



PRESIDENTIAL ELECTORS

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Abstract

Given the key constitutional role of electors in the final selection of the U.S. President one might expect the appointed electors to act in the electoral spotlight. But that has seldom been the case, although their meeting to cast their ballot in recent years is often broadcast or videoed and highlighted on their day of action while numbers of the electors do interviews with their local media.

Who are the presidential electors? This research addresses this question focusing on the electors and the process of their selection from the vantage point of the 2020 election. It offers reflection on the role electors play in the presidential electoral process in contemporary times from a democratic perspective, focusing on questions of why we might care about who they are, what their experiences are like, and their reflections on that experience.

To address the central questions of this essay, that is, who contemporary electors are, how they are selected and how do they perform their electoral job and what has been their assessment of their duties, I have collected both quantitative and qualitative data about the 2020 electoral college members across the states. Quantitative data have been collected on various demographic characteristics of the electors. From the qualitative perspective, I have undertaken interviews with a sample of individual electors and supplemented those interviews with information from media reports on and interviews with individual electors about themselves and their experiences. Who they are, how they function relative to the vision of the founding fathers and what might be the implications for the role of the Electoral College in the democratic process of electing the US president? These are the major questions of this research project. It also explores the 2020 election issue of “fake electors.”

Keywords

Presidential Electors, Democratic Perspective, Fake Electors, Constitution

Preface

“It was the proudest moment of my life.”

– 2020 California presidential elector Kevin Sabellico

The 12th Amendment to the U.S. Constitution states that “[T]he 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...”

This Electoral College system that emerged from the 12th Amendment through which the president of the United States is chosen every four years has had a long and controversial history with strong advocates and ardent opponents.¹ Amid all of the debate and scholarly writing on the Electoral College, however, only scattered historical attention has been paid to the presidential *electors* themselves, the people who have historically been selected to convene in state capitols on the second Monday in December after the November general election to cast the actual votes for President and Vice President. Their ballots are then sent to the U.S. Capitol to be recorded

and certified in contemporary times on the following January 6th, now a quite infamous date given the insurrection that occurred at the U.S. capitol on that day in 2021 as the elector ballots were being counted and certified.

Given the key constitutional role of electors in the final selection of the U.S. President one might expect the appointed electors to act in the electoral spotlight. But that has seldom been the case, although their meeting to cast their ballot in recent years is often broadcast or videoed and highlighted on their day of action while numbers of the electors do interviews with their local media.

As Professor David Post has written in a 2020 Scotusblog, “[w]ho are those ‘electors,’ anyway? And what exactly do they do while serving in the Electoral College? You can be forgiven for not having paid much (or any) attention to these questions since high school social studies class. Perhaps you notice when, every four years, a month or so after the presidential election, there is an announcement, buried at the back end of the newspapers and your news feed, that the Electoral College has met and formally ratified the election results. Most of us, I suspect, greet the news with a shrug; it’s just a bit of ‘kabuki democracy’ – purely ceremonial, and not, in the greater scheme of things, terribly important.” This commentary was written just prior to the infamous aftermath of the 2020 presidential election in which “electors: and “fake electors” took “center stage.”

This research addresses Professor Post’s question focusing on the electors and the process of their selection from the vantage point of the 2020 election and offers reflection on the role electors play in the presidential electoral process in contemporary times from a democratic perspective, focusing on questions of why we might care about who they are, what their experiences are like, and their reflections on that experience.

To address the central questions of this essay, that is who contemporary electors are, how they are selected and how do they perform their electoral job and what has been their assessment of their duties, I have collected both quantitative and qualitative data about the 2020 electoral college members across the states. Quantitative data have been collected on various demographic characteristics of the electors. From the qualitative perspective, I have undertaken qualitative interviews with a sample of individual electors and supplemented those interviews with information from media reports on and interviews with individual electors about themselves and their experiences. Who they are, how they function relative to the vision of the founding fathers and what might be the implications for the role of the Electoral College in the democratic process of electing the US president? These are the major questions of this research project.

A key contemporary question is why do we still have electors and a separate electoral college voting day distinct from the November general election? All the electors have come to be empowered to do, having been selected by political parties, is to ratify in a formal meeting the winner of a state’s votes cast in the general election. Thus, we should also ask what is the contemporary benefit to the electoral process in having electors totally constrained by the results of the general election convening in a separate ceremony to ratify the results of that November election? We could amend the Constitution to remove electors from the process and simply record the winning electoral votes in the states but amending the Constitution has never been an easy task and proposals to eliminate electors while keeping the state-by-state accounting have not been made. The main debate has been whether to eliminate the Electoral College altogether and adopt a national popular vote winner system. The problem of “fake electors” in the 2000 election might lead to more thoughts about the role and use of electors and put a new spotlight on the presidential elector process from an historical perspective.

On Monday, December 14, 2020, 524 of the 538 electors met in their state capitols. In addition, Delaware, the tiny, deeply Democratic home state of the president-elect, officials relocated their ceremony involving three electors to a college gymnasium, a site considered to have better security and better accommodate public health concerns. Arizona’s 11 electors convened in an undisclosed location² to cast the final votes that would elect the 46th president of the United States. In addition, the Colorado Democratic Party did not list the names of its electors on its website. Democratic Party spokesperson David Pourshoushtari reported that while the party did not know of any direct threats being made to electors’ safety, the party declined to publicize their names this year out of an ‘abundance of caution’” (Miller, 2020).

In addition to Professor Post’s questions about electors, the immense conflict over allegations and challenges of voter fraud in the 2020 presidential election, acrimony surrounding the electoral college vote on December 14th involving “fake electors,” and the attack on the U.S. Capitol on January 6th during the final counting of the electoral ballots serve as catalysts for the analysis presented here regarding who the 2020 presidential electors were, how they became key players in the election process, and how they assessed the historical role they played in the electoral process.

Quotes from three of the 2020 presidential electors about what their electoral experience meant sets an introductory context of this study.

“In the United States we don’t do enough to appreciate that on a cold December morning I *can’t* imagine being anywhere else than in Sacramento casting that vote. In the United States I don’t think we do enough to appreciate where 538 people across the country get together and for whatever it is worth, ... pick the President, who those people are and the stories that brought them to that moment” (Brandon Zavala, 2020 California elector, personal interview).

“A lot of people have this vision of the Electoral College, as some lofty, ivory tower, you're not amongst the people type individuals, where it's regular average, everyday people,” Michigan elector and history teacher Blake Mazurek reported (Parseghian, 2020).

“Here’s a kid from northern Minnesota who will go down in the history books. Here I am, a disabled vet born in Camp LeJuene, North Carolina, a southern boy living in northern Minnesota where the temperatures sometimes don’t get above zero. I am beyond proud that from a smallish town I got to cast the electoral ballot. I got to make history. It was beyond cool. It was the proudest thing I have ever done in politics” (Minnesota elector Joel Heller, personal interview).

Chapter 1: Origins of the Electoral College and Its Electors

For an historical perspective, this study of presidential electors begins with a review of the presidential election system that the 1787 constitutional convention debated and constructed that included the unique system of state electors. It includes historical debates as to electors’ independence and discretion in casting their electoral ballots as overtime the country proceeded through elections of 46 presidents.

As Federal Elections Commission member William Kimberling has described it, the original idea of the Electoral College was “for the most knowledgeable and informed individuals from each State to select the president based solely on merit and without regard to State of origin or political party” (2, 1992). The design of the Electoral College arose out of a compromise among the constitutional convention members.

The creation of a system for selecting a president was the final item on the Founding Fathers’ constitutional convention agenda. It was left to a subgroup of members, the Committee of Eleven, to work out a selection process during a hot Philadelphia summer. This subgroup of founders primarily debated whether the Congress should choose a president or should a democratic popular vote be the presidential selection mechanism. The electoral system ultimately chosen was a compromise between the election of the President by a vote in Congress and election of the President through a popular vote of the country’s citizens.

Text Box 1

According to Political Science Professor George Edwards “It wasn’t like the Founders said, ‘Hey, what a great idea! This is the preferred way to select the chief executive, period.’ “They were tired, impatient, frustrated. They cobbled together this plan because they couldn’t agree on anything else” (Roos, 2019).

A straight national popular vote was the initial preference of leading framers James Madison, James Wilson, and Gouverneur Morris but states’ rights advocates among the framers strongly objected to that idea. A system of popularly elected electors was adopted as a compromise (Diamond 2004). It was an “eleventh hour decision” as Justice Elena Kagan described it in the Supreme Court’s 2020 “faithless elector” *Chiafalo v. Washington* decision.

Alexander Hamilton is especially known for praising this constitutional compromise in Federalist #68. In selling the adopted presidential election, Hamilton wrote “that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.” He extolled the proposal the Constitutional Convention had adopted for selecting a chief executive or president for the nation with its emphasis on a system of electors across the states.

Hamilton argued that election of the President:

should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations... a small number of electors, selected by their fellow citizens, would be more likely than the general mass of citizens to possess the knowledge and discernment to choose characters pre-eminent for ability and virtue. Thus, electors would be charged with the duty of making a wise choice that their constituents would support.

Hamilton additionally pointed out that electors acting on behalf of their constituents would be required to operate under circumstances “favorable to deliberation.” He explained that because the electors’ meeting in each state would be temporary bodies of men, not serving in any other office under the United States and chosen for the sole purpose of selecting the president, it would be difficult to tamper with them or bribe them “to prostitute their

votes in advance.” Thus, presidential electors would be less susceptible “to cabal, intrigue and corruption” that so often causes representatives of the people to betray their trust (Villegas, 2019).

Further, John Jay predicted in Federalist #64 that the system of presidential electors would “be composed of the most enlightened and respectable citizens, whose choices would reflect discretion and discernment.” In addition, the founders advanced the idea that a “straightforward national election was ‘impractical’ in a country as large as the United States, given the poor internal communications it then had. ... the people simply could not have the national information about available candidates to make any real choice, let alone an intelligent one” (Diamond, 67, 2004).

“[E]lectors would have to exercise discretion because the people at large would literally find it impossible to identify an individual beyond their own neighbors who might possess the necessary personal and professional character to act as the administrator of the nation’s laws and commander of the nation’s army” (Whittington, 936, 2017). Professor Robert Dixon in a 1950 political science article described the original conception of a presidential elector as “a noble, non-partisan figure who, in company with his fellow-electors in his state, would perform the high political function of choosing a president and a vice-president.” Electors were to exercise personal judgement when voting.

Regardless of the idea of discretion, deliberation, and independence that the writings of the Constitution’s founding members promoted in selling the Constitution, Article II gives presidential electors only a single task: *to meet and cast a ballot*. It says nothing about how electors might deliberate in choosing how to cast that ballot. It indicates how many electors a state may appoint, but it does not say anything about how electors should perform their charge beyond reporting a list of votes cast to the President of the U.S. Senate, usually the Vice President of the United States (Whittington, 2017).

The constitution did not create any formal process to ensure deliberation or discernment on the part of electors. All the Constitution says besides the provision for counting at a joint meeting is that each state’s group of electors is to sign and certify their ballots and send a list of the voting results to Congress. Article II did mandate that electors vote for two persons “of whom one at least shall not be an inhabitant of the same state with themselves.”

Indeed, there is little evidence of electors ever coming together to deliberate or exercise discernment. Formal political parties were not in existence at the time of the writing of the Constitution. But the practice of choosing *pledged* electors started very early in the nation’s history with Federalist and Anti-Federalist candidates. (See Whittington, 910, 2017 and Paullin, ND). Consider, for example, that on February, 1797 one of the two Federalist electors from Pennsylvania bolted the Federalist ticket to which he had been pledged and cast his vote in the Electoral College for Thomas Jefferson. “What! cried an angry Federalist, writing to the *Gazette of the United States*, “do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be president? No? I chuse him to ACT, not to think” (Boller, 1996, 9).

In his 1829 treatise on the constitution, William Rawle noted that “in no respect have the enlarged and profound views of those who framed the constitution, nor the expectations of the public when they adopted it, been so completely frustrated as in the practical operation of the system so far as relates to the independence of the electors” (144). (See also Whittington, 929, 2020). From his research leading political scientist Robert Dahl concluded that the Electoral College process the Framers constructed “was almost immediately cast into the dustbin of history by leaders sympathetic with the growing democratic impulses of the American people” (17, 2003). Professor Robert Alexander has noted that the election of 1800 between Thomas Jefferson and Aaron Burr was noteworthy in that “it dramatically changed the role of presidential electors. Instead of being chosen for their judgment, electors were to be selected for their loyalty. The emergence of party tickets transformed the office of elector from one of independence to one of servitude to the party” (15, 2019).

Formally the President is elected when the presidential electors cast their ballots in December following the November general election and then Congress counts the states’ electoral votes the following January 6th. Article II of the Constitution mandates that a list of all the persons who voted as electors and the number of votes for each presidential candidate be counted. These votes were to be signed, certified, and transmitted to the seat of the government of the United States, directed to the President of the Senate.

Early in the nation’s history, emerging political parties began to provide ballots to voters to cast in the election. Those early presidential ballots simply listed the names of the presidential electors pledged to vote for that party’s presidential nominee. Modern ballots generally make the electors less visible—and the salient choice for president made by the voter more apparent—by leaving the names of the presidential electors off the government-issued ballot and asking voters to directly select the presidential candidate they wished to support. Voters are asked in November to vote for a presidential candidate, even if the mechanics of how that vote will be registered requires a pledged presidential elector (Whittington, 906, 2017).

Beyond adopting a system for presidential electors, a mechanism by which electors would be selected in each state had to be decided upon. Section 1 of Article II mandates that state legislatures prescribe the manner in which electors would be chosen and cast their votes. It laid out the electoral process that was decided upon, stating that “...each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to

the whole 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 term “Electoral College” did not actually appear in the Constitution. It was adopted later as a descriptor of the system the Founding Fathers had created. The phrase “Electoral College” did not appear in federal law until 1845. Further, “[...]despite the important role of the Electoral College, the Constitution does not say much about the electors themselves” (Pruitt, 2020). There are no provisions relating to the qualifications of electors.

In an era before national electoral campaigns, political parties or a mass media, the framers anticipated that electors would need to exercise discernment because the people at large would find it literally impossible to identify an individual beyond their own neighbors who might possess the necessary personal and professional character to act as the administrator of the nation’s laws and commander of the nation’s army. But with the rise of political parties and electioneering, the electors became rather superfluous and by common societal agreement they lost the right to exercise discretion in choosing a president. The practical construction of the Constitution has been that presidential electors were to formally record the vote of the people of the states in which they were chosen, not exercise independent judgment in selecting a president. “They were to be clerks, not kingmakers” (Whittington, 936, 2017).

The Electoral College system that has evolved scarcely operates in line with the framers’ original vision (to the extent to which the framers had an actual vision, especially when it came to the notion of deliberation). It does not and hardly ever was comprised solely of “men most capable of analyzing the qualities adapted to the station.” It neither promotes “circumstances favorable to deliberation,” nor “to a judicious combination of all the reasons and the practical construction of the Constitution.” Presidential electors were to formally record the vote of the people of the states in which they were chosen, not exercise independent judgment in selecting a president. However, historically in debates over the manner of allocating electoral votes across the states that deviates from a strictly equal numerical count little discussion about removing electors from the process has been made.

The Constitutional Convention left the decision as to how to allocate its electoral votes completely to the discretion of each state. Votes cast for losing candidates in a state are not counted in the electoral meeting which “amplifies the effect of the imbalanced allocation of electoral votes” (Festa, 10, 2001). That is a controversial system because it is a mechanism that increases the possibility of having an electoral vote winner, and hence a president, who actually received fewer popular votes than the electoral runner-up. This has been especially contentious in some contemporary elections.

As noted above, the Constitutional Convention left the actual choice of what method to use in selecting electors to the complete discretion of the state legislatures. In early elections, the states constructed a variety of methods for choosing their presidential electors and also how electoral votes would be counted. In five states--Connecticut, Georgia, New Jersey, New York, and South Carolina -- the state legislature chose electors. The other states chose electors through some process involving a popular vote, though in only two states, Maryland and Pennsylvania, did the choice depend directly on a statewide popular vote in a way even roughly resembling the contemporary method of selection in all of the states. Virginia and Delaware divided their state into districts and each district chose one elector. In Massachusetts, two electors were appointed by the legislature, while the remaining electors were chosen by the legislature from a list of the top two vote receivers in each congressional district. In New Hampshire, a statewide vote was held with the legislature making the decision in case of a tie. Voter turnout was a low single-digit percentage of the adult population in the first presidential election.

As is historically well known, George Washington was elected the first president of the United States. He won all 69 electoral votes cast in the 1789 presidential election. On Feb. 4, 1789, electors convened in 10 states to cast their ballots. North Carolina, Rhode Island, and New York abstained from the process; the former two states had not yet ratified the Constitution, and New York was in the midst of an internecine legislative conflict. Of the 72 electors, all but three cast their ballots (electors voted for two candidates). Washington appeared on all 69 ballots, while nearly half of the electors cast their second vote for John Adams, who was elected Vice President. The remainder of the votes were divided among ten other candidates. After a quorum was finally established, the Congress counted and certified the electoral vote count on April 6, 1789. By 1832, all states except one (South Carolina) determined their electoral votes as a unit by a popular election on a general ticket.

