No. 19-____

IN THE

Supreme Court of the United States

IN RE PETER APPEL AND SALLY JANE GELLERT
(AND OTHER SIMILARLY SITUATED PERSONS),

Petitioners,

v.

THE UNITED STATES, AND DONALD J. TRUMP AS PRESIDENT AND MIKE PENCE AS VICE PRESIDENT,

Respondents,

and

HILLARY CLINTON AND TIM KAINE,

Interested Persons.

PETITION FOR EXTRAORDINARY WRIT OF DIRECT REVIEW FROM CONGRESSIONAL CERTIFICATION PURSUANT TO RULE 20 (Re the Electoral College)

WILLIAM D. RUSSIELLO
Attorney for Petitioners
45 Essex Street
Suite 3 West
Hackensack, New Jersey 07601
(201) 342-0696
wrussiello@cs.com

ANN L. DETIERE-RUSSIELLO
Of Counsel and on the Brief

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QUESTIONS PRESENTED

1. Whether this Court has the "other jurisdiction" (pursuant to Rule 20 of Part 4 of the Supreme Court rules) to grant the within petition for an *appeal writ of mandamus*, pursuant to the *All Writs Act* (28 U.S.C. § 1651(a)), in order to review the declaration of constitutional law by the Congress, dated January 6, 2017, that had declared the electoral tally as legally decisive of the 2016 presidential election.

2. Whether the petitioners have standing to appeal from the congressional certification when their votes for the Democratic ticket were discarded in the "red" state of Pennsylvania and in the "blue" state of New Jersey.

3. Whether voter injury may be legally presumed when the petitioners' disenfranchisement directly resulted from the electoral certification by Congress.

4. Whether the electoral provisions of the Constitution before the Civil War have been implicitly superseded by the 24th and the 26th amendments.

5. Whether the electoral provisions of Title 3 remain valid and effective.

6. Whether the Congress had any subject matter jurisdiction to render the electoral certification sought to be reviewed.

7. Whether the 2016 and/or 2020 presidential elections are justiciable and capable of repetition while evading timely review.

8. Whether the doctrine of *in pari materia* applies to Title 28 (including § 1651(a) & 1291 & 2201(a)) to permit direct review of the certification under Rule 20.

9. Whether this Court has legally declared that the electoral college is historically obsolete such that the certification violated the doctrine of *stare decisis*.

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JURISDICTIONAL STATEMENT

There is exceptional "other jurisdiction" for the petitioners' extraordinary petition, pursuant to Rule 20 (Part 4) of the Supreme Court rules, for direct appeal review from the congressional certification of the electoral votes for the 2016 presidential election (1a-29a) by means of an "*appeal writ of mandamus*," pursuant to the *All Writs Act* (the "AWA"). See 28 U.S.C. § 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law").

The unique setting of any challenge to the constitutionality of the presidential election, taken together with the serious powers issues inherent in the congressional declaration sought to be reviewed, places this matter amply within the exceptional parameters for an extraordinary appeal exception. See *United States v. Nixon*, 118 U.S. 683, 94 S. Ct. 3090 (1974) (appeal exceptions are appropriate in context of presidential and separation of powers problems).

The petitioners assert legal standing to request leave for direct review from the congressional certification (1a-29a)(the "Certification") that directly caused their disenfranchisement in the "blue" state of New Jersey and the "red" state of Pennsylvania (24a-26a). The current president was elected by a minority of the nationwide voters because Congress certified only the tally of the electors, in contravention of prior judicial precedents and the import of the suffrage amendments. The petitioners respectfully request exceptional leave for extraordinary review from the congressional certification as a judicial order that discarded their votes *ultra vires*.

On January 6, 2017, Congress abrogated Article III powers by rendering *findings of fact* that were limited to merely counting the electoral votes, and by rendering *conclusions of law* "pursuant to the Constitution and the laws of the United States . . . to verify the certificates and count the votes of the electors of the several states for President and Vice President . . ." (4a). This congressional declaration usurped the judicial prerogative to interpret the constitution, in contravention of prior judicial precedents finding that the electoral college was historically obsolete and unconstitutional under current voting standards. The congressional announcement that the electoral tally "shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States . . ." (28a) was rendered pursuant to the provisions of 3 U.S.C. §§ 1-18 (the "Statute") that was enacted contemporaneously with the passage of the United States Code in 1948. Section 15 of the Statute is annexed with emphasis supplied (34a-36a).

Despite the ensuing precedents and the suffrage amendments after the Civil War, Congress never repealed the Statute, notably including Section 15 (34a-36a). The Congress has apparently determined that the initial electoral provisions of the constitution continue to control presidential elections. The Certification constitutes reversible error as a matter of clearly established law and constitutional history.

Congress completely lacked any current subject matter jurisdiction to legally decide the 2016 presidential election. This petition merits discretionary appeal review, pursuant to Rule 20 under Part 4 that governs "other jurisdiction."

The Certification is arguably the essential equivalent of a district court order under Rule 14.

FACTUAL STATEMENT

The Parties

The Petitioners

The petitioners are adult citizens who voted for Hillary Clinton for president (and Tim Kaine for vice president), on or around November 8, 2016. Sally Jane Gellert voted in the "blue" state of New Jersey (77a) and Peter Appel voted in the "red" state of Pennsylvania (78a). (The electoral college is well-known to *color code* the voting units as *democratic blue* or *republican red* depending upon the outcome in each presidential election). See Certification of the 2016 electoral tally (24a-26a).

The Respondents

The respondents are the United States, by the Solicitor General for the Attorney General, on behalf of itself as a governmental entity and also on behalf of the president (Donald J. Trump) and the vice president (Mike Pence).

Interested Persons

Interested persons are the democratic candidates, Hillary Clinton (for president) and Tim Kaine (for vice president), who "lost" the electoral votes and contemporaneously "won" the popular vote (but for the congressional Certification).

Similarly Situated Persons

Other similarly situated persons include other adult citizens who also voted for the interested candidates (Hillary Clinton for president and Tim Kaine for vice president) in their respective "blue" and "red" states (24a-26a).

The Decision Sought to be Reviewed

The annexed transcript of the *Congressional Record*, dated January 6, 2017 (1a-29a), establishes that the Congress rendered the electoral certification "pursuant to the Constitution and laws of the United States . . ." (4a). Although the Congress did not specify which provisions of "the Constitution and laws of the United States" were applied to justify the Certification, the Statute has historically operated as a foregone conclusion that is legally predicated upon tallying only the electoral votes. The Certification comports with publications by the *Congressional Research Service* (the "CRS") advising that the electoral provisions of the Constitution from before the Civil War continue to control presidential elections. See *The Electoral College: How it Works in Contemporary Presidential Elections*, 5/17/2017 (Congress.gov/*crsreports,* RL32611*). Accord*, *Overview of Electoral College Procedure and the Role of Congress*. CRS, 11/17/2000.

A review of the annexed transcript unquestionably confirms the judicial nature of the congressional proceeding. The president of the senate over-ruled various objections and, unlike a more traditional congressional hearing, clarified that "[t]here is no debate" (16a). The members attended to confirm the electoral tally, and were directed to avoid any expressions of dissent. The Certification was final (16a). In sum and substance, the Congress ordered the essential equivalent of declaratory relief that was finally dispositive. See 28 U.S.C. § 2201. Section 15 of the Statute expresses the congressional intent to abrogate the judicial power to "announce the decision" and to "concurrently decide" presidential elections (36a).

Various rulings were rendered (22a)("Members of Congress, the certificates having been read, the tellers will ascertain and deliver the result . . .").Upon receipt of the certificates, the presiding vice president pronounced that there were 304 electoral votes for Donald J. Trump and 227 electoral votes for Hillary Clinton as the factual predicate for the legal conclusion that "this announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States . . ." (27a-28a).

Although the petitioners do not challenge the congressional findings that the Republican ticket won seventy-seven more electoral votes than the Democrats by a margin of 304 to 227 (24a-26a), the Certification was legally erroneous, notwithstanding that the Congress was technically empowered to tally the electoral votes under the 1948 Statute. The Certification was essentially a judicial order by a non-judicial tribunal that merits exceptional direct appeal review under Rule 20.

The congressional pretext of statutory authority amounted to an abrogation of judicial powers under the same constitution that was bureaucratically invoked to justify the Certification. Judicial deference to the Congress is unwarranted under these extraordinary circumstances. Insofar as the electoral college is historically prone to also eluding any judicial review, direct appeal recourse under Rule 20 is appropriate. The Certification essentially over-ruled the contrary import of well-settled judicial precedents as well as the relatively recent suffrage amendments. The Article III power broadly applies to "all Cases . . . arising under the Constitution . . ." (31a) such that the congressional abrogation under the Statute is indefensible.

The Appendix

In addition to the transcript of the congressional record that is described as the Certification (1a-29a) – that comprises the *de facto* judicial order sought to be reviewed – the annexed appendix also includes supplemental documentation to supply background information concerning the competing elections. The Cook Political Report by David Wasserman contains a *2016 National Popular Vote Tracker*, indicating that of the approximately 136 million citizens who voted in the 2016 election, approximately 66 million persons voted for the Democratic ticket and approximately 63 million persons voted for the Republican ticket (43a). (The verifiable popular vote may be judicially noticed and should not require any evidentiary hearing).

The appendix also contains selected articles that, for example, criticize the "House of Cards" that incentivises candidates to "moneyball the electoral college in all its kludgy non-egalitarian tendencies" (69a). See also article referencing the statement by President Trump that the popular vote should determine the next presidential election in 2020 (70a)(that has since been contradicted). Other articles are also annexed, including by the editorial boards of some newspapers.

The facts that the Democrats (the "Ds") won the popular vote (by approximately three million more votes) (42a-43a) and that the Republicans (the "Rs") won the electors' vote (by 77 more electors) (26a-28a) cannot be reasonably controverted. The requested review is narrowly confined to the simplistic legal question about which competing tally controls the presidential election in 2016 and/or 2020.

The Competing Election Outcomes

The nationwide approximate three million vote advantage for the Ds can be attributed to California's landslide win of approximately four more million votes (44a & 46a). These excess votes are wasted because "most states' electoral votes are bundled into winner-take-all blocs" (66a). According to Nate Cohn (a reporter with *The New York Times*), the Rs won more electors' votes than did the Ds for various reasons, including that the Rs "didn't waste nearly as many votes in their best states . . ." (47a), California's "imperial" electors were offset by the electors from less populated states, and the Rs "won" most of the battleground states "by just a one point margin – but claimed three-fourths of their Electoral College votes" (50a). The electoral college mechanically favors the battleground states (52a)("If they break overwhelming one way, that's who wins"). The battleground advantage does not necessarily favor less populated states. See 47a (the Ds "won plenty of small states" and the Rs "won plenty of big states").

The Rs won a 46 electoral advantage due to approximately 78,000 voters in the few "swing states" of Pennsylvania (with 20 electors), Wisconsin (with 10 electors) and Michigan (with 16 electors). See What Happened by Hillary Rodham Clinton (Simon & Shuster, September 2017), p. 394 ("the election was decided by 77,744 votes out of a total of 136 million cast. If just 40,000 people across Wisconsin, Michigan and Pennsylvania had changed their minds, I would have won"). If the Ds had instead won these 46 electors, the electoral tally would have yielded 273 electors for the Ds (= 227 + 46) and 258 electors for the Rs (= 304 – 46). (Although the Ds won the popular tally, had the Ds also won these lost votes, the electoral outcome may not have been any less arbitrary).

Although substantial mal-apportionment also permeates the electoral college – e.g., the 14 electors for the "blue" state of New Jersey are offset by the same number of electors for other "red" states with half the population (Alaska, Nebraska, North Dakota and Wyoming) – the Ds would have still lost the electoral contest even if the two surplus electors had been subtracted from each state. 47a ("Mrs. Clinton would have fared just as badly . . . even if states were worth exactly their share of the population"). Unlike the 2000 election, the electoral outcome in 2016 cannot be attributed to any population mal-apportionment (47a).

The 2016 election produced the "archaic fluke of our constitutional system." (What Happened, at p. 387). The expert opinion consensus is that the electoral system leaves "tens of millions of Americans on the sidelines" (63a). The 2016 electoral outcome is explained by the *winner take all* unit voting in only three swing states, resembling the 2004 election when President Bush ". . . won the popular vote by more than three million, but could have lost the Electoral College with a switch of fewer than 60,000 votes in Ohio" (63a). President Bush's presidency pivoted upon only Florida in 2000 and then only Ohio in 2004.

For reasons explained below, this Court could render another redundant declaration (for at least the third time) that may be less disruptive than waiting for another electoral crisis. President Trump could conceivably win by only one electoral vote and lose by 5 million votes in 2020 (according to David Wasserman of the *Cook Political Report* interviewed by Michael Smerconish on CNN, 6/22/2019). (The Rs could also lose the electoral college in 2020 due to changed demographics in the state of Texas).

LEGAL QUESTIONS

Substantive Issues

Intervening Judicial Precedents

Prior to Congress rendering the Certification on January 6, 2017, this Court had decided *Evenwel v. Abbott*, 578 U.S. ___, 136 S. Ct. 1120 (2016) on April 4, 2016. In *Evenwel*, this Court found that the state senate maps in Texas that fell within the ten percent threshold were not unconstitutionally malapportioned. More importantly for these purposes, this Court explained the electoral college in the historic context of the Civil War. However, Congress determined *sub silencio* that *Evenwel* did not control the electoral college. It may be noted that the cited CRS article omitted to cite any precedent as applying to the electoral college, despite over fifty years of voting jurisprudence that was recently recited at length in *Evenwel*.

In *Evenwel*, this Court found that there are "features of the electoral system that contravene the principles of both voter *and* representational equality." 136 S. Ct. at 1130 (emphasis in original). (This single finding, taken in isolation, should be legally sufficient to vacate the electoral college). In *Evenwel*, this Court recited with approval *Gray v. Sanders*, 372 U.S. 368, 83 S. Ct. 801 (1963), that had invalidated the disproportionate county unit votes. Although the electoral college was not challenged in *Gray*, this Court then declared that there is "no constitutional way by which equality of voting power may be evaded." *Gray,* 372 U.S. at 381, 83 S. Ct. at 809. *Evenwel* clarified the import of *Gray* to mean that the state of Georgia had "unsuccessfully attempted to defend, by analogy to the electoral college, its scheme of assigning a certain number of units . . ." *Evenwel,* 136 S. Ct. at 1130.

