans Don't Match the Evidence*, BROOKINGS (Nov. 2023), www.brookings.edu/articles/widespread-election-fraud-claims-by-republicans-dont-match-the-evidence/.
- 2 *Marbury v. Madison*, 5 U.S. 137, 138 (1803).
- 3 *Bush v. Gore*, 531 U.S. 98 (2000).
- 4 *Id.*
- 5 *Id.* at 104.
- 6 *Id.*
- 7 *Id.* at 109.
- 8 HELP AMERICA VOTE ACT of 2002, 107 P.L. 252, 116 Stat. 1666.
- 9 *Id.*

10 Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.
 11 *Id.*
 12 National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77.
 13 *Id.*
 14 HELP AMERICA VOTE ACT of 2002, 107 P.L. 252, 116 Stat. 1666.
 15 *Id.*

Voter Identification Laws: Beneficial or Burdensome?



By Taylor Greenwald

Voter identification laws have been a contentious point of discussion in American political debate over the last two decades.¹ Many states, such as Texas, Florida, and Georgia have implemented stricter voter identification laws, such as requiring photo identification.² In

contrast, states like California, Minnesota, and Illinois do not require voters to present identification prior to casting a ballot. As many states move toward tighter voter identification laws, proponents argue that these laws are necessary to ensure the validity of elections, while opponents argue that these laws are targeted to disenfranchise marginalized groups in society.³

Historically, voter identification laws have varied across state lines. In “non-strict” states, voters can cast a ballot without proper identification if they sign an affidavit affirming their identity and, in some instances, poll workers are allowed to vouch for their identities.⁴ In contrast, “strict” states allow voters to cast provisional ballots, with the exception that they provide further verification post-election day.⁵ Beyond this, states vary on the forms of identification that are permitted.⁶ Some states require photo identification such as a driver’s license, state-issued identification card, or a U.S. passport.⁷ Other states accept a wide array of identification such as gun permits and non-photo identification like utility bills or bank statements.⁸

Voter identification laws stem from concerns over the integrity of elections and the risk of fraud.⁹ The debate over their merits can generally be characterized along partisan lines.¹⁰ Many Republicans, including Texas Representative Chip Roy, support voter identification laws in elections, reasoning that they enhance the integrity of elections, prevent voter fraud, and ensure that only eligible voters participate in the election process.¹¹ In contrast, many Democrats have argued that voter identification laws disproportionately impact certain groups; particularly, they disenfranchise minorities, elderly individuals and low-income individuals who may face significant barriers in obtaining an identification card.¹²

Voter identification laws, such as the SAVE Act are beneficial to the validity of elections.¹³ Supporters argue that such initiatives ensure that only eligible citizens can vote. They reduce the likelihood of double voting, provide a sense of pride in the democratic process and protect the value of elections and each vote.¹⁴ Under the SAVE Act, states are prohibited from accepting and processing an application to register to vote in a federal election unless

the applicant presents documentary proof of U.S. citizenship.¹⁵ Acceptable documentation includes a valid U.S. passport, military ID and service record, a government-issued photo ID stating U.S. birthplace, or a government-issued photo ID without birthplace or citizenship accompanied by a secondary document.¹⁶ In addition, the act requires states to establish an alternative process under which an applicant may submit other evidence to demonstrate U.S. citizenship. This could include signing an attestation under penalty of perjury that the applicant is a United States citizen and eligible to vote in elections for federal office.¹⁷ The SAVE Act builds on federal laws already in place by introducing enhanced safeguards intended to further protect the electoral process.¹⁸

For example, in *Crawford v. Marion County Election Board*, the United States Supreme Court held that state statutes requiring photo identification as a prerequisite for voting were constitutional.¹⁹ The Court reasoned that voter identification laws are permissible if they are not overly burdensome and serve a legitimate state interest.²⁰ In upholding Indiana’s statute, the Court held that the Indiana statute was a valid exercise of the state’s power because it helps deter and detect voter fraud and helps keep many people that are either deceased or no longer state residents off the voter registration list.²¹

Moreover, opponents argue that voter identification laws are overly burdensome. However, in *Frank v. Walker*, the U.S. Court of Appeals for the Seventh Circuit held that requiring voters to go to the DMV or similar government office and obtain a photo ID is not considered substantially burdensome.²² Supporting this view, a recent report by the Heritage Foundation, a conservative think tank based in Washington D.C., stated that studies claiming voter identification laws are discriminatory ignore the fact that most Americans have a valid driver’s license or other form of identification that can be used.²³ In fact, there is also little research that proves voter identification laws affect voter turnout in a discriminatory way, and some evidence suggests that voter identification laws have bolstered greater participation.²⁴

Opponents of stricter voter identification laws arguments should be seen as baseless. Voter identification laws have little to no effect on reducing voter turnout.²⁵ Elections are scheduled far in advance; they give voters ample time to obtain necessary identification. There would have to be extraordinary circumstances where one would not be able to possess a valid form of identification. Voter identification laws are a crucial safeguard to ensure the integrity of the electoral process and uphold the principle of one person, one vote. ○

References:

- David Muhlhausen & Keri Weber Sikich, *New Analysis Shows Voter Identification Laws Do Not Reduce Turnout*, THE HERITAGE FOUND. (Sept. 11, 2007) <https://www.heritage.org/election-integrity/report/new-analysis-shows-voter-identification-laws-do-not-reduce-turnout>.
- Id.*
- Id.*
- Id.*
- Id.*
- Id.*
- Hans von Spakivsky & Alex Ingram, *Without Proof: The Unpersuasive Case Against Voter Identification*, THE HERITAGE FOUND. (Aug. 24, 2011), <https://www.heritage.org/government-regulation/report/without-proof-the-unpersuasive-case-against-voter-identification>.

- 8 *Id.*
 9 *Id.*
 10 *Id.*
 11 *Id.*
 12 *Id.*
 13 Safeguard American Voter Eligibility Act, H.R. 22, 119th Cong. (2025).
 14 *Id.*
 15 *Id.*
 16 *Id.*
 17 *Id.*
 18 Julianne Lampert, Rachey Orey & Matthew Weil, *Five Things to Know About the SAVE Act*, BIPARTISAN POL'Y CTR. (July 10, 2024), <https://bipartisanpolicy.org/blog/five-things-to-know-about-the-save-act/>.
 19 *Crawford v. Marion Cnty. Election Bd.*, 533 U.S. 181, 128 (2008).
 20 *Id.*
 21 *Id.*
 22 *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).
 23 *Id.*
 24 Spakivsky & Ingram, *supra* note 7.
 25 Muhlhausen & Sikich, *supra* note 1.

