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Keeping the Faith: How the Fourteenth Amendment Should Protect Against Faithless Electors

Jennifer A. Cranmer

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**KEEPING THE FAITH: HOW THE FOURTEENTH
AMENDMENT SHOULD PROTECT AGAINST FAITHLESS
ELECTORS**

*Jennifer A. Cranmer**

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I. INTRODUCTION

Every four years in the United States, the Electoral College, composed of electors from each state and the District of Columbia, votes for who will become the president, typically based on which candidate the voters in each elector’s state chose.¹ However, when electors vote for a candidate other than the one they were pledged to vote for, they become “faithless.”²

By using laws that bind faithless electors, “the State instructs its electors that they have no ground for reversing the vote of millions of its citizens. That direction accords with the Constitution—as well as with the trust of a Nation that here, We the People rule.”³ As such, the Supreme

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1. History, *Congress and the Case of the Faithless Elector*, HIST., ART, & ARCHIVES: WHEREAS: STORIES FROM THE PEOPLE’S HOUSE (Nov. 17, 2020), <https://history.house.gov/Blog/2020/November/11-17-Faithless-Electors/> [https://perma.cc/53EC-TRB6].

2. *Id.*

3. *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).

Court should extend Equal Protection to guard against faithless electors, and we must enact strict elector pledge laws to bind electors and prevent faithless voting. Otherwise, there is a real risk of voter disenchantment and political upheaval.⁴

Imagine a scenario: Candidates A and B are running for president.⁵ Candidate A is well liked and extensively qualified to be president, with a history of public service.⁶ Candidate B is controversial and polarizing, garnering support mainly through fear.⁷ Nevertheless, it is a close race between the two candidates.⁸ Candidate A wins the nationwide popular vote, along with the popular vote in many states, including Pennsylvania and Georgia.⁹ With these key wins, Candidate A should secure the presidency, as Candidate A now has the 270 electoral college votes needed to win.¹⁰ However, whether through Candidate B's persuasion or on their own, the electors in Pennsylvania and Georgia decide not to vote for Candidate A and vote for Candidate B instead.¹¹ This swings the

4. See Rob Kuznia, *Assault on Democracy: Paths to Insurrection*, CNN (June 2021), <https://www.cnn.com/interactive/2021/06/us/capitol-riot-paths-to-insurrection/> [<https://perma.cc/DA78-B2SZ>] (describing the deadly January 6, 2021 riot at the United States Capitol, perpetrated by people who falsely believed the 2020 presidential election had been stolen from Donald Trump. Although this belief was based on a lie, it shows how dangerous voter unrest and a lack of faith in election results can be.).

5. The following is entirely a hypothetical but inspired by real events.

6. See Editorial Board, *Hillary Clinton is Amply Qualified to be President*, WASH. POST (Nov. 6, 2016), https://www.washingtonpost.com/opinions/hillary-clinton-is-amply-qualified-to-be-president/2016/11/06/fc7ba03c-a2c0-11e6-a44d-cc2898cfab06_story.html [<https://perma.cc/74V9-AHBP>] (explaining how qualified Hillary Clinton was to be president and the many recommendations she had from all types of sources).

7. Alex Altman, *No President Has Spread Fear Like Donald Trump*, TIME (Feb. 9, 2017, 2:55 PM), <https://time.com/4665755/donald-trump-fear/> [<https://perma.cc/X7ZB-MJN2>] (explaining how past presidents, except for Barack Obama, have used fear as “an effective form of political rhetoric”). Richard Nixon used fear when promoting “law and order.” *Id.* Bill Clinton used fear in trying to pass a crime bill. *Id.* George W. Bush used fear to garner support for the war on terrorism. *Id.* And recently Donald Trump “weaponized fear” more than any other president in history. *Id.* Trump “seed[ed] fear” rather than “assuag[ing] it” and used fear throughout his campaign and while in office. *Id.*

8. See *Bush v. Gore*, 531 U.S. 98, 100–03 (2000) (being cited here as an example of an extremely close presidential race).

9. See *id.* (providing an example of a presidential race that could come down to one state, like Florida, or in this hypothetical situation, two—Pennsylvania and Georgia).

10. See *id.* (providing an example because both Bush and Gore could have secured the presidency with a win in Florida in the 2000 presidential election).

11. This is loosely based on Donald Trump attempting to have election officials in different states change the election results in those states. See Rosalind S. Helderman, *All the Ways Trump Tried to Overturn the Election – And How It Could Happen Again*, WASH. POST (Feb. 9, 2022), <https://www.washingtonpost.com/politics/interactive/2022/election-overtum-plans/> [<https://perma.cc/76U9-D9Q5>]; see also Marshall Cohen, Jason Morris & Christopher Hickey, *Timeline: What Georgia Prosecutors are Looking At As They Investigate Trump's Efforts to Overturn*

election in Candidate B's favor, and Candidate B becomes president, against the will of the voters nationwide and in Pennsylvania and Georgia specifically.¹² These voters are outraged, as are many people in the country, who begin to think that their votes do not matter.¹³ Pennsylvania and Georgia did not have laws that prevented the faithless electors' votes from counting, which changed the outcome of the election.¹⁴

This scenario, although hypothetical, draws from several recent events. First, the 2000 presidential election, where George W. Bush won the electoral college and the resulting election by only five electoral votes.¹⁵ Faithless electors could have changed this outcome, by either causing the House of Representatives to have to choose the president or causing Al Gore to win the electoral college, and the presidency, outright.¹⁶ Second, the 2016 presidential election, which had the most faithless electors ever, and the number could have been more, had some

the Election, CNN (Aug. 5, 2021), <https://www.cnn.com/interactive/2021/08/politics/trump-georgia-2020-election/> [<https://perma.cc/VW7F-PLDS>]; see also Katie Benner, *Trump Pressed Justice Dept. to Declare Election Results Corrupt, Notes Show*, N.Y. TIMES (Nov. 6, 2021), <https://www.nytimes.com/2021/07/30/us/politics/trump-justice-department-election.html> [<https://perma.cc/6QT3-2JG8>].