Gray necessarily controls the similar numerical units in the electoral college. See *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 109 S. Ct. 1433 (1989), cited with approval in *Evenwel*, 136 S. Ct. at 1131. *Gray* explained the compelling reasons for rejecting unit voting to be as follows:

> The county unit system, even in its amended form . . . would allow the candidate winning the popular vote in the county to have the entire unit vote of that county. Hence, *the weighting of votes would continue even if unit votes were allocated strictly in proportion to population*. Thus, if a candidate won 6,000 of 10,000 votes in a particular county, he would get the entire unit vote, the 4,000 *other votes for a different candidate being worth nothing and being counted only for the purpose of being discarded.*

Gray, 372 U.S. at 381, 83 S. Ct. at 809 (footnote # 12) (emphasis supplied).

The problem with any kind of unit voting (whether in counties or states) is ". . . in tabulating the votes . . ." (absent any population disparity). *Gray*, 372 U.S. at 381, 83 S. Ct. at 809. It is probably never feasible to tabulate the individual votes that are batched into numerical units. See *Board of Estimate*. (By contrast, the federal senators are directly voted for only by individuals under the 17th amendment). For example, the vote by Mr. Trump in New York may be described as a *loser discarded* vote (similar to the 4,000 votes in the *Gray* example) and the vote by Mrs. Clinton there may be described as a *winner wasted* vote (similar to the 6,000 votes in the *Gray* example). The candidates' votes were both tabulated to discard the vote by Mr. Trump at the state level and then to eventually

discard the vote by Mrs. Clinton at the national level. The petitioners' votes, among countless others, were unquestionably also *counted only for the purpose of being discarded,* in brazen violation of the precepts of *Gray*.

The 2016 election rendered "live" the controversy that was prophesied about in *Evenwel*. Having also ignored the warnings from decades before in *Gray*, the Congress negligently careened into the foreseeable accident of American history.

Although the petitioners did not compute the number of discarded votes nationwide, they should be heard to claim that their individual votes were nonetheless discarded because Congress tallied only the electoral votes that were tabulated as state bloc units. It is important to note that the discarded votes are not limited to only the D votes because many R votes were also discarded. The R voters in the other blue states were also batched into other bloc units. See 63a (". . . Republicans in San Francisco and Democrats in Corpus Christi, whose votes are currently worthless"). Computing the electoral tabulation is strange because the president "can win with fewer votes, some states matter more than others, [and] some votes matter more than others . . ." (65a). The electoral college unconstitutionally applies the *weighting of votes*, including "wasted votes" that are also discarded *en masse*. See *Gill v. Whitford*, 585 U.S. ___, 138 S. Ct. 1916 (2018).

If the goal is to compute the worthy votes to be determined by those votes that are counted to determine the electoral majority, that would leave *only those R votes in the red states that were not discarded and not also wasted.* The basic formula may be posited

as follows: Worthy votes = Total votes - Worthless votes (loser discarded + winner wasted). The voting majority may always be worthless and outnumbered by the voting minority in all electoral elections. The Certification that discarded the petitioners' majority votes should be reviewed and reversed.

Historical Context

In *Evenwel*, this Court noted the legal importance of constitutional history in order to understand the electoral college. *Evenwel*, 136 S. Ct. at 1127 ("We begin with constitutional history"). The constitutional history is also summarized below.

As expressed in the constitutional preamble (30a), the purpose of the electoral college was to promote a "more perfect Union," as an inclusive mandate under the *Great Compromise* in order for the southern states to ratify the Constitution. Under the initial provisions of Article II (Section 1) and the 12th amendment of 1804 (30a-33a), the electors were appointed as proxies for the "sovereign states" to vote for the president. Each state was allocated two additional electors to correspond to the senators regardless of population. *Evenwel*, 136 S. Ct. at 1130.

Section 15 of the Statute empowers Congress to "concurrently decide" and to "announce the decision of the questions submitted" with respect to the electoral tally (36a). The Statute apparently derives from the Presidential Electoral Law in 1868 and the General Election Law in 1872. (The 1948 Statute probably descends from these ancestral statutes that may be currently archived in parchment format).

The United States purportedly became "one people and one country" after the Civil War. *Texas v. White*, 74 U.S. 700, 721, 13 S. Ct. 1, 7 (1869). The electors

nonetheless continued to vote on behalf of the "sovereign states" even after the United States became the "union of states." See *McPherson v. Blacker*, 146 U.S. 1, 27, 13 S. Ct. 1,7 (1892). The import of *Texas* and *McPherson* remain contradictory because the electors continued to vote on behalf of the sovereign states in the new union of states. The Civil War had terminated any confederate claims. *Texas*. The vestigial role of the "faithless electors" remained strained. *Ray v. Blair*, 343 U.S. 214, 72 S. Ct. 654 (1952). Neither the states nor any party electors have retained any compulsory obligation to vote according to the combined import of both *Texas* and *Ray*. The elected electors pledged to their party such that the founding requirements of legislative appointments were later abandoned. *Ray*.

The constitution is known to have been also amended after the Civil War, by the 13th amendment in 1865, the 14th amendment in 1868 and the 15th amendment in 1870. These *Civil War amendments* created a "new structure of law that emerged in the post Civil War era." *Mitchum v. Foster*, 407 U.S. 225, 239, 92 S. Ct. 2151 (1972).

The ensuing suffrage amendments compounded the constitutional alteration even further, as was noted in *Gray*, 372 U.S. at 376, 83 S. Ct. at 806 (footnote #8):

> . . . Hamilton expressed the philosophy behind the electoral college in the Federalist No. 68 [quotations omitted]. Passage of the Fifteenth, Seventeenth, and Nineteenth Amendment shows that this conception of political equality belongs to a bygone day, and should not be considered in determining what the Equal Protection Clause of the Fourteenth Amendment requires in statewide elections.

The terminology of "bygone" (noting the idiomatic expression "let bygones be bygone") confirms that the electoral college is obsolete. *Gray* declared that the electoral system as envisioned by Alexander Hamilton became essentially obsolete under the 14th Amendment. It is important to also note that the majority of the population has resided in urbanized areas since the 1920s (53a-60a).

The fact that presidential elections never ceased to be certified under the 1948 Statute cannot result in *Gray* having been over-ruled by the Congress. The congressional tallies after *Gray* was decided in 1963 were legally dubious. The fact that *Gray* was essentially ignored for many decades cannot render the electoral tallies valid. The Congress repeated the chronic mistake yet again even after this Court clarified *less than a year before the Certification* that *Gray* had been correctly decided. *Evenwel*, 136 S. Ct. at 1130. Congressional defiance is confirmed by the CRS publications that omit to cite any judicial precedents. The Statute arises from the "bygone" federalist paper that the Supreme Court had declared "should not be considered" in modern elections. *Gray* (footnote #8).

The Congress was never empowered to "concurrently decide" any legal "declaration" under the cited pretext of the Statute. The broad power to decide "all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States … (31a) is exclusively judicial. The Certification unquestionably violated the foundational purpose of the separation of powers under Article III. See *Marbury v. Madison*, 5 U.S. 137 (1803).

The Supersession Doctrine

The suffrage amendments repeat *four times* that "[t]he right of citizens of the United States to vote . . . shall not be denied or abridged by the United States . . .". This repetitious refrain was expressed in the 15th amendment (1870)(for persons "of race, color or previous condition of servitude"), in the 20th amendment (1920)("on account of sex"), in the 24th amendment (1964) ("by reason of failure to pay any poll or other tax"), and in the 26th amendment (1971)(for "persons eighteen years or older"). These suffrage amendments culminated with *universal suffrage* for all citizens over the age of eighteen. The suffrage amendments may be construed to prohibit the United States from abridging the *individual* right to vote in all elections.

The notion that there remains some unique exception for presidential elections is contradicted by the provisions of the 24th amendment (Section 1), as follows:

> The rights of the citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Basic principles of constitutional construction require that "the election process must pass muster against the charges of discrimination or abridgment of the right to vote." *Moore v. Ogilvie*, 394 U.S. 814, 818, 89 S. Ct. 1493, 1496 (1969). In *Williams v. Rhodes*, 393 U.S. 23, 89 S. Ct. 5 (1968), this Court clarified that the electoral provisions cannot be construed to "impose burdens on the right to vote, where such burdens are

expressly prohibited in other constitutional provisions." *Rhodes*, 393 U.S. at 29, 89 S. Ct. at 10. The electoral provisions "are always subject to the limitation that may not be exercised in a way that violates other specific provisions of the Constitution." *Id*. The 24th amendment should be construed to apply to presidential elections consistently with the rationale of *Gray*.

The 24th amendment prohibits any governmental interference with "the right of qualified voters . . . to cast their votes effectively." *Rhodes, supra,* 393 U.S. at 29. The 24th amendment should be construed to avoid the abridgment of the right to vote, at the time in context of removing the poll tax impediment, in presidential elections. If the 24th amendment is construed with the 26th amendment, then citizens over the age of 18 are expressly entitled to vote directly in presidential elections.

The two amendments interpreted together could be broadly construed to provide as follows: "The rights of the citizens of the United States (over the age of eighteen) to vote in any . . . election for President or Vice President . . . shall not be denied or abridged by the United States . . ." (The technical reference to electors in the 24th amendment should not be construed to have revalidated the *bygone* status of the electoral college, since the Congress had proposed the 24th amendment in 1962 – before *Gray* – even though the nationwide ratification occurred in 1964 – after *Gray*).

The 24th amendment cannot be reasonably construed to allow the vestigial electors to nullify the votes of the majority of the citizens without also violating the precepts of *Gray* (and *Evenwel)*. The electoral process cannot be defended on the grounds

that the voting is initially accessible if the ultimate tally disenfranchises the majority of the casted votes. *Gray* expressly rejected the defense that the voters were individually allowed to vote when the county unit counting system ultimately caused the "*end result*" of voter dilution. *Gray*, 372 U.S. at 379, 83 S. Ct. at 808.

The initial electoral provisions required the electors to vote for the states when "the slave counted for only three-fifths of a person for purposes of the apportionment of House seats." *Evenwel*, 136 S. Ct. at 1146. The electoral system was integrally tied to the "power politics" of slavery that was later abolished by the 13th amendment. *Id*. See 62a ("The Electoral College, which is written into the Constitution, is more than just a vestige of the founding era; it is a living symbol of America's original sin").

The constitutional provision referencing only "male citizens" or even the "three-fifths of all other Persons" (Article I, Section 2) obviously do not remain currently effective. *Evenwel*, 136 S. Ct. at 1149, second footnote # 7 ("Needless to say, the reference in this provision to 'male inhabitants . . . being twenty-one years of age' has been superseded by the Nineteenth and Twenty-Sixth Amendments"). *Evenwel* expressed agreement with the rationale of this *supersession doctrine* consistent with *Gray's* declaratory clarification about the "bygone" status of the electoral college. The 26th amendment, that was enacted over one century after the Civil War, unquestionably expresses the modern mandate of universal suffrage.

In the event that these footnoted points in *Gray* (at footnote #8) and *Evenwel* (at second footnote # 7) were construed as mere dicta, the Congress was still never free to abrogate any judicial powers. See Federalist Paper No. 78. Declaratory relief is reserved as the

judicial prerogative to render final judgments. 28 U.S.C. § 2201(a).

The notion that the constitution must be expressly amended again necessarily presupposes that the supersession doctrine does not apply. (Only the 21st amendment "hereby repealed" the 18th amendment). Principles of constitutional construction require a review of the most recent amendments in order to consider whether the electoral provisions have been implicitly superseded. The Certification turned the clock back to "a bygone day" because the Congress systemically failed to heed this Court's 1963 decision despite the ensuing clarification in 2016 that *Gray* had been correctly decided. The Certification was erroneous because Congress is institutionally incapacitated from deciding any legal controversy under Article III.

Other Controlling Standards

In *Shelby County, Alabama v. Holder*, 570 U.S. 529, 133 S. Ct. 2612 (2013), this Court redefined the curent historic relationship between the federal government and the various states to be as follows: ". . . our Nation was and is a union of States, equal in power, dignity and authority . . . [that is] . . . essential to the harmonious operation of the scheme upon which the republic was organized" . . . [and] . . . the "allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States." *Shelby*, 133 S. Ct. at 2623 (quotations omitted). The electoral college cannot possibly be construed to comply with *Shelby's* proscription against the favoritism towards the very few *swing states*. It is not possible to reconcile the mal-apportioned allocation of the states' electors as complying with any equality of power among the voting jurisdictions under *Shelby*. Even if the mal-apportioned senators can remain justified in order to

prevent the "large States from outvoting the small States" (*Evenwel*, 136 S. Ct. at 1138), the electoral college "allocation plainly violates one person, one vote" (*Evenwel*, 136 S. Ct. at 1144). It is difficult to understand how "letting a few close states decide a close national election" (52a) comports with *Shelby*.

Assuming *arguendo* that the only applicable legal standard was that the electoral system was required to comply with a "high standard of justice and common sense" – *Karcher v. Daggett* 462 U.S. 725, 730, 103 S. Ct. 2653, 2658 (1983) – then the electoral college miserably fails that alternative test. See *Ray*, 343 U.S. at 233 (dissenting opinion – the electoral college "is a mystifying and distorting factor in presidential elections, which may resolve a popular defeat in an electoral victory . . . it is open to local corruption and manipulation . . . [and] . . . elevate[s] the perversion of the forefathers' plan into a constitutional principle"). Even the dissenting defense of the electoral college insisted upon the "'absence of arbitrariness in end result." *Gray*, 372 U.S. at 384, 83 S. Ct. at 811.

The Import of *Bush v. Gore*

After the recount effort by the Gore campaign in Florida, this Court rendered a *per curiam* decision. See *Bush v. Palm Beach County Canvassing Board*, 531 U.S. 70, 121 S. Ct. 471 (2000)("*Bush I*")(remand to Florida Supreme Court with direction to clarify interpretation of the "safe harbor" provisions of Title 3); *Bush v. Gore*, 531 U.S. 1046, 121 S. Ct. 512, (2000)("*Bush II*")(stayed recount and granted certiorari); and *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525 (2000) ("*Bush III*")(manual recount was not appropriate remedy to rectify arbitrary differences among the disparate standards of the various counties in Florida).