Campaign Finance Reform and its Impact on Modern Elections



By Wendell Powell

In a world where everyone has a voice, free speech enthusiasts flourish and find purpose. It can be argued that the ultimate form of free speech is allowing money to speak on one's behalf. The adage “put your money where your mouth is” may hold more truth than we often acknowledge.

But what happens when corporations gain a voice? What happens when they begin to place their financial power behind their preferred policies and candidates? The Supreme Court's landmark decision in *Citizens United v. FEC* fundamentally transformed the landscape of campaign finance regulation, leading to unprecedented amounts of money flooding our electoral process.

One of the core principles underlying American democracy is the protection of free speech. The First Amendment guarantees the right to express opinions without government interference.¹ However, *Citizens United v. FEC* (2010) expanded this right by striking down restrictions on corporate and union political expenditures, ruling that these entities possess First Amendment rights similar to individuals.² The decision effectively enabled unlimited independent political spending, asserting that monetary contributions constitute a form of protected speech.

While some people celebrated this decision as a victory of free speech, it raised concerns about the disproportionate influence of wealthy donors and special interest groups in elections. The ability of corporations and super PACs to spend unlimited funds to support candidates or issues has sparked debate about whether this truly serves the public interest or merely amplifies the voices of the affluent at the expense of the broader electorate.

To understand the present landscape of campaign finance, it is essential to examine its regulatory history. The first significant

campaign finance law in the United States was the Tillman Act of 1907, which prohibited direct financial contributions from corporations to federal political campaigns.³ This legislation was a response to concerns about corporate influence in politics, but it lacked enforcement mechanisms.

Efforts to regulate campaign financing continued into the 20th century. The Federal Election Campaign Act (FECA) of 1971 imposed stricter disclosure requirements on campaign contributions. In 1975, the Federal Election Commission (FEC) was established to enforce these regulations.⁴ However, everything went awry when the Supreme Court's decision in *Buckley v. Valeo* (1976) struck down limits on a candidate's personal expenditure on their own campaign, reaffirming the principle that money equates to speech while upholding contribution limits to prevent corruption.⁵ This was a temporary win for detractors until it was overturned by the Bipartisan Campaign Reform Act of 2002 (“BCRA”).⁶

The BCRA, also known as the McCain-Feingold Act, came like a shockwave. This law sought to curb the influence of soft money—funds raised by political parties for activities intended to influence elections. It also introduced requirements for candidates and advocacy groups to disclose donors contributing more than \$10,000.⁷ However, subsequent court rulings, particularly *McConnell v. FEC*, upheld some aspects of the BCRA while weakening others.⁸

One of the most significant consequences of *Citizens United* was the emergence of Super PACs—-independent expenditure-only committees that can raise unlimited funds from individuals, corporations, and unions to influence elections. Unlike traditional political action committees (PACs), Super PACs cannot contribute directly to candidates but can spend vast sums to advocate for or against them. This has led to an influx of money into political campaigns, often from undisclosed sources.⁹ The increasing role of wealthy donors in American politics has raised fundamental questions about the integrity of the electoral system. A small number of billionaires and corporations now wield significant influence over election outcomes, shaping policies and priorities in ways that may not align with the broader electorate's interests. This begs the question: what is the role of Government, specifically when it comes to fairness and equity?

Another concerning trend is the growing wealth of politicians themselves. It seems that many elected officials enter office with modest financial backgrounds but experience significant wealth accumulation during their tenure. This trend has led to suspicions that policymakers prioritize the interests of donors and lobbyists over those of ordinary citizens. The close relationship between campaign contributions and legislative outcomes has eroded public trust in the political process. Moreover, according to the data of the Federal Election Commission, the most successful candidates raised well over a billion dollars—creating an uneven playing field.¹⁰ This uncomfortable truth has killed the romanticism of the grassroots candidate who lack access to wealthy donors, reinforcing the dominance of political elites. Many voters feel that their voices are drowned out by the financial influence of corporations and

billionaires, and the growing perception exists that politicians are more accountable to their donors than to their constituents. Advocates of change argue that transparency measures, contribution limits, and public funding of elections can help level the playing field and restore faith in the democratic process. However, opponents contend that such reforms may infringe upon free speech rights and impose undue restrictions on political participation.

Where is the middle ground? Does it live in increasing transparency without imposing excessive restrictions? Requiring real-time disclosure of political donations, enforcing stricter reporting requirements for nonprofit groups engaged in political advocacy, and implementing stronger anti-corruption laws could help mitigate the influence of money in politics while preserving free speech protections. The answers will shape the future of American democracy for generations to come. ○

References:

- 1 U.S. CONST. amend. 1.
- 2 Citizens United v. FEC, 130 S. Ct. 876, 898 (2010).
- 3 BASIC DOCUMENTS IN FEDERAL CAMPAIGN FINANCE LAW 13 – 14 (Pawel Laidler & Maciej Turek eds., 2016).
- 4 Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended in 52 U.S.C.).
- 5 Buckley v. Valeo, 96 S.Ct. 612, 618 (1976).
- 6 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in 52 U.S.C.).
- 7 2 U.S.C. §§ 431-457 (2018).
- 8 McConnell v. FEC, 124 S. Ct. 619 (2003).
- 9 *De-Mystifying Super PACs: Understanding Their Role in Modern Politics*, ARISTOTLE, <https://www.aristotle.com/blog/2024/06/de-mystifying-super-pacs/> (last visited Mar. 22, 2025).
- 10 *Candidates for president*, FED. ELECTION COMM'N, https://www.fec.gov/data/candidates/president/?election_year=2000&cycle=2000&election_full=true (last visited Mar. 15, 2025).

Artificial Intelligence and Its Impact on Elections, Present and Future



By Corwin Hooley

These days, when everyday Americans discuss the dangers of artificial intelligence (“A.I.”), they usually imagine *Terminator*-like soldiers turning against humanity on the whims of a rogue A.I. like Skynet. However, the more insidious danger is what happens when A.I. is used, not as

brute force, but as a tool to manipulate the masses and fool them into making choices based on social engineering. Nowhere will that danger be more pronounced than in a hotly contested and polarized election cycle. In the United States, voters are inundated with commercials, speeches, phone calls, and other methods of outreach during election season. But what happens when you cannot tell the difference between the actual candidate’s voice and an A.I. generated one?

That is the crux of why A.I. can be so dangerous: the more sophisticated the technology becomes the harder it will be to discern.