Trump also tried to pressure then Vice President Mike Pence into throwing out Electoral College votes. See Libby Cathey, *Trump Suggests Pence Should Have 'Overturned' 2020 Election*, ABC NEWS (Jan. 31, 2022 4:21 PM), <https://abcnews.go.com/Politics/trump-suggests-pence-overturned-2020-election/story?id=82581412> [<https://perma.cc/63G2-8NVT>]; see also Michael S. Schmidt, *Trump Says Pence Can Overturn His Loss in Congress. That's Not How It Works*, N.Y. TIMES (Apr. 30, 2021), <https://www.nytimes.com/2021/01/05/us/politics/pence-trump-election.html> [<https://perma.cc/X7Q3-2E4Y>].

12. Loosely based on Trump's attempt to swing the election in his favor. See Helderman, *supra* note 11.

13. Loosely based on the anger Trump supporters felt on the mistaken belief that the election had been stolen from him. See Kuznia, *supra* note 4; see also Lisa Mascaro, Eric Tucker, Mary Clare Jalonick & Andrew Taylor, *Pro-Trump Mob Storms US Capitol in Bid to Overturn Election*, AP NEWS (Jan. 6, 2021), <https://apnews.com/article/congress-confirm-joe-biden-78104aea082995bbd7412a6e6cd13818> [<https://perma.cc/9WWX-DH8J>].

14. See *Faithless Elector State Laws*, FAIRVOTE (July 7, 2020), https://www.fairvote.org/faithless_elector_state_laws [<https://perma.cc/2Z3H-RCCV>] (showing that Pennsylvania and Georgia do not currently have any laws to prevent faithless electors).

15. Aaron Blake, *How 'Faithless Electors' are Messing with Our Electoral Maps, Explained*, WASH. POST (Nov. 7, 2016), <https://www.washingtonpost.com/news/th4e-fix/wp/2016/11/07/how-faithless-electors-are-messing-with-our-electoral-maps-explained/> [<https://perma.cc/P5BE-KPN4>].

16. *Id.* (explaining that, because of how close the 2000 presidential election was, with a margin of five electoral votes, it would have only taken two electors changing their votes to send the race to the House of Representatives to decide). The House of Representatives chooses the president if no candidate gets a majority of Electoral College votes. *Id.* The Senate would pick the Vice President. *Id.* If three electors had switched their votes from George W. Bush to Al Gore, Al Gore would have become the president. *Id.*

electors' intentions to vote faithlessly been carried out.¹⁷ Third, the 2020 presidential election, where some sources depicted scenarios in which faithless electors could have decided the election.¹⁸ As such, with the rise of faithless electors and close presidential elections, the scenario depicted above could very easily become reality. If it did, disastrous consequences could follow, such as unrest, lack of faith in the election results, and deadly riots.¹⁹

In *Chiafalo v. Washington*, the Supreme Court upheld the validity of state laws that bind electors and punish faithless electors.²⁰ As of this writing, however, 17 states still have no faithless elector law in place to either prohibit, punish, or cancel the vote of a faithless elector.²¹ In these states without faithless elector laws, faithless electors actually can “revers[e] the vote of millions of . . . citizens.”²² Furthermore, in the states with faithless elector laws, 19 of these laws still count a faithless elector’s vote.²³

State laws that allow electors to vote for unpledged candidates violate the Equal Protection Clause of the Fourteenth Amendment and the “one person, one vote” principle established by the Supreme Court, since these laws allow faithless electors to subvert the will of the voters in the states they are representing.²⁴ Faithless electors also undermine our

17. Kyle Cheney, *Electoral College Sees Record-Breaking Defections*, POLITICO (Dec. 19, 2016, 8:52 PM), <https://www.politico.com/story/2016/12/electoral-college-electors-232836> [<https://perma.cc/M6YY-APB5>]. The increase in faithless electors in the 2016 presidential election could indicate a rise of faithless electors overall, which is a dangerous trend for our democracy.

18. Lance Lambert, *Faithless Electors Could Decide the Tight 2020 Election*, FORTUNE (Nov. 4, 2020, 3:57 PM), <https://fortune.com/2020/11/04/2020-election-results-faithless-electors-electoral-college-trump-biden-270/> [<https://perma.cc/2Q7U-K6RQ>].

19. See Kuznia, *supra* note 4 (discussing the January 6, 2021 riot at the United States Capitol, perpetrated by people who falsely believed the 2020 presidential election had been stolen from Donald Trump. Although this belief was based on a lie, it shows how dangerous voter unrest and a lack of faith in election results can be.). Rioters stormed the United States Capitol with the goal of overturning the 2020 presidential election results. See Mascaro, Tucker, Jalonick & Taylor, *supra* note 13. A bipartisan Senate report after the attack found that seven people died because of the riot, but two more police officers who had responded to the riot also tragically committed suicide after the report was released. See Chris Cameron, *These Are the People Who Died in Connection with the Capital Riot*, N.Y. TIMES (Jan. 5, 2022), <https://www.nytimes.com/2022/01/05/us/politics/jan-6-capitol-deaths.html> [<https://perma.cc/Y5UL-A7DL>]; see also Zak Hudak, *Two More Officers Who Responded to January 6 Attack Die by Apparent Suicide, Bringing Total to Four*, CBS NEWS (Aug. 3, 2021 7:25 AM), <https://www.cbsnews.com/news/gunther-hashida-kyle-defreytag-suicide-washington-metropolitan-police-january-6-capitol-riot/> [<https://perma.cc/4R5A-P4V5>].

20. *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).

21. *Faithless Elector State Laws*, *supra* note 14.

22. *Chiafalo*, 140 S. Ct. at 2328.

23. *Faithless Elector State Laws*, *supra* note 14.