The margin of electoral victory in Florida initially amounted to only "1,784 votes for Governor Bush." *Bush I*, 531 U.S. at 101, 121 S. Ct. at 527-528. Florida pivoted the 2000 presidential election based on a miniscule number of voters in one singular state that was fraught with voting irregularities. The finding in *Bush II* that the recount in Florida could not be completed due to differences among the various counties establishes that the electoral college is inherently prone to arbitrary outcomes. If the recount efforts in Florida had been allowed to proceed, the unpredicted outcome there was "not a recipe for producing election results that have the public acceptance democratic stability requires." *Bush II*, 531 U.S. at 1047, 121 S. Ct. at 512. *Bush II* expressed the rationale for rejecting state recounts due to arbitrary differences among various counties, even before *Shelby* (that was decided over a decade later) required more equality among the states.

Bush III confirms that the "Constitution's design [was] to leave the selection of the President to the people . . .". 531 U.S. at 98, 121.Ct. at 525. See *Oregon v. Mitchell*, 400 U.S. 112, 91 S. Ct. 260 (1970). The meaning of "We the People" that is expressed in the constitutional preamble should be construed to comply with the overall "design" of the 24th amendment and the 26th amendment. The pronouncement that "the people" should be allowed to vote for their presidents supports the rationale that electors should not be permitted to nullify their votes.

The electors voted for presidents when voting rights were historically limited to a very restrictive class of persons. *Evenwel*, 136 S. Ct. at 1130. The framers' concept of voting rights in the electoral college (as expressed in the Federalist Paper No. 68) no longer

comports with the ensuing "design" of the suffrage amendments. See *Gray*, 372 U.S. at 381, 83 S. Ct. at 381 ("The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeen, and Nineteenth Amendments can mean only one thing – one person, one vote"). The "people" are not currently incapacitated from voting directly and no longer require any proxy electors to vote on their behalf.

Congressional Abuse

The Certification's disregard of prior judicial precedents constitutes congressional misfeasance. In *Plaut v. Spendthrift Farm, Inc*., 514 U.S. 211, 115 S. Ct. 1477 (1995), this Court clarified that the Congress cannot retroactively reverse any adjudicated decision. In *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), the house veto operated as a voidable nullification of the agency decision to suspend deportation. See also concurring opinion in *Chadha* (congressional veto of agency decision was judicial order that violated separation of powers).

The Certification amounted to the essential equivalent of a "legislative abrogation" of *Gray* that was recently recited in *Evenwel*. See *Plaut*, 514 U.S. at 230, 115 S. Ct. at 1447 ("The issue here is not the validity or even the source of the legal rule that produced the Article III judgments, but rather immunity from legislative abrogation of those judgments themselves"). This Court's condemnation of "legislative abrogation" in *Plaut* clearly comports with the framers' criticism of legislative *bills of attainder*. *United States v. Brown*, 381 U.S. 437, 441, 85 S. Ct. 1707, 1711 (1965)(legislative punishment prohibited as *pains and penalties* under Section 9 of Article I). The Federalist Papers expressed the foundational purpose of the

separation of powers, in part to protect the people from *legislative tyranny* that had historically punished "the right to vote . . ." *Brown,* 381 U.S. at 462, 85 S. Ct. at 1722 (footnote # 40, *quoting* Federalist Paper # 78). The Certification abrogated the judicial power to "concurrently decide" (36a) the voting rights of the petitioners by invoking the same constitution that the Congress offensively violated.

The Certification entailed a "particular proceeding before another tribunal [that] was truly judicial." *DC Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, footnote # 13 (1983). Substance over form determines whether another tribunal is judicial in nature. *Id.* Reviewing the congressional journal is appropriate to consider whether Congress abrogated judicial powers. *Kilbourn v. Thompson*, 103 U.S. 168 (1880)(congressional invocation of "the laws and the Constitution of the United States" was not justified as a legal basis for contempt order found to be void due to violating the constitutional separation of powers).

Justiciability Issues

The petitioners have a "personal stake" in constitutionally avoiding having their votes "wrongfully denied, debased or diluted" in the electoral college. *Evenwel*, 136 S. Ct. at 1135. The existence of a justiciable controversy may be determined by whether the winning candidate was determined by the majority of the bloc units instead of by the individual votes. See *Evenwel*, 136 S. Ct. at 1135. There is a presumptive *per-se* constitutional injury that should require no proof beyond the actuality of voter nullification. *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1964)("To the extent that a citizens' right to vote is debased, he is that much less of a citizen . . ."). But for the congressional Certification that tallied only the votes by the electors,

the popular vote would have determined the 2016 presidential election. Questions of causation and injury may be *legally* resolved under the doctrine of *res ipsa loquitor*. See *Johnson v. U.S*, 333 U.S. 46, 49, 68 S. Ct. 391, 392 (1948)("The rule only deals with permissible inferences from unexplained events").

Unlike *Gill*, the remedy requested by the injured voter-petitioners *sub judice* is to credit *nun pro tunc* the nationwide popular vote that has already been tabulated for the presidential election in 2016, or, in the alternative, for an advanced declaration for the 2020 election. Unlike the gerrymandering situation, the "one vote rule is relatively easy to administer as a matter of math." *Rucho v. Common Cause*, 588 U.S. __ (2019). In *Rucho*, this Court recently reiterated the time tested "idea that each vote must carry equal weight" as though to again agree with *Gray*.

The 2016 presidential election should not be deemed to be legally moot. *Moore*, 394 U.S. at 816 ("But while the . . . election is over . . . the problem is . . . capable of repetition yet evading review . . . The need for its resolution thus reflects a continuing controversy in the federal-state area . . ."). (The verbal concession by the Clinton campaign may be ineffective absent any filed writing under 3 U.S.C. § 20). The Statute "remains in force" and the electoral "practice is deeply rooted and long standing." *Gray*, 372 U.S. at 376, 83 S. Ct. at 806.

As to the 2016 election, the within petition for alternative review under Rule 20 raises legal objections as to the subject matter jurisdiction of the Congress. See FRCP 60(b)(4)(subject matter jurisdiction objections may be raised at any time). This petition should not be deemed to be untimely in the absence of any time limits under Rule 20.

This Court already declared in *Gray* many decades ago that the underlying purpose of the electoral college (as expressed in Federalist Paper No. 68) was historically obsolete. The Supreme Court is not an academic institution that publishes advisory decisions, only to be ignored by the Congress as though *Gray* and *Evenwel* declared legal abstractions. No judicial deference is required after the Congress misapplied constitutional law under the pretext that the Statute empowers the usurpation of decisive declarations that are contrary to the import of prior precedents decided by the Supreme Court.

Procedural Issues

Appeal Exceptions

Since Congress has historically refrained from adjudicating legal controversies (for the reasons explained in *Plaut*), there is understandably no known precedent for this application. Congress has applied the 1948 Statute as though the electoral provisions from before the Civil War remained effective, despite the contrary import of the ensuing decisions by the Supreme Court. *Congress empowering itself under the antiquated Statute to decide that the leader of the free world can be elected by a minority of nationwide voters is extraordinary.*

This petition amply qualifies for exceptional appeal review. See Section 2 of Article III (". . . the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make"). Exceptional appeals are contemplated under 28 U.S.C. § 1291 "where a direct review may be had in the Supreme Court." *See Nixon*.

Although Section 1291 ordinarily applies to direct review of interlocutory appeals from the district courts, exceptional cases may be subject to "direct review" when presidential problems also implicate another constitutional crisis in the separation of powers. See *Nixon*, *supra*. Section 1291 imposes no known restriction to direct review by the Supreme Court, that is also contemplated in the exceptional *catch all* provision of Section 1651(a) (or the AWA).

The AWA may be construed to encompass the possibility of direct review of the Certification under Section 1291, both of which are encompassed in Title 28. Under the doctrine of *in paria materea*, different provisions of the same statute may be construed together in order to determine jurisdiction. See *Christianson v. Colt Industries*, 486 U.S. 800, 108 S. Ct. 2166 (1988). The AWA should not be construed to preclude "direct review" of the Certification under Section 1291. The Congressional declaration amounted to the essential equivalent of a lower court order that should not evade appeal review.

The AWA is expressly listed as one among other procedural means by which review may be obtained under limited exceptions to the general rule against appeal review. See 8 U.S.C. § 1252(a)(2)(a). Although Title 8 does not express the technical terminology of "appeal writ," Section 1252 may be construed as approving of the AWA as the jurisdictional basis for similar exceptional appeal review in the context of the Statute. In *Chadha,* appeal review was possible in the context of the administrative process for deportations. See 8 U.S.C. § 1252(D)("Nothing . . . which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions

of law raised upon a petition for review filed with an appropriate court of appeals . . .").

Judicial appeal review is generally allowed when there is any abuse of discretion by administrative agencies (5 U.S.C. § 706) and also from any declaratory judgment that is deemed to be final (28 U.S.C. § 2201(a)). See also 28 U.S.C. § 2254(d)(1-2)(appeal exception allowed where state court decision denying *habeas corpus* "resulted in a decision that was contrary to, or involved an unreasonably application of, clearly established Federal law, as determined by the Supreme Court of the United States . . ."). The congressional failure to provide for any recourse under the Statute only confirms the *legislative tyranny* that the Congress agrees should not preclude the requested review in similar situations when precluding appeals is offensive to due process.

Rule 20

This petition amply satisfies the three part test of Rule 20 that (1) "that the writ will be in aid of the Court's appellate jurisdiction," (2) that "exceptional circumstances warrant the exercise of this Court's discretionary powers" and (3) that "adequate relief cannot be obtained in any other form or from any other court." Any "extraordinary writ" under the AWA may be "sparingly exercised" based on upon the most extraordinary combination of factors, including the nationwide nature of the dispute, the absence of any material factual controversy, the established separation of powers problem, when alternative recourse is elusive, and when the case is clearly proved. See *Colorado v. Kansas*, 320 U.S. 383, 64 S. Ct. 176 (1943). Cf. *Kansas v. Nebraska*, 135 S. Ct. 1042 (2015)(petition under Rule 17 may be denied when record in environmental river disputes is complicated).

(1) *"Appellate Jurisdiction"*

The Supreme Court has the exclusive jurisdiction to over-rule prior precedents that the Congress is constitutionally disempowered from retroactively amending. See *Patterson v. Mc. Lean Credit Union*, 491 U.S. 164, 109 S. Ct. 2363 (1989). There is obviously no statutory provision that would expressly authorize any appeal review from any quasi judicial order rendered by the Congress because any such provision would necessarily presuppose the prohibited abrogation. *See Plaut*. Accordingly, Section 15 of the Statute that authorizes the Congress to "concurrently decide" presidential elections (36a), taken together with the conspicuous absence of any other provision that should contemplate judicial review under the Statute, are the same reasons why this Court may consider exercising the discretionary power to grant the requested leave under Rule 20. See also Rule 11 of the Supreme Court rules (appeal review may occur before final judgment in the courts of appeals ". . . upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice . . ."). It is not procedurally possible to appeal from any quasi judicial order that was rendered by any non-judicial tribunal (outside the agency context) unless this Court grants the exceptional leave that is applied for. *See Feldman*. The *appeal writ* under the AWA (incorporated into Rule 20) is reserved for extraordinary situations when technical review is not otherwise possible. See also Power versus discretion: Extraordinary relief and the Supreme Court, by Steve Vladeck (*Scotusblog,* 12/20/2018). Any legal declaration that escapes judicial review is profoundly offensive to due process.

(2) *"Exceptional Circumstances"*

This petition entails "exceptional circumstances amounting to a judicial usurpation of power" by Congress. See *Kerr v. United States District Court*, 426 U.S. 394, 96 S. Ct. 2119 (1976). The petitioners have no alternative recourse from the Certification despite the legal presumption against the absence of any appeal review. *McNary v. Haitian Refugees Ctr., Inc.*, 498 U.S. 480, 111 S. Ct. 888 (1991). There cannot be any factual controversy about the conceded electoral tally that Congress certified in the Certification. The national tracking of the popular vote and the unit allocation of the electors may be a matter of judicial notice. Fed. R. Evid. 201(b)(2)(facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" may be judicially noticed). This petition may be readily decided within the analogous context of summary judgment. *Davidson v. City of Cranston*, 188 F. Supp 3d, *reversed on other grounds*, 837 F.3d 135 (1st Cir. 2016) (summary judgment to the plaintiff in gerrymandering voting case reversed by granting summary judgment to the defendant). The petitioners do not challenge the Certification's *findings of fact* about the electoral tally, confining the legal arguments only to the congressional *conclusions of law*. The simple questions for review are entirely legal and based on an undisputed record of the annexed transcript of the congressional journal. Moreover, there is public consensus about ending the electoral college among the editorial boards of leading newspapers, including the New York Times (61a) and the LA Times (75a).

(3) *"Alternative Recourse"*

The electoral college presents a unique conundrum that evades any traditional legal review. *Williams v. Virginia Board of Elections*, 288 F. Supp 622, 628, *affirmed* 393 US 320, 89 S. Ct. 555 (1969)(the injustice of the electoral college "cannot be corrected by suit, especially one in which but a single State is impleaded"). The electoral college is an amorphous entity without any known location. The electors cannot be readily named or served, except when they meet only once every four years in various state capitals throughout the country.

There would be no monetary damages for any civil rights misconduct, pursuant to the provisions of 28 U.S.C. § 1346 and/or 42 U.S.C. § 1983. The Voting Rights Act (42 U.S.C. § 1973) is limited to protecting the rights of voting minorities. See *Shelby*. The electoral college cannot be resolved by lawsuits between the states. *State of Delaware v. State of New York*, 385 U.S. 895, 87 S. Ct. 198 (1966). Unlike the situations in *Gray* and *Evenwel*, state governors cannot be liable for judicial *fiats* by the Congress. *See Williams*. Congressional members are (and should be) immune. Voting claims by (or against) defecting electors are not clearly cognizable. See *Ray*.

The timing logistics of any legal filing are nearly impossible. See *Parker v. Winter*, 645 F. App'x 632 (10th Cir. 2016) ("Challenges to election laws are one of the quintessential categories of cases capable of repetition yet evading review because litigation has only a few months before the remedy sought is rendered impossible by the occurrence of the relevant election").

The citizens vote in November, the electors vote in December, and the president is inaugurated in January, thus severely constraining the time period for any viable legal filing. Moreover, any district court filing presupposes the meritorious basis of any cognizable cause of action that is filed by voters with the alleged standing against immunized defendants. Insofar as the Congress essentially never renders judicial decisions due to the separation of powers (see *Plaut*), the requested review would entail an appellate function for which the district lacks any known jurisdiction.