Chapter 2. Choosing the Electors

Historically we know little about the selected electors in the early presidential elections, nor the individuals who followed as electors in later years. Only a scant historical record of whom the individuals chosen to serve as electors in each state were appears to have been kept, nor how they obtained a place on the ballot in popular election state systems, or the selection methods used in state legislatures.

Merrill Jenson’s and Robert Becker’s “Documentary History of the First Federalist Elections, 1788-1790” in-depth study names the electors in each state and the number of votes for president and vice-president in the ten states participating in the first presidential election but does not go any further in describing their selection or the casting of their votes.

The names of electors can be found in state archives and the actual votes recorded in the United States Congress following the November general election and voting of the electors, however, are stored at the National Archives.³ Beyond their names, even in the early years there is little historical evidence to suggest that initial electors “deliberated” in the manner Hamilton and Jay envisioned. The Constitution framers may have expected presidential electors to exercise judgement when they cast their votes, but the rise of the two-party system quickly changed that approach.

Since political parties did not exist in 1787, the drafters of the Constitution, as cited above, conceived of electors voting according to their individual discretion, not the dictates of a state or national party. In the nation’s earliest elections, state legislators primarily picked the electors. Within a few decades after the Constitution was ratified, however, the party system became the means of translating popular preferences within each state into Electoral College ballots. There was little in the way of a popular vote during this period. By 1824, however, all but six of the 24 states provided for popularly selected electors and by 1832 popular elections were almost universal (Villegas 2019).

The gatherings of electors casting presidential votes that have evolved over time operate very differently from the original idea of a meeting of knowledgeable individuals deliberating with “discernment” in choosing individuals to serve as president who would be “pre-eminent for ability and virtue” that Hamilton and Jay envisioned. The original idea was that electors would serve as informed intermediaries between the general public and their government. They would have independence to break from the popular vote in their states when they deemed it necessary. But over the course of the 19th century, as U.S. Senator Thomas Hart Benton argued, electors had “degenerated into mere agents.” Justice Joseph Bradley, a member of the 1877 Electoral Commission, also characterized electors as mere instruments of party—party puppets.” John Ingalls, who served in the U.S. Senator from Kansas from 1873 to 1891 is credited with commenting that electors were like “the marionettes in a ‘Punch and Judy’ show” (Edwards. 2011).

Added to these critical comments about Electoral College electors is Andrew Sheets’ description of them in a 2020 “American Presidency” debate series contribution. Sheets writes that “[the word that really stands out to me is “deliberation” (in Alexander Hamilton’s writing in the Electoral College). Electors are very often political party leaders themselves, who are “not particularly renowned for their careful consideration of important issues. Similarly, someone who is not well connected to the political sphere- your average garbage truck driver or retail worker- are extremely unlikely to find themselves in this position. It is inherently elitist. To summarize this argument: Electors are often not of the same background or socio-economic circumstances of the voters they are supposed to represent, and thus, there is an inherent disconnect between the voters themselves and their electors” (Sheets, 2020).

In the first presidential election, five states chose their electors in the state legislature. Four states chose by a popular vote, but each by a different method: one by a straight general ticket (“winner-take-all”); one by dividing the state into special districts with one elector each; one by nominating one elector in each congressional district from which the legislature would make the final selection (plus two at-large electors); and one by splitting the state into two units, each with a certain number of electors. The remaining two states lost their electoral votes when their respective state legislatures could not agree on a method.

These academic descriptions regarding the characteristics of presidential electors and assessments as to how they perform their role in the election contribute are incentives for the analysis that is central to this current project. What is also a driving force for this study is that while the electoral college system of electing the president has been much debated and has come under increasing challenges, few of the challenges have focused on the concept of electors as Hamilton and Jay envisioned them but rather on the system of allocating votes across the states is the main challenge, that is how they actually perform their duty. The mode of electoral selection changed over time and the charge to these individuals has come to limit their discretion and any real deliberation among themselves. Occasionally electors have cast their “ballot” in a “faithless manner” discussed in Chapter 3 but “any semblance of elector independence has been fully wiped out” (Roos, 2020).

Beyond the method of selecting electors, the Constitution left the decision as to how electoral votes would be allocated within the states completely up to the discretion of each state. States could choose from a number of different methods and a diverse set of selection procedures were adopted. Particularly significant was that the states adopted a unit rule in which whatever candidate had the most votes among a state’s electors would receive all the state’s electoral vote rather than allocating electoral votes proportionally. (See Festa, 2001 Text Box 2.) As the Electoral College operates today, all fifty states plus the District of Columbia select electors by popular vote, and forty-eight states plus the District of Columbia use the unit rule. Maine and Nebraska are the exception.

As noted in this essay’s Preface, Article II, Section 1 of the Constitution states that “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 in the state may be entitled to in the Congress.” That sentence is the singular reference to the process by which electors would be selected. The manner of choosing its slate of electors was left to the state legislatures. Until the mid-1800s, it was common for many state legislatures to simply appoint electors (Pruitt, 2020). Other states decided on a direct popular vote for electors either by congressional district or at large

throughout the whole state. (See Paullin, ND). Then other states devised some combination of these methods. But in all cases, electors were chosen individually from a single list of all candidates for the position (Kimberling 1992).

The founding fathers might have expected that the state legislatures would simply choose the presidential electors themselves, but over the first decade of the Constitution's existence the states moved to statewide popular election as the mode for selecting the electors." The states also moved quickly to adopt the unit rule or the winner-take-all mode of awarding electors to a single presidential candidate. States did not take long to recognize that they would have more sway in the presidential election if they awarded all of their electoral votes as a unit to a single candidate rather than splitting across multiple candidates (Wittington 2017).

During the 1800s, two trends in the states altered and more or less standardized the manner of choosing electors. In the first trend, direct popular vote of the whole state was used to choose electors. By 1836, all states had moved to choosing their electors by a direct statewide popular vote except South Carolina where the state legislature continued to choose them until 1860.

The second trend involved what is called the "winner-take-all" system of choosing electors. Under the winner-take-all system, the presidential candidate who wins the most popular votes within a state, wins all that state's electors rather than electoral votes being allocated proportionally in a state. William Kimberling (1992) describes this trend as "the logical consequence of the direct statewide vote for Electors owing to the influence of political parties. For in a direct popular election, voters loyal to one political party's candidate for president would naturally vote for that party's list of proposed Electors. By the same token, political parties would propose only as many Electors as there were electoral votes in the State so as not to fragment their support and thus permit the victory of another party's Elector."

The custom developed that each political party in each state would offer a "slate of electors" — a list of individuals loyal to their candidate for president equal in number to that state's electoral vote to the state government. Voters in each state would then cast a ballot for each individual listed on the slate of whichever party they supported rather than casting a direct vote for a presidential candidate. This system of presenting separate party slates of individuals occasionally led to confusion. Some voters divided their votes between party lists because of personal loyalties to individuals involved rather than according to their choice for president. Other voters, either out of fatigue or confusion, voted for fewer than the entire party list according to historians. The result, especially in close elections, was the occasional splitting of a state's electoral vote. This happened as late as 1916 in West Virginia when seven Republican electors and one Democrat elector won. Voters in that state had cast their votes individually for electors. The one Democratic elector got the most votes, followed by seven Republican electors.

In contemporary times, individual party candidates for elector are seldom listed on the ballot. Instead, the expression "Electors for" usually appears in fine print on the ballot in front of each set of candidates for president and vice president (or else the state law specifies that votes cast for the candidates are to be counted as being for the slate of delegates pledged to those candidates). Thus, voters *indirectly* cast their votes for the electors for the presidential and vice-presidential candidates of their choice rather than directly for the candidates themselves.

The 12th Amendment directed electors to "vote" by "ballot," but it did not settle whether electors must be permitted to exercise discretion when casting their ballots according to (Rebecca Green 2020). Since the 12th Amendment, there have been several federal and state statutory changes which have affected both the time and manner of choosing presidential electors, but none have altered the fundamental workings of the Electoral College. There have also been a few curious incidents which its critics cite as problems, but which proponents of the Electoral College viewed as merely its natural and intended operation.

Chapter 3: "Faithless Electors"

Individual electors in the Electoral College who decide not to vote for their own registered party's candidate have come to be called "faithless electors." So-called "faithless elector" laws have been state mandates that penalize or remove a presidential elector who does not vote for the candidate he or she has pledged to support. If one were a disciple of Alexander Hamilton and John Jay then perhaps there could actually be no such thing as a "faithless elector." The leaders of the "faithless electors" movement in 2016 who worked to convince electors to choose a candidate other than Donald Trump called themselves "Hamilton Electors." They declared that "[t]he Constitution is quite clear about what our job is and that it's our decision at the end of the day" (O'Donnell, 2016).⁴

Historically, a total of 165 electors have acted "faithlessly" casting their vote for someone other than the candidate with the most votes in their state (90 for president and 75 for vice president) (Green, 2020). They have had various reasons for voting unexpectedly. Keith Whittington tells us that for example, in 2000, a Democratic elector from Washington, D.C. refused to cast a ballot as a protest over the district's lack of representation in Congress. In 1960, a Republican elector from Oklahoma joined several unpledged electors in voting for the Virginia Democrat Harry Byrd as part of a "Dixiecrat" revolt from the Democratic Party nominee John F. Kennedy. In 1972, a Republican elector from Virginia cast his ballot for the Libertarian Party candidate rather than for the

incumbent Republican president Richard Nixon. In 1976, a Republican elector from the state of Washington cast his ballot for Ronald Reagan, the unsuccessful challenger for the GOP presidential nomination of incumbent Gerald Ford.

On three occasions, individual electors challenged state laws regarding the electoral practice that led to the Supreme Court weighing in on the issue of elector freedom to vote for a presidential or vice-presidential candidate whom they perceived to be the best candidate regardless of how a majority of voters in a state in the general election voted. The first case occurred in 1952 and two cases grew out of the actions of several electors in the 2016 election.

In the 1952 case of *Ray V. Blair*, the Supreme Court confirmed the constitutionality of state pledge laws. In a five to two vote, the court ruled that states have the right to require electors to pledge to vote for the candidate whom their party supports and have the right to remove potential electors who refuse “to pledge” prior to the election. The ruling held only that requiring a pledge, not an actual vote, was constitutional. Justices Robert Jackson and William Douglas were the two dissenters. They reasoned that states have only the power to appoint their electors but not the power to control them, thus leaving electors with the discretion to vote in any manner they so choose. Justice Jackson wrote “[N]o one faithful to our history can deny that the plan originally contemplated what is implicit in its text – that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices.”

But what if electors follow party rules, pledge to support certain candidates and then when casting their formal vote after the general election, vote for some other candidate? The second Supreme Court decision, *Chiafalo V. Washington* and its companion case of *Colorado Department of State v. Baca*, argued in 2020, addressed these issues focusing on two questions:

1. Do state laws that require presidential electors to vote in accordance with the state's popular vote, or penalize those who fail to do so, violate electors' constitutional rights under Article II or the Twelfth Amendment?
2. Does a presidential elector intending to vote for someone other than the person to whom he or she was pledged have standing under state law to object to being removed as an elector?

Washington state law requires electors, selected by their party, to vote for the candidate of their party during the Electoral College proceedings or otherwise be subject to a \$1,000 civil penalty. In the 2016 presidential election four electors, who had signed pledges to vote for the Democratic nominee, voted for candidates other than Clinton/Kaine.

It was not that they were opposed to the election of Hillary Clinton to the presidency. They supported her but “[t]hey wanted to be able to vote for someone other than the Clinton/Kaine ticket in the hope that doing so might move the fate of the election to the House of Representatives, which would eventually select someone other than Donald Trump as president. They were motivated by an overriding concern of stopping Donald Trump from winning the White House. To that end, each of the “faithless electors” in Washington state voted for Colin Powell for president and for someone other than Tim Kaine for vice president; their votes were sent to Congress and counted, but the state fined them \$1,000 each for failing to vote for the nominee of their party. The electors challenged their fines in state court, arguing that the Constitution gives members of the Electoral College the right to vote however they please. The State Superior Court rejected their arguments in an 8-1 decision.

The lone dissenter, Justice Steven González, stated, “no one faithful to our history can deny that the plan originally contemplated, what is implicit in its text, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the [individuals] best qualified for the Nation's highest offices” (quoting *Ray V. Blair*). The dissent reasoned that states have only the power to *appoint* their electors but not the power to *control* them, thus leaving electors with the discretion to vote in any manner they so choose.

In the third case, *Colorado Department of State v. Baca*, the 2016 electors challenged a Colorado law that required presidential electors to cast their votes for the winner of its state's general election. If an elector refuses to do so and instead votes for someone else, the elector can be removed and replaced according to this law. Colorado presidential elector Michael Baca did not cast his vote for Hillary Clinton, the Democratic candidate, who won the state's popular vote in 2016. Instead, he voted for John Kasich, a Republican not on the ballot as noted earlier. Mr. Baca was removed and replaced by an elector who voted for Clinton.

The state's action was challenged in federal court. The United States Court of Appeals for the Tenth Circuit ruled in favor of Mr. Baca. The decision held that a state's right to appoint an elector does not allow for removal of an elector because the elector is exercising a *federal* function. The court concluded that Mr. Baca was personally entitled to his position because he had been elected to that position. It rejected Colorado's argument that states may exercise control over their electors. The court concluded that states lack the power to remove an elector who votes contrary to state law. In the court's view, the U.S. Constitution empowers electors to be “free to vote as they choose” in the Electoral College. The court further stated that, although the Constitution grants the states the

power to appoint electors, that power ceases once the elector is selected. The U.S. Supreme Court granted certiorari to hear appeals in these two cases, which would be heard jointly.

Prior to the Supreme Court hearing in these cases in 2020, *Scotusblog* published a set of essays in a “Symposium Before Oral Argument in *Chiafalo V. Washington* and *Colorado Department of State V. Baca*” centering on the issue of elector independence in voting for president including advocates of elector discretion and proponents of electors bound to vote for their party’s nominee.

In his symposium essay, law Professor Robert Natelson in the most expansive advocacy of elector freedom presented eight points in support of the idea that the Constitution lodged discretion in presidential elector decision making. According to Professor Natelson “[a] central part of our Constitution’s intricate and carefully balanced presidential election system is the power, and duty, of presidential electors to vote for those candidates they deem most qualified. States purporting to convert electors into marionettes are trying to amend the Constitution while evading proper amendment procedures.”

Professor Natelson’s first point centered on the definition of an “elector.” He noted that in founding-era dictionaries “elector” meant “one who chooses, who makes decisions for himself or herself.” Second, he argued that the Constitution prescribed that electors vote by ballot and voting by ballot meant voting in secret. Professor Natelson noted that Senator (and former Framer) Charles Pinckney in 1800 could say on the floor of the Senate, “[T]he Constitution expressly orders that the Electors shall vote by ballot; and we all know, that to vote by ballot is to vote secretly.” If state law can determine an elector’s vote, Professor Natelson contended that “there would be no reason for secrecy.”

Third, the Constitution included a “same day” clause that empowered Congress to fix a day for the choice of presidential electors that would be “the same throughout the United States.” One purpose of the same day clause Professor Natelson contended “was to prevent the states (or other outside forces) from swapping and trading electors to manipulate the vote—precisely the unconstitutional practice of which the U.S. Court of Appeals for the 10th Circuit found Colorado guilty in *Baca v. Colorado Department of State*.” And fourth “the Constitution grants no express authority to the states to control electors.”

In his fifth point, Professor Natelson noted that the two principal models for the Electoral College were the indirect election systems then prevailing in Scotland (for members of the British Parliament) and in Maryland (for state senators) at the time of the writing of the Constitution. In both systems, electors took oaths disclaiming outside instructions and promising to exercise their best judgment.

The record of the ratification-era constitution was Professor Natelson’s sixth argument. Founding era commentators highlighted the role of discretion in exercising an elector’s duties emphasizing Hamilton’s and Jay’s remarks in the *Federalist Papers* cited earlier in this research. Professor Natelson wrote that “[t]his historical record is such that even many apologists for puppet-electors laws admitted that the Founders expected electors to exercise judgment.”

Professor Natelson’s final two reasons in support of elector discretion centered on the 12th Amendment and whether it changed the discretion rule for elector voting. He noted that some advocates for prescribing elector actions contend that the 12th Amendment that separated elector votes for President and Vice President changed that rule. “The Founders did not anticipate the rise of political parties,” the argument goes. “But by the time the 12th Amendment was adopted (1804), that separated elector votes for president and vice president electors were expected to vote as their parties prescribed.” However, Professor Natelson suggested that “the text and background of the 12th Amendment argue for elector discretion, not against it, in counterargument to those who contend that electors were expected to vote as their parties prescribed.

Although the 12th Amendment changed the electoral process in some respects, the language pertaining to elector discretion remained almost identical to that in the original Constitution. Those voting for President and Vice President were still called “electors” (with the implication of free choice). They still voted by “ballot” (i.e., secretly). Finally, the congressional debates over the 12th Amendment contained virtually no evidence that electors were to be more constrained than they were under the original Constitution. On the contrary, as Professor Natelson argued, the debates were filled with remarks showing an assumption that electors should vote as they deem best. They were not to be “marionettes.”