24. See *Chiafalo*, 140 S. Ct. at 2328 (explaining that when a state enacts elector pledge laws, it is “instruct[ing] its electors that they have no ground for reversing the vote of millions of its citizens”);

democracy and people's faith in our election system.²⁵ As such, each state must enact strict faithless elector laws to ensure that electors vote for their pledged candidates.²⁶

In Part II(A), this Note will first describe the lead up to *Chiafalo*, including a brief history of the electoral college, faithless electors, and state statutes. In Part II(B), this Note will then expand on the *Chiafalo* decision, including the history of faithful voting and the Court choosing to uphold faithless elector laws. In Part IV(A), this Note will then explore the unconstitutionality of faithless electors, detailing how faithless electors violate the Fourteenth Amendment Equal Protection Clause because faithless electors subvert the will of the voters in their states, causing those citizens' votes to count less, which calls for an equal protection analysis. Part IV(A) will also examine the right to vote as a fundamental right, which entitles it to strict scrutiny analysis by the courts.²⁷ This Note will explain how equal protection has been applied to prevent inequality in other voting rights situations including redistricting, discrimination, "one person, one vote," presidential elections, and other state restrictions like poll taxes.²⁸ This will culminate in a proposal to extend Equal Protection to protect voters whose votes ultimately do not count due to faithless electors. Other aspects of the unconstitutionality of faithless electors will also be described, such as the inherent inequality of faithless electors and the argument that the winner-take-all system itself is unconstitutional.²⁹

In Part IV(B), this Note will also explore the current statutory landscape regarding faithless elector laws. It will divide the states' laws into groups depending on what the laws do: whether they bind, punish,

see also *One-Person, One-Vote Rule*, LEGAL INFO. INST., https://www.law.comell.edu/wex/one-person_one-vote_rule (last visited Nov. 2, 2021) [<https://perma.cc/AFQ8-G9V8>] (explaining that "one person, one vote" means that each person's vote in a state should be weighted equally).

25. See Russell Wheeler, *Can the Electoral College be Subverted by "Faithless Electors"?*, THE BROOKINGS INST. (Oct. 21, 2020), <https://www.brookings.edu/blog/fixgov/2020/10/21/can-the-electoral-college-be-subverted-by-faithless-electors/> [<https://perma.cc/HPR2-2X7T>] (explaining how faithless electors could change the outcome of a close election).

26. See *Faithless Elector State Laws*, *supra* note 14.

27. See *Equal Protection and the Right to Vote*, EXPLORING CONST. CONFLICTS, <http://law2.umkc.edu/faculty/projects/frtrial/conlaw/righttovote.html> (last visited Nov. 2, 2021) [<https://perma.cc/CSE7-YE4X>].

28. See *Nixon v. Herndon*, 273 U.S. 536, 541 (1927) (preventing states from denying the right to vote based on race); see also *Bush v. Gore*, 531 U.S. 98, 104 (2000) (applying Equal Protection to voting rights in a presidential election); see also *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("one person, one vote"); see also *Gray v. Sanders*, 372 U.S. 368, 379–80 (1963) ("one person, one vote"); see also *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) ("one person, one vote").

29. See *Frequently Asked Questions*, EQUAL VOTES, <https://equalvotes.us/faqs/> (last visited Jan. 17, 2022) [<https://perma.cc/9QK3-V4KA>].

and/or cancel the votes of faithless electors. It will also detail which states are considering faithless elector legislation, as of this writing. In Parts IV(C) and IV(D), this Note will also consider the history of faithful voting, the view of the majority, and how these aspects factor into issues surrounding faithless electors. Lastly, Part IV(E) will examine the National Popular Vote Interstate Compact (NPVIC), along with the interplay of the NPVIC and faithless elector laws.

This Note will also address counterarguments regarding faithless elector laws, such as the argument that the Electoral College system already inherently causes unequal weighting of votes; that the winner-take-all election system is, itself, unconstitutional; that electors should have discretion in voting; and that states should have discretion in choosing their own laws. Addressing these counterarguments will bolster the validity of elector pledge laws and show the necessity of enacting strict versions of these laws.

II. BACKGROUND

A. *Lead Up to Chiafalo*

1. Electoral College History

Every four years, the President of the United States is chosen through the Electoral College system.³⁰ Although enshrined in the Constitution, the Electoral College system actually came about as an “eleventh-hour compromise.”³¹ Originally, the Constitutional Convention delegates were unable to decide how the president would be selected.³² After referral to a committee, the Electoral College was proposed.³³ This system served, in part, as a compromise between two possible ways of electing the president: a vote in Congress and a popular vote by eligible citizens.³⁴ The Founders subsequently approved Article II, Section 1, Clause 2 of the Constitution, which provided that states would appoint their presidential electors.³⁵ Article II, Section 1, Clause 3 specified that each elector “would cast votes for two candidates in the presidential field.”³⁶ The

30. *Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020); History, *supra* note 1.

31. *Chiafalo*, 140 S. Ct. at 2320.

32. *Id.*

33. *Id.*

34. *What is the Electoral College?*, NAT'L ARCHIVES (Dec. 23, 2019), <https://www.archives.gov/electoral-college/about> [<https://perma.cc/WQ2K-DLYR>].

35. U.S. CONST. art. II, § 1, cl. 2; *Chiafalo*, 140 S. Ct. at 2320.

36. *Chiafalo*, 140 S. Ct. at 2320; U.S. CONST. art. II, § 1, cl. 3.

majority winner would become president, with the person garnering the second most votes becoming vice president.³⁷ However, this process did not work with political parties.³⁸ Therefore, the Twelfth Amendment was enacted to have each elector vote on separate ballots for president and vice president.³⁹

Today, most states use a winner-take-all electoral system, wherein the states appoint electors selected by the political party that won the state's popular vote.⁴⁰ Therefore, if, in a state that uses the winner-take-all system, a Democratic candidate wins the majority of votes, the Democratic party will select all of the electors.⁴¹ The state will then appoint those electors chosen by the Democratic party, who will hopefully vote for the Democratic candidate, assuming none of the electors turn faithless.⁴² And the situation would be the same if a Republican candidate won the majority of votes in a winner-take-all state.⁴³ While most states use a winner-take-all system, two states do not.⁴⁴ Maine and Nebraska use the Congressional District Method for allocating their electoral votes.⁴⁵ In those states, one electoral vote is given to the winner of each congressional district, and two additional electoral votes are given to the winner of the state's popular vote. In most elections, the same candidate wins all of the congressional district electoral votes, along with the two electoral votes for winning the popular vote.⁴⁶ As such, the same candidate usually ends up receiving all of the state's electoral votes, even when the state uses the Congressional District Method.⁴⁷ No matter which system their state uses, when United States citizens vote for a candidate in a presidential election,

37. *Chiafalo*, 140 S. Ct. at 2320; U.S. CONST. art. II, § 1, cl. 3.