Appeal writs are reserved for extremely rare separation of powers problems that should not evade appeal or other plenary review when there is no known recourse. See *Kerr*. Rule 20 may provide the only exceptional procedural basis for any legal review, while dispensing with ordinary liability problems (and hopefully excusing difficult standing requirements). Absent any viable challenge in any district court, Rule 14 cannot provide any means of review unless state governors are sued. *Williams*. It may be impossible to *let bygones be bygone* if presidential elections cannot procedurally escape the confines of 18th century law. Rule 20 may operate as a *saving grace* from this procedural trap of the Statute.

Constitutional democracy is a legal fiction if voting precedents are ignored. *Brown,* 381 U.S. 462, footnote # 40, citing Federalist Paper No. 78 (". . . all the reservations of particular rights or privileges would amount to nothing" absent judicial remediation). The congressional abrogation of judicial powers under the antiquated Statute should not be tolerated. See *Rucho* (citing *Marbury*).

Remedial Relief

Any legislative infraction requires the judicial branch to engage in the kind of check and balance that is required to maintain constitutional democracy. Unlike the Federalist Paper No. 68, the framers' foundational purpose that was expressed in the Federalist Paper No. 78 remains currently valid. *Brown,* 381 U.S. at 462, 85 S. Ct. at 1722, footnote # 40 (quoting Federalist Paper No. 78). Even if the Statute was construed to have been implicitly approved in *Bush I, II and III*, *Gray* was cited with approval in *Evenwel.* As of March 18, 1963, the electoral college was historically obsolete because this Court declared its *bygone* status as an immutable finding about American history. In the event this Court disagrees with this posited interpretation of *Gray*, that is arguably reinforced by the import of *Evenwel*, then it is important to note that *Gray* was decided in 1963 *before the later suffrage amendments* in 1964 and 1971. This Court previously addressed the problematic basis for the electoral college at least twice before this petition, including in *Evenwel* that had also articulated the supersession doctrine.

In *North Carolina v. Sandra Little Covington*, 581 U.S. ___, 137 S. Ct. 1624 (2017), this Court remanded and reversed the requested gerrymandering remedy of a special election in order to avoid the "likely disruption to the ordinary process of governance . . .". *Accord*, *Marks v. Stinson*, 19 F.3d 873 (3rd Cir 1994) (remand to require showing that losing candidate would have won but for the election irregularities). The ultimate goal of promoting "democratic stability" should be considered sufficiently important to justify final appeal review. See *Bush II*, *supra*.

The application of the direct vote may preserve the democratic process despite any foreign manipulation that did not clearly impact upon the popular tally in 2016. If this Court were to vacate the offending Statute, that would expeditiously remove what may be described as the proverbial *joker in the deck* of future presidential elections. The petitioner voters deserve the peace of mind of resting assured that the presidents and vice presidents they vote for never have to again gamble upon *wild card* electoral events in a few swing states.

As to the 2016 election, assuming that it remains legally live, the requested reversal may be compared to the *sua sponte* correction of any administrative mistake by a non judicial tribunal that was legally void *nunc pro tunc*. See FRCP 60(a) & 60(b)(4). The decisions in *Gray* and *Evenwel* may be enforced to retroactively remedy congressional contempt. *Plaut*. Any acclimation to the illegal *status quo* does not defeat the repatriation remedy in the context of abduction cases. *Abbott v. Abbott*, 560 U.S. 1, 130 S. Ct. 1963 (2010) and *Chafin v. Chafin*, 568 U.S. 165, 133 S. Ct. 1017 (2013).

Other high courts have recently ordered the removal of their elected leaders in Kenya, South Korea, and Brazil. The decisions by other high courts may have persuasive application. *See Lozano v. Alvarez*, 572 U.S.1, 134 S. Ct. 1224 (2014). The legitimacy of democratic elections should not be trivialized, particularly when *the Congress has historically ignored Supreme Court precedents.*

A decision by this Court to vacate the Statute "by fiat" (75a) is historically overdue and appropriate in this very unique context.

Post-Script **Summary**

The Supreme Court's historic protection of voting rights cannot be separated from the underlying ideals of democracy. As this Court previously stated in *Moore v. Ogilvie,* 394 U.S. 814, 815, 89 S. Ct. 1493, 1494 (1969):

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

Although the framers' goals were laudable in creating the founding framework for the election of the first president, the *Civil War Amendments* and the ensuing suffrage amendments profoundly changed the constitution after the 18th century. Over the course of decades after the 1948 Statute, this Court rendered controlling findings about the history of the electoral college in the dogmatic decisions of *Gray* and then *Evenwel*. Congress, by issuing the Certification, erroneously ignored the historic import of this important jurisprudence as well as the suffrage amendments.

There is no alternative recourse other than to appeal directly from the congressional findings that clearly reveal severe abuse of judicial powers. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 392, 91 S. Ct. 1999, 2002, 403 U.S. 388, 392 (1971). The 2016 election should not be moot and/or the 2020 election should not be premature. The Certification was error as matter of established law and constitutional history. This Court remains currently empowered to enforce the democratic ideals that founded the "more perfect Union."

CONCLUSION

For all of the foregoing reasons, the petitioners respectfully request that this Court grant their extraordinary petition for exceptional appeal review from the congressional certification, dated January 6, 2017, pursuant to Rule 20 (Part 4) of the Supreme Court rules and the *All Writs Act*, and order such other and further relief as may be just and proper.

Respectfully submitted,

WILLIAM D. RUSSIELLO
Attorney for Petitioners
45 Essex Street
Suite 3 West
Hackensack, New Jersey 07601
(201) 342-0696
wrussiello@cs.com

ANN L. DETIERE-RUSSIELLO
Of Counsel and on the Brief

September 10, 2019

APPENDIX

UNITED STATES OF AMERICA
CONGRESSIONAL RECORD

PROCEEDINGS AND DEBATES OF THE
115th CONGRESS, FIRST SESSION

Vol. 163

WASHINGTON, FRIDAY, JANUARY 6, 2017

No. 4

House of Representatives

The House met at noon and was called to order by the Speaker.

PRAYER

The Chaplain, the Reverend Patrick J. Conroy, offered the following prayer:

Loving God, we give You thanks for giving us another day.

We thank You again today for Your divine inspiration, which led to the creation of the Republican democracy we enjoy today, mindful that our responsibility is to faithfully carry forward this legacy to all those Americans who will follow us.

By law, the Congress meets this day in joint session to count the electoral votes for President and Vice President of the United States. May all who attend to these proceedings, and those responsible for the management of government, be mindful that something greater than each and any of us gathered, or affected by these events, is coming to pass.

Bless our great Nation and those entrusted with its care throughout this first session of the 115th Congress, the 226th session of the Supreme Court, and

the imminent administration of the 45th President. May all, by their actions, remember that we are a Nation which claims to put our trust in You.

And may all that is done be for Your greater honor and glory.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from North Carolina (Mr. HOLDING) come forward and lead the House in the Pledge of Allegiance.

Mr. HOLDING led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF TELLERS ON THE PART OF THE HOUSE TO COUNT ELECTORAL VOTES

The SPEAKER. Pursuant to Senate Concurrent Resolution 2, 115th Congress, the Chair appoints as tellers on the part of the House to count the electoral votes:

The gentleman from Mississippi (Mr. HARPER) and

The gentleman from Pennsylvania (Mr. BRADY).

RECESS

The SPEAKER. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 12:55 p.m. today.

Accordingly (at 12 o'clock and 2 minutes p.m.), the House stood in recess.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

□ 1300

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 1 p.m.

COUNTING ELECTORAL VOTES—JOINT SESSION OF THE HOUSE AND SENATE HELD PURSUANT TO THE PROVISIONS OF SENATE CONCURRENT RESOLUTION 2

At 1 p.m., the Sergeant at Arms, Paul D. Irving, announced the Vice President and the Senate of the United States.

The Senate entered the Hall of the House of Representatives, headed by the Vice President and the Secretary of the Senate, the Members and officers of the House rising to receive them.

The Vice President took his seat as the Presiding Officer of the joint convention of the two Houses, the Speaker of the House occupying the chair on his left. Senators took seats to the right of the rostrum as prescribed by law.

The joint session was called to order.

The VICE PRESIDENT. Mr. Speaker and Members of Congress, pursuant to the Constitution and laws of the United States, the Senate and House of Representatives are meeting in joint session to verify the certificates and count the votes of the electors of the several States for President and Vice President of the United States.

After ascertainment has been had that the certificates are authentic and correct in form, the tellers will count and make a list of the votes cast by the electors of the several States.

The tellers on the part of the two Houses will take their places at the Clerk's desk.

The tellers, Senator BLUNT and Senator KLOBUCHAR on the part of the Senate, and Mr. HARPER and Mr. BRADY of Pennsylvania on the part of the House, took their places at the desk.

The VICE PRESIDENT. Without objection, the tellers will dispense with reading formal portions of the certificates.

There was no objection.

The VICE PRESIDENT. After ascertaining that certificates are regular in form and authentic, the tellers will announce the votes cast by the electors for each State, beginning with Alabama.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Alabama seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 9 votes for President and Michael R. Pence of the State of Indiana received 9 votes for Vice President.

Mr. McGOVERN. Mr. President, I object to the certificate from the State of Alabama on the grounds that the electoral votes were not, under all of the known circumstances, regularly given and that the electors were not lawfully certified, especially given the confirmed and illegal activities engaged in by the Government of Russia that were designed to interfere with our election and the widespread violations of the Voting Rights Act that unlawfully suppressed thousands of votes in the State of Alabama.

Mr. VICE PRESIDENT. Sections 15 and 17 of title 3 of the United States Code require that any objection be presented in writing, signed by a Member of the House of Representatives and a Senator.

Is the objection in writing and signed not only by a Member of the House of Representatives but also by a Senator?

Mr. McGOVERN. Mr. President, the objection is in writing and is signed by a Member of the House of Representatives but not yet by a Member of the United States Senate.

Mr. VICE PRESIDENT. In that case, the objection cannot be entertained.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Alaska seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 3 votes for President and Michael R. Pence of the State of Indiana received 3 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Arizona seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 11 votes for President and Michael R. Pence of the State of Indiana received 11 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Arkansas seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 6 votes for President and Michael R. Pence from the State of Indiana received 6 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of California seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 55 votes for President and TIM KAINE of the Commonwealth of Virginia received 55 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Colorado seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 9 votes for President and TIM KAINE of the

Commonwealth of Virginia received 9 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Connecticut seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 7 votes for President and TIM KAINE of the Commonwealth of Virginia received 7 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Delaware seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 3 votes for President and TIM KAINE of the Commonwealth of Virginia received 3 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the District of Columbia seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 3 votes for President and TIM KAINE of the Commonwealth of Virginia received 3 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Florida seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 29 votes for President and Michael R. Pence of the State of Indiana received 29 votes for Vice President.

□ 1315

The VICE PRESIDENT. For what purpose does the gentleman from Maryland rise?

Mr. RASKIN. Mr. President, I have an objection because 10 of the 29 electoral votes cast by Florida were cast by electors not lawfully certified because they violated Florida's prohibition against dual office holding.

The VICE PRESIDENT. Debate is out of order.

Section 15 and 17 of title 3 of the United States Code requires that any objection presented be in writing, signed by both a Member of the House of Representatives and a Senator.

Is the objection in writing and signed not only by the Member of the House of Representatives, but also by a Senator?

Mr. RASKIN. It is in writing, Mr. President.

The VICE PRESIDENT. Is it signed by a Senator?

Mr. RASKIN. Not as of yet, Mr. President.

The VICE PRESIDENT. In that case, the objection cannot be entertained.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Georgia seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 16 votes for President and Michael R. Pence of the State of Indiana received 16 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from Washington rise?

Ms. JAYAPAL. Mr. President, I object to the certificate from the State of Georgia on the grounds that the electoral votes were not—

The VICE PRESIDENT. There is no debate. There is no debate.

Section 15 and 17 of title 3 of the United States Code requires that any objection be presented in writing, signed by both a Member of the House of Representatives and a Senator.

Is the objection in writing and not only signed by the Member, but by a United States Senator?

Ms. JAYAPAL. Mr. President, even as people waited hours in Georgia—

The VICE PRESIDENT. There is no debate. There is no debate.

If there is not one signed by a Senator, the objection cannot be entertained.

Ms. JAYAPAL. Mr. President, the objection is signed by a Member of the House, but not yet by a Member of the Senate.

The VICE PRESIDENT. It is over.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Hawaii seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 3 votes for President, and BERNIE SANDERS of the State of Vermont received 1 vote for President, and TIM KAINE of the Commonwealth of Virginia received 3 votes for Vice President, and ELIZABETH WARREN Of the Commonwealth of Massachusetts received 1 vote for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Idaho seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 4 votes for President and Michael R. Pence of the State of Indiana received 4 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Illinois seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 20 votes for President and TIM KAINE of the Commonwealth of Virginia received 20 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Indiana seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 11 votes for President and Michael R. Pence of the State of Indiana received 11 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Iowa seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 6 votes for President and Michael R. Pence of the State of Indiana received 6 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Kansas seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 6 votes for President and Michael R. Pence of the State of Indiana received 6 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the Commonwealth of Kentucky seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 8 votes for President and Michael R. Pence of the State of Indiana received 8 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Louisiana seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 8 votes for President and Michael R. Pence of the State of Indiana received 8 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Maine seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 3 votes for President and Donald J. Trump of the State of New York received 1 vote for President and TIM KAINE of the Commonwealth of Virginia received 3 votes for Vice President and Michael R. Pence of the State of Indiana received 1 vote for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Maryland seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 10 votes for President and TIM KAINE of the Commonwealth of Virginia received 10 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the Commonwealth of Massachusetts seems to be regular in form and authentic, and it

appears therefrom that Hillary Clinton of the State of New York received 11 votes for President and TIM KAINE of the Commonwealth of Virginia received 11 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Michigan seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 16 votes for President and Michael R. Pence of the State of Indiana received 16 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from California rise?

Ms. TEE. Mr. President, I object because people are horrified by the overwhelming evidence of Russian interference in our elections.

The VICE PRESIDENT. Section 18, title 3 of the United States Code prohibits debate in the joint session.

Section 15 and 17 of title 3 of the U.S. Code requires any objection be presented in writing, signed by both a Member of the House and a Member of the Senate.

Is the objection in writing and signed not only by the Member of the House, but also by a Senator?

Ms. LEE. Mr. President, even with the malfunction of 87 voting machines at predominantly African—

The VICE PRESIDENT. There is no debate in order.

Ms. LEE. I have grave concerns—

The VICE PRESIDENT. The objection cannot be entertained.

Ms. LEE. Unfortunately, it is not yet signed by a Senator.