Professor David Post added to Professor Natelson’s arguments in his symposium entry with his interpretation of the Constitution to say that “states have absolute power to appoint electors however they wish; but once electors have been appointed, they are federal government officials, performing a federal government function, and states may not interfere with the performance of federal functions by federal officials.” In contrast to professors Natelson and Post’s independent voter arguments regarding electors’ votes, other symposium participants presented arguments as to why electors were not to engage in discretion by voting their own minds. For example, Paul Smith and Adav Noti wrote that “[unbinding presidential electors could throw the 2020 election into chaos.”

They argued that if the Supreme Court were to “unbind” them, “presidential electors will go from being mere functionaries to being completely free agents, legally permitted to vote for any candidate (or no candidate), subject only to the electors’ own judgment. They will be free to choose as president any natural-born

citizen of sufficient age, regardless of who won — or even ran in — their home state’s popular election. That unreviewable judgment will decide who serves as president of the United States.” The 538 electors would become “the most important elected officials in the nation. With great power comes great temptation.”

They pointed out that federal law does not restrict individuals and groups from making donations to electors as opposed to restricted rules for other elected officials. None of the most important federal anti-corruption laws covers presidential electors. “... electors can accept unlimited amounts of money in connection with their official duties. And they don’t even need to tell anyone.” Like candidates for Congress, candidates for elector may make campaign promises. Like members of Congress, moreover, once chosen, electors may vote according to their judgment exercised in light of facts then available. “In sum, federal law is woefully unprepared for the presidential election to be decided by 538 free agents. The opportunities for undue influence and corruption in such a system would be vast, the stakes incredibly high and the legal framework nonexistent.”

In 2016, seven faithless elector votes were cast. Two Republican electors in Texas did not vote for Donald Trump; one voted for John Kasich and one voted for Ron Paul. Five Democratic electors did not vote for Hillary Clinton. One Hawaii elector voted for Bernie Sanders and in Washington State, three Democratic electors cast their votes for Colin Powell and one elector cast a vote for Faith Spotted Eagle.

Chiafalo V. Washington 2020

The 2020 Supreme Court decision regarding faithless electors in *Chiafalo V. Washington* has settled the issue regarding elector discretion and discernment at least for the time being. The justices voted in favor of state electors having to be “faithful” to the results of the popular vote in their state. Following this Supreme Court decision, no electors acted in a “faithless” manner in 2020.

Supreme Court Justice Elena Kagan, writing for the Court, stated that the question before the Court to be “whether a State may also penalize an elector for breaking his pledge and voting for someone other than the presidential candidate who won his State’s popular vote... We uphold Washington’s penalty-backed pledge law for reasons much like those given in *Ray*. The Constitution’s text and the Nation’s history both support allowing a State to enforce an elector’s pledge to support his party’s nominee—and the state voters’ choice—for President.”

Justice Kagan’s decision relied heavily on a reading of the history of the Electoral College. She wrote that “[w]hether by choice or accident, the Framers did not reduce their thoughts about electors’ discretion to the printed page. All that they put down about the electors was what we have said: that the States would appoint them, and that they would meet and cast ballots to send to the Capitol. Those sparse instructions took no position on how independent from—or how faithful to—party and popular preferences the electors’ votes should be. On that score, the Constitution left much to the future. And the future did not take long in coming. Almost immediately, presidential electors became trusty transmitters of other people’s decisions.”

Justice Kagan relied heavily on the “long settled and established practice” of electors voting in line with the results of a state election in writing her decision. “Electors have only rarely exercised discretion in casting their ballots for President. From the first election, states sent those ballots to the Electoral College—as today Washington does—to vote for pre-selected candidates, rather than to use their own judgment. And electors (or at any rate, almost all of them) rapidly settled into that non-discretionary role.”

She concluded that “[t]he Constitution’s text and the Nation’s history both support allowing a State to enforce an elector’s pledge to support his party’s nominee—and the state voters’ choice—for President.... And nothing in the Constitution expressly prohibits States from taking away presidential electors’ voting discretion as Washington state does.” Thus, the justices voted unanimously in favor of state electors having to be “faithful” to the results of the popular vote in their state. The rulings in *Blair* and *Chiafalo* upheld state pledge laws, upheld fines for individual electors who vote for someone other than the candidates for whom they pledged to vote and upheld a state’s right to remove and replace electors who decide to cast a vote for a non-pledged candidate. Interestingly, there was no mention in this decision of Hamilton’s and Jay’s perspectives of how electors would carry out their duties employing discretion and deliberation in the *Federalist Papers* as described earlier. Following Justice Kagan’s ruling there were no “faithless electors” in 2020, (although “phony electors” created huge problems as discussed later in this work. (See, for example, Alexander, 2022.) At the same time, activism during the period after the November 2016 election and before the formal electoral college voting in December suggests the extent to which “many Americans “fervently believe electors have discretion” (Green, 2020).

According to Professor Green’s contribution to the “Symposium: Liquidating Elector Discretion”

Widespread public calls for electors to vote their conscience in 2016 demonstrate that the public assumed that electors would have discretion when extraordinary conditions arose. The 2016 election presented an atypical trifecta: The winner of the popular vote failed to capture the White House, troubling evidence of foreign interference in the election swirled, and many believed the presumptive Electoral College winner was unfit for office. These unprecedented circumstances unleashed a torrent of popular pressure on electors to defect. Americans lobbied electors through

letter campaigns and newspaper opinion columns. A “Conscientious Elector” petition at Change.org gained millions of signatures imploring electors to cast their vote for the popular vote winner. Electors felt the heat. A *USA Today* headline blared: “Harassment or Hail Mary? Electors feel besieged.” A *Politico* story titled “Electors under siege” recounted how “once-anonymous electors are squarely in the spotlight, targeted by death threats, harassing phone calls and reams of hate mail,” noting that “[o]ne Texas Republican elector said he’s been bombarded with more than 200,000 emails.” Some states hired protection for besieged electors. Massive popular pressure on electors to change their votes in 2016 demonstrates that the American public fervently believed electors have discretion.

Even death threats to presidential electors were not unheard of during the 2016 election. Michigan Republican elector Michael Banerian, a 22-year Oakland University senior, was particularly outspoken about the death threats he had received. “You have people saying ‘you’re a hateful bigot, I hope you die,’ he said. “I’ve had people talk about shoving a gun in my mouth and blowing my brains out. And I’ve received dozens and dozens of those emails. Even the non-threatening-my-life emails were very aggressive” (Gerstein, 2016). The threats continued in 2020. Text Box 2 provides an example from this election.

Text Box 2

When interviewed, 2020 Minnesota Democratic elector Joel Heller described a particularly nasty encounter he had with a Trump supporter while at a gas station getting Noel [his son] ready to drop off at school. “I pull into a gas station and a guy comes up to me and says, ‘are you Joe Heller?’ I say ‘yes, Sir, nice to meet you.’ He looks at me and says ‘I know where your live, I know where your son goes to school,. You ‘better vote for the true Republican and the true president of the United States, Donald Trump.’ And I am shocked “as” This guy is going off. The poor gas station attendant had to call the police to get this guy to leave me alone. I had to talk to the state trooper and talk to the police chief. And they eventually tell him, if he ever got near me again, they are going to file charges against him... He was this close to my face, I literally thought I was going to get smacked... Then I was lambasted on social media. It was bad.

Chapter 4: The Contemporary Presidential Elector Selection Process

As noted earlier, the constitution mandates that state legislatures be responsible for nominating presidential electors. While state legislatures have retained this responsibility, they have turned the actual selection process over to the political parties to choose their slates of electors and submit their candidate lists to the Secretary of State. State legislatures have adopted a variety of methods by which the parties can select their presidential electors. State laws describe the selection process that each state mandates.

The two most common methods for selecting electors that legislatures have adopted are either that state party committees create a list of electors or that potential electors’ campaign for a spot at a state party or a district convention where delegates vote for the party’s set of electors. Twenty-six states stipulate that state party conventions select their party’s candidates for presidential elector. Eight states and the District of Columbia stipulate that state or district party central committees nominate their electoral candidates. Fourteen states let the parties use whatever method they wish. Three states use other methods: Pennsylvania, Wisconsin and California.

California has adopted a particularly distinctive method for selecting electors. California Republican elector selectors include the most recent candidates for state constitutional offices and for US Senate plus the party leaders in each house of the state legislature and various state party organization leaders. California Democrats choose their electors through a process in which each Democratic nominee for the U.S. House of Representatives designates one elector and the two most recent nominees for the U.S. Senate each designate one elector⁵.

In 2020, California U.S. Representatives Ami Bara and Gil Cisneros selected their wives to be electors while Representative Jerry McNerney chose his daughter-in-law and Maxine Waters chose her daughter, Karen. Other Californian Democratic Party selectors chose electors with backgrounds and experiences aimed at making the Electoral College more diverse and interesting from an historical perspective.

Media stories of how two of these electors were selected illustrate the distinctiveness of this process. First is the story of Kevin Sabellico's selection as an elector, "[s]ometimes in California you just have to ask." Sabellico, a 22-year-old political consultant (quoted in the Preface) described as a political 'wonk' told the story of early on asking his congressman and friend, Rep. Mike Levin, to appoint him a member of the Electoral College. Levin, who had not yet realized he had this power, agreed. 'I was the first person to ask for it, and I got it,' Sabellico recounted" (Dotinga 2020).

Second, Ammar Campa-Najjar, who was the Democratic nominee in California's 50th District, appointed Peter Bolland to be that district's elector. As Mr. Bolland has told his story:

"I've known Ammar since he was a student in my philosophy class at Southwestern College. Every once in a while, there's a student you connect with, and we just stayed in touch. Then one day my phone rang as I was driving home from the grocery store. He (Campa-Najjar) said: 'Hey, do you want to be in the Electoral College, that thing everybody hates?' I said: 'Of course I want to do it!' I had so many questions. Like most politics' watchers, I have complained bitterly about the Electoral College. It is patently anti-democratic. But it is, after all, enshrined in the Constitution. James Madison and Alexander Hamilton thought it was a good idea. And those guys seemed pretty smart. But wasn't it at best elitist, at worst racist? I needed to learn more." (Dotinga 2020).

California Democratic elector Marsha Conant's story of how she came to be asked to be the 16th congressional district elector adds to the diversity and colorful nature of that state's elector selection process. She told me in an interview that "I was just doing feminist stuff, local stuff, being a volunteer in different campaigns. Of someone being elected, I was a delegate for Rep. Jim Costa of California's 16th congressional district. He called me up one day and asked me if I knew what being an elector was and I said 'yes, kinda' but do you really know, and he decided he would like to appoint me. I couldn't believe it. It was just 'wow.' It was a big deal. He wasn't even my congressman... I have never given money to his campaign. I do not live in his district. I just don't really know why he asked me. When I asked him, he said 'you deserve to be able to do this and I wanted you to represent me.' It was a huge honor. I have a lot of awards and proclamations throughout the years and I have never hung and framed any of them except my electoral stuff. It has been framed and hung... I think about how lucky people are to be electors and appreciate it as much as I did."

As the U.S. Representative in California's 8th district, Speaker Nancy Pelosi also got to appoint an elector. She issued a press release regarding her selection of Mattie Scott to represent California's 8th congressional district in 2020, writing that

"It is with great pride that I appointed Mattie Scott to cast our district's vote in the Electoral College for President-elect Joe Biden. Twenty-four years ago, Mattie Scott turned her grief at her son's murder into a decades-long fight to confront the tragedy of gun violence and to end all forms of violence in San Francisco and across the nation. As the founder of Healing 4 Our Families and Our Nation and California President for Brady United Against Gun Violence, Mattie is a powerful force for progress, harnessing her courage and determined spirit to empower families and heal our communities. (The complete press release can be found at [http://www.speaker, newsroom/121420-0](http://www.speaker.newsroom/121420-0).)

Moving beyond California's selection process, Pennsylvania has a unique system in which each party's national presidential nominee names the elector candidates on the party ticket, while Wisconsin allows each party's holdover members of both houses of the legislature together with the candidate for the contested legislative seats to constitute the convention that chooses the elector candidates. (See Fortier 2004.)

Outside of the California selection process which has gained substantial media attention, media accounts of elector voters seldom describe the internal selection process the political parties engage in to actually select their electors. For example, former Secretary of State and presidential nominee Hillary Clinton and her husband, former president Bill Clinton, were appointed New York state electors in 2020 by the state party. Whether they initiated a quest (campaigned) to be electors or whether they were approached by the party's selection team has not been described in any media accounts. Regarding her selection Clinton tweeted "I believe we should abolish the Electoral College and select our president by the winner of the popular vote, same as every other office. But while it still exists, I was proud to cast my vote in New York for Joe Biden and Kamala Harris".

The Clintons' selection would appear to be an example of the insider politics that often drives the elector selection processes. According to the New York state electoral college rules, New York state parties' central committees choose their party's electors. Thus, the Clintons most likely did not need to publicly campaign to be electors and seek votes from party convention delegates. There also were no media stories of party loyalists asking to be an elector in New York. The New York Electoral College delegation traditionally consists of the state's most

prominent political movers and shakers. New York's 2020 Democratic presidential electors were primarily high-level party officials, including the governor.⁷



Hillary and Bill Clinton casting their ballots as New York State electors, 2020

Beyond the distinctive selection processes described above, two selection mechanisms as noted earlier, predominate across the states. In some states, as in New York but with less emphasis on an elite selection process, state party officials select the electors and in other states, individuals interested in being an elector campaign for the position, either at the congressional district level or at the state party convention. Below are several personal accounts of how individuals campaigned to be an elector in these states in 2020.

In a personal interview, 2020 Florida Republican elector Nelson Diaz told me the story of how he became an elector which is representative of the more party elite selection process.

“About nine years ago I got recruited to be chair of the Republican Party in Miami.... Because of my work within the party, I was asked to be an elector if President Trump won the state. In Florida, the Executive Board selects whomever they want ... It was something I really wanted to do. In the summer I started talking to the chairman of the party that at a minimum my name be given a shot.”

“He asked three times.” The story of Anthony Attanasio’s campaign to be a Democratic elector in Connecticut involved a combination of party leadership support and a convention election process. When interviewed, he reported that he had asked the state party leadership three times over the course of three presidential elections to be an elector. Each time he was a member of the Democratic State Central Committee. As Anthony told the story:

“I did some investigation. It is pretty much up to the chairman. So I asked the chairman in 1996 to be an elector. He said “sure” (facetiously) because I was kind of new. There were people lined up to do it. I asked again in 2008 (without success) and then I asked in 2020. This time the chairman agreed that I was the type of person who should be an elector... she endorsed me. There was actually a competition at the convention but the people who were endorsed by the state chairman all won. (There was an asterisk by their names on the ballot.) Since I had known about the electoral college since I was a kid and thought it was an interesting thing to do, it was kind of like a bucket list of things to do” (personal interview).

North Carolina Republican elector Jonathan Fletcher described initially having run for an elector position in 2016. He described the process as

“climbing the ladder and currently serving as chair of the Republican Party in the county and have served in a number of districts.. .and next year I am looking to run for district chairman. In 2016, I ran to be the 10th district elector. I didn’t do a lot of campaigning. I told some people I wanted to do it. And I didn’t hear of anybody else who wanted to do it. So, I just thought I could show up that day and be nominated and get it. But we had somebody at the last minute who did the same thing as I did. He was a Black man and with the Republican Party not having very many people of color, a lot of people voted on that and honestly, he was a great guy and did a good job. I learned my lesson though that I would have to work for it next time. In 2020, I told people that I wanted to do it. I campaigned; I went to meetings in all of the counties and to conventions. I put my name out there. I did text messages and did a lot of different things to get there and ultimately was successful.... It does surprise me every single year when we only have one or two people say they want to it. It is such an honor. It is such a rare thing... It is an awesome thing.... It gives *real*,

everyday people the opportunity to get involved in government. I encourage anybody to attempt to become an elector” (personal interview).

On Facebook Mr. Fletcher wrote the day before the November election

“Election Day is just ONE day away! Did you know you can vote for me this year? My name won't appear on your ballot, but a vote for Donald Trump in NC is a vote for me to be your Presidential Elector. I hope I can get your support tomorrow, if you haven't voted already.”

Cheryl Poling, a Minnesota elector, also described the process of running to be an elector in that state in a media interview.

“I ran in the congressional district. You begin at the caucuses and go through your convention, and you *just choose to run*. There's a little application and a little video [prompted by the pandemic] to do and for DFL members to consider. And then the top vote getter is your elector. And the second vote getter of the opposite gender is your alternate. That's how I won” (Strate, 2020).



Julia Beckman, 2020 Illinois Presidential Elector

Other electors in my interviews added colorful stories about how they came to be an elector, often not having to run for the position but being selected by their party's state leaders (different from the elite selection process in New York). They got “the call,” a somewhat distinctive process from the California experience. Illinois Democratic elector Julia Beckman recounted the selection process in her state. “Mike would call you up and say, ‘do you want to be an elector?’ ‘Mike’ was Michael Madigan, chair of the Democratic Party. Beckman was the state central committee representative from the 11th congressional district and “Mike” had appointed her as presidential elector three times under this process. The picture below shows her in “campaign mode.”

President of the New Mexico Native American Democratic Caucus Aleta Suazo also got “a call” to be an elector. Chair of the state Democratic Party called her quite unexpectedly, asking her to be one of New Mexico's five electors.

“The chair of the Democratic Party could decide. I assume she decided who the five electors were going to be for New Mexico, and I was one of them. She gave me the call and ‘of course I said I would do that.’ I was more than happy, especially to cast my vote for President Biden. It was extremely important. I never, ever thought I would be chosen.”