38. *Chiafalo*, 140 S. Ct. at 2320 (explaining that the "first contested presidential election occurred in 1796, after George Washington's retirement").

39. *Chiafalo*, 140 S. Ct. at 2321; U.S. CONST. amend. XII.

40. *Chiafalo*, 140 S. Ct. at 2319; see *The Electoral College: How the Electoral College Works Today*, FAIRVOTE https://www.fairvote.org/the_electoral_college#how_the_electoral_college_works_today (last visited Feb. 25, 2022) [<https://perma.cc/W6SQ-VTFZ>].

41. See *The Electoral College: How the Electoral College Works Today*, *supra* note 40.

42. See *id.*

43. See *id.*

44. See *id.*

45. See *The Electoral College: Maine and Nebraska*, FAIRVOTE https://www.fairvote.org/the_electoral_college#maine_nebraska (last visited Feb. 25, 2022) [<https://perma.cc/LD9H-9VHE>].

46. See *id.* (explaining that, since Maine and Nebraska began using the Congressional District Method, the winner of the state's popular vote has also won in every congressional district, in each presidential election except for the 2008 and 2016 elections. In the 2008 election, John McCain won four electoral votes in Nebraska, while Barack Obama won the electoral vote in one of Nebraska's congressional districts. Similarly, in the 2016 election, Hillary Clinton won three of Maine's electoral votes, while Donald Trump won the electoral vote in one of Maine's congressional districts).

47. See *id.*

they are actually voting for electors who promise to vote for the chosen candidate in the Electoral College.⁴⁸

Today, once each state's electors are selected, they meet and vote for president and vice president, typically based on the general election results in their state.⁴⁹ Their votes are then counted by Congress.⁵⁰ There are 538 electors in the Electoral College, and a majority of 270 is needed to win the presidency.⁵¹ Each state has a number of electors equal to the number of that state's Senators and representatives in the House of Representatives.⁵² The District of Columbia also has three electors.⁵³ If no presidential candidate receives the 270 votes needed to win the election, the House of Representatives chooses the president, and the Senate chooses the vice president.⁵⁴

2. Electoral College Controversy

The Electoral College has become a frequently debated topic.⁵⁵ There have been hundreds of proposals brought in Congress about Electoral College reform or abolition.⁵⁶ These proposals outnumber Constitutional amendment proposals for anything else.⁵⁷ Proponents for reforming or abolishing the Electoral College argue, in part, that “swing states” have too much power under the Electoral College and can basically decide the presidency on their own.⁵⁸ “Swing states” receive significantly more attention from candidates during elections.⁵⁹ This violates the “one

48. History, *supra* note 1; Chiafalo v. Washington, 140 S. Ct. 2316, 2319 (2020).

49. *What is the Electoral College?*, *supra* note 34.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Presidential Election Process*, USAGOV (July 28, 2021), <https://www.usa.gov/election> [<https://perma.cc/5MFW-CC3A>].

55. See *Electoral College History*, THE U.S. NAT'L ARCHIVES & RECS. ADMIN. (Dec. 17, 2019), <https://www.archives.gov/electoral-college/history#whyec> [<https://perma.cc/48HD-82EQ>]; see also ProCon.org, *The Electoral College: Top 3 Pros and Cons*, PROCON.ORG (Jan. 9, 2021), <https://www.procon.org/headlines/the-electoral-college-top-3-pros-and-cons/> [<https://perma.cc/H76Q-6FS4>].

56. *Electoral College History*, *supra* note 55.

57. *Id.*

58. Sage Ann Schneider, *Outgrowing the Electoral College*, PURDUE POL'Y RSCH. INST. BLOG (Dec. 1, 2020), <https://www.purdue.edu/discoverypark/ppri/blog/outgrowing-the-electoral-college/> [<https://perma.cc/9MPA-STRY>]; ProCon.org, *supra* note 55; Christopher Pearson, *Winner-Take-All Ignores the Will of Too Many Voters*, NCSL STATE LEGISLATURES MAG. (Mar./Apr. 2020), <https://www.ncsl.org/research/elections-and-campaigns/debating-the-electoral-college.aspx> [<https://perma.cc/34Y5-496L>].

59. Schneider, *supra* note 58; ProCon.org, *supra* note 55; Pearson, *supra* note 58.

person, one vote” constitutional principle because people’s votes count more depending on where they live.⁶⁰

The Electoral College also subverts the will of the people because the popular vote winner does not always win the Electoral College, which some see as illegitimate.⁶¹ Specifically, a candidate who lost the popular vote has become president because of the Electoral College five times.⁶² The first occurred in 1824, when John Quincy Adams became president after losing both the popular and electoral votes.⁶³ This occurred because no candidate won a majority of the electoral votes for the presidency in that election.⁶⁴ Thus, the House of Representatives voted for the president and chose Adams.⁶⁵ The next occurred in 1876, when Rutherford B. Hayes was chosen as president by Congress, again after losing both the popular and electoral votes.⁶⁶ More specifically, when neither Republican candidate Rutherford B. Hayes nor Democratic candidate Samuel Tilden received the requisite number of electoral votes, Congress created a bipartisan Federal Electoral Commission which voted to make Hayes president.⁶⁷ In 1888, Benjamin Harrison became president after losing the popular vote by over 90,000 votes but still winning the electoral vote.⁶⁸ More recently, in 2000, George W. Bush became president by winning the Electoral College by five votes, even after losing the popular vote by over 500,000 votes.⁶⁹ And, in 2016, Donald Trump became president after losing the popular vote by 2.8 million votes, a significantly larger gap than in previous years, although he won the Electoral College by a more significant margin, 304 electoral votes to 227.⁷⁰ Overall, the Equal Votes group estimates that, in every presidential election, there is approximately a 20% chance that a minority candidate, one who did not win the popular vote, will win the presidency.⁷¹

60. Jesse Wegman, *Can We Please Pick the President by Popular Vote Now?*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/07/06/opinion/supreme-court-electoral-college-faithless.html> [https://perma.cc/GJ4S-XECG].