The VICE PRESIDENT. The Chair is prepared to proceed with the count.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Minnesota seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 10 votes for President and TIM KAINE of the Commonwealth of Virginia received 10 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Mississippi seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 6 votes for President and Michael R. Pence of the State of Indiana received 6 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from Texas rise?

Ms. JACKSON LEE. Mr. President, I object on the massive voter suppression that is provisional that denied individual ballots—

The VICE PRESIDENT. Debate is not in order. Debate is not in order.

The gentlewoman will suspend.

Section 15 and 17 of title 3 of the U.S. Code requires that any objection be presented in writing and signed by both the Member of the House of Representatives and a Senator.

Ms. JACKSON LEE. Mr. President, I have an objection.

The VICE PRESIDENT. Is it signed by a United States Senator?

Ms. JACKSON LEE. Not yet. We are seeking a United States Senator.

The VICE PRESIDENT. Well, in that case, the objection cannot be entertained.

We will proceed with the count.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Missouri seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 10 votes for President and Michael R. Pence of the State of Indiana received 10 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Montana seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 3 votes for President and Michael R. Pence of the State of Indiana received 3 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Nebraska seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 5 votes for President and Michael R. Pence of the State of Indiana received 5 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Nevada seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received

6 votes for President and TIM KAINE of the Commonwealth of Virginia received 6 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of New Hampshire seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 4 votes for President and Tim KAINE of the Commonwealth of Virginia received 4 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of New Jersey seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 14 votes for President and TIM KAINE of the Commonwealth of Virginia received 14 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of New Mexico seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 5 votes for President and TIM KAINE of the Commonwealth of Virginia received 5 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of New York seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 29 votes for President and TIM KAINE of the Commonwealth of Virginia received 29 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of North Carolina seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State

of New York received 15 votes for President and Michael R. Pence of the State of Indiana received 15 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentleman from Arizona rise?

Mr. GRIJALVA. Mr. President, I object to the certificate from the State of North Carolina based on violations of the Voting Rights Act and confirmed hacking by the—

The VICE PRESIDENT. There is no debate in the joint session.

The Chair has previously ruled that a signature from a Senator is required. Is there a signature from a Senator?

Mr. GRIJALVA. There is a signature from the House of Representatives, myself, and—

The VICE PRESIDENT. The objection cannot be received without a signature from a Senator.

The tellers will continue the count. Ms. JACKSON LEE. Mr. President. The VICE PRESIDENT. For what purpose does the gentlewoman from Texas rise?

Ms. JACKSON LEE. Mr. President, I object to the 15 votes from the State of North Carolina because of the massive voter suppression and the closing of voting massive suppression that occurred from African American—

The VICE PRESIDENT. There is no debate. There is no debate. There is no debate.

The gentlewoman will suspend.

As the Chair has previously ruled, a signature from a Senator is required.

Ms. JACKSON LEE. Mr. Vice President, I do have in writing a signature from myself, not yet a signature from a Senator.

The VICE PRESIDENT. The objection cannot be received.

The tellers will continue the count.

□ 1330

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of North Dakota seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 3 votes for President and Michael R. Pence of the State of Indiana received 3 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Ohio seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 18 votes for President and Michael R. Pence of the State of Indiana received 18 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Oklahoma seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 7 votes for President and Michael R. Pence of the State of Indiana received 7 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Oregon seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 7 votes for President and TIM KAINE of the Commonwealth of Virginia received 7 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the Commonwealth of Pennsylvania seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 20 votes for President and Michael R. Pence of the State of Indiana received 20 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Rhode Island seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 4 votes for President and TIM KAINE of the Commonwealth of Virginia received 4 votes for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of South Carolina seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 9 votes for President and Michael R. Pence of the State of Indiana received 9 votes for Vice President.

Ms. JACKSON LEE. Mr. President.

The VICE PRESIDENT. For what purpose does the gentlewoman from Texas rise?

Ms. JACKSON LEE. Mr. President, I object to the votes from South Carolina because—

The VICE PRESIDENT. The gentlewoman will suspend.

As the Chair has previously ruled. there is no debate in the joint session. As the Chair has previously ruled, a Senator is required to sign.

Ms. JACKSON LEE. Mr. President, I have it in writing. I am now seeking a signature from a United States Senator.

The VICE PRESIDENT. The objection cannot be received.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of South Dakota seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 3 votes for President and Michael R. Pence of the State of Indiana received 3 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Tennessee seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 11 votes for President and Michael R. Pence of the State of Indiana received 11 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Texas seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 36 votes for President, John R. Kasich of the State of Ohio received 1 vote for President, and Ron Paul of the State of Texas received 1 vote for President, and Michael R. Pence of the State of Indiana received 37 votes for Vice President, and Carly Fiorina of the Commonwealth of Virginia received 1 vote for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of Utah seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 6

votes for President and Michael R. Pence of the State of Indiana received 6 votes for Vice President.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Vermont seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 3 votes for President and TIM KAINE of the Commonwealth of Virginia received 3 votes for Vice President.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the Commonwealth of Virginia seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 13 votes for President and TIM KAINE of the Commonwealth of Virginia received 13 votes for Vice President.

Senator BLUNT. Mr. President, the certificate of the electoral vote of the State of Washington seems to be regular in form and authentic, and it appears therefrom that Hillary Clinton of the State of New York received 8 votes for President, Colin Powell of the Commonwealth of Virginia received 3 votes for President, and Faith Spotted Eagle of the State of South Dakota received 1 vote for President, and Tim KAINE of the Commonwealth of Virginia received 8 votes for Vice President, ELIZABETH WARREN of the Commonwealth of Massachusetts received 1 vote for Vice President, MARIA CANTWELL of the State of Washington received 1 vote for Vice President, SUSAN COLLINS of the State of Maine received 1 vote for Vice President, and Winona LaDuke of the State of Minnesota received 1 vote for Vice President.

Mr. HARPER. Mr. President, the certificate of the electoral vote of the State of West Virginia seems to be

regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 5 votes for President and Michael R. Pence of the State of Indiana received 5 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from California rise?

Ms. LEE. Mr. President, I object on behalf of the million of Americans, including members of the intelligence community.

The VICE PRESIDENT. As the Chair has previously ruled, debate is prohibited.

As the Chair has previously ruled, a signature from a Senator is required. The objection cannot be received unless such a signature is obtained.

Ms. LEE. Mr. President, despite grave concerns of the intelligence—

The VICE PRESIDENT. The objection cannot be received.

Senator KLOBUCHAR, continue the tally.

Senator KLOBUCHAR. Mr. President, the certificate of the electoral vote of the State of Wisconsin seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 10 votes for President and Michael R. Pence of the State of Indiana received 10 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from Texas rise?

Ms. JACKSON LEE. Mr. President, I object to the votes from the State of Wisconsin which should not be legally certified.

The VICE PRESIDENT. The gentlewoman will suspend.

As the Chair has previously ruled, a signature from a Senator is required. Is there such a signature?

Ms. JACKSON LEE. Mr. President, I do have a written document with my objection.

The VICE PRESIDENT. The objection cannot be received.

We will continue the tally.

Mr. BRADY of Pennsylvania. Mr. President, the certificate of the electoral vote of the State of Wyoming seems to be regular in form and authentic, and it appears therefrom that Donald J. Trump of the State of New York received 3 votes for President and Michael R. Pence of the State of Indiana received 3 votes for Vice President.

The VICE PRESIDENT. For what purpose does the gentlewoman from California rise?

Ms. MAXINE WATERS of California. Mr. President, I do not wish to debate. I wish to ask: Is there one United States Senator who will join me in this letter of objection?

The VICE PRESIDENT. The gentlewoman will suspend.

The Chair has previously ruled a signature from a Senator is required. The objection cannot be received.

Members of Congress, the certificates having been read, the tellers will ascertain and deliver the result to the President of the Senate.

Senator BLUNT. Mr. President, the undersigned, ROY BLUNT and AMY KLOBUCHAR, tellers on the

part of the Senate, GREGG HARPER and ROBERT A. BRADY, tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice President of the United States for the term beginning on the 20th day of January 2017.

The tellers delivered to the President of the Senate the following statement of results:

JOINT SESSION OF CONGRESS FOR THE COUNTING OF THE ELECTORAL VOTES FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES—OFFICIAL TALLY

The undersigned, ROY BLUNT and AMY KLOBUCHAR tellers on the part of the Senate, GREGG HARPER and ROBERT A. BRADY tellers on the part of the House of Representatives, report the following as the result of the ascertainment and counting of the electoral vote for President and Vice President of the United States for the term beginning on the twentieth day of January, two thousand and seventeen.

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Electoral votes of each State	For President							For Vice President						
	Donald J. Trump	Hillary Clinton	Colin Powell	John Kasich	Ron Paul	Bernie Sanders	Faith Spotted Eagle	Michael R. Pence	Tim Kaine	Elizabeth Warren	Maria Cantwell	Susan Collins	Carly Fiorina	Winona LaDuke
Alabama—9	9							9						
Alaska—3	3							3						
Arizona—11	11							11						
Arkansas—6	6							6						
California—55		55							55					
Colorado—9		9							9					
Connecticut—7		7							7					
Delaware—3		3							3					
District of Columbia—3		3							3					
Florida—29	29							29						
Georgia—16	16							16						
Hawaii—4		3				1			3	1				
Idaho—4	4							4						
Illinois—20		20							20					
Indiana—11	11							11						
Iowa—6	6							6						
Kansas—6	6							6						
Kentucky—8	8							8						
Louisiana—8	8							8						
Maine—4	1	3						1	3					
Maryland—10		10							10					
Massachusetts—11		11							11					
Michigan—16	16							16						
Minnesota—10		10							10					
Mississippi—6	6							6						
Missouri—10	10							10						
Montana—3	3							3						
Nebraska—5	5							5						
Nevada—6		6							6					
New Hampshire—4		4							4					
New Jersey—14		14							14					
New Mexico—5		5							5					
New York—29		29							29					
North Carolina—15	15							15						
North Dakota—3	3							3						
Ohio—18	18							18						
Oklahoma—7	7							7						
Oregon—7		7							7					
Pennsylvania—20	20							20						
Rhode Island—4		4							4					
South Carolina—9	9							9						
South Dakota—3	3							3						
Tennessee—11	11							11						
Texas—38	36			1	1			37					1	
Utah—6	6							6						
Vermont—3		3							3					
Virginia—13		13							13					
Washington—12		8	3				1		8	1	1	1		1
West Virginia—5	5							5						
Wisconsin—10	10							10						
Wyoming—3	3							3						
Total—538	304	227	3	1	1	1	1	305	227	2	1	1	1	1

ROY BLUNT,
AMY KLOBUCHAR,
Tellers on the part of the Senate.

GREGG HARPER,
ROBERT A. BRADY,
Tellers on the part of the House of Representatives.

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The VICE PRESIDENT. The state of the vote for President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of electors appointed to vote for President of the United States is 538. Within that whole number, a majority is 270.

The votes for President of the United States are as follows:

Donald J. Trump of the State of New York has received 304 votes.

Hillary Clinton of the State of New York has received 227 votes.

Colin Powell of the Commonwealth of Virginia has received 3 votes.

John Kasich of the State of Ohio has received 1 vote.

Ron Paul of the State of Texas has received 1 vote.

Bernie Sanders of the State of Vermont has received 1 vote.

Faith Spotted Eagle of the State of South Dakota has received 1 vote.

The state of the vote for Vice President of the United States, as delivered to the President of the Senate, is as follows:

The whole number of electors appointed to vote for Vice President of the United States is 538. Within that whole number, a majority is 270.

The votes for Vice President of the United States are as follows:

Michael R. Pence of the State of Indiana has received 305 votes.

Tim Kaine of the Commonwealth of Virginia has received 227 votes.

ANNOUNCEMENT BY THE VICE PRESIDENT

The VICE PRESIDENT. The joint session will be in order.

The Sergeant at Arms will remove the disturbance from the gallery.

The joint session will be in order.

Elizabeth Warren of the Commonwealth of Massachusetts has received 2 votes.

Maria Cantwell of the State of Washington has received 1 vote.

Susan Collins of the State of Maine has received 1 vote.

Carly Fiorina of the Commonwealth Of Virginia has received 1 vote.

ANNOUNCEMENT BY THE VICE PRESIDENT

The VICE PRESIDENT. The Sergeant at Arms will remove the protestors from the gallery.

The joint session will be in order. Winona LaDuke of the State of Minnesota has received 1 vote.

This announcement of the state of the vote by the President of the Senate shall be deemed a sufficient declaration of the persons elected President and Vice President of the United States, each for the term beginning on the 20th day of January 2017 and shall be entered, together with the list of the votes, on the Journals of the Senate and House of Representatives.

The purpose of the joint session having concluded, pursuant to the Senate Concurrent Resolution 2,

115th Congress, the Chair declares the joint session dissolved.

(Thereupon, at 1 o'clock and 41 minutes p.m., the joint session of the two Houses of Congress dissolved.)

The SPEAKER. Pursuant to Senate Concurrent Resolution 2, 115th Congress, the electoral vote will be spread at large upon the Journal (emphasis supplied).

CONSTITUTIONAL PROVISIONS

Preamble (1787-1789)

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article II, Section 1 (1787-1789)

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no

person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States . . . .

Article III (excerpted)

Section 1. The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish . . .

Section 2 The Judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made . . .

Amendment XII (1804)

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President,

and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; – The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; – The person having the greatest Number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President – The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally

ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XXIV, Section 1 (1964)

The rights of the citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Amendment XXVI, Section 1 (1971)

The rights of the citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

STATUTORY PROVISIONS

3 U.S.C. § 15 (Counting electoral votes in Congress) (with emphasis supplied)

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and **the President of the Senate shall be their presiding officer**. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to **the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States**, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. **Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member**

of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and **such objections shall be submitted to the Senate for its decision**; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the **two Houses, acting separately, shall concurrently decide is supported by the decision of such State so**

authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which **the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State**. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and **the presiding officer shall then announce the decision of the questions submitted**. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

* * *

3 U.S.C. § 20: "The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State."

* * *

28 U.S.C. § 1651(a): "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law."

* * *

28 U.S.C. § 1291: "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . except where a direct review may be had in the Supreme Court."

* * *

28 U.S.C. § 2201(a): "In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

* * *

FRCP 60(a): "The court may correct a clerical mistake or a mistake arising from omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice . . ."

* * *

FRCP 60(b): "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(4) the judgment is void; or

(6) any other reason that justifies relief.