Bad actors may try to leverage these technologies through various methods to disseminate false or misleading information using A.I. These include deepfakes, which are A.I. generated or altered images and videos that can be used to spread false information or influence the receiver’s opinions. An example of this would be the likeness of a political candidate in an advertisement that mimics his voice but grossly misrepresents his positions on the issues at the heart of his campaign. Another method would be A.I.-generated chatbots that can be used to create and spread false information. When working in a large group called a bot farm, the A.I. can create written advertisement campaigns that can have a massive impact on what information people receive as a result. Essentially this would give certain ideas or misinformation a larger impact than otherwise possible because there are thousands of A.I. chatbots spreading their message in ads, on message boards, and across social media.

It becomes clear that, in a rapidly advancing technological world, safeguards need to be implemented to protect the integrity of the United States election process from these dangers and the bad actors who would try to manipulate the public. First this article will focus on what measures and legislation are being proposed and implemented on the federal and state levels. Then, the focus will shift to the way forward and how best to ensure that future elections can be protected effectively.

The Federal Government is not oblivious to the risks inherent in allowing unrestrained A.I. usage in elections. Currently, there are several bills that have been introduced to the legislature. Some, like HR 8384, are focused on regulating the output of A.I.-generated deceptive media, specifically on political and campaign advertisements. The Federal Artificial Intelligence Risk Management Act of 2024 is aimed at creating a commission to evaluate the risks and to create protocols to address those risks to elections and campaigning. This act focuses both on transparency, but also the ongoing development of these types of regulations and encouraging responsible utilization of A.I. technologies.

Additionally, there is HR 8668 which seeks to amend the Federal Election Campaign Act of 1971, or FECA. This act would expand the disclosure requirements of FECA to include the use of A.I.-generated content but would also require campaigns to report what A.I. tools they are using and how they are being used. This type of disclosure expansion could be challenged in the Supreme Court, and the Government would need to survive exacting scrutiny and show a significant interest implicated in these restrictions. This demonstrates the boundaries that can be imposed on regulations and why none of the legislators are calling for a total ban on A.I. use, they would likely be invalidated on First Amendment grounds.

The States, on the other hand, have made strides and have implemented legislation regulating Artificial Intelligence. These typically fall into two categories: disclosures and limited prohibitions. The States that have disclosure requirements, such as Indiana, usually revolve around misleading or deepfake images using the likeness of the candidates or misrepresenting their platform. States, such as Minnesota, prohibit deepfake media portraying or about a candidate for a certain period

before the elections. Minnesota has a 90-day blackout period, while others have less. The penalties attached to these restrictions vary but are usually injunctive in nature for the civil penalties, and fines if the law provides for criminal penalties.

As discussed above, there is no federal scheme in place yet that fully addresses A.I. and its various impacts in the election cycle. All the measures currently in place are mainly aimed at distinct aspects of the issue, but none provide sufficient protections for the entire scope of danger. The best way forward is one that combines several approaches and provides several safeguards. For example, the proposed Federal Act requiring a risk management commission would be a good place to start. That way there is an ongoing entity able to evolve the protections in tandem with the advancement of technology. The ideal solution is this kind of committee coupled with longer blackout periods and stronger penalties for knowingly using misleading A.I. to influence an election or distort a candidate's likeness or platform. There must be a strong enough punishment to deter the abuse of A.I. Another possible deterrent is penalties that are passed on to the candidates who use and benefit from these misleading tactics.

There is no one-size-fits-all solution to the risks A.I. poses to U.S. elections. However, by implementing a strong uniform federal scheme that is prepared to handle the evolving complexities of A.I., and providing several layers of protection, the U.S. can ensure that the integrity of future elections is as safeguarded as possible. ○

References:

- 1 THE TERMINATOR (ORION PICTURES 1984)
- 2 *Risk in Focus: Generative A.I. and the 2024 Election Cycle*, Cybersecurity & Infrastructure Security Agency, (Jan. 18, 2024), https://www.cisa.gov/sites/default/files/2024-01/Consolidated_Risk_in_Focus_Gen_AI_Elections_508c.pdf.
- 3 *White Paper on Artificial Intelligence – A European Approach to Excellence and Trust*, COM (2020), EUROPEAN COMMISSION (Feb. 19, 2020), https://commission.europa.eu/system/files/2020-02/commission-white-paper-artificial-intelligence-feb2020_en.pdf.
- 4 *Risk in Focus: Generative A.I. and the 2024 Election Cycle*, *supra* note 2.
- 5 *Id.*
- 6 *White Paper on Artificial Intelligence – A European Approach to Excellence and Trust*, COM (2020), EUROPEAN COMMISSION (Feb. 19, 2020), https://commission.europa.eu/system/files/2020-02/commission-white-paper-artificial-intelligence-feb2020_en.pdf.
- 7 H.R. 8384, 118th Cong. (2024).
- 8 H.R. 6936, 118th Cong. (2024).
- 9 *Id.*
- 10 H.R. 8668, 118th Cong. (2024).
- 11 Whitaker, L. Paige, Cong. Rsch. Serv., IF12468, *Artificial Intelligence (AI) In Federal Election Campaigns: Legal Background and Constitutional Considerations for Legislation* (2023), <https://crsreports.congress.gov/product/pdf/IF/IF12468>.
- 12 *Id.*
- 13 U.S. Const. amend. I.
- 14 Sanam Hooshidary & Adam Kuckuk, *AI in Elections: A Look at the Federal and State Legislative Landscape*, NATIONAL CONFERENCE OF STATE LEGISLATURES (2024), <https://www.ncsl.org/elections-and-campaigns/ai-in-elections-a-look-at-the-federal-and-state-legislative-landscape>.
- 15 Ind. Cod §3-9-8
- 16 Minn. Stat §609.771
- 17 *Id.*
- 18 Sanam Hooshidary & Adam Kuckuk, *supra* note 14.
- 19 H.R. 6936, 118th Cong. (2024).

No Conviction, No Vote? Pre-trial Detention and the Right to Vote



By Brianna Pritts

Approximately 64% of individuals in jail are pre-trial detainees, meaning that the majority of people housed in American jails have only been charged with a crime and yet to have been convicted.¹ The accused still retain their right to vote in elections, but those who are incarcerated

in pre-trial detention face logistical barriers to voting.

In 1974, the Supreme Court held that individuals who are otherwise eligible to vote cannot be denied this right merely based off the fact he or she is incarcerated.² Despite this ruling, those who are detained, but retain their right to vote, experience both informational and infrastructure obstacles to partaking in this right.