Fellow New Mexico Democratic elector Brianna Gallegos, also, got “the call,” describing a similar process when I interviewed her. “My volunteerism and just helping these different candidates, ... I was elected to my second term as president of the Young Democrats. That involvement helped me to be an electoral college voter. I didn't seek the position. It was the state chair who reached out to me, asked if I would consider that position. It was a great honor. I was 27. I don't know the exact history of the electors in New Mexico, but I know I was one of the youngest voters and I think just being involved with the Democratic Party of New Mexico and the willingness to help them and promote candidates. It's a lot of time to do that and get in front of different constituencies. They promote diversity that I really appreciate especially in New Mexico. They are trying to make sure that everyone is involved. They want to make sure it is well rounded. They are also reaching out to young voters because they definitely value the youth vote and also Black and indigenous people” (personal interview).

To round out these stories is the selection account of Patrick Hunt in Maryland. As recounted by Judy Carbone, the Garrett County Democratic Committee chair,

“I was thrilled Patrick was an elector. We selected Patrick because he has been a driving force in what we are trying to do in Garrett County. He has been involved in high level campaigns before and has a great work ethic. It was unanimous that he was chosen” (Larry 2020).

From Patrick Hunt's perspective

"Judy asked if anyone wanted to do it. I said that I did, These are handouts for party activists, and I just thought it was my turn. I had done the work, and it was my turn. Being an *elector was an honor*. It was another adventure.... [On elector day] they treated us like important people. The governor was there. There was a sense of formality. It was a serious occasion. These are serious times, and this is a serious responsibility...It's nice to be part of history. When I voted for president I said, 'On behalf of the family farmers in Garrett County, the government workers in Montgomery County, and all the voters in between in the 6th Congressional District, I cast my vote for Joe Biden for President of the United States.' I chose those words to honor work and workers and to acknowledge the contributions of those that feed us and those that make sure that government policies are effectively administered" (personal interview).

These electors' descriptions of the selection process suggest that party involvement and loyalty has become central in selecting and electing electors. In describing the Electoral College, the National Archives states that "the political parties most often choose individuals for the slate to recognize their service and dedication to that political party. They may be state elected officials, state party leaders, or people in the state who have a personal or political affiliation with their party's presidential candidate" (National Archives). The process of selecting electors in 2020 certainly confirmed that description.

As North Carolina General Assembly special counsel Gerry Cohen described the vetting process, "[f]or someone who isn't a pretty strong party loyalist, it would be really impossible for them to get chosen" (Huang, 2020). Or in the words of Alaska elector Judy Eledge "What had you done? I believe you should be involved in working with Republican candidates if you are going to be elected as an elector. *Service to one's party* is what counts in the contemporary selection process" (personal interview).

A final example of the elector selection process from the electors' perspective comes from a radio interview the day after the December 14th electoral meeting with Virginia Democratic elector Leah Pence who was asked to describe the process by which she became an elector. She responded:

"[t]raditionally they are members of the party who are active in the party or the community and have Democratic affiliation and tendencies and they are put forth by the areas in which they represent. For me, I worked a lot with local Democrats in Page County as well as the surrounding counties and then what you do is you toss your name into the hat much like you do in any other political race and there is a conference that takes place in which members of the political parties...they get together to choose which individual they feel like would be best served to represent their district. Two electors were chosen from the 6th district and then the state party chooses one of those two to represent that district in Richmond...in April and May I was campaigning on-line and getting out, reaching out to individuals through calls and text messages and that type of thing" (Leweke 2020).

In conclusion, contemporary media accounts of what it is that electors do in performing their electoral duties have also tended to stress their non-deliberative functioning and their lack of independence in their decision-making. Journalist Kyle Cheney's column in *Politico* during the 2016 presidential election is a good example. He wrote that while acting as the most important political institution in the world, "...there's little understanding of who these 306 Republicans and 232 Democrats are, the role they play, or how they were selected. That's because presidential electors *have never done anything more than rubber-stamp* the results of the general election." Mark Delk, a 2020 North Carolina presidential elector colorfully reflected this perspective too, stating in an interview that "[t]he electors don't get to act as free agents or circuit breakers." They act "more like ministers at a wedding" (Xu, 2020).

Contemporary electors are primarily strong partisan individuals chosen to be electors because of their party work as emphasized in this chapter regarding the 2020 presidential electors. Political parties usually choose people whom they want to reward for their service to and support of the party as Arkansas elector Doyle Webb described the selection process, "[we] generally select people who are unquestionably Republican [and] unquestionably support our nominee" (Lockwood, 2020).

Chapter 5: The Demographics of the 2020 Presidential Electors

Compare founding father John Jay's prediction that potential electors would "be composed of the most enlightened and respectable citizens, whose choices would reflect discretion and discernment" to contemporary electors' descriptions of themselves. as "being average everyday people." That is how "2020 Michigan elector Blake Mazurek described himself and his fellow electors. "We're regular folks; we live right in your neighborhoods. We don't descend from an ivory tower to do this" (Heinen Bell, 2020).

Reflecting on *his* fellow electors, 2020 Minnesota elector Mel Aamerud commented that ‘a lot of people have this vision that the Electoral College as some lofty ivory tower. You’re not amongst the people type individuals where it is average everyday people.... I represented thousands of people from Minnesota. It hits you, like wow, this is really amazing that this poor guy from Ham Lake is here doing this’ (*NorthMetro* TV, 2020). Thirdly, Oregon elector Nathan Slotz’s described his fellow electors as “just normal people who on weekends and after hours like to be involved in our community and our presidential electors are no different ...all of our electors are people who have day jobs, except for me are not associated with politics” (personal interview). Slotz was a staffer in the Oregon state senate.

A few electors in 2020, such as Stacey Abrams, the former Georgia gubernatorial candidate and Bill and Hillary Clinton were well known political figures. But most contemporary electors are longtime state party devotees, such as Bonnie Lauria, a retired General Motors worker in West Branch, Michigan. "I've held most offices, from the local level up to state central," the 79-year-old said. "This is one I haven't had the privilege of being part of. I'm glad it's my turn."

Qualitative descriptions of the electors in demographic terms were major foci of media accounts in 2020 as illustrated earlier in this essay. Minnesota’s electors, for example, were characterized as “familiar names in political circles. They're party volunteers and chairs from across the state. They're elected officials and spouses of elected officials” (Hertel, 2020). An AP News article described Arizona’s 2020 electors as “being a diverse group of



Arizona Democratic Electors, 2020

Democrats chosen by party officials to formalize their rare victory in the state. Representing the party are three tribal leaders, a Latina mayor, three labor union leaders, an openly gay Latino county supervisor, a Black member of the state utility regulation commission, the president of a county NAACP chapter and the state party chair, Felecia Rotellini” (Christie 2020). The Democratic Party created a montage of these electors shown below.

Republican electors gathered for group photos in a number of states which were also made public in news reports. Shown below are several photos of Republican delegates in Alabama, Mississippi, North Carolina, Utah and Wyoming that the state party put up on their websites,



2020 Alabama Republican Presidential Electors



2020 Mississippi Republican Presidential Electors



2020 North Carolina Republican Presidential Electors



Wyoming Republican Party Photo of its 2020 Electors



2020 Utah Republican Electors

A total of 306 Democratic electors and 232 Republican electors met in their state capitols on December 14, 2020, with the exception of the Arizona Democratic delegates who met in an unknown location for safety reason as noted earlier and Delaware where delegates met in a university gymnasium. To move beyond the anecdotal descriptions quoted above and to gain a more systematic portrait of who these electors were, I compiled a demographic database of the 538 electors. The database includes an accounting of the electors' age, race, sex, public office status and occupation to the extent to which this information could be obtained.

The electors consisted of 291 men and 247 women. Ages were found for 385 of the 538 electors (72%). Eighteen-year-old Maine elector Jay Philbrick (pictured below), a Brown university student, was the youngest elector. He told me he decided to take a shot at becoming an elector last spring (2020) because he wanted "to show young people there are many different ways, that people don't even know about to make a difference." (See also Collins 2020). Maine's presidential elector selection process consists of each qualified political party nominating presidential electors at a state convention. Jay told me that he "basically sent text messages to all of the delegates to the state convention...there was me sitting in my bedroom sending text messages over a couple of days telling a little bit about myself and my experience. That was about 2000 messages."

"I made age part of my platform in a way, why having a young person's perspective would be important. And that it would help bring a unique perspective to the political arena. I also talked about my experiences such as being on the board of my school. I tried to make it so that people were not just voting for me because I was a kid."

He came in second in the voting behind Shenna Bellows who had been the Maine Democratic senate candidate in 2000. Shenna became one of the two statewide electors and Jay became the elector for the first congressional district.

After voting, each Maine elector had the opportunity to present a short statement expressing their thoughts on democracy and the electoral process. In his statement, Philbrick stressed that “[w]e must commit in our private lives to build consensus around government, to be able to speak reasonably with one another.” (Jay actually was officially nominated to be an elector when he was 17 years old but turned 18 before the November election and thus could vote in it. Maine is one of the states that allows sixteen-year-olds to preregister to vote and automatically get their voter registration card on their 18th birthday.)



18 year old Maine elector Jay Philbrick

The oldest elector was 96-year-old Michigander Michael Kerwin, shown below being escorted to the state legislature by his daughter and a police officer to cast his vote. Mr. Kerwin was a retired labor union representative and had been a deputy city clerk under Detroit Mayor Coleman Young. His appointment as an elector was to honor his long union service. He was selected at the electoral meeting to make the official nomination of Joe Biden for president.



Michigan elector Michael Kerwin's daughter drives him to the state capitol accompanied by a state trooper

Colorful stories were written about the selection of the 2020 electors from a symbolic descriptive perspective. The story of the one Democratic Nebraska elector represents one such example. Nebraska is one of the two states that allocate its presidential electors by congressional district. While losing the rest of that state, Joe Biden won the second congressional district which encompasses Omaha, and thus the Democrat Party got to choose one of the state's electors. Democrats in that district chose Precious McKesson, finance director for the Nebraska Democratic Party and the political director for the 2020 presidential campaign of Joe Biden in Nebraska's 2nd District. She was the first woman and the first woman of color in Nebraska to cast an Electoral College ballot for a Democrat presidential candidate. "I am beyond thrilled to have cast the electoral vote for President-Elect Joe Biden and Vice President-Elect Kamala Harris," she said of her role as elector. Embracing the symbolism of her selection, the Nebraska Democratic Party asked local artists Justin Kemerling and Matt Carlson to design a poster of McKesson as "The Elector," modeled after Obama's "HOPE" poster from 2008. The poster is shown below.



**Precious McKesson,
Nebraska Elector**

Demographic symbolism was also central to the elector selection process in Washington D.C.⁶ Chair of the District of Columbia Democratic Party Charles Wilson issued a press release describing the distinctive process that the District Democrats used to choose their 2020 electors. The release stated that

“in the past, these positions have been reserved for elected officials and party leaders. With all that is going on in our country, I thought it best to recognize *everyday Democrats* who are doing wonderful work to improve our quality of life, but who may not receive recognition—especially those who have been on the front lines during the COVID pandemic.”

Additionally, the release continued, “we wanted to select electors who could provide opportunities to develop partnerships with labor unions and corporations to help grow our organization. Lastly, this being the 100th anniversary of the 19th amendment, we have intentionally selected an all-female slate of electors. We are so excited to work with them in the coming months, and are lucky to have them representing our party, our community, and our soon-to-be state of Washington, DC.” Two of the women chosen were considered “essential workers” on the front lines of the coronavirus pandemic, a grocery store employee, and a nurse. “They are not politicians but everyday citizens” is how they were described (Quander, 2020).

In a media interview, these DC electors described their experiences. First, “I am going to walk in there with a huge smile, with my chest up -- my head up knowing that I am getting into *good trouble*. I am participating in a system that initially was designed not for me particularly as a woman and definitely not for me as an African American,” is how Washington DC elector Meedie Bardonille, a Howard University graduate and member of Delta Sigma Theta Sorority who works as a nursing director and serves as the chair of the Washington, D.C. Board of Nursing, described her feelings as she got ready to be part of the Electoral College in 2020.

Fellow elector Jacqueline Echavarria, a native Washingtonian and grandmother works at a grocery store. She stated in her interview

“[w]ho would have thought a Safeway cashier would be considered essential? I never considered myself to be a frontline person. When I was in the army – yes. When I was in the police department – yes. But as a cashier and now a grandmother of six, I never would have considered myself an essential worker” (Bazdarni 2020).

Barbara Helmick, the third elector was a program director at D.C. Vote. She noted that “this year, the Democratic Party came up with the idea of selecting ‘real’ people who reflect the values and issues that are important to us as a District. And they knew they wanted to have at least one person representing our campaign [gay rights] to achieve full equality through statehood and picked me.” “This is a critical step in one of the most important elections we have for president and vice president, and the individual casting the electoral votes must be trusted and respected” (Riley 2020). They appear here in a party created montage.



Washington D.C. 2020 Democratic Electors

Erin Sturdivant, 19, a political science major at the University of Oregon and a Piedmont High School graduate, was the youngest member of the California delegation to cast an electoral vote for the Biden-Harris team on Monday, Dec. 14. Sturdivant's uncle, Congressman Harley Rouda from Orange County's 48th District, nominated her for the position. It was also the first presidential election in which she was eligible to vote (along with Maine's Jay Philbrick). Ms. Sturdivant described her experience as "it is amazing that I got it and being in the biggest state of California. He nominated me because I am his niece. I have volunteered for his campaign and am a political science student. This was such an honor" (Raj Mathai, 2020).



19 year old Erin Sturdivant, 2020 California elector

The Constitution placed one restriction regarding who would be eligible to serve as a presidential elector. It bars *sitting* U.S. Senators and Representatives from acting as electors. Although not explicitly barred from serving as an elector, no sitting president has ever been selected as an elector.⁶ In 2020, former President Bill Clinton was chosen as an elector in New York state along with his wife, former U.S. Senator, Secretary of State, and 2016 presidential nominee Hillary Clinton. As noted earlier, according to the New York state electoral rules, New York state parties' central committees choose their party's electors. Thus, the Clintons did not need to publicly campaign to be electors.⁷

Further, examining the electoral college members from a diversity perspective, Arizona democrats in 2020 had a distinct opportunity to include and highlight Native Americans in the process. Arizona Democratic Party Chair Felecia Rotellini reported desiring "to choose electors who would represent the diversity of Arizona, and the diversity of Arizona voters, as well as Arizona Democratic voters." That included three tribal leaders with 'deep roots to our state.'"

According to Rotellini "it made sense to choose tribal leaders as electors because they have contributed to the state in a multitude of ways, including economically, spiritually, and socially. Moreover, she said, the three



Arizona Tribal Leaders Jonathan Nez, Ned Norris, Stephen Roe Lewis

tribal electors' values align with the party on issues like affordable, accessible healthcare, good public education, environmental protection and protection of elders." She "tried to represent the constituencies across the state from the southern border to the northern border and, yes, it was difficult." She said she aimed to include as many constituency groups as she could: labor, LGBTQ, different ethnic groups, women leaders, as well as community activists, rural and urban residents and, of course, tribal leaders. "It's my chance to acknowledge their partnership and their contributions, not only in the individual electors, but the communities that they represent" (Schlabach, 2020). The three selected tribal leaders are pictured here.

Added to this perspective are the thoughts of Aleta Suazo, a New Mexican

Pueblo Indian who stated

"I don't know all of the electors who have ever been electors from New Mexico. I don't know how many were natives. I don't know who they all are, but to me to be able to represent aa a Pueblo, to me being a Pueblo woman, to represent our state and to sign my name and put my name there being as I said before, being from Acqumar, the oldest continuously inhabited community. And if asked, I would gladly do it again" (personal interview).

The chair of the Democratic Party had asked her to be one of New Mexico's five electors.

I now turn to a quantitative description of the 2020 electors. Robert Alexander's *Representation and the Electoral College* published in 2019, included data on the demographics of electors for the elections 2000 through

2016. He reports that electors in these five elections were “generally much better educated and wealthier, are more likely to be male, are more likely to be white, and are far more active than the citizenry at large.... The average age of electors tended to be around 60.” (The electors in that profile were not divided by political party.)

Table 1 presents a demographic profile of the 2020 presidential electors in total and with separate figures for Democratic and Republican electors. Men were a slight majority of the electors (54%) overall. Women were a majority of the Democratic electors (55%) while they were only 31% of the Republican electors.

These figures show an advance in the presence of female Democratic electors and stagnation within the Republican Party compared with findings of a study of the 2000 electors in which women were 43% of Democratic electors and 38% of Republican electors (Alexander et al, 2004). “History-making” women electors received media attention (Rivas, 2022).

Text Box 4

An Historical Story about Women Electors

Maryland Democratic elector Corynne Courpas reported visiting the State of Maryland archives to explore the history of Maryland presidential electors stimulated by her being selected to be an elector in 2020. In a radio interview with Kate Sanner, host of *Moving Forward*, she told the following story. “Electoral votes that have been cast in Maryland and Maryland’s history is unique. It is one of the original 13 colonies but also every vote since 1789 has taken place in the Maryland state house in Annapolis and that sets us apart from most of the states with George Washington as president and Robert Hanson Harrison as the vice-president at that time. One thing I counted, literally counted, approximately 500 [Maryland] electors in that time because it does vary from election to election. Less than 75 were women which of course makes sense. We didn’t get the vote until 1920. The first woman I could identify, and it was strictly by name, was in the 1940s, a pretty limited group of people, so I felt very special about this day for many reasons. Let me say that I was honored to be nominated and with our district encompassing three counties. I was especially honored to be selected because I am sure there were a lot of well qualified people from Fredericksburg, Montgomery and Carroll counties whose names were submitted, but I got chosen and far as I know I am the first woman from Carroll County ever. So that was pretty exciting!” (Sanner 2020).