* * *

Rule 201(b)(2) of Federal Rules of Evidence: "The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

* * *

PUBLISHED ARTICLES

NEW YORK TIMES ARTICLE:
It is Over: Democrats' Efforts
to Deny Trump Presidency Fail*
(January 6, 2017)

By Matt Flegenheimer

Congress Certifies the Electoral College Vote

On Friday, Donald J. Trump's victory in the 2016 election was certified during a joint session of Congress.

WASHINGTON—One by one, the Democratic lawmakers stepped to the microphone on Friday, holding on to their letters and an impossible dream: denying the presidency to Donald J. Trump, two weeks before his inauguration.

And one by one, Vice President Joseph R. Biden Jr.—presiding over a joint session of Congress to validate the Electoral College results in Mr. Trump's victory—turned back their challenges with a stoic message, pounding his gavel without hesitation.

"It is over," Mr. Biden said at one point, as Republicans rose to their feet to cheer.

After weeks of fitful grumblings about the long-shot maneuvers that might obstruct Mr. Trump's path to the White House, the proceedings on Friday appeared to close the book.

Lawmakers are permitted to make objections to both individual and state tallies, but they must be submitted in writing and signed by at least one member of both the House and the Senate. No senator chose to join the cause of the half-dozen or so House Democrats who raised complaints.

The result was a parade of clipped protests from House members, drowned out quickly by the questioning of the vice president, who also serves as the president of the Senate.

The members spoke of voter suppression, of Russian interference and of the bracing fear consuming many Americans.

"Mr. President, I object because people are horrified," began Representative Barbara Lee of California.

Repeatedly, Mr. Biden asked if anyone could produce an objection that was joined by a senator.

"In that case," he said, to Republican applause, when no one could, "the objection cannot be entertained."

As the exercise neared its end, Representative Maxine Waters, Democrat of California, stepped forward. "I do not wish to debate," she said. "I wish to ask: Is there one United States senator who will join me?"

Mr. Biden reached for his gavel.

For Republicans, the state-by-state recap supplied a heartening reminder of November's great surprises: victories for Mr. Trump in Florida, Michigan, Pennsylvania and Wisconsin.

When the results in Colorado, a rare swing state victory for Hillary Clinton, were read aloud, a faint voice could be heard from the Democratic side: "Yea, Colorado."

But as Mr. Biden read the final numbers—including a single vote from an elector in Washington State for Faith Spotted Eagle, a Native American tribal leader who has led opposition to the Keystone XL pipeline—

more conspicuous demonstrations against Mr. Trump erupted among visitors to the gallery.

"I rise to defend our democracy. We reject this electoral vote," one woman shouted as she was escorted out.

"I rise to defend free and fair elections," a man cried a moment later. "Donald Trump as commander in chief is a threat to American democracy."

A spokeswoman for the United States Capitol Police said two men and one woman had been arrested.

TIME ARTICLE:
Hillary Clinton Leads by 2.8 Million
in Final Popular Vote Count
(December 20, 2016)

By Sarah Begley

© Mark Wilson—Getty Images Former US Secretary of State, Hillary Clinton is applauded before speaking at a portrait unveiling ceremony for outgoing Senate Minority Leader Harry Reid (D-NV), on Capitol Hill December 8, 2016 in Washington ...

In the final count, Hillary Clinton's lead in the popular vote of the 2016 presidential election was nearly three million votes.

According to the independent, non-partisan Cook Political Report, Clinton's final tally came in at 65,844,610, compared to Donald Trump's 62,979,636, with a difference of 2,864,974. The total number of votes for other candidates was 7,804,213.

Although Clinton captured nearly as many votes as Barack Obama did to win in 2012 (65,915,795), she lost the electoral college by a wide margin, clocking in at only 227 votes compared to Trump's 304. Seven electors who were pledged to vote for either Clinton or Trump defected to other options, like Colin Powell, Bernie Sanders and "Faith Spotted Eagle."

[Cook Political Report] (excerpts below)

2016 National Popular Vote Tracker

Clinton (D)	65,844,954
Trump (R)	62,979,879
Others	7,804,213
Clinton %	48.20%
Trump %	46.10%
Others %	5.70%
Dem '12 Margin	3.90%
Dem '16 Margin	2.10%
Margin Shift	-1.80%
Total '12 Votes	129,075,630
Total '16 Votes	136,629,046
Raw Votes vs. '12	5.90%

Compiled from official sources by: David Wasserman @Redistrict, Cook Political Report @CookPolitical

*Denotes Official/Certified Results; "Swing State" defined as state that flipped from '12 or was decided by less than 5%.

NEW YORK TIMES ARTICLE:
Why Trump Had an Edge in the Electoral College
(December 19, 2016)

Nate Cohn @NateCohn

With an expected win in the Electoral College today, Donald J. Trump will seal his presidential victory—despite losing the national popular vote by a significant margin.

His Electoral College lead should be substantial, since he won states worth 306 electoral votes to 232 from states won by Hillary Clinton. Yet the nearly final popular vote count has him trailing by nearly three million votes, or 2.1 percentage points, the largest deficit for a winning candidate since 1876's notorious election.

How exactly did we end up with such divergent results?

Liberals say Mr. Trump's victory is proof that the Electoral College is biased against big states and undemocratically marginalizes urban and nonwhite voters. Conservatives say the Electoral College serves as a necessary bulwark against big states, preventing California in particular from imposing "something like colonial rule over the rest of the nation," as the conservative analyst Michael Barone put it. California sided with Mrs. Clinton by a vote margin of four million, or 30 percentage points.

Both sides have a point. But in the end, Mr. Trump won for a simple reason: The Electoral College's (largely) winner-take-all design gives a lot of weight to battleground states. Mr. Trump had an advantage in the traditional battlegrounds because most are whiter and less educated than the country as a whole.

But Mr. Trump's success in those states isn't just about demographics. It's about quirks of history, like the outcome of a battle over Toledo, Ohio. It's about gains by Mrs. Clinton that went unrewarded. It's also about plain luck.

No, not regionalism

One argument in favor of the Electoral College is that it doesn't reward regionalism: a candidate who wins with huge margins in one part of the country. That's because a winner-take-all system doesn't reward any additional votes beyond what's necessary to win a state or a region. You get all of Florida's electoral votes, whether you win it by 537 or 537,000 votes.

A good example of how regionalism can drive a popular-electoral vote split is the 1888 election. The Democrat, Grover Cleveland, won the popular vote by nearly a point, but he lost the Electoral College by a margin similar to Mrs. Clinton's.

Why? He won the popular vote by dominating the Deep South, where white supremacist Democrats had succeeded in disenfranchising Republican black voters since the end of Reconstruction. Even progressives would consider this a moral victory for the Electoral College.

Regionalism Drove Electoral Split in 1888

In 1888, Democrats won the popular vote but lost the Electoral College.

But Democrats won the popular vote by running up huge margins in the Deep South. The Republicans didn't do nearly as well in their best states.

That drove the popular vote-electoral vote split: Democrats lost the popular vote and the electoral vote in the rest of the country.

{Charts Omitted}

Mrs. Clinton's big win in California was, on paper, potentially enough to be "responsible" for the electoral-popular vote split in the same way that the Deep South drove Mr. Cleveland's popular vote win in 1888.

But unlike the situation in 1888, Mrs. Clinton's huge victory in California (along with the District of Columbia and Hawaii, where Mrs. Clinton won by a higher percentage than she did in California) was almost entirely canceled out by Mr. Trump's dominance of his base states—which we'll call Appalachafornia—from West Virginia to Wyoming. ("Appalachafornia" consists of West Virginia, Kentucky, Tennessee, Arkansas, Alabama, Oklahoma, Kansas, Nebraska, Wyoming, Montana, Idaho, North Dakota and South Dakota.)

It Wasn't Regionalism in 2016

As in 1888, Democrats won the popular vote while losing the Electoral College.

But it wasn't because Democrats did far better in their base than the Republicans, who won Appalachafornia by just as much as Democrats won California.

Democrats still won the popular vote and lost the Electoral College in the rest of the country, excluding Appalachafornia and California.

{Charts omitted}

Mrs. Clinton led in the rest of the country by the same two-point margin after excluding Appalachafornia and California—and yet she still loses the Electoral College vote by about the same margin.

That's not how it went in 1888: The Republicans didn't waste nearly as many votes in their best states, so they actually led in the vote in the rest of the country. They won the Electoral College as well.

Whatever danger conservatives face from "imperial" California in a popular vote is matched by the threat Democrats would face from an "imperial" Appalachafornia. Regionalism alone is not why Mr. Trump won without the popular vote.

No, not small-state bias

The Electoral College isn't just a check against regionalism. It also reflects our federal system by awarding an electoral vote for every senator and representative. The result is that small states get more sway, since senators aren't awarded by population.

Wyoming, the least populous state, has one-sixty-sixth of California's population. Yet it has one-eighteenth of California's electoral votes.

In general, the Electoral College's small-state bias does hurt the Democrats. In fact, the small-state bias tipped the 2000 election. Al Gore would have won the presidency, 225 to 211, if electors were just awarded by representative, not by senators and representatives.

But the small-state bias was almost entirely irrelevant to Mr. Trump's advantage. Mrs. Clinton won plenty of small states—she won seven of the 12 smallest. Mr. Trump, meanwhile, won plenty of big states—in fact, he won seven of the 10 largest.

Defeat Even Without Small-State Bias

Mrs. Clinton would have fared just as badly in the Electoral College even if states were worth exactly their share of the population.

Hillary Clinton's share of Electoral College votes, under different apportionment of electors

{charts omitted}

As a consequence, the result would have been virtually identical if states had not received electoral votes for their senators. It would have even been the same if the electors had been apportioned exactly by a state's population.

Battleground Bias

O.K., so it's not California and it's not small-state bias. What is it?

It's the Electoral College's most straightforward bias: The battleground states count the most.

Mrs. Clinton did well in noncompetitive states and "wasted" popular votes that didn't earn her any more electoral votes, while Mr. Trump did just well enough in competitive states to pick up their electoral votes.

There are, of course, two halves to this effect:

- Mrs. Clinton fared better in the remaining blue states, outside of California and Hawaii, than Mr. Trump did in the remaining red states, outside of "Appalachafornia."

Mrs. Clinton won states like Illinois and New York by a much larger margin than Mr. Trump won similarly sized red states like Georgia and Texas.

Compared with President Obama in 2012, Mrs. Clinton made sizable gains in many of the red states outside of Appalachafornia, including a big seven-point improvement in Texas—yet won no electoral votes from them.

- Mr. Trump did very well in the battleground states. Depending on how the battlegrounds are defined, the vote there either broke for Mr. Trump or was virtually tied—a huge improvement over Mitt Romney's showing in 2012.

Mr. Trump won a lopsided electoral vote tally from those states by narrowly winning four of the five states decided by around one point or less: Florida, Wisconsin, Michigan and Pennsylvania (Mrs. Clinton edged him out in New Hampshire). Outside of those five states, the electoral vote was basically tied, with Mr. Trump edging out Mrs. Clinton, 231 to 228 (and leading by the margin of small-state bias).

The imbalance between competitive and battleground states is somewhat similar to a regionalism issue, at least in a mathematical sense: Mrs. Clinton won the "blue states" by a wider margin than Mr. Trump won the "red states." The rest of the country—the battlegrounds—voted Republican, and so did the Electoral College.

But this isn't a regionalism issue. The "solid red" and "solid blue" states where Mr. Trump failed to make gains include a clear majority of the country's Electoral College votes, population and actual votes. The regional anomaly was the Midwest, and it just so happens that in a winner-take-all system Mr. Trump's strength in the Midwestern battleground states yielded a lot of Electoral College votes.

There's a real demographic reason for it: Most of the traditional battleground states are much whiter, less educated and particularly less Hispanic than the rest of the country.

But the demographics alone don't quite do justice to Mr. Trump's victory in the Electoral College. In the

end, he won the battleground states by just a one-point margin—but claimed three-fourths of their Electoral College votes.

He won four of the five closest states, winning 75 of 79 votes at stake.

There has never been a close election in the United States in which one candidate has claimed such a resounding electoral vote margin out of the closest states.

Trump Narrowly Wins Big, Close States

Mr. Trump won the closest states by an electoral vote margin of 71—the largest in competitive American elections.*

Electoral vote margin in states decided by 1.5 points or less. {charts omitted}

*Popular vote margin less than 5 percentage points.

For lack of a better word: Mr. Trump had some very good luck.

There's nothing about the distribution of Mrs. Clinton's votes in the battlegrounds or nationally that meant she was destined to get as few electoral votes as she did.

Just take Minnesota, Wisconsin and Michigan—three contiguous states spanning the Upper Great Lakes. Mrs. Clinton actually won the region by a narrow margin, but she won just 10 of the 36 votes at stake.

Accidents of History

Ultimately, state lines are pretty arbitrary. Yes, when those lines were determined, there were reasoned considerations like population and access to rivers and resources. But statehood and state lines, often poorly surveyed in the first place, were hotly disputed in the

19th century. Many states were created in response to political considerations, especially the balance between free and slave states. In other times, it could have gone very differently.

Consider two of the bigger nonpolitical state boundary questions of the 19th century: the fate of the Florida Panhandle and the "Toledo War."

The Toledo War was a long dispute between Michigan and Ohio over a tiny strip of land along their border, which happens to include the city of Toledo. Ohio had the upper hand for one reason: It earned its statehood first, and therefore blocked Michigan's petition—which included the strip. In the end, Congress proposed a deal: Michigan would relinquish its claim on the Toledo strip and, in exchange, would get the Upper Peninsula.

The Florida Panhandle and the Florida Peninsula were governed as separate regions—West and East Florida—under Spanish and British rule. They were effectively separated by hundreds of miles of treacherous swamp and forest.

Ultimately, West and East Florida were combined into one state. This was mainly coincidental: Alabama earned statehood before the Florida territory was annexed. West Florida repeatedly tried to join Alabama, starting as soon as the state was annexed and lasting all the way past the Civil War. Many of these efforts—which included referendums, congressional petitions and direct negotiations between Florida and Alabama—nearly succeeded. But they ultimately did not.

If these minor border issues had gone differently, Mrs. Clinton would probably be president. The Florida Panhandle is heavily Republican: Without it, the rest of Florida votes Democratic. Both halves of the Toledo War worked out poorly for Mrs. Clinton. Not only

would she have won Michigan with Toledo, but she would have also won Michigan without the Upper Peninsula: Only the full trade gives Mr. Trump a narrow win.