The clearest and most detrimental disenfranchisement pre-trial detainees experience is the access to information. Foremost, they lack access to information to make an educated decision on who to vote for. They do not have internet access and must rely on librarians to answer questions that Google could answer in milliseconds.³ Often, many are under the incorrect assumption that as soon as they are arrested, they now lose their right to vote.⁴ Additionally, there is a lack of access to information involving relevant dates, such as when one must be registered, and when an absentee ballot must be cast.⁵

The voting laws in certain jurisdictions also may make it more difficult for pre-trial detainees to vote. For example, thirty-six states require voter identification.⁶ Often, as a result of going to jail, individuals have their personal effects, including their IDs, confiscated.⁷ Further, sixteen states require “for cause” reasons to obtain an absentee ballot, and in many of these states, being in jail is not an enumerated excuse.⁸

To combat this issue, some state and localities have created initiatives to make voting from jail easier. In Cook County, Illinois, which is home to one of the largest jail populations in the country, legislation has made the county jail an official early voting location.⁹ Illinois’ Public Act 101-0442 initiated three important features for pre-trial detainees – access to education and registration materials, absentee ballots access, and in person voting polls in jail.¹⁰ This Act assists pre-trial detainees in jumping over both the informational and infrastructural hurdles associated with voting from within a jail.¹¹ It requires the availability of educational resources, including informational materials on how to vote from jail.¹² Additionally, this provision assists in ensuring that the jail staff and Department of Corrections officials are also informed about voter eligibility in jails.¹³ Further, the Act permits mail-in ballots in facilities with a population under three million and requires in-person voting for facilities with over three million.¹⁴

Initiatives like Public Act 101-0442 highlight the potential for reform by providing tangible solutions to the obstacles pre-trial

detainees face. Although pre-trial detainees often encounter barriers that hinder their ability to exercise their right to vote, certain reforms offer a promising model for overcoming these informational and infrastructural obstacles. These initiatives have shown that systematic changes can help in securing access to the voting process for all citizens, regardless of their incarceration status. ○

References:

- 1 Glenna Siegal, *Illinois Public Act 101-0442: Unlocking Education, Registration, And Participation of Voters in Pretrial Detention*, 2022, U. Ill. L. R. 1603, 1606 (2022).
- 2 O'Brien v. Skinner, 414 U.S. 524 (1974).
- 3 Siegal, *supra* note 1 at 1612.
- 4 *Id.* at 1610.
- 5 *Id.*
- 6 Emily Rong Zhang, *New Tricks for an Old Dog: Detering the Vote Through Confusion in Felon Disenfranchisement*, 84 Mo. L. Rev. 1037 (2019).
- 7 *Id.*
- 8 *Id.*
- 9 Nicole D. Porter, *Voting in Jails*, THE SENTENCING PROJECT (May 7, 2020) <https://www.sentencingproject.org/policy-brief/voting-in-jails/>.
- 10 Siegal, *supra* note 1 at 1625.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*

I Want to be a Judge, “Dawg!” (Or Is It “Dog?”)



By Timothy Carver

The ambiguity of language in legal contexts often shapes judicial interpretations, opening doors to manipulation and strategic advantage. Consider this: If I say, “just give me a lawyer, dawg,” do you know what I mean? Does anyone genuinely believe I’m requesting legal counsel from a poodle that made it through law school? This absurdity underscores the baffling decision in *State v. Demesme*, where the Louisiana Supreme Court denied a writ, with Justice Crichton in concurrence concluding that the term was ambiguous—as if the casual colloquialism masked some hidden meaning.¹ This writing illuminates how even trivial linguistic quirks, like “dog” versus “dawg” can be exploited to sway legal outcomes, a principle with profound implications for judicial power dynamics.

Florida’s system of electing judges presents itself as democratic, but behind the “nonpartisan” label lies a carefully masked battleground. The state’s more than six hundred county and circuit court judges are elected in races governed by the Florida Statutes,² which proudly markets them as nonpartisan.³ But in practice, that label amounts to little more than legal window dressing. Candidates don’t need party labels when endorsements, special interest backing, and coded campaign messaging do the signaling for them. Political influence often shapes election outcomes well before voters cast their ballots.⁴ Judicial candidates routinely exploit the gray areas of Canon 7 of the Florida Code of Judicial Conduct—using strategic language, donor networks, and partisan signaling to convey political alignment

without technically breaking the rules.⁵

With six-year terms on the line, these elections carry lasting consequences and have become critical flashpoints for political power. Such quiet politicization of the judiciary runs counter to the framers’ vision of an independent and impartial bench. Throughout American history, political power has swung like a pendulum, shifting between parties with competing and often conflicting visions—from the early divides between Federalists and Democratic-Republicans to the transformative realignments of the Civil War, the Progressive Era, and the Civil Rights Movement.⁶ These ideological shifts underscore why an insulated judiciary is essential to preserving stability and fairness. The framers, wary of unchecked power, constructed a system of checks and balances anchored by a judiciary meant to remain above the political fray.⁷

In *The Federalist No. 78*, Alexander Hamilton emphasized that judicial independence is vital to protecting the rule of law against “encroachments and oppressions of the representative body.”⁸ He famously warned that “there is no liberty, if the power of judging be not separated from the legislative and executive powers.”⁹ Without this separation, courts risk becoming mere instruments of prevailing political forces—undermining public confidence and destabilizing the foundation of democratic governance. Florida’s judicial elections expose just how fragile that neutrality can be.

Consider the explosive case of *Inquiry Concerning Judge Casey L. Woolsey*, in which the Florida Supreme Court reviewed a campaign voicemail filled with political buzzwords such as “liberal” and “conservative.”¹⁰ Despite its unmistakable partisan undertones, the Court held that the language used was not inherently political.¹¹ The voicemail—sent by a candidate who ultimately won the judicial election—sparked widespread criticism, with many arguing that the message clearly signaled partisan affiliation under the guise of neutrality.¹² The Court’s reasoning hinged on a distinction between context and content. It concluded that terms like “liberal” and “conservative” are not, in themselves, explicitly partisan.¹³ This interpretation raises serious questions. For instance, if a person refers to themselves as a “liberal,” does that not make it more likely they align with the Democratic Party than if they had not used that term? Similarly, if someone identifies as a “conservative,” isn’t it more probable they lean Republican?