Ages were found for 71% of the 2020 electors. As noted earlier in this paper, elector ages went from 18 to 96. Young electors, those under the age of 30, were a small contingent, only four percent of the Electoral College (based on the number of ages found), 12 Democrats and four Republicans, but given the Hamiltonian notion of electors, it is an impressive number, that these young activists both sought election and were sought out to be electors. The average age of the Democratic electors was 58 and for Republicans the average age was 60. Regarding race and ethnicity, nearly three-fourths of the electors were white (73%). Overall, the percentage of minority electors had increased from 17 percent to 27 percent compared with figures for the 2000 presidential electors. Republican electors were overwhelmingly white while the Democratic electors were more racially and ethnically diverse.

	Total N (Pct)		Democrats N (Pct)		Republicans N (Pct)	
Sex						
Men	289	54	139	45	150	69
Women	249	46	167	55	82	31
Total	538		306		232	
Race/Ethnicity						
White	393	73	182	63	211	94
Black	62	12	54	18	8	4
Latino/a	31	6	28	10	3	1
Native American	9	2	9	3	0	0
Asian	18	3	16	5	2	1
Middle East (Islam)	3	1	3	1	0	0
Total	516		292		224	
Public Office Holder						
President (former)	1	>1	1	>1	0	0
Governor/Lt. Governor	7	5	4	5	3	6

Other statewide officials	8	5	4	5	4	8
Former federal elected officials	5	4	3	3	2	4
State senator	24	18	12	14	12	23
State representative	41	30	21	25	20	38
County officers	11	8	2	2	5	9
Mayor	18	13	17	20	1	2
City officials	19	14	16	19	3	6
School board	3	2	1	>1	2	4
Total	138		85		53	
Age						
18-29	17	4	12	5	5	3
30-39	27	7	19	8	8	5
40-49	54	14	37	16	17	11
50-59	79	21	43	18	36	24
60-69	120	31	73	31	47	31
70+	88	23	50	21	38	25
Total	385		234		151	
Occupation						
Elected Official	106	22	69	24	37	19
Business	88	18	22	7	66	33
Lawyer	51	10	25	9	26	13
Educator	38	8	29	10	9	5
Party official	25	5	17	6	8	4
Appt. public administrator	9	2	7	1	2	<1
Government staffer	20	4	13	5	7	4
Medical professional	15	3	9	3	6	3
Community activist	22	4	21	7	1	<1
Political activist	11	2	5	2	6	3
Union leader	20	4	19	6	1	<1
Union worker	7	0	6	2	0	--
Tribal leader	4	1	4	1	0	--
Student	6	1	5	2	1	<1
Farmer/rancher	5	1	1	<1	4	2
Blue collar worker	7	1	4	1	3	2
Skilled worker	3	<1	3	1	0	--
Religious leader	4	1	1	<1	3	2
Other professional	44	9	27	9	16	8
Military	4	1	2	<1	2	2
Total	489		292		197	

Table 1. Demographic Profile of the 2020 Presidential Electors

In total, 138 of the 2020 presidential electors either currently or previously had held an elective office position (nearly 25%). As noted above, former president Bill Clinton was the most notable former federally elected official to serve as an elector in 2020, along with his wife and former senator and Secretary of State, Hillary Clinton (and 2016 presidential candidate).

Three currently sitting governors---West Virginia Republican governor Jim Justice, Wisconsin Democratic governor Tony Evans and New York Democratic governor Andrew Cuomo--- and three lieutenant governors, Kathy Hochol (D-NY), Larry Roden (R-SD) and Mandal Barnes (D-WI) also served as electors. None of these individuals had to campaign to be selected as an elector at a party convention. Rather central party committees chose them.

The careers of the electors spanned a broad spectrum of occupations, although political occupations dominated, ranging from elected office holder as cited above to being a political operative or electoral staffer. In the occupational accounting, the elected officials' number differs somewhat from that in the public office holding category. Some of the elected offices were part-time while the elector held a different full-time occupation, and some were former officeholders currently engaged in a different profession. It should also be noted that the labor union paper, the *Labor Tribune*, highlighted "26 Union leaders cast Electoral College votes for Biden" from ten states in its January 2021 edition.

Given the distinctiveness of the presidential elector selection process in Pennsylvania where the parties' presidential candidate and his team select the 20 electors for the state as opposed to it being an internal state party

process, I surveyed the group of Trump certified electors Pennsylvania electors to observe whether on their “face” there was anything distinctive about their demographics. Seven of the 20 electors (35%) were women, one was African American and two were Latino. They all currently or previously held party or elected office positions.

Chapter 6: The Electors’ Job

Article II of the U.S. Constitution mandates that electors meet in their respective states and engage in the one task of casting a ballot for two persons. Amendment 12, as noted earlier, requires that one of two people being nominated, should at least not be an inhabitant of the same state as an elector. The process of deliberating and how their ballots were to be cast was not prescribed in the Constitution. Article II indicates how many electors a state may appoint, but it does not say anything about what those electors should do beyond the formalities of reporting a list of votes cast to Congress which in turn will open the states’ envelopes containing the votes and formally count them. This chapter describes what the electors actually do, that is, their job, when formally gathering at their state capitol the first Monday after the second Wednesday in December following the November general election to cast their votes. In addition to signing their certificate, some states ask their electors to announce their vote verbally while other states distribute the ballots to be signed and in some cases, as shown earlier in the case of New York, have the electors come forward and deposit their ballots in a special container.

Vermont’s “Electoral College” 2020 meeting lasted all of 11 minutes. Sixty-two-year-old Terge Anderson, former chair of the Vermont Democratic Party and an AIDS activist, 44 year old State Representative Kesha Ram and 68 year old Linda Gravell, chair of the Waterbury County Democratic party, met in the Montpelier state capitol to cast Vermont’s three electoral votes for President and Vice President of the United States. They signed the documents casting their votes for Joe Biden and Kamala Harris. They had been selected to be the three Vermont electors earlier at the Democratic State Party convention and became electors when the Democratic ticket won the most Vermont votes. Before signing their presidential and vice-presidential certificates, they each pledged an oath of allegiance to the state of Vermont and an oath of office as an elector.



2020 Vermont Electors making their pledges.

At the other end of the formality spectrum, North Carolina holds a very formal ceremony with much “pomp and circumstance.” In 2016, its opening ceremony included the National guard presenting the colors, and an acapella group from Broughton High School singing the national anthem. Four 4H state officers led the Pledge of Allegiance. A variety of governmental officials from the executive, legislative and judicial branches were introduced as were councilors from a number of countries and representatives of the National Guard.

Due to COVID concerns, the ceremony was shortened somewhat but still consisted of a number of introductory formalities in 2020. As 2020 elector Jonathan Fletcher described it

“[everything was scripted out for us. The night before we did a little run through of the whole presentation. They had bibles prepared for us and all of our scripts. I was honored to be able to nominate vice-president Pence for our college. That was really cool to be able to do that. We signed six copies of the certification there and it got sent all over the place. I am still not 100% sure there is anywhere I can go and actually view it. That will be cool one day to go back and view it” (personal interview).

Nevada made an “historic move” in 2020 as the only state to hold its meeting of electors virtually. Each of the state's six electors voted over Zoom from a location that they each chose. After signing their certificates, they were asked to hold up for viewing as captured in a Zoom picture shown below.



As somewhat of an aside regarding tradition and trappings, the Electoral College meeting in Massachusetts has long been steeped in formalities. Men were expected to wear tuxedos and women would wear black gowns. Below is a representative picture from the 2016 Massachusetts' Electoral College meeting. The tradition was abandoned in 2020 due to the COVID epidemic.



2016 Massachusetts' Electors

Reflecting on electoral duties, a number of 2020 electors described “how the day went.” “It was like a performance” is how Virginia elector Leah Pence described it in a media interview. “We did do a virtual meeting before the big day in Richmond. We talked about how the day would go, what the process would look like, so you would be prepared for the day of and everything is scripted out. We have to follow a procedure to make sure things

are passed in the correct order. Things are very regulated and very standardized, that things are done by the book and to the process... everyone needs to know exactly what to do and when they need to do it. The *“day of” is like a performance*, your rehearsed, you know your lines and it really is kind of a celebration of the district you represent” (Leweke 2020). Republican Party of Arkansas Chairwoman Jonelle Fulmer described the process as “[you come in, and you get sworn in. You get to bring your special Bible, whatever Bible you want to use for the oath, Participating in the ceremony is a rare privilege” (Lockward ,2020).

In an additional media interview, Minnesota elector Cheryl Poling described her experience as

“Uhm, I don’t know that I would say it was emotional. It was ... It was awe inspiring. But you had this sense of being on the edge of knowing that this was historic. You knew the importance and you didn’t want to miss any of it, so you were hyper aware. I don’t believe that I was emotional. I don’t feel that I was emotional until after it was over. Then it sort of hits you, what you had just done. The whole time, you were riveted to every word that [Secretary of State] Steve Simon said and everything that you were being asked to do in the careful, step-be-step process. *It was just a sense of feeling the importance of history being made* (Strate, 2020).

Chapter 7: Symbolism in the Elector Selection Process

It would be possible with a constitutional amendment that the electoral college system for electing the U.S. president could be maintained but the role of individual electors in it be eliminated. Eliminating electors but maintaining the electoral college has not been the focus of any “reform” efforts. From a symbolic perspective being selected to meet at one’s state capitol on the appointed day to personally cast a ballot for a presidential candidate has great positive meaning to those who have been chosen to be electors as noted throughout this research. Their stories should inspire readers and listeners to have a special reflection on the “elector” aspect of the Electoral College.

In reflecting on the Electoral College from the perspective of its electors, not only who they are but also what it has meant to them to be an elector is an important symbol for our democratic electoral process. The positive symbolism of this process is captured in the variety of ways electors described their experience, that is, what stood out for them as they were asked about their experience. Historical symbolism and symbolic diversity were especially dominant in the 2020 elector comments about their experience made in media inquiries and in personal interviews for this study. These symbols are illustrated here.

Twenty-two-year-old California elector Kevin Sabellico highlighted what being an elector symbolized for him. He told me “[it] was an honor, the proudest moment of my life....it is so meaningful being a student of history to be a part of history, have my signature live on in the archives.”⁸ Nathan Slotz posted “I’m looking forward to casting one of Oregon’s electoral votes today as the Chair of the DPO 2nd Congressional District. Committee. Thank you Oregon voters and CD2 Democrats for giving me this honor! “

In the picture below, another young California elector, 28 year old Brandon Zavala, quoted in the introduction to this paper, proudly showed me his official electoral pin. He told me “I am no more important than Hillary Clinton in this process. We are merely vessels in this process. The most important thing to take from this is removing the veil. We were just a bunch of ordinary folks similar to jury duty.”



Brandon Zavala. California Elector

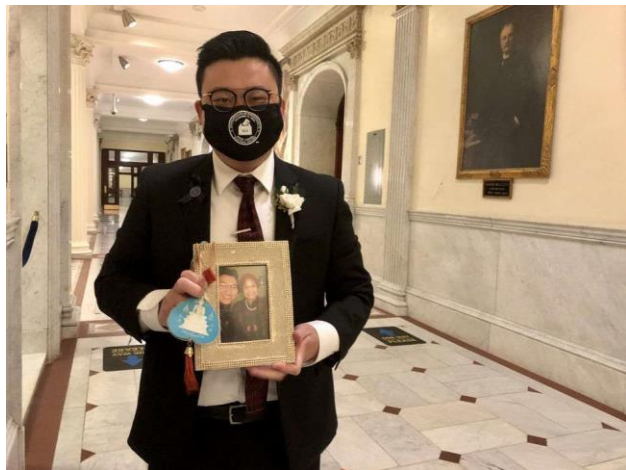
that this is the most exciting day of my life (Haigh, 2020). Maryland elector Patrick Hunt stated “I just thought it was my turn. I had done the work and it was my turn. Being an elector was an honor. It was another adventure.... They treated us like important people. The governor was there. There was a sense of formality. It was a serious occasion ... These are serious times, and this is a serious responsibility. It is nice to be part of history” (personal interview).

In addition to electors Sabellico and Zavala, other electors expressed the honor they felt in signing their name to the electoral ballot. Forty-four year old disabled veteran Minnesota elector Joel Heller, for example, described his experience as “pretty cool, It is a surreal moment. I hope you understand what a moment this is to be here. It’s like historic.... The whole process, casting that vote and the paperwork. You had to sign this paper. Sign, this slip of paper, recite the oath of office. They have an oath for presidential electors. I found that just fascinating. I am going to be there in the history books... to me it was huge honor.”

John Kalamarides, a Connecticut elector, recounted being “positively thrilled. I have to tell you

At the Michigan electoral meeting, elector Blake Mazurek had the honor of seconding the formal nomination of Kamala Harris to serve as Vice President. Harris would be the nation's first female Vice President, and for Mazurek, helping further this historic milestone was the most memorable part of his day. "I literally had tears welling in my eyes when I returned to my seat," he said. "I thought of my wife and daughter and every woman in our country while performing this honor. *The weight of the moment was not lost on me*" (Heinin Bell 2020).

Particularly prominent in regard to the element of symbolism in being an elector is 26-year-old Wayne Yeh's description of his quest to be an elector in 2020. As he characterized it, in his mind, it stemmed back to his grandmother.



Massachusetts' Elector Wayne Yeh

His Laotian grandmother, the first in his family to immigrate to the United States, told Yeh sometime before her death in 2019 not to feel guilty about leaving his family in California and planting roots in Massachusetts. On Monday, he carried her memory with him into the State House in Boston as he voted for the next president and vice president of the United States. "A few of us ran because we wanted the delegation of the Massachusetts Electoral College to reflect the demographics of Massachusetts, and that's what's encouraged me as a young person" (Solis 2020).

Sitting in the Massachusetts House Chamber as an elector, he set up a small picture frame on his desk that held a photograph of himself and his grandmother Poun Keodouangdy Yeh. He is shown here holding that picture.

Yeh tells the story that

"In August I decided to run to be a Massachusetts presidential elector in the electoral college because I believed that following the primary, we needed to work toward a more unified Democratic Party with space for Democratic voters who initially supported different candidates who championed different ideas, and work toward true unity and reconciliation for those voters. This was my message as I campaigned to members of the Democratic State Committee, and I'm humbled and honored to have received enough votes to be elected. I also ran to ensure that our electoral delegation of 11 people better and more equitably reflects the demographics of Massachusetts."

I ran my campaign as an outsider to uplift voices of those typically marginalized within the party, and I believe it's a symbolic win that represents the direction the Democratic Party should go post-Trump. There are two other people of color in this year's Massachusetts elector class, and two of us are LGBTQ people of color (Ertischek 2020).

Beyond Mr. Yeh's story, other media accounts captured racial symbolism as a distinctive perspective of the electors and the selection process. For example, Madison Wisconsin elector, State Representative Sheila Stubbs illustrates this symbolic facet of the presidential elector selection process. When she was asked to reflect on her electoral experience, she responded that "she cried with joy after being named an elector. To be an African American and a woman, and to be able to be an elector to witness Senator Kamala Harris become our Vice President — it's an 'aha' moment, I'm so excited" is how she described her historic role casting a vote for Mr. Biden and Senator Harris (Leher and Epstein 2020).

Fellow Michigan elector 57-year old Robin Smith, a librarian in the Lansing school district noted that "[a]s a Black female, it really means everything to me," said Ms. Smith, "My mom reminded me that when I came into this room today, that I brought my mother, my grandmother and my great-grandmother in with me because Black females have played such a huge part when it comes to the Democratic Party." As noted earlier, Nebraska and District of Columbia electors also emphasized the racial symbolism of their selection.

For Florida elector Nelson Diaz, "[i]t was a moving experience as a child of an immigrant family. My parents and grandparents fled a Communist dictatorship 90 miles south of our shore in 1961, so for me to have that opportunity was a moving experience. I have to tell you I got teary-eyed. I am getting teary-eyed now [in our interview]. In casting that ballot and signing my name on a piece of paper that was going to be one of several that was going to elect the president. It is a moving experience for a child of immigrants." Finally, is the perspective of Bonnie Lauria, a retired General Motors worker in West Branch, Michigan. "I've held most offices, from the local level up to state central," the 79-year-old said. "This is one I haven't had the privilege of being part of. I'm glad it's my turn" (Ax, 2020).

Other electors emphasized the historical symbolism that was reflected in this chapter's opening comments. For example, Democratic elector Mary Arnold, a retired social worker from Columbus, Wisconsin proclaimed in an interview:

"I was blown away to be asked, It never occurred to me that I might be an elector." Ms. Arnold, who was 72 years old and chair of her county's party organization, said she received a phone call in September from the state Democratic chairman asking if she would like to be an elector. She was told she was selected because she had been a good local leader. As an aside, Ms. Arnold went on to say that the occasion would be the first time she got dressed up since the coronavirus pandemic hit, and she figured she would stop for takeout food to celebrate during her 30-minute drive home from Madison. 'I am going to put on makeup for probably the first time in nine months,' she also said." (DPL 2020).