61. Schneider, *supra* note 58; ProCon.org, *supra* note 55; Pearson, *supra* note 58.

62. Dave Roos, *5 Presidents Who Lost the Popular Vote but Won the Election*, HIST. (Nov. 2, 2020), <https://www.history.com/news/presidents-electoral-college-popular-vote> [https://perma.cc/7JSR-4L9A].

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Frequently Asked Questions*, *supra* note 29.

Proponents of the Electoral College argue that it was established in the Constitution by the Founding Fathers, who thought it was the best choice for selecting a president and, therefore, it should remain in place.⁷² Conversely, others argue that society has changed and the Founding Fathers' arguments for choosing the Electoral College no longer apply, making the Electoral College a "relic."⁷³ Proponents of the Electoral College argue that the system causes all states and areas in the United States to be a part of choosing the president, rather than the focus being only on big cities.⁷⁴ The Electoral College also ensures that there is a clear winner of the presidential election, whereas, if there was a popular vote system in place instead, someone could win the popular vote without getting an overall majority of the votes.⁷⁵

3. Uniqueness of the Electoral College

Although established centuries ago, the Electoral College system remains unique. There are 40 countries, other than the United States, with democracies that have a president with both "real and symbolic power,"⁷⁶ which means that the president fills two roles: the "head of government" and a more ceremonial role as the "personification of the nation."⁷⁷ Yet, in 33 of those countries, the president is directly elected by the people.⁷⁸ And, in 22, there must be a popular vote majority.⁷⁹ Overall, there are 125 electoral democracies in the world, but the United States' Electoral College system is the only system where citizens vote for electors who then vote for a president.⁸⁰ This makes the United States' system the only

72. Trent England, *Current System Keeps States in Charge of Our Elections*, NCSL STATE LEGISLATURES MAG. (Mar./Apr. 2020), <https://www.ncsl.org/research/elections-and-campaigns/debating-the-electoral-college.aspx> [https://perma.cc/34Y5-496L]; ProCon.org, *supra* note 55.

73. Schneider, *supra* note 58; ProCon.org, *supra* note 55.

74. England, *supra* note 72; ProCon.org, *supra* note 55.

75. ProCon.org, *supra* note 55.

While there are valid arguments on both sides of the Electoral College debate, there seems to be more merit to arguments against the Electoral College. It appears the Electoral College has become outdated, and no longer serves the purposes it once did. Furthermore, the Electoral College system, and specifically the risk that a candidate who lost the popular vote in the country can become president under this system, seems to have the potential to lead to voter disenchantment with the political system and voting.

76. Schneider, *supra* note 58.

77. See Drew DeSilver, *Among Democracies, U.S. Stands Out in How It Chooses Its Head of State*, PEW RSCH. CTR. (Nov. 22, 2016), <https://www.pewresearch.org/fact-tank/2016/11/22/among-democracies-u-s-stands-out-in-how-it-chooses-its-head-of-state/> [https://perma.cc/6U28-M7BX].

78. Schneider, *supra* note 58.

79. Schneider, *supra* note 58.

80. Schneider, *supra* note 58.

democratic system in the world where the head of state is indirectly elected in that manner.⁸¹

4. History of Faithless Electors

An Electoral College elector becomes faithless when the elector “votes in the electoral college for a candidate other than the one who won the popular vote in the elector’s state.”⁸² This means faithless electors do not cast votes for their party’s nominee.⁸³ As of this writing, there have been faithless electors in 14 presidential elections.⁸⁴ The first occurred in the 1796 election, and the most recent faithless electors were in the 2016 election.⁸⁵ There have been over 150 faithless votes cast throughout history for president or vice president, and Congress has counted each faithless vote.⁸⁶ Some electors voted faithlessly because their party’s nominee had died, while others voted for different candidates.⁸⁷ A few faithless votes were also due to an accident, an abstention, or an abnormal vote, where the elector swapped the presidential and vice presidential nominees.⁸⁸ Only one faithless elector has voted for their candidate’s opponent.⁸⁹ Although faithless electors have yet to change the results of an election, in a close race, faithless electors could potentially impact the outcome.⁹⁰ Electors might want to change the outcome of an election if they believe the election was “stolen”⁹¹ or that the candidate who won the popular vote should not be president.⁹²

81. V. Lance Tarrance, *America’s Unique and Controversial Electoral College*, GALLUP (Nov. 7, 2016), <https://news.gallup.com/opinion/polling-matters/197228/america-unique-controversial-electoral-college.aspx> [<https://perma.cc/5YH7-SZUA>].

82. *Faithless elector*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/f%20faithless%20elector> (last visited Oct. 19, 2021) [<https://perma.cc/379F-E5TC>].

83. *Faithless Electors*, FAIRVOTE (Dec. 15, 2020), https://www.fairvote.org/faithless_electors [<https://perma.cc/S2M8-GPEP>].

84. *Id.*

85. *Id.*

86. *Id.*; *Chiafalo v. Washington*, 140 S. Ct. 2316, 2328 (2020).

87. *Faithless Electors*, *supra* note 83; *Chiafalo*, 140 S. Ct. at 2328.

88. *Faithless Electors*, *supra* note 83.