Under the Federal Rules of Evidence, the standard for relevance is whether a fact makes another fact “more or less probable than it would be without the evidence.”¹⁴ By that measure, terms like “liberal” and “conservative” should be understood as politically charged—because they *do* make alignment with a particular party more likely. If judicial candidates are permitted to casually invoke politically charged language without consequence, it raises the risk of signaling a shift away from the judiciary’s intended role as an unbiased institution. This not only undermines the spirit of Canon 7—it threatens to erode public trust in the courts themselves.¹⁵ When overtly partisan language slips through unchallenged, the line between judicial neutrality and political advocacy grows perilously thin. The risk is clear: a bench once meant to be a forum of impartial justice becomes yet another tool of ideological influence.

Meanwhile, modern campaigns have weaponized data with ruthless efficiency. Sophisticated voter databases now allow for precisely targeted messaging, ensuring that campaign voicemails, texts, and digital ads strike the right demographic nerve. Gone are the days of vague, generic appeals. Today's judicial campaigns are scalpel-sharp—engineered for maximum impact while technically skirting the limp restrictions of Canon 7.¹⁶

If we are to honor the Framers' vision and safeguard the courts from political encroachment, the answer is clear: the rules must be strengthened. Alternatively, if judicial elections are destined to remain political in all but name, then perhaps it is time to abandon the pretense altogether—scrap the façade of nonpartisanship and confront the reality that political forces already shape the judiciary. And, if that is where we are headed, then, as the Beastie Boys said nearly forty years ago: “*You gotta fight! For your right! To parr-tay!*”¹⁷ I want to be a judge, dawg! ○

References:

- 1 State v. Demesme, 228 So. 3d 1206, 1207 (La. 2017).
- 2 Fla. Office of the State Courts Admin., *Trial Courts - Circuit*, <https://www.flcourts.gov/Florida-Courts/Trial-Courts-Circuit> (last visited Feb. 20, 2025).
- 3 FLA. CONST. art. V, §§ 10(b)-(c) (establishing non-partisan elections for county and circuit judges); see also FLA. STAT. § 105.031(2) (2024).
- 4 See Fla. S.B. 90, 2021 Leg., Reg. Sess. (Fla. 2021).
- 5 FLA. CODE JUD. CONDUCT, Canon 7 (2023).
- 6 *Political Parties in the Senate*, U.S. SENATE, <https://www.senate.gov/about/origins-foundations/parties-leadership/overview.htm> (last visited Feb. 22, 2025); see also David R. Mayhew, *Electoral Realignments: A Critique of an American Genre*, 30 AM. POL. SCI. REV. 527 (2002).
- 7 U.S. CONST. art. III, § 1 (establishing judicial tenure during good behavior to insulate judges from political pressure).
- 8 THE FEDERALIST No. 78 (Alexander Hamilton).
- 9 *Id.*
- 10 *Inquiry Concerning a Judge No. 2023-029 re: Woolsey*, 389 So. 3d 411, 412 (Fla. 2024).
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 FED. R. EVID. 402.
- 15 Mark D. Killian, *Navigating Judicial Campaigns—What's Permissible in Promoting Websites*, FLA. BAR NEWS (May 16, 2024), <https://www.floridabar.org/the-florida-bar-news/navigating-judicial-campaigns-whats-permissible-in-promoting-websites/>.
- 16 Charles J. Kahn, Jr., *Judicial Elections: Canon 7, Politics, and Free Speech*, 72 FLA. B.J. 22 (1998), <https://www.floridabar.org/the-florida-bar-journal/judicial-elections-canon-7-politics-and-free-speech/>.
- 17 BEASTIE BOYS, FIGHT FOR YOUR RIGHT (Def Jam & Columbia Records 1986).

The Modern Voter: How Social Media is Reshaping the Electorate



By Grayson Horton

Social media is the new public square. In the early history of the United States of America, candidates for elected office did not engage directly with voters.¹ Instead, “members of the candidate’s political party or other elected officials might go out on the campaign trail and ‘stump’ for the candidate.”² As time progressed, candidates utilized new technologies to directly reach the electorate.³ Newspapers and political writings spread candidates’ ideas across the United States.⁴ Radio and television allowed voters to hear and see candidates.⁵ Today, social media is the medium candidates are using to campaign.⁶ This shift to social media campaigning will have long-lasting impacts on American elections. Consequently, social media companies like *Meta*, *TikTok*, and *X* have a duty to protect the integrity of US elections. Social media companies play a key role in how information about elections is shared to the electorate. Thus, social media companies must not abuse their power over their users to influence voters.

Social media has increasingly become the place where voters get their information about elections.⁷ *X* (formerly Twitter) and *TikTok* are the two social media companies that voters are turning to for politics.⁸ Fifty-nine percent of X users say keeping up with politics or political issues is a reason they use it, compared with thirty-six percent of *TikTok* users and even smaller share of Facebook or Instagram users (twenty-six percent each).⁹ In particular, an increasing amount of young voters tend to get most of their news from social media.¹⁰ While the number of adults who say they regularly get news from *TikTok* has grown fivefold in the last four years,¹² “[t]hose who get most of their political news from social media are more likely to be younger adults.”¹² Further, nearly half of the adults in that group are under thirty, while a miniscule twelve percent are fifty and older.¹³

Since the shift of younger voters being on social media to get their political news, campaigns and other political groups have spent billions of dollars on advertisements that target these young voters.¹⁴ During the 2024 election cycle, total online political advertising topped \$1.35 billion dollars on *Meta* and *Google*.¹⁵ From September 1, 2024, until election night, advertisers spent more than the prior twenty months combined.¹⁶ Yet, these figures are likely underestimated because “online political spending is limited by the lack of federal regulation governing what information platforms make publicly available.”¹⁷ For example, *Meta* and *Google* both do not report expenses for creating ads like “research and production, nor payments for influencer endorsements.”¹⁸ Also, “due to the volume of advertising activity,” the Brennan Center for Justice statistics for online political spending is limited to those advertisers who spent at least \$5,000.¹⁹ Additionally, *Meta* and *Google* define “political” differently.²⁰ *Meta* defines “political” to include ads “by or about candidates, parties, and political figures, as well as social

issues,” while *Google* defines “political” to include those ads “that feature elected officials, parties, candidates, and other things the public can vote on.”²¹ Thus, there is no universal online political disclosure requirement for social media companies. This is an area where Congress should legislate.

Social media companies and the role the government plays in regulating them has recently been an issue that has reached the United States Supreme Court. In *Moody v. Netchoice, LLC*, the Court stated, “[A]n entity exercising editorial discretion in the selection and presentation of content is engaged in speech activity,” and “[w]hen the government interferes with such editorial choices . . . it alters the content of the compilation” and thereby “creates a different opinion page . . . bearing a different message.”²² Thus, the compilation of information contained on social media news feeds is protected by the First Amendment, yet the Court did not rule on the underlying First Amendment question about whether the Texas and Florida laws violated the Constitution.