Tamon Hamlett, pictured below, a 19-year-old political-science student at the University of Houston, when asked about his electoral experience replied "I've heard about it my entire life, but now I am a part of it. I want to be a model for my fellow students." He was elected during a July virtual state GOP convention. He had hoped to be elected to the national convention but fell short in that effort and was instead picked to be an elector (DPL 2020).

The Democratic Party's elector selections in Washington D.C. and Nebraska's 2nd district, described earlier, also highlight the significance of demographic symbolism that has come to mark the elector selection process. DC elector Meedie Bardonville described this symbolism with the following statement.



Tamon Hamlett, Texas Presidential Elector

"I represent those that have been undervalued and underrepresented. I stand proudly as an American citizen who will cast the vote for the first African American woman and graduate of my alma mater, Howard University, to the highest office in our country. It is validation that we cracked not just the glass ceiling, but the concrete walls built to keep us out, and have finally taken our place at the political table. It means that I am participating in a system that was not designed for me. It is a unique and complex system, with a history filled of compromise and inequity, but today I am here ... *unbought, unbosomed, unbothered as an African American woman, nurse, mother of a Black son fulfilling the dreams of those that paved the way before me*" (Barzani 2020).

Also consider from a symbolic perspective California's 36th district US Representative Raul Ruiz's appointment of Augustin Arreola, a 23-year-old first-generation American to represent the district in the Electoral College. About Arreola's appointment, Congressman Ruiz said, "[H]is story is really a reflection for all the other youth that grew up in humble beginnings that all things are possible in our country, and that dreams really do come true" (Reyes and Revuelta 2020).

Mr. Arreola's sense of history was shown in his statement that

"I was in the room where we were making history." "It's definitely going to be one of the most special days of my life. It's an immense honor, words can't explain how I feel but I know it's something that I take very seriously and never in 100 years would have imagined I would have been in this situation or in this position to carry out such a historic vote on behalf of my community."

The following are further examples of electors' symbolic responses to inquiries about what it meant to them to be an elector.

"It was fun."

"It's a ministerial duty. It is an award. It was kind of fun. I have a nice certificate in my living room. It was a great honor."

"It was an honor, the proudest moment of my life....it is so meaningful being a student of history to be a part of history, have my signature live on in the archives. I got some hate on social media. "I was the reason the country

was falling apart. I am a terrible representative, and I should be ashamed of myself. I should kill myself and all this horrible stuff.”

Describe your experience as an elector: “I was extremely honored because the U.S. means a lot to me and this whole process... it was by my peers who knew how very hard I had worked and to be recognized for that was a great honor.”

“The thinking is that you want tried and true party people to be your representatives at the Electoral College... You want to be sure you can trust people. ... The good part of the Electoral College is that it is a wonderful ceremony... It is really a lovely ceremony. We have a beautifully printed ballot which I have framed up on the wall... The beautiful part of it is that we sit in the Senate chamber which is gorgeous. It gives you a sense of the seriousness of it. In presidential years we nominate electors at the state convention I have done as much work for the party I feel as anybody.”

“I have already said that I do not intend to run in four years because I believe that we should allow as many people to have that experience because it really is an awesome thing.”

Perhaps the most significant symbolic and emotional moment of the 2020 presidential electors’ experiences was that of Jack Arends, a 64-year-old Washington State elector. The Democratic Party’s presidential electoral ceremony includes each of its 12 electors giving a short statement after all their votes had been cast. Mr. Arends was dying of cancer but was determined to fulfill his duty as an elector. Wearing his “Play Nice” beret, he ended his speech saying “I was told there was no more medical treatment that would help me, *so it was important for me to do this one thing that I could do, while I still can,*” (Kavi, Aishvarya 2020). He then put his head on his desk and sobbed. The picture below shows a fellow delegate comforting him. (See also Brown 2021).



Washington State Presidential Elector Jack Arends

Chapter 8 Electoral Procedures: Before and After Electors Gather to Cast Their Votes

The United States electoral college system, especially its use of “citizen electors” to cast the final formal vote for president, is unique among democratic nations for selecting their national leaders. “It has not been eagerly copied by the rest of the world. No other nation has followed the American system in adopting an electoral college system” (Kiger, 2019).

In addition, besides the U.S, the only other democracies that indirectly elect a leader who combines the roles of head of state and head of government (as the U.S. president does) are Botswana, the Federated States of Micronesia, the Marshall Islands, Nauru, South Africa and Suriname. (The Swiss collective presidency also is elected indirectly, by that country’s parliament.) (DeSilver 2016).

Ten other nations have electoral college type systems for choosing their national leaders, but they do not function in quite the same manner as the U.S. system does. Sometimes they are used to select legislators rather than presidents. Only the United States has a system in which voters elect a body of “electors” from the general citizenry whose sole function is to choose the president and they do so only indirectly in contemporary times. The other 29 countries that indirectly elect their head of state give that task to their national legislatures, supplemented in five cases by representatives of states or regions (See DeSilver, 2016). In Germany, for example, 130 members of the Bundestag together with 630 delegates chosen by the state parliaments elect its president. In India, an assembly consisting of all elected members of both houses of Parliament and of state legislative assemblies – nearly 5,000 “electors” in total, casting more than a million population-weighted votes selects its president. (DeSilver 2016).

Latin Americans initially borrowed the Electoral College although it has now been replaced by other methods of electing the president. Argentina, for example, used the Electoral College for nearly a century and a half, from 1853 to 1995 (Horowitz, 2009).

In addition to the uniqueness of its electoral system, the length of time of its electoral process is a distinctive feature of the U.S. system. In comparison, consider the length of presidential and prime minister contests in other major democratic countries. For example, in the French presidential election process under Article 7 of the Constitution of France, the president is elected to a five-year term in a two-round election process. To officially be a candidate, contenders must, among other things, be nominated by at least 500 elected representatives (e.g., mayors, and deputies). According to the Constitution, the first round of the presidential election must be held between 20 and 35 days before the transition of power at the end of the five-year term of the incumbent officeholder.

If no candidate secures an absolute majority of votes in the first round, a second round is held two weeks later. The formal campaign and election of the president of France is essentially officially a two-month process, shorter if a candidate wins a majority of the votes in the first round of voting, which historically has never happened. In 2022, President Emmanuel Macron formally announced his candidacy for re-election on March 3rd, 2022. He had already received substantially greater number of sponsorships than that needed from elected officials to qualify for the ballot. Marine Le Pen, his major competitor, formalized her support on March 6th. (Twelve candidates in all received 500 valid sponsorships for the first round of voting.) Macron and Le Pen competed in the final round on April 27th with President Macron winning 59% of the run-off vote. He was then sworn in for a second term on May 7th.

The prime ministers of Canada and Great Britain are considered the heads of their governments in what are called parliamentary systems. Prime ministers are not directly elected in a popular vote by the citizens of their respective countries, rather they are first elected in a local election to be a member of Parliament. Then they are chosen as leaders of their party. They become the chief executive of each of these countries if their party wins a majority of the seats in Parliament or forms a coalition with a smaller party to claim a majority. The selection of a Prime Minister in Canada is essentially the same as in Great Britain.

To return to the U.S. electoral system, other distinctive formal and informal steps in the electoral process have been enacted before and after the electors gather to formally cast their votes. These procedures affect the actions of the electors as to how their votes are ultimately counted and certified and challenges to them as electors. This chapter highlights the role and relationship of these surrounding events and procedures in relation to the electors casting their votes and the final disposition of their votes.

The U.S. Code mandates that electors shall meet and cast their vote on the Monday after the second Wednesday in December of presidential election years. The electors’ meeting occurs in the middle of a relatively complex and sometimes contentious electoral process. The meeting of electors at their state capitols on December 14, 2020 to cast their votes for president of the United States was a major procedural step in finalizing the presidential election process that year as noted earlier.

Prior to their December meeting, any disputes over the designation of the formal electors in each state must be resolved. The procedure for United States electors to carry out their job is that they meet in their respective state legislatures on an appointed date as described earlier. They cast their votes for President and Vice President in separate ballots since the 12th Amendment was enacted. As noted above and in earlier chapters, their meeting is

embedded in the middle of a process over the course of several months with a number of constitutional steps to formalize the process.

The first step in the post-general election stage of the United States presidential electoral process regarding electors is the constitutional requirement that the governor of each state prepares seven original copies of a "certificate of ascertainment," each one under the seal of the state, which identifies the electors whom the state appointed and the votes they received. Ascertainment means "to discover with certainty, as through examination or experimentation." Electors do not directly receive votes from the general public in contemporary times, but their votes are counted from the votes their presidential candidate has received. For example, in Delaware, as announced by its Secretary of State at the December 14th electoral meeting, elector Marla Blout Carter received 296,268 votes (although no one directly cast a vote for her). They were the number of the votes that Joe Biden had received.

The set of electoral votes consists of one Certificate of Ascertainment and one Certificate of Vote. Electoral votes (the Certificates of Vote) must be received by the President of the U.S. Senate and the national archivist no later than nine days after the meeting of the electors. If votes are lost or delayed, the national archivist may take special measures to retrieve duplicates of the originals.

Textbox 5 presents an abbreviated statement of Delaware's Secretary of State Jeffrey Bullock outlining the formal process of electing candidates vying for an elector position, and the state verifying and ascertaining the winners at the December 14, 2020, electoral meeting as an example of this process.

Text Box 5

The process for nominating and selecting the electors and having them vote is established by the U.S. Constitution and Delaware law. Shortly after the Republican and Democratic party nominated their presidential and vice-presidential candidates at their national political conventions this past summer, state leaders of both parties nominated electors to stand for those candidates and sent those names to Delaware's elections commissioner. Last month we cast our votes as citizens. Those votes were tabulated and then certified by our superior courts in each county. The results were then sent to Governor Carney who added together each county's votes and ascertained the names of the winning electors. The governor then prepared the following certificate of ascertainment. It reads "whereas an election was held in the state of Delaware on Tuesday the 3rd day of November....being Tuesday next after the first Monday of said month in accordance with the provisions in the constitution and laws of the state of Delaware. In that behalf for the purpose of choosing by ballot three electors for the election of a president and vice-president of the United States. Whereas the official certificates of said election held in the several counties of the said state due manner made out, signed and executed have been delivered to me according to the said laws of the said state by the superior court of said counties and having examined said returns and having been enumerated and ascertained the votes of each and every candidate voted for as one of such electors the results appear as follows: [Then each elector is listed with the number of votes cast for his or her party's presidential and vice-presidential candidates.] C-SPAN

After their meeting in which they cast their votes, the electors follow what happens to their votes and how they are ultimately certified in a joint session of the U.S. Senate and U.S. House of Representatives. As noted in this research, electors commented on and found meaning in their ballots being sent to Washington and counted in the final step in the electoral process before an individual was officially declared the president-elect. The U.S. presidential election process is not only distinct in having "presidential electors" in addition to the votes of the general public as noted throughout this work. It is also distinct in mandating a number of even further steps in the process after the electors cast their votes before the presidential winner is formally certified. Then, even more weeks pass before being sworn into office. Altogether it is a distinctive, long, drawn out process open to challenges at many steps.

As the new Congress assembles in early January following the election, the Archivist of the United States transmits sets of certificates from each state to Congress. The transfer occurs in late December or early January

when OFR's legal staff meets with representatives of the Secretary of the Senate and the Clerk of the House. The papers sent to Capitol Hill are "Certificates of the Vote," signed by the electors of each state as noted earlier. They must be sent via registered mail to the Vice President in his capacity as president of the Senate, to the Secretary of State, the Archivist of the United States and to the federal district court with jurisdiction over where each set of electors convened.

After the newly elected U.S Representatives and Senators have been sworn in on January 3 following the November election, they convene as a joint body in the U.S. House chamber to record, count and certify the final outcome of the election on January 6th, a date now infamous as a result of the 2021 insurrection at the U.S. Capitol while members were formally counting the ballots. The two pictures below show congressional staffers carrying boxes containing the elector votes to the well of the U.S. House chamber for the final counting and determination of the 2020 presidential election process, and Vice President Mike Pence counting the votes.

The Electoral Count Act, Certifying Electors and the Final Congressional Counting of Elector Votes



Aides carry boxes containing state Electoral College votes during a joint session of Congress at the US Capitol on January 6, 2021

The general election has competing sets of electors in each state. This process of states determining which set of electors to certify and transforming the votes electors cast in their states' "electoral college" meetings into the final decision as to who will be sworn in as president for a four-year term of office has not always been without challenges such as that which caused turmoil in the electoral system as in 2020.

The certification of electors in the 1876 presidential election between Rutherford B. Hayes and Samuel J. Tilden especially caused great turmoil resulting in the passage of the Electoral Count Act (ECA) eleven years later in an attempt to reform the process. In the 1876 election three states, under the control of Reconstruction governments in the post-Civil War era, Louisiana, South Carolina and Florida sent multiple slates of electors to Congress. Congress was presented with two sets of electors, one voting for Hayes and one voting for Tilden. Oregon also sent two slates of electors. The choice of president turned on the issue of which sets of votes were to be accepted and counted. No rules or procedures were in place

to determine which votes Congress should count. Congress had not contemplated the problem of two different slates coming from the same states and it had never created a dispute resolution for how that would be resolved.

Unable to agree on which votes to accept from the 1876 election, Congress appointed a fifteen-member electoral commission with presidential approval to solve the problem. The commission consisted of five U.S. representatives, five senators and five members of the Supreme Court. With a strictly partisan vote of eight to seven, the commission decided in favor of the Hayes' electors, Hayes was then elected president by a margin of one electoral vote (Fortier, 2004).

In 1887, Congress passed the Electoral Count Act, popularly known as the ECA, in an attempt to rectify the deficiencies in the counting of electoral votes that had emerged in 1876. The ECA is a set of rules that Congress enacted in an attempt to govern the process it would use in counting the ballots sent from the states in future elections. This involvement of Congress in the electoral process was originally part of the 12th Amendment. However, when the 12th Amendment was enacted, its authors did not consider the problem of two different slates coming from the same state and did not provide any kind of a dispute resolution process for how that problem would be resolved.

The ECA focused on what happens after Americans vote, with an emphasis first on the pre-electoral meeting period focusing on a time limit for states to settle disputes over slates of candidates before the electors meet and secondly, on the process Congress would use to certify the Electoral College votes the states submitted after the elector meetings. It governs what Congress and the Vice President should do in the case of any disputes about which candidate won in a state. The ECA set a timeline for states to appoint presidential electors in November and for electors to cast their votes in December. It then described a process that Congress should follow when it counted the electoral votes that the states had submitted. The ECA essentially set up a

timetable for when different parts of the counting process would take place and constructed a dispute resolution process that Congress would use to resolve irregularities in accepting electoral slates from states.

But as Professor Rebecca Green describes the ECA, “it is anything but clear. If you want to read a statute as an example of a very unclear, poorly drafted statute, pick up a copy of the Electoral Count Act and read for yourself. On so many levels and so many instances it leaves a huge number of gaping holes for partisan mischief” (Green, 2022). Added to Professor Green’s critique of the ECA is CATO Institute writer Andy Craig’s description of the ECA as “simply put, ...is a mess. There are important constitutional defects in the existing ECA, but its main problem is its baffling lack of clarity. It contains convoluted run-on sentences, conflicting provisions, confusing ambiguities, and needless complexity” (2022).

The ECA’s “Safe Harbor” Pre-Elector Meeting Period

Focusing on the time period between the voting of the general public and the Electoral College meeting of the electors, the ECA established what is called the “safe harbor” period. Approximately six weeks lapse between the timing of the national vote and the elector meeting to cast the final votes. Why is there such a lapse between the two activities? These weeks have come to be called the “safe harbor period” during which time states are responsible for settling any challenges or disputes regarding electors. Each state’s board of elections counts the presidential ballots in the hours and sometimes days after the general election and canvases the vote throughout the state. The “safe harbor” period lasts up until six days before the Electoral College meeting.

ECA states that as long as states use existing state law to resolve disputes about electors by this deadline, the votes cast at the electors’ meeting would be “conclusive.” The law establishes a procedure that Congress must follow when two or more slates of electors are received. If only one slate of electors was chosen through established procedures for the safe harbor provision, then that is the slate that must be counted but can be challenged at the January 6 meeting as described below.

This statute is meant to act as a safeguard so when Congress meets to count the electoral votes on January 6th, it could not second-guess or overturn the election results. It is considered a “safe harbor” provision because it serves as a type of insurance policy by which a state can insulate its electoral votes against challenges in Congress by completing certifications of the results and settling any state court legal challenges by the “safe harbor” deadline. A state qualifies for “safe harbor” protection if it has resolved “any controversy or contest concerning the appointment of all or any of the electors.” If, for example, a state legislature decided to send in its own slate, the law says the electors chosen by popular vote and certified by the governor must be counted by Congress from states that met the safe harbor deadline.