Interestingly, the same changes would have flipped the 2000 election, and perhaps the 1876 election, to the same result as the national popular vote (though I don't have county-level results for Florida in that election). The pronounced regionalism at play in 1888 would have made it harder to change the outcome by tweaking state lines.

To be clear, you can also make plenty of changes that would benefit Republicans. You could reunify West Virginia and Virginia, to take an easy one.

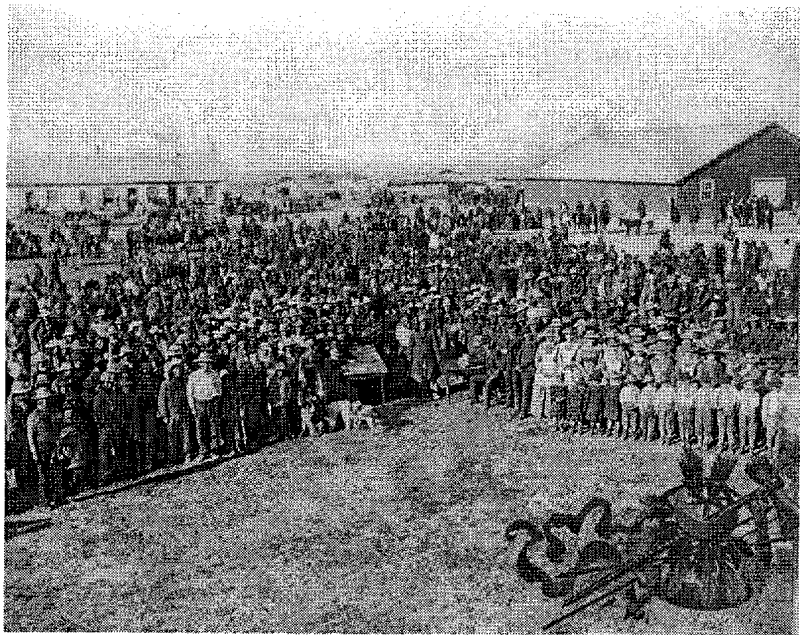
The point is that the main bias of the Electoral College isn't against big states or regionalism; it's just toward the big battleground states. If they break overwhelmingly one way, that's who wins. This is not exactly a high-minded Hamiltonian argument. There aren't many justifications for letting a few close states decide a close national election. But that's basically what the system does, and there's nothing about those states that ensures they provide a representative outcome.

Correction: December 19, 2016

An earlier version of this article misstated a part of Florida that is heavily Republican. It is the Florida Panhandle, not the Florida peninsula.

NEW YORK TIMES ARTICLE:
As American as Apple Pie?
The Rural Vote's Disproportionate Slice of Power
(November 20, 2016)

Emily Badger @emilymbadger



Census taking in the Dakotas sometime in the 1880s. The Dakota Territory was divided into two states, worth twice the political power. Credit David Francis Barry, via Library of Congress

In 1920, for the first time, the Census Bureau counted more people living in urbanized America than in the countryside. This hasn't been a rural nation ever since.

Yet the idea of Thomas Jefferson's agrarian America has receded slowly despite demographic change. We still romanticize the family farm, though relatively few of them exist anymore. We view even suburbia

in pastoral terms—the "crabgrass frontier," as the historian Kenneth T. Jackson put it. And, as the recent Electoral College results make clear, we still live with political institutions that have baked in a distinctly pro-rural bias, by design.

The Democratic candidate for president has now won the popular vote in six of the last seven elections. But in part because the system empowers rural states, for the second time in that span, the candidate who garnered the most votes will not be president.

Rural America, even as it laments its economic weakness, retains vastly disproportionate electoral strength. Rural voters were able to nudge Donald J. Trump to power despite Hillary Clinton's large margins in cities like New York. In a House of Representatives that structurally disadvantages Democrats because of their tight urban clustering, rural voters helped Republicans hold their cushion. In the Senate, the least populous states are now more overrepresented than ever before. And the growing unity of rural Americans as a voting bloc has converted the rural bias in national politics into a potent Republican advantage.

"If you're talking about a political system that skews rural, that's not as important if there isn't a major cleavage between rural and urban voting behavior," said Frances Lee, a professor of government and politics at the University of Maryland. "But urban and rural voting behavior is so starkly different now so that this has major political consequences for who has power."

The U.S. Senate Has Become Even Less Representative

The minimum share of the U.S. population able to elect a Senate majority.

The Electoral College is just one example of how an increasingly urban country has inherited the political structures of a rural past. Today, states containing just 17 percent of the American population, a historic low, can theoretically elect a Senate majority, Dr. Lee said. The bias also shapes the House of Representatives.

It exists, as a result, in the formulas that determine where highway funds are spent or who gets Homeland Security dollars. It exists in state capitols, where bills preferred by urban delegations have been much more likely to be rejected.

Today, the influence of rural voters also evokes deeply rooted ideals about who should have power in America. Jefferson and James Madison argued that the strength of the nation would always derive from its agrarian soil.

"They had this vision of what they called the 'yeoman farmer': this independent, free-standing person who owed nothing to anybody, who didn't receive any payments from the government, who didn't live by a wage, but who could support himself and his family on a farm growing everything they needed—and that these were the people who were going to be the backbone of democracy," said Gerald Gamm, a political scientist at the University of Rochester, describing what could be the forefathers of the rural voters who tilted this year's election.

One in Five People Live in Rural America Today

{Charts excerpted}

When the framers of the Constitution were still debating the shape of institutions we have today, 95 percent of America was rural, as the 1790 census classified the population. The Connecticut Compromise at the time created the Senate: one chamber granting equal voice to every state to counterbalance the House, where more populous states spoke louder.

And they made sure the compromise stuck. Today, equal state representation in the Senate is the only provision in the Constitution that remains singled out for protection from the amendment process; no state can lose its full complement of senators without its permission.

But even as a deliberately undemocratic body, the Senate has slipped further out of alignment with the American population over time.

The Senate hasn't simply favored sparsely populated states; politicians in Washington created sparsely populated states to leverage the Senate's skewed power.

"When we talk about small-state bias, all of that was an intentional policy choice," said Jowei Chen, a political scientist at the University of Michigan. Republicans in Congress passed the 1862 Homestead Act, offering free land to settlers who would move to territories that would eventually become states—creating more Senate seats and Electoral College votes for a Republican Party eager to keep government control away from Southern Democrats. They even managed to divide the Dakota Territory into two states, worth twice the political power.

As the Plains later depopulated and American cities, then suburbs, swelled, the Senate became even more unrepresentative.

Jeffersonian suspicion of big cities also appears in the sites of state capitals: Albany and not New York; Jefferson City and not St. Louis; Springfield and not Chicago. Political scientists at the University of California, Davis, have found that most state capitals were located near what was then the population centroid of each state—typically closer to the geographical center of the state, and not the place where the most people already lived, breaking with how much of the world sited its capitals.

The state legislatures there also grew significantly less representative as America urbanized. In 1961, when lawyers in Tennessee brought what would be a seminal case before the Supreme Court challenging the practice, the state legislature had not reapportioned its districts to reflect population change in 60 years. Maryland was still using districts drawn in 1867.

Even states that had constitutions requiring equal population districts were ignoring them. Florida, Georgia and New Mexico gave small counties 100 times the voting power of the most populous ones. Decades ago in California, Amador County (population 14,294) had the same representation in the state's Senate as Los Angeles County (with a population over six million).

"They justified it because that was a cultural norm; it was just the way things were," said Stephen Ansolabehere, a Harvard professor of government. Rural legislators had no incentive to change a system

that favored them. “They just let it keep getting worse. You’re in power. Why change?”

A crowded Coney Island beach in Brooklyn in 1923. Credit Robert Sennecke/Ullstein Bild, via Getty Images.

By the mid-20th century, no state approximated majority rule. America at the time, Dr. Ansolabehere and James M. Snyder Jr. wrote in their book “The End of Inequality,” had some of the most unequal representation in the world. A series of Supreme Court cases beginning with that Tennessee complaint upended this system and established the standard that equal representation means “one person, one vote.” Not one town, one vote. Or one county, one senator. Only the United States Senate, protected by the Constitution, remained unchanged.

Still, the House retains a rural bias. Republican voters are more efficiently distributed across the country than Democrats, who are concentrated in cities. That means that even when Democrats win 50 percent of

voters nationwide, they invariably hold fewer than 50 percent of House seats, regardless of partisan gerrymandering.

The Electoral College then allocates votes according to a state's congressional delegation: Wyoming (with one House representative and two senators) gets three votes; California (53 representatives and two senators) gets 55. Those two senators effectively give Wyoming three times more power in the Electoral College than its population would suggest. Apply the same math to California and it would have 159 Electoral College votes. And the entire state of Wyoming already has fewer residents than the average California congressional district.

In Washington, these imbalances directly influence who gets what, through small-state minimums (no state can receive below a certain share of education funding) and through formulas that privilege rural states (early road spending was doled out in part by land area and not road use).

There are policy reasons that the country might want to disproportionately spend resources on places with few people. Repairing an interstate highway in rural Oklahoma keeps national commerce flowing. And when the private market won't build essential infrastructure, public investments like the New Deal's rural electrification help fight poverty.

But even when you control for policy need, Dr. Lee's research has found that a significant rural bias in resources persists. You can see it in Homeland Security funding that gave Wyoming, for example, seven times as much money per capita as New York after the Sept. 11 terrorist attacks. You can see it in Alaska's proposed "bridge to nowhere."

"In that case," Dr. Ansolabehere said, "Alaska has so much disproportionate power in the negotiation over funds that in order for California to get some, Alaska gets a lot—to the point of not knowing what to spend the money on."

These calculations also mean that populous states subsidize less populous ones, which receive more resources than the tax dollars they send to Washington.

The challenge for rural voters now is that their electoral strength, and even these funding formulas, have not translated into policies that have fixed the deep economic problems they face, from high unemployment to declining wages. And it's unclear how Mr. Trump will do that for them, either—even if his major infrastructure proposal comes to pass and helps rebuild their roads.

If he can't, rural voters may stray from his party again. In that future, the rural bias in American politics would persist. But Democrats might yet have a chance to blunt its effects.

NEW YORK TIMES EDITORIAL BOARD:
Time to End the Electoral College
(December 19, 2016)

By the New York Times Editorial Board,
Credit Tyler Comrie

By overwhelming majorities, Americans would prefer to elect the president by direct popular vote, not filtered through the antiquated mechanism of the Electoral College. They understand, on a gut level, the basic fairness of awarding the nation's highest office on the same basis as every other elected office—to the person who gets the most votes.

But for now, the presidency is still decided by 538 electors. And on Monday, despite much talk in recent

weeks about urging those electors to block Donald Trump from the White House, a majority did as expected and cast their ballots for him—a result Congress will ratify next month.

And so for the second time in 16 years, the candidate who lost the popular vote has won the presidency. Unlike 2000, it wasn't even close. Hillary Clinton beat Mr. Trump by more than 2.8 million votes, or 2.1 percent of the electorate. That's a wider margin than 10 winning candidates enjoyed and the biggest deficit for an incoming president since the 19th century.

Yes, Mr. Trump won under the rules, but the rules should change so that a presidential election reflects the will of Americans and promotes a more participatory democracy.

The Electoral College, which is written into the Constitution, is more than just a vestige of the founding era; it is a living symbol of America's original sin. When slavery was the law of the land, a direct popular vote would have disadvantaged the Southern states, with their large disenfranchised populations. Counting those men and women as three-fifths of a white person, as the Constitution originally did, gave the slave states more electoral votes.

Today the college, which allocates electors based on each state's representation in Congress, tips the scales in favor of smaller states; a Wyoming resident's vote counts 3.6 times as much as a Californian's. And because almost all states use a winner-take-all system, the election ends up being fought in just a dozen or so

"battleground" states, leaving tens of millions of Americans on the sidelines.

There is an elegant solution: The Constitution establishes the existence of electors, but leaves it up to states to tell them how to vote. Eleven states and the District of Columbia, representing 165 electoral votes, have already passed legislation to have their electors vote for the winner of the national popular vote. The agreement, known as the National Popular Vote interstate compact, would take effect once states representing a majority of electoral votes, currently 270, signed on. This would ensure that the national popular-vote winner would become president.

Conservative opponents of a direct vote say it would give an unfair edge to large, heavily Democratic cities and states. But why should the votes of Americans in California or New York count for less than those in Idaho or Texas? A direct popular vote would treat all Americans equally, no matter where they live—including, by the way, Republicans in San Francisco and Democrats in Corpus Christi, whose votes are currently worthless. The system as it now operates does a terrible job of representing the nation's demographic and geographic diversity. Almost 138 million Americans went to the polls this year, but Mr. Trump secured his Electoral College victory thanks to fewer than 80,000 votes across three states: Michigan, Pennsylvania and Wisconsin.

This page opposed the Electoral College in 1936, and in more recent years as well. In 2004, President George W. Bush won the popular vote by more than three million, but he could have lost the Electoral College with a switch of fewer than 60,000 votes in Ohio.

Many Republicans have endorsed doing away with the Electoral College, including Mr. Trump himself, in 2012. Maybe that's why he keeps claiming falsely that he won the popular vote, or why more than half of Republicans now seem to believe he did. For most reasonable people, it's hard to understand why the loser of the popular vote should wind up running the country.

SCIENTIFIC AMERICAN

Guest Blog

The Funky Math of the Electoral College

Everyone knows it's a weird way to elect presidents—but it's even crazier than you think

August 24, 2016

By Randyn Charles Bartholomew

Credit: DSW4 Wikimedia

You might already know we have a pretty weird system for electing presidents. Candidates can win with fewer votes, some states matter more than others, some votes matter more than others, and all due to an ad hoc political compromise between 18th century wigged gentlemen. Per their decision, we don't vote for our leaders directly, but instead choose intermediaries, known as electors, who then (usually) vote for who we tell them to. Since each state is given two free electors regardless of how few people live there, voters from sparsely populated states like Wyoming are able to pack over three times the electoral punch than in large states like California.

So it's been for the past 57 presidential elections, and so it shall be this November when we decide whether Hillary Clinton or Donald Trump should be our next Commander in Chief.

But the situation is even weirder than you think.

According to Professor Steven Brams, a political scientist and game theorist at NYU who has been working on electoral decision problems since the 1970s, there is a non-obvious effect that gives more power to the large states than their large populations would suggest. His research indicates that campaign resources should be allocated to states according to their electoral votes to the three-halves power. Why this is so involves advanced combinatorial math, for the initiated only, but the outcome is that if one state has four times the electoral votes of another state, rather than give it quadruple the attention and ads, it's in a campaign's interest to give it eight times as much, all else being equal. (It may be a dubious proposition that this is in any way advantageous to the citizens of these large states, as they get bombarded with mailers and 30-second TV ads, but it is a reflection of how valuable their votes are to the campaigns competing for them.)