In *Murthy v. Missouri*,²³ while the Court held that the plaintiffs lacked Article III standing, the plaintiffs argued that the federal government pressured social media companies to censor their protected First Amendment speech regarding elections and COVID-19. In his dissent, Justice Alito wrote, “[f]or months, high-ranking Government officials placed unrelenting pressure on Facebook to suppress Americans’ free speech. Because the Court unjustifiably refuses to address this serious threat to the First Amendment, I respectfully dissent.”²⁴

As the evidence has shown, the modern voter will likely get their election information via social media, and the law is unclear on the relationship between social media and government regarding elections. Thus, clear guidance is needed for social media companies, and Congress and the courts will ultimately have to ensure social media companies participate in the election process in a meaningful way without infringing on Americans’ First Amendment rights to debate the issues of the day. ○

References:

- 1 *Presidential Elections and Voting in U.S. History: Where and Why*, LIBRARY OF CONGRESS, <https://www.loc.gov/classroom-materials/elections/general-election/where-and-why/> (last visited Dec 27, 2024).
- 2 *Id.*
- 3 *Presidential Elections and Voting in U.S. History*, *supra* note 1.
- 4 OpenStax & Lumen Learning, *The Evolution of the Media*, AMERICAN GOVERNMENT 2E SECOND EDITION (2019), <https://pressbooks.online.ucf.edu/pos20411g/chapter/the-evolution-of-the-media/#footnote-120-1>.
- 5 *Id.*
- 6 Ian Vandewalker & Eric Petry et al., *Online Ad Spending in the 2024 Election Topped \$1.35 Billion*, BRENNAN CENTER FOR JUSTICE (2024), <https://www.brennancenter.org/our-work/analysis-opinion/online-ad-spending-2024-election-topped-135-billion>.
- 7 Colleen McClain, *How Americans Navigate Politics on TikTok, X, Facebook and Instagram*, PEW RESEARCH CENTER (2024), <https://www.pewresearch.org/internet/2024/06/12/how-americans-navigate-politics-on-tiktok-x-facebook-and-instagram/>.
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 Rebecca Leppert & Katerina Eva Matsa, *More Americans – especially young adults – are regularly getting news on TikTok*, PEW RESEARCH CENTER (2024), <https://www.pewresearch.org/short-reads/2024/09/17/more-americans-regularly-get-news-on-tiktok-especially-young-adults/>.

- 12 Mark Jurkowitz et al., *Demographics of Americans who get most of their political news from Social Media*, PEW RESEARCH CENTER (July 30, 2020), <https://www.pewresearch.org/journalism/2020/07/30/demographics-of-americans-who-get-most-of-their-political-news-from-social-media/>.
- 13 *Id.*
- 14 Vandewalker & Petry et al., *supra* note 6.
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 Ian Vandewalker & Eric Petry et al., *Online Political Spending in 2024*, BRENNAN CENTER FOR JUSTICE (2024), <https://www.brennancenter.org/our-work/analysis-opinion/online-political-spending-2024>.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *Moody v. Netchoice, LLC*, 603 U.S. 707, 731-732 (2024).
- 23 *Murthy v. Missouri*, 603 U.S. 43 (2024)
- 24 *Murthy v. Missouri*, 603 U.S. 43, 108 (2024) (Alito, J., dissenting).

Strengthening Laws Against Voter Intimidation and False Election Speech



By Madisen Maring

The historical context of voter intimidation in the United States is deeply intertwined with the struggle for civil rights. The Voting Rights Act of 1965 stands as a landmark achievement in the fight against discriminatory voting practices.

This act outlawed practices designed to disenfranchise African American voters in the South. As a direct result, Black voter registration surged, transforming the political landscape.¹ By the end of 1965, a quarter of a million new Black voters had been registered, with one-third of these registrations directly facilitated by federal examiners.²

Although blatant intimidation practices are less common today, the threat of coercion and manipulation still exists.³ In this digital age, new avenues are available for suppressing votes and undermining elections. While online platforms create unmatched opportunities for communication and political engagement, they have equally been used as weapons through which disinformation can spread. This has caused unprecedented threats against individuals and chaos to be unleashed upon the electorates.⁴

With new avenues and possibilities available for voter intimidation tactics, it is time to adjust current voter intimidation laws to provide for greater penalties against offenders and apply additional safeguards in ensuring the right to vote. This proactive approach not only ensures that all Americans can vote without fear of coercion or harassment, but it also reinforces public confidence in the system which is indispensable for a healthy political climate.

Under 52 U.S.C § 10101(b), it is a federal crime for two or more persons to conspire to “. . . intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose. . . .”⁵ Although the law was intended to address historical problems, such as vote buying and voter coercion, its broad language

also covers various forms of modern-day voter suppression, in some instances occurring in the digital realm.

For example, In *Silberberg v. Bd. of Elections of N.Y.*, a federal court upheld New York's law making it a crime for a person to show another person his or her marked ballot, including via social media posts.⁶ The court held that this seemingly innocuous activity could facilitate a more sophisticated form of voter coercion, such as employers, unions, or other pressure groups intimidating people into showing photos of their completed ballots as evidence that they voted in a certain way, thereby establishing a culture of coercion and fear of reprisal.⁷

There are other possible remedies for modern voter intimidation. In some cases, existing statutes may need strengthening and clarification to address the singular challenges presented by online platforms. For instance, 52 U.S.C. § 10307(b) aims to protect voters from intimidation or coercion that could influence their ability to freely participate in the democratic process by prohibiting an individual from attempting to intimidate, threaten, or coerce any person engaging in the voting process.⁸

Certain sections of existing federal laws should be created in regard to the role of social media in voter intimidation, including ways to make platforms more accountable for promoting harm. For example, expanding 52 U.S.C. § 10307(b) could include additional language to address online activities, such as dissemination of misinformation about voting procedures, making unfounded allegations of voter fraud, or impersonating election officials in digital spaces. Further, this could include increased sanctions against those individuals and groups who have been found to intimidate voters, especially through sophisticated online means that could deter others from such methods.

However, whatever reform to strengthen voter intimidation laws is required, great caution is also called for in order not to breach constitutionally protected rights, more particularly the freedom of expression under the First Amendment. A proper balance must be drawn between protecting elections and free speech. Any increase or formulation of legislation intended to prevent voter intimidation must be narrowly crafted to reach a limited range of injurious practices while preserving the opportunity for legitimate political expression.