Congress’s role is limited to ensuring that the submissions it receives from the states are authentic, in that they reflect the actual outcome of those elections consistent with state and federal law. The ECA’s “safe harbor” provision was intended to ensure this is accomplished. It provides that when a state finally resolves disputes pursuant to laws in place prior to Election Day, and does so by a certain date, then Congress must treat a state’s final determination as “conclusive,” meaning Congress cannot second-guess the state’s election results or otherwise look behind the returns. But the ECA statute does not include any enforcement mechanism to ensure Congress respects that promise. And vague terms in the ECA allowing Congress to reject electoral appointments as not “lawfully certified” or to reject electoral votes as not “regularly given” have been misunderstood (at best) by some members of Congress to justify objecting to state results critics have found.

The ECA does not include any enforcement mechanism to ensure that Congress respects the “safe harbor” protection. Vague terms in the ECA allowing Congress to reject electoral appointments as not “lawfully certified” or to reject electoral votes as not “regularly given” have been misunderstood (at best) by some members of Congress to justify objecting to state results.

ECA, Congress and the Post-Elector Meeting Period

This section considers the role of Congress in the final step of the presidential election process. The 12th Amendment says only that “[t]he 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 Vice President can also call for objections. Thus, when it meets on January 6th following the election, Congress has two roles to play: 1) the President of the Senate (the Vice President) is to open the elector ballots sent to it by each state and 2) count and announce the results. The role of the Vice President is purely a ministerial one according to the Electoral Count Act.



Vice President Pence Counting the Elector Votes, January 6, 2021

However, the ECA does not clearly spell out the Vice President's ministerial role according to its critics. Professor Green, for example, notes that "in long, convoluted language, the ECA states that regarding each state's slates "all such returns and papers shall be opened by him" -- the vice president, or president of the Senate -- "in the presence of the two houses when met as aforesaid, and read by the tellers, and all such returns and papers shall thereupon be submitted to the judgment and decision..." "Does this run-on sentence mean that Mike Pence shall open only the ballots that he wants? Or does he have to open if there's more than one slate from a state -- how does he know which ones to open?" Green posed. "None of those questions are answered by the face of the statute" (2020).

A second issue regarding Congress's role according to the ECA is that it allows for objections to Congress's counting of a state's electoral votes as long as those objections are made in writing and that one US Senator and one US Representative signs them. The Act specifies that after the Vice President opens each State's certificate and announces the State's votes, he "shall call for objections, if any." If there is a House and Senate member appealing a state's slate of electors, the Joint Session of Congress is dissolved, and the House and Senate meet separately for two hours to debate a contested state's electoral vote. Each body then votes whether to accept or reject that state's slate of electoral votes. The House and Senate reconvene in the Joint Session.

During the counting of the electoral votes on January 6th, 2021 objections were raised regarding the electoral votes of six states. Only two of these objections, that regarding Arizona and Pennsylvania, met the requirement that at least one senator and one representative has issued the objection. In both cases a recess was called while Senators and Representatives met separately in their chambers to vote on the objection. Each objection was overwhelmingly defeated in both bodies. The other four objections that were raised failed for lack of a member from both the Senate and the House of Representatives objecting (Georgia, Michigan, Nevada and Wisconsin).

Reforming the Electoral Count Act

As a result of the chaos surrounding the January 6th, 2021 meeting of Congress to count the electoral votes, reform of the Electoral Count Act has taken on prominence in editorials, legal scholar writings and presentations, and members of Congress consideration. Advocates for reforming the Electoral Count Act of 1887 argue that it is outdated and does not provide clear guidance about the role that Congress plays in certifying election results as described earlier. That ambiguity, they say, "created the circumstances that led to the attack on the Capitol on Jan.6, 2021, when thousands of then-President Trump's supporters stormed the Capitol to try to stop Congress from affirming what the states had already determined — that Joe Biden had won the 2020 presidential election (Turman, He, and Brewster, 2022).

Scholarly reform proposals and editorial comments in addition to Professor Green's that were noted earlier abound regarding reform ideas for the Electoral Count Act. They include the American Law Institute which organized a group of scholars to write a set of five "Principles to Guide Electoral Count Act Reform" published in its *Lawfare* series. New York University's Brennan Center for Justice has issued "How to Fix the Electoral Count

Act” (Weiner, Kinsella, and Scotnicki, 2022), among others.

Members of Congress of both parties, too, have recognized the problem of the ambiguities and complex language of the Electoral Count Act that have created confusion and chaos in the final counting of the electoral votes, especially in 2020. To solve the problems, a bipartisan group of US Senators in 2022 led by Senators Susan Collins and Joe Manchin began work on proposals to reform the ECA. As convenor of the legislative effort process,

Senator Collins described the problem in an op ed-piece in the *New York Times* on February 18, 2020, titled “Our Democracy Shouldn’t Rest on a Rickety Law outlining the motivation and substance of congressional action. Senator Collins wrote “much more attention must be paid to *counting* and *certifying* of votes. Our democracy depends on it. To prevent the subversion of the electoral process, Congress must reform the Electoral Count Act. A bipartisan group of 16 senators is working to do that.... Our primary focus must be on avoiding another Jan. 6 by reforming the Electoral Count Act. That is the vital goal in itself, it is our duty to get it done, and it is a worthy mission that should not be derailed by good faith but ultimately partisan provisions.” As they initiated their work, the group of Senators said that the Electoral Count Act was “widely seen to be impenetrably complex and poorly conceived, especially in its definition of the congressional role in the final tally of electoral votes for President and Vice President” (Report on Possible Electoral Count Act, 2022).¹⁰

One major goal of the Senate reform group has been to clarify that the Vice President’s role in overseeing the formal counting of the Electoral College vote is *ceremonial or ministerial* only. The measure the committee has proposed as of this writing according to the Senate committee would clarify that “that the vice president does not have the authority to reject a state’s electors.”

On July 22, 2022, the senators introduced two proposals to reform and modernize the Electoral Count Act. In a joint statement, the group of nine Republicans and seven Democrats declared that “From the beginning, our bipartisan group has shared a vision of drafting legislation to fix the flaws of the archaic and ambiguous Electoral Count Act of 1887, Through numerous meetings and debates among our colleagues as well as conversations with a wide variety of election experts and legal scholars, we have developed legislation that establishes clear guidelines for our system of certifying and counting electoral votes for President and Vice President. We urge our colleagues in both parties to support these simple, commonsense reforms” (www.Collins.Senate.gov).

Their proposal includes two bills. The first bill, “The Electoral Count Reform Act” would reform and modernize the ECA “to ensure that electoral votes tallied by Congress accurately reflect each state’s vote for President. It would replace ambiguous provisions of the 19th-century law with clear procedures that maintain appropriate state and federal roles in selecting the President and Vice President of the United States as set forth in the U.S. Constitution.” It specifies first that the vice president’s role is purely ceremonial, It also increases the number of lawmakers required to register objections to a state’s results to at least one-fifth of the members in both the House and the Senate, respectively. Further, it designates the governor as the only person who can submit a state’s electors. Finally, it clarifies the law to ensure that state lawmakers cannot overturn a state’s popular vote. The second bill is the Presidential Transition Improvement Act which would guarantee transition funding to both candidates in the event that there was uncertainty about the election. What follows is a one-page summary of the Electoral Count Reform Act produced by the Senate.

ELECTORAL COUNT REFORM ACT OF 2022

ECRA would reform and modernize the outdated 1887 Electoral Count Act to ensure that electoral votes tallied by Congress accurately reflect each state's public vote for President. It would replace ambiguous provisions of the 19th-century law with clear procedures that maintain appropriate state and federal roles in selecting the President and Vice President of the United States as set forth in the U.S. Constitution. KEY PROVISIONS INCLUDE:

- Single, Conclusive Slate of Electors. Includes a number of important reforms aimed at ensuring that Congress can identify a single, conclusive slate of electors from each state:
- Identifies Official to Submit Slate. Identifies each state's Governor, unless otherwise specified in the laws or constitution of a state in effect on Election Day, as responsible for submitting the certificate of ascertainment identifying that state's electors. Congress could not accept a slate submitted by a different official. This reform would address the potential for multiple state officials to send Congress competing slates.
- Provides for Expedited Judicial Review. Provides for expedited review, including a three- judge panel with a direct appeal to the Supreme Court, of certain claims related to a state's certificate identifying its electors. This accelerated process is available only for aggrieved presidential candidates and allows for challenges made under existing federal law and the U.S. Constitution to be resolved more quickly.
- Modernizes Rules for Counting Electoral Votes. Requires Congress to defer to slates of electors submitted by a state's executive pursuant to the judgments of state or federal courts.
- Role of the Vice President. Affirmatively states that the constitutional role of the Vice President, as the presiding officer of the joint meeting of Congress, is solely ministerial and that he or she does not have any power to solely determine, accept, reject, or otherwise adjudicate disputes over electors.
- Higher Objection Threshold. Raises the threshold to lodge an objection to electors to at least one-fifth of the duly chosen and sworn members of both the House of Representatives and the Senate. This change would reduce the likelihood of frivolous objections by ensuring that objections are broadly supported. Currently, only a single member of both chambers is needed to object to an elector or slate of electors.
- Protection of Each State's Popular Vote. Strikes a provision of an archaic 1845 law that could be used by state legislatures to override the popular vote in their states by declaring a "failed election" – a term that is not defined in the law. Instead, this legislation specifies that a state could move its presidential election day, which otherwise would remain the Tuesday immediately following the first Monday in November every four years, only if necessitated by "extraordinary and catastrophic" events.
- Protection of Each State's Popular Vote. Strikes a provision of an archaic 1845 law that could be used by state legislatures to override the popular vote in their states by declaring a "failed election" – a term that is not defined in the law. Instead, this legislation specifies that a state could move its presidential election day, which otherwise would remain the Tuesday immediately following the first Monday in November every four years only if necessitated by "extraordinary and catastrophic" events.

While the U.S. Senate's proposed reform was initiated as a bipartisan effort, the reform effort in the U.S. House proceeded primarily as a Democratic Party effort although it was introduced jointly by a Democratic and Republican member. On Sept. 19, Reps. Zoe Lofgren, D-Calif., and Liz Cheney, R-Wyo., introduced the "Presidential Election Reform Act," which overlaps in significant ways with the Senate bill but has some differences. Both Lofgren and Cheney are on the House committee investigating the events of January 6. The House passed the bill on September 21st on a 229-203 vote, primarily along party lines. Republican members of the House argued that it would lead to mass litigation and "trample on state sovereignty over election law."

While the two bills are similar, they differed in certain areas. For instance, the Senate bill would require one-fifth of the House and Senate to object to states' electors, instead of one lawmaker in both chambers. The House bill, on the other hand, requires one-third of each chamber to issue an objection. The two proposals had to be merged into one law to be voted on by the end of the Congress. On December 22, the Senate passed the

“Electoral Count Reform and Presidential Transition Improvement Act of 2022” and the next day the U.S House passed the Senate version as part of an omnibus spending bill. President Biden sign the omnibus bill into law on December 29th.

Chapter 9. Final Thoughts

Presidential electors are imbedded in the Constitution. They are the final decision makers in determining who will serve as president. The only exception is if there is a tie vote among the electors across the country in which case the U.S. House of Representatives votes on the President with each state having one vote and the U.S. Senate votes on the Vice President. These electors thus would seem to have a particularly powerful role in our political system. But historically electors have not been independent decision makers but rather individuals pledged to vote for whomever their party has nominated and whoever wins the most votes in a state. Thus, their role is not very substantive and their voting in the Electoral College after the general presidential election has become more pro forma for the most part rather than an exercise in independent judgement. But they are still 538 people who cast the *final* vote for President and Vice President every four years with the exception noted above. Thus, they are political actors who deserve recognition and not just disparagement as a number of scholarly and journalistic observers have suggested as noted in this research piece. The goal of this study has been to present a descriptive portrait of who they are, how they come to be “electors,” how they perform their electoral duties and to assess their job focusing on the 2020 presidential election.

The presidential elector process that has electors meeting in their state capitols on the first Monday after the first Tuesday of December following the general election to vote on who will be president has evolved quite differently from the process which Alexander Hamilton and other founding fathers publicly championed as described in this essay’s introduction that “men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice.”

Historians have cited few, if any, examples of presidential electors ever engaging in this deliberative function, that is performing as “Hamiltonian electors” even from the earliest presidential elections. On the contrary, electors have really never been chosen specifically by their state legislators to deliberate in a judicious fashion. Rather they have tended to be loyal party functionaries who gather to ratify the election of presidential and vice-presidential candidates already selected in a popular election. Individuals seek to become electors by touting their service to their political party. Also, as highlighted in this essay, contemporary electors tend to view themselves as “ordinary people.” They deserve to be selected as electors because their work for the party is the standard practice. Their financial contributions to the party have also been noted as an incentive for party leaders selecting them (Alexander, Brown, and Kaseman. 2004).

They do not campaign for an elector position based on their ability to be discerning, to be deliberators, or independent actors. Many campaigned for the position within their party based on their loyalty as has been recorded in this essay while others describe getting “the call,” that is, being selected by a party leader; They express much pride in having been selected. “I hope I am equal to the task,” for example, was 2020 Maine Republican elector Peter Laverdiere’s assessment of his electorship (personal interview).

From the perspective of just performing their one task of casting pledged votes, contemporary presidential electors seem to be superfluous or a cosmetic appendage to the election process. One could just count the electoral votes cast on the first Tuesday after the first Monday in November and eliminate the personal elector aspect of the system since they do not act independently. “A constitutional amendment removing the human element from the Electoral College could easily replace the actual personage of presidential electors with a literal ‘registering machine’ to record the results of the general election and weigh the popular votes cast by the traditional constitutional formula.” In addition, a minor argument for eliminating electors is that it would save states money creating separate meetings of electors (although it is not a huge expense).

The interviews with electors conducted for this research project and the media stories of other campaigns and performance as electors paint a very positive picture of the role electors played in the presidential election process in 2020. However, Republican challenges to the election results and the role of electors was a serious negative aspect of the elector process.

The Trump “Fake Elector Scheme”

The larger problem emerging from the 2020 election was the issue of “fake electors.” The emergence of “fake” or “alternative” electors, as some groups called themselves in the 2020 election, added to its intense post-election chaos which may not be a onetime occurrence. This experience would contribute to a movement for an automatic system of counting electoral votes eliminating one avenue of disruption in the electoral system.

In New Mexico one of the signers of an alternative certificate, businessman Jewell Powdrell, told the *Las Cruces Sun News* that he had “no regrets” about signing his certificate (Boetel 2022). In other states these “electors” did not hesitate to publicly present themselves as shown here in the picture below of the Nevada “fake

electors” that the state Republican Party posted on its website. The picture was accompanied by the “tweet” “our brave electors standing up for what is right and casting their electoral votes for @realDonaldTrump. We believe in fair elections and will continue the fight against voter fraud in the Silver State!”



Nevada Republican Party social media picture of their 2020 fake electors

The Arizona state Republicans also proudly posted a picture of their “alternative electors” as shown below. They created a facsimile of the formal “certificate of ascertainment” which they had notarized and sent to the National Archive as part of an effort to prevent what they viewed as a “fraudulent theft” of the election (Hansen 2020). They also posted a video of the signing on social media and sent out a press release describing their effort.



Arizona Alternative “Fake” Electors

The pictures shown above of Republican activists in Nevada and Arizona posing as “alternative electors” in the 2020 post-election period appear to represent individual state-level partisan actions to overturn the presidential election results. But those efforts presented singularly do not consider the full extent of their being part of a Trump organization effort (or scheme) to overturn the results of the election focusing on “electors” as part of a supposed election fraud on the part of voters. To complete the historical story of presidential electors in the 2020 election, the actions of President Donald Trump and his election team to overturn the election focusing on

challenges to presidential electors must be included for a more complete accounting of the 2020 presidential elector process.

In a *New York Times* piece on the “fake electors” in 2020, Jack Wilenchik who helped organize these electors in Arizona is quoted as stating in an internal email that “[w]e would just be sending in ‘fake’ electoral votes to Pence so that ‘someone’ in Congress can make an objection when they start counting votes and start arguing that the ‘fake’ votes should be counted.” In a follow-up email, Mr. Wilenchik wrote that “‘alternate’ votes is probably a better term than ‘fake’ votes,” adding a smiley face emoji (Haberman and Broadwater, 2022).

Republican electors in the seven battleground states of Arizona, Georgia, Michigan, New Mexico, Nevada, Pennsylvania and Wisconsin signed certificates falsely stating that Donald Trump, not Democrat Biden, had won their states, 84 electors in all, (Lerner 2022). The 84 people who signed bogus documents claiming that Donald Trump won the 2020 election included dozens of local republican party leaders, seven current candidates for public office, eight current office holders and at least five previous state and federal office holders. The Trump backers met at statehouses, or nearby, and signed certificates that used similar language as the real certificates, proclaiming their votes for president and vice president. They mailed those certificates to the National Archives and Congress, which ignored them.

In the days following the 2020 election President Trump’s team mounted a vigorous campaign to affect the Electoral College vote count of January 6, 2021. The scheme has been documented in the U.S. House of Representatives’ January 6 Committee report. In addition, the encyclopedia *Wikipedia*’s “The Trump Fake Electors Plot” and a *New York Times* 2022 article by Alan Feuer and Katie Benner titled “The Fake Electors Scheme Explained” describe this campaign in detail.

Their *stated* rationale of this campaign was that Mr. Biden’s victories in those states would be overturned once they could establish their claims of widespread voting fraud and other irregularities, and that it was only prudent to have “alternate” slates of electors in place for that eventuality. “The January 6th Congressional report, however, makes it plain that plan was never to collect the signatures, file them away, and only pull them out in the unlikely event that a court or state legislature reversed the results of one or more of the elections in the five states. The plan was to use the fake certificates affirmatively” (Rotner, 2022).