89. *See id.* (explaining how in the 1796 presidential election between John Adams and Thomas Jefferson an elector in Pennsylvania had promised to vote for Adams but ended up voting for Jefferson).

90. Wheeler, *supra* note 25.

91. *See* Tovia Smith, *They Believe in Trump’s ‘Big Lie.’ Here’s Why It’s Been So Hard to Dispel*, NPR (Jan. 5, 2022, 4:13 PM), <https://www.npr.org/2022/01/05/1070362852/trump-big-lie-election-jan-6-families> [<https://perma.cc/TP3N-VU9G>] (explaining how two-thirds of Republican voters and about one-third of all voters believe that the 2020 presidential election was stolen from Donald Trump).

92. *See Chiafalo*, 140 S. Ct. at 2322 (explaining that in the 2016 presidential election, three electors that were pledged to vote for Hillary Clinton decided to vote for someone else hoping that

5. States Enact Statutes to Prevent Faithless Electors

Throughout the 20th century, states began to enact elector pledge laws to prevent faithless voting.⁹³ As of this writing, 34 states and the District of Columbia have such laws.⁹⁴ The purpose of these laws, in most states, is to ensure that electors vote for the presidential candidate who won the majority of votes in that state.⁹⁵ Maine and Nebraska are the only states that do not use a winner-take-all system for presidential electors.⁹⁶ Sixty years before the *Chiafalo* decision, some states began to include penalties for faithless electors in their laws.⁹⁷ At the time *Chiafalo* was decided, 15 states had penalties for faithless electors.⁹⁸

6. Faithless Elector Statutes are Challenged

A challenge to elector pledge laws first came to the Supreme Court in *Ray v. Blair*.⁹⁹ In *Ray*, the chairman of Alabama's Executive Committee of the Democratic Party refused to certify Edmund Blair as a candidate for Presidential Elector in the Democratic Primary because Blair refused to pledge to "aid and support 'the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States.'"¹⁰⁰ The Supreme Court upheld the pledge requirement.¹⁰¹ However, the pledge requirement in *Ray* did not include a penalty, so the Court did not address whether a pledge could be enforced by penalty.¹⁰²

The unanswered question in *Ray* was revisited in two cases: *Chiafalo v. Washington* and *Colorado Department of State v. Baca*.¹⁰³ In *Chiafalo* and *Baca*, electors in Washington and Colorado, respectively, were challenging elector pledge laws that required them to vote for the popular vote winner in their states and penalized them for breaking their pledge.¹⁰⁴

they could convince enough of Donald Trump's electors to do the same and prevent him from winning a majority of electoral votes).

93. *Id.* at 2321.

94. *Faithless Elector State Laws*, *supra* note 14.

95. *Chiafalo*, 140 S. Ct. at 2321–22.

96. *Id.* at 2321; History, *supra* note 1; Wheeler, *supra* note 25.

97. *Chiafalo*, 140 S. Ct. at 2322.

98. *Id.*

99. *Ray v. Blair*, 343 U.S. 214 (1952).

100. *Id.* at 215.

101. *Id.* at 231.

102. *Chiafalo*, 140 S. Ct. at 2323.

103. See David K. TeSelle, *Review of Chiafalo and Baca: The "Faithless Electors" Supreme Court Cases*, NAT'L L. REV. (July 16, 2020), <https://www.natlawreview.com/article/review-chiafalo-and-baca-faithless-electors-supreme-court-cases> [https://perma.cc/36JG-TVZD].

104. *Id.*; *Chiafalo*, 140 S. Ct. at 2322–23.

The electors argued that they should have discretion in voting.¹⁰⁵ The lower courts in *Chiafalo* and *Baca* ruled differently on the issue of faithless electors, so the Supreme Court heard a combined case to resolve the split.¹⁰⁶ The Court rendered its full opinion in *Chiafalo* and adopted the same reasoning in *Baca*.¹⁰⁷

B. *Chiafalo* Decision

In a unanimous decision in *Chiafalo*, the Supreme Court upheld faithless elector pledge laws and ruled that those laws could be enforced with penalties.¹⁰⁸ The Court reaffirmed that states have broad power over their electors, including the power to require electors to pledge to vote for their party's presidential candidate and to penalize electors for not doing so.¹⁰⁹ Electors do not need to be given discretion, and the Constitution "give[s] electors themselves no rights."¹¹⁰ Citing back to *Ray*, the Court indicated that history supports the assertion that electors are meant to vote for their pledged candidates.¹¹¹ This has been the accepted practice throughout history, with few exceptions.¹¹² The Court held that "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."¹¹³

In addition, during oral arguments, some of the justices discussed the chance that faithless electors could disenfranchise voters and cause chaos, if they are not prevented from voting at their discretion.¹¹⁴

Overall, since its inception, the Electoral College has become embroiled in controversy,¹¹⁵ and it remains unique among electoral democracies.¹¹⁶ Through the Electoral College system, citizens vote for electors who then vote for the president.¹¹⁷ Electors become faithless when they do not vote for the candidate that they were pledged to vote

105. TeSelle, *supra* note 103.

106. *Chiafalo*, 140 S. Ct. at 2322–23.

107. TeSelle, *supra* note 103; *Colo. Dep't of State v. Baca*, 140 S. Ct. 2316 (2020).

108. *Chiafalo*, 140 S. Ct. at 2323.

109. *Id.* at 2324.

110. *Id.* at 2328.

111. *Id.* at 2323, 2328 (citing *Ray v. Blair*, 343 U.S. 214, 228–30 (1952)).

112. *Id.* (citing *Ray*, 343 U.S. at 228–30).

113. *Id.* at 2323–24.

114. Amy Howe, *Opinion Analysis: Court Upholds "Faithless Elector" Laws*, SCOTUSBLOG (July 6, 2020, 1:43 PM), <https://www.scotusblog.com/2020/07/opinion-analysis-court-upholds-faithless-elector-laws/> [<https://perma.cc/AH9N-BPVC>].