Strengthening the laws on voter intimidation should be non-partisan to say the least, since it involves the democratic process to which we are all entitled. By proactively preventing these evolving threats-digital, we can protect the integrity of our elections and ensure all voices will be counted. ○

References:

- 1 The Voting Rights Act of 1965, Pub. L. No. 89-110.
- 2 *Voting Rights Act of 1965*, NATIONAL ARCHIVES, <https://www.archives.gov/milestone-documents/voting-rights-act> (last reviewed Feb. 8, 2022).
- 3 PETER J. HENNING ET AL., *THE PROSECUTION AND DEFENSE OF PUBLIC CORRUPTION: THE LAW AND LEGAL STRATEGIES* § 10.04 (2024)
- 4 *Id.*
- 5 52 U.S.C § 10101(b) (2025).
- 6 *Silberberg v. Bd. of Elections of N.Y.*, 272 F. Supp. 3d 454, 454 (2017)
- 7 *Id.* at 457.
- 8 52 U.S.C § 10307(b) (2025).

The Safeguard American Voter Eligibility Act (SAVE Act) and the Concern about Pushback from the Senate and Current Administration



By Ben Dellacono

The United States' election process embodies the essence of democracy, providing citizens with the opportunity to influence the direction of governance. However, the political landscape today has become both increasingly complex and contentious, which has cultivated

a divided society. This divide can be partially attributable to the influences of social media and the abundant misinformation that is pumped through various media outlets. With the increased levels of misinformation and concerns regarding election fraud, it is the utmost duty of legislation to uphold the trust and integrity of the United States' election process.

The Safeguard American Voter Eligibility Act (SAVE Act) was introduced on May 7, 2024, in response to the increasing concerns of voter fraud.¹ This bill requires individuals to provide documentary proof of U.S. citizenship in order to register to vote in federal elections.² It would replace the National Voter Registration Act (NVRA) which currently preempts a state's ability to require documentary proof of citizenship in federal elections.³ Some of the documentary proof established by the bill with respect to an applicant for voter registration is as follows:

- (1) "A form of identification issued consistent with the requirement of the REAL ID Act of 2005 that indicates the applicant is a citizen of the United States."
- (2) "A valid United States passport."
- (3) "The applicant's official United States military identification card, together with a United States military record of service showing that the applicant's place of birth was in the United States."⁴

In addition to these requirements, this bill provides states with the responsibility to continually vet their eligible voter lists by removing noncitizens and assessing criminal penalties for those who vote without proof of U.S. Citizenship.⁵ This Act is essential because it provides a step in the right direction to securing the integrity and impartiality of the federal electoral process by ensuring only U.S. citizens participate in elections. However, some public officials have opposed this requirement.

House Democrat Joseph D. Morelle from New York released negative statements about the proposed Safeguard American Voter Eligibility Act (SAVE Act).⁶ He stated this would extremely burden Americans since "most Americans would no longer be able to register to vote using their driver's license or other state-provided identification alone."⁷ Further, he stated the REAL ID Act of 2005

is “bizarre” because “REAL IDs are available to noncitizens.”⁸ This statement from Congressman Morelle points to how hypocritical and illogical his argument is because this shows the current voting standards regarding the REAL ID Act alone are not strict enough to provide proof of citizenship. Apart from these arguments he also raises issues with other types of documentary proof of obtaining a valid United States passport and REAL ID form are not plausible. Those who served in the military would be allowed to show “a military identification card coupled with a military service record showing the applicant’s place of birth” would be too much of a burden because “tracking down and submitting a military service record is likely a significant burden for military voters.”⁹ Therefore, he claims that since the SAVE Act requires that states have to receive documentary proof of citizenship before voters can be registered makes the burden too high and the federal election will not be accessible or fair for American voters.¹⁰ Of higher concern is Congressman Morelle’s perspective on the criminal penalties that are administered. “The SAVE Act would amend the NVRA’s criminal penalties contained in 52 U.S.C. § 20510(b)(1) to allow for suits against ‘an election official who registers an applicant to vote in an election for federal office who fails to present documentary proof of United States citizenship.’”¹¹ Morelle states that “[n]ot only is this a blatant attack on election officials, but the threat of severe criminal penalties would almost certainly make election officials wary to allow applicants who do not have DPOC to make use of the already confusing alternative.”¹² The penalties that are set forth by the SAVE Act are not intended to be an attack, but rather they are a means of accountability and deterrence of carinal behavior. With clear guidelines and severe consequences for specific non-compliance, this Act promotes a reliable and consistent voting process in every state.

The Biden Administration also released a statement through the Executive Office of the President that strongly opposes the SAVE Act.¹³ They state that, “it is illegal for noncitizens to vote in federal elections – it is a federal crime punishable by prison and fines. The alleged justification for this bill is based on easily disproven falsehoods.”¹⁴ However, even though fraudulent voting is punishable by crimes this does nothing to secure the electoral process other than provide an aspect of deterrence. In this letter, the President makes it clear that “he will continue fighting to protect Americans’ sacred right to vote in free, fair, and secure elections,” but has failed to make any steps at addressing the current issues which are abundant at the start of the registering process.¹⁵ Fraud should be addressed prior to the election and mitigated to the best of legislations power, not subsequent to the election when the fraud has already been committed.

These concerns from the Democratic party are extreme, yet they are understood. To address the burden and accessibility argument, the government can employ a subsidized company with the focal point of streamlining proof of documentary citizenship. Not only will this add job opportunity, but it will provide U.S. citizens with a more fluent way to obtain essential documents prior to election day. In addition, the government can produce legislation to mandate that requests of documentation be fulfilled within a certain time frame

and take steps to employ public awareness campaigns to educate and inform citizens on the updated requirements of the SAVE Act. Despite the various measures the government can take to address Democrats concerns, it is important to mention that it is the civic duty of every individual to follow the guidelines of the electoral process, and it should be up to the individual to take the necessary responsibility to obtain documentary proof of citizenship within the four years prior to a new presidential election. ○

References:

- 1 SAVE Act, H.R.8281, 118th Cong. (as passed by House, July 10, 2024).
- 2 Julianne Lempert et. Al, *Five Things to Know About the SAVE Act*, BIPARTISAN POLICY CENTER (Jul 10, 2024), <https://bipartisanpolicy.org/blog/five-things-to-know-about-the-save-act/>.
- 3 SENATOR MIKE LEE, SAFEGUARD AMERICAN VOTER ELIGIBILITY ACT, <https://www.lee.senate.gov/services/files/7941575D-F5CF-4E15-B4F9-1E2F83D6515F>.
- 4 *Id.*
- 5 *Id.*
- 6 Joseph D. Morelle, *supra* note 4.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 Rep. Roy, R-TX, and 104 cosponsors, *Statement of Administration Policy H.R. 8281*, EXECUTIVE OFFICE OF THE PRESIDENT OFFICE OF MANAGEMENT AND BUDGET (July 8, 2024) www.whitehouse.gov/wp-content/uploads/2024/07/SAP-HR8281.pdf.
- 14 *Id.*
- 15 *Id.*

Does Newfound Power Change the Mind of a Voter?