“The intent of the scheme was to pass the fraudulent certificates to then-vice president Mike Pence in the hope that he would count them, rather than the authentic certificates, and thus overturn Joe Biden’s victory. This effort was predicated on a fringe legal theory outlined by Trump attorney John Eastman in the ‘Eastman memos,’ which claimed that the vice president has constitutional discretion to swap out official electors with an alternate slate during the certification process, thus changing the outcome of the electoral college vote and the overall winner of the presidential race. This scheme came to be known as the “Pence Card” (Wikipedia).

Focusing on electors, the Trump campaign emails that have been uncovered provide evidence of a coordinated campaign to overturn the election results as described in a *New York Times* “fake elector scheme” article. Consider for example, Phoenix-based lawyer Jack Wilenchik who helped organize the pro-Trump electors in an Arizona, December 8th email “We would just be sending in ‘fake’ electoral votes to Pence so that ‘someone’ in Congress can make an objection when they start counting votes and start arguing that the ‘fake’ votes should be counted.” Their stated rationale was that Mr. Biden’s victories in those states would be overturned once they could establish their claims of widespread voting fraud and other irregularities, and that it was only prudent to have the “alternate” slates of electors in place for that eventuality.

On January 28, 2022, the January 6th Committee issued subpoenas to 14 individuals who participated as purported “alternate electors” for former President Trump. Each of the 14 served as “chair” or “secretary” on their state’s slate of fake electors. Committee Chairman Bennie Thompson issued the following subpoena statement:

“The Select Committee is seeking information about attempts in multiple states to overturn the results of the 2020 election, including the planning and coordination of efforts to send false slates of electors to the National Archives. We believe the individuals we have subpoenaed today have information about how these so-called alternate electors met and who was behind that scheme. We encourage them to cooperate with the Select Committee’s investigation to get answers about January 6th for the American people and help ensure nothing like that day ever happens again.”¹¹

The Justice Department also issued subpoenas to at least four people as part of its investigation into Donald Trump’s alleged plan to overturn the 2020 election results by installing a slate of fake electors to falsely declare him the winner in several states, according to reports. Subpoenas were issued to David Shafer and Brad Carver, Georgia Republican Party officials, Thomas Lane, an official in Arizona, and Shawn Flynn, a Michigan Trump campaign aide also received subpoenas. These individuals played a central role in organizing the fake slate of electors in these states.

But those individuals were not “electors” who cast “fake” votes for president and had their votes sent to Washington. Questions of illegalities facing the actions of the “fake electors” such as those individuals shown in

the group photos earlier in this chapter is a distinct and central interest to this study and presidential electors in general. Attention here centers on state level investigations of legal improprieties in “fake elector” actions. “Fake electors” in seven states--Michigan, New Mexico, Arizona, Nevada, Georgia, Pennsylvania, and Wisconsin-- have been charged with felonies.

Michigan state prosecutors announced felony charges in July 2023 against the 16 Republicans who served as 2020 fake electors. It was the first time any of the fake electors had been charged with a crime related to the election scheme. These activists all pleaded not guilty to eight criminal counts alleging that they had signed false certificates in an attempt to shift the state’s Electoral College votes to former President Trump over Joe Biden.

Each defendant was charged with one count of conspiracy to commit forgery, two counts of forgery, one count of uttering and publishing conspiracy to commit election law forgery, and two counts of election law forgery. They pleaded not guilty to all of the counts. They were released on a \$1,000 bond, after state judges determined that they were not a danger to the community and didn’t pose a flight risk. The court cases continue as of this writing in March 2024. These “electors” will not stand trial until 2025. (Marshal Cohen, CNN, 2023).

According to Secretary of State Joselyn Benson “This was a well thought out plan. There are a number of pieces that these individuals were very aware of what they were trying to do and submitting the documents to the National Archives...this was an attempt to actually lie to the government about how the Michigan votes should be allocated. There must be culpability for anyone involved from those who actually committed the acts to those who help them organize them” (Cohen et al, CNN, 2023).

In the state of Nevada, a Clark County grand jury indicted six Republican officials as fake electors in December 2023. Each of these fake electors has been charged with two felonies: one count of forgery and one count of filing a false record. Those two categories of felonies have penalties that range from one year up to either four or five years in prison. Each of the indicted individuals pleaded “not guilty.” Their trial has been postponed until 2025.

The Nevada charges were narrower in scope than the Michigan charges. Nevada Attorney General Aaron Ford pointed out the state’s existing laws do not “directly” apply to the conduct of the fake electors, and in the spring, he advocated for a proposed law that would explicitly criminalize the act of submitting a false slate of electors. But his office sought the charges related to forgery before a three-year statute of limitations would have expired (Golonka and Birenbaum, 2023).

Turning to the indictment of fake electors in Wisconsin, in 2022 two Democratic electors and a voter initiated a suit against the ten Republicans who attempted to cast electoral ballots despite Joe Biden’s victory in that battleground state and two attorneys who aided their efforts. Their lawsuit filed in Dane County Circuit Court alleged a conspiracy by Trump and his allies to overturn his loss in the presidential race, calling it “as legally baseless as it was repugnant to democracy.” It sought up to \$2.4 million in damages as well as disqualifying the Republicans from ever serving as electors again.

On December 6, 2023, attorneys who filed the case announced that these 10 “fake electors had settled this civil lawsuit and admitted their actions were part of an effort to overturn President Joe Biden’s victory. As part of the Wisconsin settlement, the 10 fake electors issued a statement acknowledging that the phony certificates they signed in December 2020 were “used as part of an attempt to improperly overturn” the lawful election results. They agreed to never serve in an election in which Donald Trump was on the ballot. No money was involved in the settlement. They also agreed to fully cooperate in any justice department investigation into efforts to overturn the 2020 election.

Attorneys general in Michigan and New Mexico referred investigations regarding the separate slates of electors to federal prosecutors (Parks, 2022).

Contrary to the legal challenges fake electors faced in Michigan and Nevada, Pennsylvania alternate electors were considered unlikely to face criminal repercussions because of an important legal caveat they added to their document. Pennsylvania’s certificate. The Republican “electors” said the votes they were casting should only be counted if a court found that they were the “duly elected and qualified electors. The reasoning they were given “to go through with this process was that [the campaign] was concerned that there was a number of court cases that the Trump campaign had not adjudicated yet.. and the campaign hoped a favorable ruling for Trump in those cases might have changed the outcome of the vote. In that scenario...the campaign was concerned that if there was no slate of electors submitted under the constitutional process, the court victories would be meaningless.” (Walker 2023, *Spotlightpa.org*).

In submitting their certificates, New Mexico “fake electors,” like Pennsylvania’s “fake electors,” added a caveat saying their certificate was submitted in case they were later recognized as duly elected, qualified electors. That would only have been possible if Trump had won any of several dozen legal battles he waged against states in the weeks after the election. New Mexico Attorney General Raul Torrez declared that the state’s five Republican electors could not be prosecuted under the current law for filing election certificates that falsely declared Donald Trump the winner of the 2020 presidential race. At the same time, he was making recommendations to state lawmakers that he says would enhance the security of the state’s electoral process and provide legal authority for prosecuting similar conduct in the future. (Bryan and Lee, 2024.)

If one were to advocate eliminating electors while maintaining the electoral college system of automatically allocating votes across the states what might the arguments be in its favor beyond lessening the possible corruption factor of “fake electors” cited above? Electors, as highlighted in this essay, really should not be classified as “dummies,” at least not being “stupid persons” according to the dictionary definition of the term as they have been disparaged in the past as a reason for eliminating them. Nor are they necessarily “marionettes,” that is puppets worked from above by strings, attached to their limbs. They are such only in the sense that they have pledged to cast votes for their party’s nominee. But the pledges are more reflective of what presidential electors believe in and have worked for in the political process than performing as “party hacks” at least as electors have reflected on their role in the process quoted in this research. The voting public has long had ready access to the platforms and speeches of presidential contenders. Thus, one of the original reasons for a pool of knowledgeable electors to make the ultimate presidential decision is no longer necessary.

To the electors themselves, their gathering and their signature on the official ballots has great significance as noted throughout this essay. Two additional quotes highlight this significance to them. As Florida elector Nelson Diaz responded when asked about what being an elector meant to him, “[it] was probably one of the coolest things I have ever done. Seeing Vice President Pence carrying the box to the capitol with a piece of paper that I had signed, and that piece of paper was one of several that would select the next president.” Mark Gonzalez representing the 34th congressional district of California in an interview with Spectrum 1 News explained “I’m a symbol of what this country is built on. I’m a symbol of what California stands for, how we are built for the Latino community, for the young community, for the LGBTQ community, and I’m honored and grateful to be here to represent what America truly is about” (Pardo and Poukish, 2020).

No elector expressed a sense that it was not a truly meaningful and purposeful act that he or she had performed even while in some cases supporting the elimination of the Electoral College system in favor of a national popular vote. Casting their vote had great meaning to the electors as part of the democratic process. Particularly moving in this regard is the statement Delaware elector Marla Blout Carter gave at that state’s electoral meeting.

This is an amazing day and historic moment to be able to vote for Delaware’s own Joe Biden to be president of the United States. It is an opportunity and honor to sign my name and cast a vote for it is also an honor to sign my name and to cast a vote for vice president-elect Kamala Harris, the first woman to serve as vice president and person of color. And to do that at Delaware State University, our HBCU. It really moves me. I am humbled and honored to serve as an elector and to sign my name nine times to documents that will become a part of history is personal. It is personal because over a year ago I had a stroke and couldn’t even pick up a pen, let alone sign my name. It signified so much because if I can come back from a stroke, I know this country under the leadership of Joe Biden and Kamala Harris we can come back from this very dark time. So I believe this is so historic for all of us for this opportunity to serve. I am just so grateful for this opportunity to serve in this capacity.”

One should not be surprised that none of the electors considered themselves to be “dummies,” “marionettes” or just “witnesses at a wedding” or “party hacks” when interviewed about their experience nor have any disparaged the process. They did not downplay their job. To them it was a proud (and patriotic) duty. It was an honor. They should not be disparaged (or harassed). They do add a personal aspect to an electoral process that is fraught with negative and impersonal campaigning that might be viewed from a positive vantage point when watching these individuals perform their one constitutional duty.

What then does this study of contemporary presidential electors contribute to an assessment of the electoral college system for electing the U.S. president? What conclusions might we take away from it? Does it reinforce electors’ historical and perhaps substantive importance in the presidential electoral process, or not? Historically electors exercising individual judgement and deliberation in casting ballots for a presidential candidate disappeared early on, if it even ever existed, with the rise of political parties controlling the process as noted earlier. It is rather the symbolism and being part of history that seems to motivate political party activists’ interest in being an elector to cast that vote and their eagerness in accepting the opportunity when it is offered. To them, they are playing a significant role in the US democratic system. They are proud of their role in this democratic process.

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Several perspectives should be reflected upon in assessing the value of maintaining this unique event as part of the presidential selection process. Given the lack of substantive independent importance to their role in determining the outcome of presidential elections and the rancor that has occurred in recent elections, a case could be made to eliminate the electors, even while keeping the formal Electoral College system. Their meeting and votes really do not have any effect on the outcome of the November general election. Given the 2020 Supreme Court ruling in *Chiafalo v. Washington*, electors cannot change their vote from what was pledged when they were selected as electors although that has not stopped highly agitated partisans from harassing and threatening them to change their vote and even becoming “fake electors” challenging the process in 2020.

In 2020, C-SPAN showed live and videoed for later viewing the meetings of electors to cast their votes in their state capitols and participate in the formal process of that gathering. Watching these ceremonies may have a positive effect on voters who take the time to view them. (We do not know the extent of viewership.) Seeing and

hearing Jack Arends during Washington states electoral college meeting emotionally describing his electorship as he was dying of cancer described earlier is an especially positive example of these Americans' role in the electoral process.

One could conclude based on the interviews conducted for this study and media interviews of electors more generally that those partisans who have had the opportunity to be an "elector" would champion retaining the process (although some indicated that the electoral college system should be abolished in favor of a national popular vote). Electors provide a unique, humanizing element to what is a contentious contest to lead the nation. Commenting on her experience, elector LaNiece Jones, a California elector whom U.S. Representative Barbara Lee had appointed, characterized her experience as "Beyond words, it was so amazing, I just could not believe that we had that opportunity to be able to cast a historic vote." Nelson Diaz also told me that "I have already said that I do not intend to run in four years because I believe that we should allow as many people to have that experience because it really is an awesome thing."

Postscript: The National Popular Vote Interstate Compact and Presidential Electors

The National Popular Interstate Compact (NPVIC) was created in 2006 as a means of bringing greater equity across the states. NPVIC legislation has been introduced in 42 states. If enacted, it would guarantee the presidency to the candidate who receives the most popular votes across all 50 states and the District of Columbia. The compact is designed to ensure that the candidate who receives the most votes nationwide is elected President, and it would come into effect only when it would guarantee that outcome,

The Compact is a state-based approach to the presidential electoral process. It preserves the Electoral College (and thus electors) and state control of elections. The NPVIC relies on the constitution's allowance for states to choose how their electoral votes are distributed. The compact would go into effect when enacted by states with a total of 270 electoral votes. States enter the compact by passing enabling legislation through their state legislatures. It is consequential that is state legislators and not the voters themselves who get to choose to enact this system in individual states.

What this means for presidential electors who cast the actual votes for president under the Constitution is that all of this group of 270+ presidential electors will be supporters of the candidate who received the most popular votes across the 50 states and the District of Columbia—thus making that candidate president regardless of which candidate obtained the most votes in a particular state. Presidential electors in every state that joined the compact will be the electors selected by the party of the national winning presidential candidate even if the *other* party's presidential candidate received the most votes in that state. It accomplishes its goal in good part by substituting the slate of the *losing* candidate's electors in a state for the slate of the presidential candidate who actually won the vote in that state. If a state has passed legislation supporting the compact, that state's electors who will convene on the appointed Monday in December at the state's capitol will be the electors selected by the state political party that has won the *national* vote even if the opposition candidate received more votes in that state. The presidential elector certifying official would certify appointment as official electors the selected electors of the national winner's party regardless of which party got the most votes in a state.

Reflecting on the NPVIC from the perspective of "fake electors" and the turmoil they caused in 2020, it is quite possible that a party who lost the national vote but won the vote in a state that joined the compact could challenge the results and create its own certifications. They would be highly likely to seek redress in the courts challenging the NPVIC as unconstitutional based on the 10th and 12th Amendments.

Endnotes

¹ According to National Archives' counts "there have been more proposals for Constitutional amendments to change the Electoral College than on any other subject." More than 850 proposals have been offered in Congress, making this topic second in overall numbers only to the equal rights amendment" (Vile, 2003). In 1969, the U.S. House Representatives approved a constitutional amendment to eliminate the Electoral College and provide for the direct election of the President using the results of the national popular vote. The House passed H.J. Res. 681 with widespread bipartisan support, 338 to 70, but the measure never made it out of the Senate.

Also, a 2021 Pew Research Center national poll showed that "a majority of Americans (55%) favor moving away from the Electoral College while 45% favor retaining the Electoral College" (Jones 2021). Surveys about the public's perspective on presidential electors have not been undertaken. The amendment effort has seldom focused on electors. In 1934, the U.S. Senate voted 42 to 24 following short of the two-thirds necessary to advance a change to an automatic system that would have eliminated electors. See also Alexander Keyssar, "Why Do We Still have the Electoral College."

² Arizona electors met in an undisclosed location because of the numerous threats these individuals received in this highly contested state.

³ The *Documentary History of the First Federal Elections 1788-1790*, edited by Gordon DenBoer does list the names of the electors from each of the states participating in the first presidential election.

⁴ In *Representation and the Electoral College*, Robert M. Alexander describes in-depth the campaign of the “Hamilton” electors in 2016.

⁵ The California Elections Code mandates that “each year of the general election at which electors of President and Vice President of the United States are to be chosen, the candidate in each congressional district who received the largest number of votes in the primary election among the candidates who disclosed a preference for the Democratic Party shall designate one presidential elector and shall file his or her name and residence and business address with the state chairperson by a date specified by the state chairperson.”

⁶ The Twenty-Third Amendment to the Constitution which was ratified in 1961 gave the District of Columbia a number of electors to that of “the least populous state” which is three votes. Prior to its enactment, voters in the DC District could not vote for president.

⁷ President Clinton had also served as an elector in 2016, casting his vote for wife Hillary.

⁸ Sabellico also said that he asked for a speaking role. He was appointed to second the nomination of the chair and the secretary of the College.

⁹ Although Article II of the constitution only refers to US senators and representatives, some state legislators declined to serve as an elector after they were selected under the concern that their eligibility to be an elector might be challenged under Article II. Their eligibility has never been challenged in the courts and has not been the subject of debate. But some states such as North Carolina have passed laws barring state legislators from being electors.

¹⁰ The Report on Possible Electoral Count Act Reforms is the project of co-chairs Bob Bauer and Jack Goldsmith, at the invitation of the leadership of the American Law Institute.

¹¹ *The Select January 6th Committee Final Report can be found at* Select January 6th Committee Final Report and Supporting Materials Collection | GovInfo.

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