115. See ProCon.org, *supra* note 55.

116. See Schneider, *supra* note 58; see also Tarrance, *supra* note 81.

117. History, *supra* note 1; *Chiafalo*, 140 S. Ct. at 2319.

for.¹¹⁸ There has been a history of faithless electors throughout past and more recent elections.¹¹⁹ As a result, states began to enact elector pledge laws to prevent faithless electors.¹²⁰ Eventually challenges to these laws reached the Supreme Court, which upheld their validity.¹²¹

III. STATEMENT OF THE ISSUE

In *Chiafalo*, the Supreme Court opened the door for states to enact strict faithless elector laws.¹²² However, many states have yet to walk through the door, by failing to enact laws to prevent faithless electors and protect their voters.¹²³ Other states have not gone far enough, by using laws that do not cancel faithless votes or remove or punish faithless electors.¹²⁴ The states' failure to enact sufficiently strict laws is unconstitutional under the Fourteenth Amendment Equal Protection Clause¹²⁵ because electors can subvert the will of the voters in their state, thus, those citizens' votes count less than other citizens' votes.¹²⁶ It is also blatantly unfair, as there is inherent inequality in the idea that faithless electors can control the outcome of elections, against the will of most Americans.¹²⁷ To combat this issue, states should enact legislation preventing faithless electors, by requiring strict pledges from electors and providing for the removal and punishment of electors who vote faithlessly.¹²⁸ Failing to do so could have disastrous consequences because low voter turnout can be tied to factors such as lacking confidence "that election results reflect[] the will of voters."¹²⁹

118. *Faithless elector*, *supra* note 82.

119. See *Faithless Electors*, *supra* note 83.

120. See *Chiafalo*, 140 S. Ct. at 2321.

121. *Id.* at 2323.

122. *Id.* at 2328.

123. *Faithless Elector State Laws*, *supra* note 14.

124. *Faithless Elector State Laws*, *supra* note 14.

125. U.S. CONST. amend. XIV, § 1.

126. See *Chiafalo*, 140 S. Ct. at 2328 (explaining that when a state enacts elector pledge laws, it is "instruct[ing] its electors that they have no ground for reversing the vote of millions of its citizens").

127. See Lambert, *supra* note 18.

128. See *Faithless Elector State Laws*, *supra* note 14.

129. See Hauwa Ahmed, *How the Biden Administration Can Tackle America's Voter Turnout Problem*, CTR. FOR AM. PROGRESS (Mar. 16, 2021), <https://www.americanprogress.org/article/biden-administration-can-tackle-americas-voter-turnout-problem/> [https://perma.cc/YV9N-BE87].

IV. ANALYSIS

A. *Unconstitutionality of Faithless Electors*

Although the Supreme Court seemingly expressed disdain for faithless electors in *Chiafalo*,¹³⁰ the Court did not go far enough in preventing faithless electors, considering the danger they pose to citizens' rights to vote and their ability to undermine the legitimacy of the United States' democracy.¹³¹ State laws that do not prevent faithless electors are unconstitutional under the Fourteenth Amendment Equal Protection Clause because electors can subvert the will of voters in their states, and, thus, those citizens' votes count less than other citizens' votes.¹³²

1. Right to Vote as a Fundamental Right

The right to vote is a fundamental right¹³³ protected by more sections of the Constitution than any other right.¹³⁴ It is fundamental to the United States' democratic process.¹³⁵ Beyond the Constitutional amendments regarding voting rights, the Supreme Court has also acknowledged the right to vote as "fundamental" and "protected" by the Equal Protection Clause.¹³⁶

Nevertheless, voting rights have a shaky past in the United States.¹³⁷ When enacted, the Constitution did not include a clear right to vote.¹³⁸ Voting rights were originally limited, with women and people of color being unable to vote.¹³⁹ It took until 1870, with the passage of the

130. See *Chiafalo*, 140 S. Ct. at 2328 (holding that electors are given no constitutional rights, are agents of others, and that State pledge laws "instruct electors that they have no ground for reversing the vote of millions of its citizens," which accords with the Constitution).

131. See Wheeler, *supra* note 25 (explaining how faithless electors could change the outcome of a close election).

132. See *Chiafalo*, 140 S. Ct. at 2328 (explaining that when a state enacts elector pledge laws, it is "instruct[ing] its electors that they have no ground for reversing the vote of millions of its citizens").

133. See *Bush*, 531 U.S. at 104; see also *Equal Protection and the Right to Vote*, *supra* note 27.

134. See David H. Gans, *OP-ED: How the Right to Vote Became Fundamental*, CONST. ACCOUNTABILITY CTR. (Aug. 26, 2020), <https://www.theconstitution.org/news/op-ed-how-the-right-to-vote-became-fundamental/> [<https://perma.cc/J3GF-SJ6F>] (explaining that the right to vote is protected by the fourteenth amendment, fifteenth amendment, nineteenth amendment, twenty-fourth amendment, and twenty-sixth amendment).

135. See Angelys Torres McBride, *The Evolution of Voting Rights in America*, NAT'L CONST. CTR. (May 27, 2021), <https://constitutioncenter.org/blog/the-evolution-of-voting-rights-in-america> [<https://perma.cc/E8TT-BTXM>].