This isn't just an academic result, Brams told me. Studies show campaigns actually do allocate their resources this way. If anything, they over-invest in the large states. As 1964's Republican nominee Barry Goldwater put it, you have to "go shooting where the ducks are." Because most states' electoral votes are bundled into winner-take-all blocs, a large state like Ohio with its 18 electors can easily become must-win for either side.

One way to understand this phenomenon is to imagine an extreme case in which a number of large states

merge into an even larger one. Let's call it New Texaflohioginia. Let's further envision that New Texaflohioginia is worth a total of 270 electoral votes, and that all the remaining states are worth a total of 268. In this thought experiment, a candidate could safely ignore anyone living in those smaller states since whoever manages to win New Texaflohioginia will get all 270 of its votes, enough to outweigh all the other states combined, and therefore enough to win the presidency.

So which states have more influence per voter then, the big states or the smaller ones? It's not an easy question to answer since there are factors pushing in opposite directions, and they interact in ways which are asymmetrical and complex. Small states get more electors per voter, while the big states form larger blocs which cluster their influence into unignorable masses. According to Brams, "you might think the small states would have an advantage because of the plus two votes they get, but the winner-take-all aspect swamps the small state effect."

But not everyone agrees with this analysis. Professor Andrew Gelman, a statistician and political scientist at Columbia University, points to a study of his which he says shows the real-life distribution of votes following a different pattern from the one predicted by Brams et al. In his view, the theory of a large state bias lacks empirical backing and thus the "small states are slightly overrepresented because of how they all get three electoral votes."

Even if academics aren't in agreement on the knotty ways in which the votes of small and large states interact, there is one distinction that is widely agreed on: the one between swing states and non-swing states. The system "is motivating candidates to campaign in

swing states, so a few states become very important and nobody else matters," Gelman said. In a state like New York, for instance, democrats have won by an average of 26 percent in the last five presidential elections, and always by at least 20%. Since the outcome is generally not in question, an individual vote, or even a few thousand votes, cannot alter the result. What's more, if a solidly blue state like New York does happen to be close in a particular election, that would almost certainly indicate a national landslide in favor of Republicans, as in 1984, when Ronald Reagan won New York—and every other state, excepting only Minnesota and the District of Columbia.

Most states are lopsidedly red or blue in this way. Only a very few are competitive, and candidates limit their charm offensives to these few battleground states. "In most states your vote doesn't count. You may as well not have voted at all," Brams said.

So which states do matter? For starters, Pennsylvania. Trump recently claimed that if he doesn't win in that state, it will be because Clinton cheated. Given the current polls, that is highly dubious, but for a while its rust belt voters seemed receptive enough to the Republican nominee's populist message. Florida too will certainly be at the top of both candidates' wish-lists. Its importance was amply demonstrated in 2000 when a mere few hundred votes were the difference in Florida's electoral delegation swinging to George W. Bush instead of Al Gore, thereby winning him the presidency. Trump may now be regretting the way he insulted Florida's popular Senator "little Marco" Rubio and ex-Governor Jeb "low energy" Bush.

Then there's Ohio. No Republican has ever won the presidency without winning Ohio, and Democrats have managed to overturn the will of Ohioans just

once. According to the nonprofit organization FairVote, in 2012 Mitt Romney held more campaign events in Ohio than in all 30 of the smallest states combined. (Ohio still opted for Barack Obama.) The New York Times reports that Ohio Governor John Kaisich was offered—and turned down—the Republican VP slot. Hillary Clinton had more luck, luring the ex-governor of Virginia, another swing state, onto her ticket. Other swing states include Iowa, Nevada, Colorado, New Hampshire, North Carolina, and possibly Wisconsin and Michigan.

If one purpose of our grueling year-long presidential campaigns is to create a national conversation about the major issues facing the country, then most Americans are not being invited into that discussion. The current system creates the incentive for candidates to moneyball the electoral college in all its kludgy non-egalitarian intricacies. These Byzantine strategeries are both opportunity and necessity for modern campaigns.

As we gear up for an election so operatic and wacky it makes House of Cards look prosaic by comparison, it's natural that the more urgent question of Clinton versus Trump remains at the forefront of our minds. But hovering above all the targeted ad dollars and campaign stops in the same old states, we might also pause to wonder: does democracy really need to be more complicated than "most votes wins"? However, the electoral college is written into the constitution and is not likely to be amended anytime soon. Let's hope Pennsylvania, Ohio and Florida pick us a good president.

The views expressed are those of the author(s) and are not necessarily those of Scientific American.

https://blogs.scientificamerican.com/guest-blog/the-funky-math-of-the-electoral-college/

POLITICO

Trump pushes to swap Electoral College for popular vote

April 26, 2018 10:47 a.m. EDT

By Louis Nelson

President Donald Trump on Thursday voiced support for doing away with the Electoral College for presidential elections in favor of a popular vote because the latter would be "much easier to win."

The president's support for a popular-vote presidential election came as an aside during a freewheeling Thursday morning interview with "Fox & Friends," the Fox News morning show he is known to watch and from which he receives almost unflinchingly positive coverage. Trump made the remark amid a larger point about public figures who publicly support him in turn benefiting from a boost of popularity from Trump supporters.

"Remember, we won the election. And we won it easily. You know, a lot of people say 'Oh, it was close.' And by the way, they also like to always talk about Electoral College. Well, it's an election based on the Electoral College. I would rather have a popular election, but it's a totally different campaign," Trump said. "It's as though you're running – if you're a runner, you're practicing for the 100-yard dash as opposed to the 1-mile."

"The Electoral College is different. I would rather have the popular vote because it's, to me, it's much easier to win the popular vote," he continued.

Despite projections ahead of Election Day that the Electoral College map did not offer him a clear path to victory, Trump cruised past the 270-electoral-vote

threshold, ultimately earning 306. (Trump officially earned 304 votes, thanks to two electors who voted against the president even though he won their state.)

But despite Trump's claims that his election was a landslide victory, he has at times been haunted by the fact that Democrat Hillary Clinton beat him in the popular vote by almost 3 million votes, a result Trump has chalked up to a strategic decision by his 2016 team not to campaign in blue states. Only one Republican, George W. Bush in 2004, has won the nationwide popular vote in presidential elections dating back to 1992.

https://www.politico.com/story/2018/04/26/trump-electoral-college-popular-vote-555148

INTELLIGENCER

A New 2016 Election Voting Map Promotes . . . Subtlety

March 9, 2018

By Eliza McCarthy

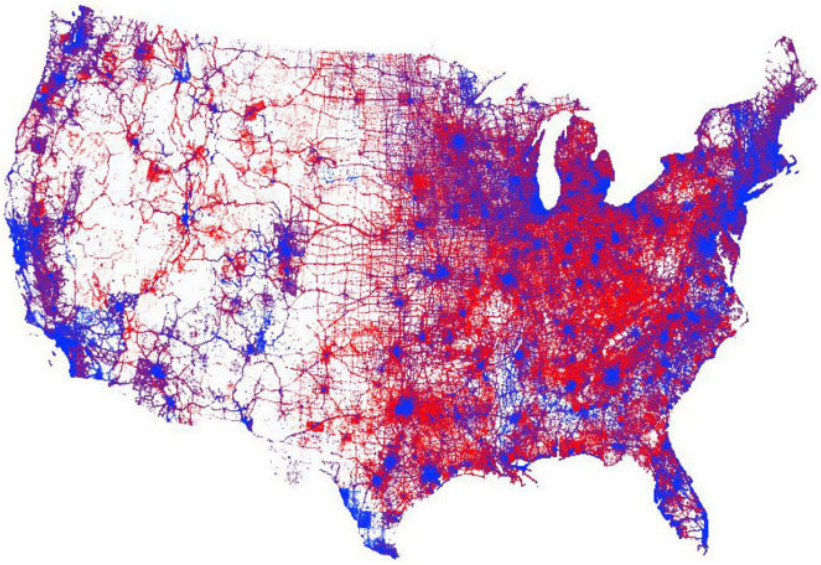


Photo: Courtesy of Kenneth Field and Esri.com

Along with the New York *Times*' needle of death, perhaps no infographics are as associated with the 2016 election as voting maps.

You know the ones: A Democrat would post an almost psychedelically stretched-out cartogram of the continental U.S. shaped by vote population distribution, because, as you recall, Hillary Clinton got 3 million more votes.

A Republican would then put up a very different map showing all the counties that voted for Trump and making the U.S. look like a sea of red – never mind

that a lot of those rural counties have fewer inhabitants than a single block in Manhattan. (Donald Trump put a version of this map on a wall in the White House.)

Now, some 16 months later, perhaps the fairest and most nonpartisan version of the electoral map yet has gone a little bit viral: one that includes a dot representing every single vote cast. That's 65,844,954 blue dots for Hillary Clinton and 62,979,636 red dots for Donald Trump.

In this new version, cartographer Kenneth Field wanted to include all votes – not just those of the victor in each area. Field says Trump's map isn't "incorrect . . . [but] there isn't just one way of mapping the data"; Field also wanted to make "a map that pushes the data into areas where people actually live."

To make this "dot-density" map, he used ArcGIS software from Esri, the company where he works, to illustrate information from two government data sets, one on election results and the other, the USGS's "brilliant" national land-cover database. To the uninitiated, populating a map with more than 130 million dots might seem almost like an act of magic, but once he'd gathered the needed data sets, Field says making this version of the map took him only . . . 35 minutes. (Field aims to make a more user-friendly, zoomable, hi-res version when he gets the time in the next few weeks.)

Does the map tell us something "new" about the election? Overall, it doesn't upend any key demographic conventional wisdom: The coasts and urban areas are mainly blue, and the rural Midwest in particular mainly red.

But online, some people seem be finding (for them at least) surprising nuance within this version's gashes of red, and strips of blue: "Wow, having lived in Texas most of my life, it's crazy seeing so much blue in the 4 largest cities (Austin, Dallas, Houston, and San Antonio)," noted @StaceyTurner77. "It's quite interesting to 'see' that our 'unsafe borders' are so predominantly blue. You'd think if the residents/citizens/voters in those areas believed the Republican theory/solution would work, those areas would be redder," observed another reader. "Rather than solid red, you see that basically the west is pretty freaking' empty," said a third.

Might some American voters be starting to actually contemplate, rather than simply to react to, the vagaries of the 2016 election? "I'm a Republican," started one series of tweets, "but I appreciate this map."

http://nymag.com/intelligencer/2018/03/a-new-2016-election-voting-map-promotes-subtlety.html

DAILY CALLER

LA Times Editorial: Electoral College Is Unconstitutional And Should Be Banned

December 16, 2016
5:39 p.m. ET

Blake Neff, Reporter

The Los Angeles Times has published an editorial arguing that the Electoral College shouldn't be allowed to choose the next U.S. president, on the grounds that it is unconstitutional.

Needless to say, Kenneth Jost's argument is a very bold one, since the Constitution explicitly creates the Electoral College and describes how it works; the system was even refined with the 12th Amendment. But Jost, an adjunct professor at Georgetown University Law Center, says that's no barrier to having the Supreme Court abolish the Electoral College by fiat.

"The electoral college is enshrined in the Constitution, but that doesn't necessarily make it constitutional," Jost argues. Small states are too protective of the Electoral College to approve an amendment abolishing it, he says, so the only reasonable possibility is to have the Supreme Court intervene and declare it illegal.

"It's up to the Supreme Court – and a properly framed lawsuit – to do away with a system that not only never functioned as the framers intended but blatantly violates the court's 'one person, one vote' principle," says Jost.

"Plaintiffs in a legal challenge could be voters in any of the most populous states. They could correctly argue that their votes are being systematically undervalued in presidential elections," he continues, glossing over

that the Constitution clearly designed the Electoral College to mitigate the influence of large states.

The Electoral College's structure, Jost argues, is invalid because it was initially designed in part to protect slaveholding states where relatively few people could vote. He then argues that the plain text of the Constitution should be ignored in favor of the Supreme Court's 1964 ruling in Reynolds v. Sims, which held that state legislative elections must follow a "one person, one vote" principle.

"With an appropriate challenge in the high court, that precedent ought to topple the electoral college," he says. He then ends his argument by quoting Anthony Kennedy to argue that the Constitution should be ignored so that "persons in every generation can invoke its principles in their own search for greater freedom."

Read the whole editorial here. (http://www.latimes.com/opinion/op-ed/la-oe-jost-electoral-college-20161216-story.html)

Follow Blake on Twitter (https://twitter.com/BlakeNeff)

Send tips to blake@dailycallernewsfoundation.org.

https://dailycaller.com/2016/12/16/la-times-editorial-electoral-college-is-unconstitutional-and-should-be-banned/

AFFIDAVIT

Sally Jane Gellert, being duly sworn, states as follows:

1. I am a citizen of the United States, and over the age of 18 years old.

2. I reside in the state of New Jersey where I am registered to vote.

3. On or around November 8, 2016, I voted in the state of New Jersey for Hillary Clinton for president and for Tim Kaine as vice president of the United States.

Wherefore, I respectfully request that the Supreme Court of the United States grant my joint petition for the relief requested therein, pursuant to Rule 20 of the Supreme Court rules, and order such other and further relief as may be just and proper.

/s/ Sally Jane Gellert
Sally Jane Gellert

Sworn to before me this 9th day of November, 2018

/s/ William D. Russiello
WILLIAM D. RUSSIELLO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES: October 30, 2023

AFFIDAVIT

Peter Appel, being duly sworn, states as follows:

1. I am a citizen of the United States, and over the age of 18 years old.

2. I reside in the state of Pennsylvania where I am registered to vote.

3. On or around November 8, 2016, I voted in the state of Pennsylvania for Hillary Clinton for president and for Tim Kaine as vice president of the United States.

Wherefore, I respectfully request the Supreme Court of the United States grant my joint petition for the relief requested therein, pursuant to Rule 20 of the Supreme Court rules and order such other and further relief as may be just and proper.

/s/ Peter Appel
Peter Appel

Sworn to before me this 9th day of November, 2018

/s/ Craig J. Vogin
[COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Craig J. Vogin, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Aug. 1, 2021
MEMBER, PENNSYLVANIA
ASSOCIATION OF NOTARIES]