By James Mrnacaj

A presidential candidate was facing a felony conviction.¹ The resolution of these legal proceedings was significantly delayed due to presidential immunity claims, extending beyond the electoral cycle. This delay means that the outcome of the election was significantly influenced

by the fact that the winning candidate was contending with these criminal charges. If the candidate is sentenced while in office, it could profoundly affect his or her ability to govern and potentially shape every aspect of their presidency. What impact did this postponement have on the November election, and what impact will this unprecedented situation have on future elections, considering such a groundbreaking ruling on presidential immunity for criminal acts committed during a president's term?

President Trump faced allegations of criminal actions for his role in the January 6 riots.² In response to this indictment, Trump invoked complete presidential immunity asserting that the acts at issue were within the scope of presidential power.³ As this was an issue of first impression, the District of Columbia ruled that “any immunity not expressly mentioned in the Constitution must not exist [for the President].”⁴

Since this is the first case dealing with whether a president has immunity from criminal prosecution, the question arises of how voters might use this information to vote for an individual knowing that they might be able to commit criminal acts while holding the highest office. While this is the first time criminal acts were investigated under the current legal framework, there are historical precedents of presidents facing legal scrutiny. Before Richard Nixon's presidency was under legal scrutiny, he ran for president during the 1968 election and won with 301 electoral votes.⁵ After his first term, Nixon secured a landslide victory with 520 electoral votes, despite the Watergate break-in occurring months before this second election. The scandal remained largely obscured from public attention due to Vietnam War coverage.⁶ This issue escalated in 1973 when Nixon faced demands to surrender tape recordings and documents of conversations with his staff, alongside charges of conspiracy to defraud the United States.⁷ In response, Nixon invoked presidential immunity for the confidential meeting between the President and close advisors.⁸ However, the Court held that this immunity “cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.”⁹ The intense public and legal scrutiny, coupled with the Court's holding, led to the resignation of President Nixon two years into his term.¹⁰ Despite Nixon winning the prior election by an overwhelming number of 520 electoral votes, his scandal and response made a lasting impact on voters, which led to the Democrats emerging in the next election.¹¹ The President's crimes so deeply violated the public's trust that voters delivered a

decisive rejection at the next election.¹²

However, with Trump the situation is somewhat different. The alleged criminal actions of knowingly making false claims of election fraud in 2020 were brought to light, yet the Supreme Court ruled that Trump was immune from the criminal actions alleged.¹³ Trump lost the 2020 presidential election to President Joseph Biden, with Biden winning 306 of the electoral votes.¹⁴ However, with the issue of presidential immunity recently being discussed in the Supreme Court a year before the 2024 election, what impact will this have on voters, if any at all? Donald Trump won the 2024 presidential election with 312 electoral votes, nearly 80 more votes than his last victory.¹⁵ While a ruling from the Supreme Court of the United States set a groundbreaking precedent, Trump was able to invoke presidential immunity for those criminal actions and it is clear how the voters voiced their opinion on this ruling.

Overall, while a former President under similar scrutiny, was forced to resign, and suffered political defeat without presidential immunity protection, the current state of politics is much different with President Trump. In 2024, voters elected President Trump despite – or perhaps because of – the Supreme Court ruling granting him partial presidential immunity, contrasting sharply with Nixon's experience when legal rulings worked against him. ○

References:

- 1 Trump v. United States, 603 U.S. 593 (2024).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 J.E. Luebering, *United States presidential election of 1968*, BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-1968> (last visited Jan. 15, 2025).
- 6 Mindy Johnson, *United States presidential election of 1972*, BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-1972> (last visited Jan. 15, 2025).
- 7 United States v. Nixon, 418 U.S. 683, 686 (1974).
- 8 *Id.*
- 9 *Id.* at 713.
- 10 *Watergate Scandal*, HISTORY (Oct. 9, 2009) <https://www.history.com/topics/1970s/watergate>.
- 11 Meg Matthias, *United States presidential election of 1976*, BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-1976>.
- 12 *Id.*
- 13 Trump v. United States, 603 U.S. 593 (2024).
- 14 Amy McKenna, *United States presidential election of 2020*, BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-2020> (last updated Apr. 15, 2025).
- 15 Tracy Grant & Brian Duignan, *United States presidential election of 2024*, BRITANNICA, <https://www.britannica.com/event/United-States-presidential-election-of-2024> (last visited Jan. 21, 2025).

2024-2025 MOOT COURT EXECUTIVE BOARD



2024-2025 EXECUTIVE BOARD



Left to Right: Victoria Kelly, Kendall Coughlin, Mallory Fernandes, Grayson Horton, Emily Feyerabend

PUBLISHING COMMITTEE



Top Left to Bottom Right: Quinten Zak, Brendan Coughlan, Vincent DeStefano, Quentin Abbott, Heather Ochs, Kendall Coughlin, Emily Winter

OPERATIONS COMMITTEE



Left to Right: Corwin Hooley, Victoria Porter, Mallory Fernandes, Shannon Stamp

EXTERNAL COMPETITIONS COMMITTEE



Left to Right: Sawyer Lecius, Miller Whitten, Madison Dietz, Emily Winter, Will Horth, Brianna Pritts

INTERNAL COMPETITIONS COMMITTEE



Top Left to Bottom Right: Timothy Carver, Wendell Powell II, Ethan West, James Mrnacaj, Grayson Horton, Carmen Trunkett

EVENTS COMMITTEE



Top Left to Bottom Right: Anthony Thompson, Madisen Maring, Benjamin Dellacono, Lillian Rodriguez, Victoria Kelly, Taylor Greenwald



AVE MARIA
SCHOOL OF LAW

AVE MARIA SCHOOL OF LAW • MOOT COURT BOARD JOURNAL

1025 Commons Circle • Naples, Florida 34119

avemarialaw-moot-court.avemarialaw.edu/Home/Publications

www.avemarialaw.edu

mc.vppublication@avemarialaw.edu