136. See ERWIN CHERMERINSKY, CONSTITUTIONAL LAW 1053 (Rachel E. Barkow et al. eds., 6th ed. 2020).

137. See Torres McBride, *supra* note 135.

138. See *id.*

139. See *id.*

Fifteenth Amendment, for the Constitution to include a provision that the right to vote could not be denied based on race.¹⁴⁰ And, it was not until the Nineteenth Amendment was enacted that women had the right to vote.¹⁴¹ Over time, through Constitutional amendment and federal enactment, the right to vote has evolved and been expanded to include more people.¹⁴²

The right to vote is still being challenged across the country.¹⁴³ For example, in one year from 2011 to 2012, 19 states passed 27 laws that made it more difficult for citizens to vote.¹⁴⁴ More recently, after the insurrection on the United States Capitol, over 160 bills were introduced in states that would curb citizens' ability to vote.¹⁴⁵ Currently, voter suppression is still occurring in different ways, including "additional obstacles to registration, cutbacks on early voting, and strict voter identification requirements,"¹⁴⁶ along with limits on mail voting and purging of voter rolls.¹⁴⁷

A majority of Americans—57%—believe that voting is a fundamental right for all adult citizens and should not be restricted.¹⁴⁸ This can be a partisan issue though, with Democrats more likely to classify the right to vote as a fundamental right and Republicans more likely to see voting as a privilege.¹⁴⁹ Nevertheless, there seems to be partisan agreement that all qualified citizens should be allowed to vote.¹⁵⁰

2. Fourteenth Amendment Equal Protection Clause

The Fourteenth Amendment to the United States Constitution provides each citizen with equal protection of the law.¹⁵¹ It states, "nor

140. *See id.*

141. *See id.*

142. *See id.*

143. *See Voting Rights*, ACLU, <https://www.aclu.org/issues/voting-rights> (last visited Feb. 25, 2022) [<https://perma.cc/WLA8-H2TN>]; *see also* Eliza Sweren-Becker & Hannah Klain, *The Fight for Voting Rights in 2021*, BRENNAN CTR FOR JUST. (Feb. 24, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/fight-voting-rights-2021> [<https://perma.cc/958N-ALYB>].

144. *See Voting Rights*, *supra* note 143.

145. *See Sweren-Becker & Klain*, *supra* note 143.

146. *See Voting Rights*, *supra* note 143.

147. *See Sweren-Becker & Klain*, *supra* note 143.

148. Vianney Gómez & Carroll Doherty, *Wide Partisan Divide on Whether Voting is a Fundamental Right or a Privilege with Responsibilities*, PEW RSCH. CTR. (July 22, 2021), <https://www.pewresearch.org/fact-tank/2021/07/22/wide-partisan-divide-on-whether-voting-is-a-fundamental-right-or-a-privilege-with-responsibilities/> [<https://perma.cc/W62A-QR96>].

149. *See id.*

150. *See id.*

151. U.S. CONST. amend. XIV, § 1.

shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”¹⁵² Essentially, the government cannot treat people differently than others in similar circumstances.¹⁵³ To prevail on an equal protection claim, a person needs to show that the government discriminated against the person and that the person suffered an actual harm.¹⁵⁴ The government’s action will then be subject to one of three levels of scrutiny: rational basis, intermediate, or strict.¹⁵⁵

Rational basis scrutiny is the lowest possible level of scrutiny for an equal protection claim.¹⁵⁶ To pass rational basis scrutiny, the law must be “rationally related to a legitimate government purpose.”¹⁵⁷ Intermediate scrutiny requires a law to be “substantially related to an important government purpose” and is used for discrimination cases involving issues like gender or nonmarital children.¹⁵⁸ If the case involves a fundamental right—like the right to vote—the court will typically use a higher level of scrutiny.¹⁵⁹ A law will only pass strict scrutiny analysis if the legislature passed the law to further a “compelling governmental interest” and if the law is narrowly tailored to achieve that interest.¹⁶⁰ As such, many laws fail under strict scrutiny analysis.¹⁶¹ Because the right to vote has been undoubtedly acknowledged as a fundamental right by the Supreme Court, all laws affecting that right must pass strict scrutiny analysis.¹⁶²

3. Equal Protection as Applied in Other Voting Rights Situations

Throughout history, the Supreme Court has applied the Fourteenth Amendment Equal Protection Clause to remedy inequality in many voting rights situations.¹⁶³

152. *Id.*

153. *See Equal Protection*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/equal_protection (last visited Nov. 2, 2021) [<https://perma.cc/Q2XY-N3U5>].

154. *See id.*

155. *See id.*

156. *See* CHEMERINSKY, *supra* note 136, at 686.

157. *See id.*

158. *See id.* at 685.

159. *See Equal Protection and the Right to Vote*, *supra* note 27.

160. *See Strict Scrutiny*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny (last visited Nov. 15, 2021) [<https://perma.cc/75G7-PNJU>].

161. *See* CHEMERINSKY, *supra* note 136, at 685.

162. *See id.* at 1054.

163. *See* *Nixon v. Herndon*, 273 U.S. 536, 541 (1927) (preventing states from denying the right to vote based on race); *see also* *Bush v. Gore*, 531 U.S. 98, 104 (2000) (applying Equal Protection to voting rights in a presidential election); *see also* *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“one

First, in *Nixon v. Herndon*, the Court held that the Fourteenth Amendment prevented states from denying the right to vote based on race.¹⁶⁴ The Court also rejected the idea that it could not hear the case because the subject matter was political.¹⁶⁵ In *Baker v. Carr*, the Court held that the Fourteenth Amendment applied to redistricting and, again, rejected the idea that the political question doctrine barred the case.¹⁶⁶ The Court has also struck down other state restrictions on voting rights, including poll taxes,¹⁶⁷ on the basis of the Fourteenth Amendment.

More recently, the Court dealt with equal protection in the context of presidential elections in *Bush v. Gore*.¹⁶⁸ This case involved the extraordinarily close results of the presidential election in Florida between George W. Bush and Albert Gore Jr. and a challenge to the election procedures and vote recount that was occurring at the time.¹⁶⁹ The Court explained that states have the power to choose a statewide election for appointing electors to the Electoral College.¹⁷⁰ At first, state legislatures chose the electors for their respective states.¹⁷¹ However, this is no longer the case, as each state's citizens themselves now vote for electors.¹⁷² By choosing a statewide election, states have given their citizens the right to vote for electors.¹⁷³ The Court indicated that, "when the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter."¹⁷⁴ As such, each person's vote should be counted and not disregarded by a faithless elector. In addition, equal

person, one vote"); *see also* *Gray v. Sanders*, 372 U.S. 368, 379–80 (1963) ("one person, one vote"); *see also* *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) ("one person, one vote").

164. *See Nixon*, 273 U.S. at 541.

165. *See id.* at 540.

166. *See Baker v. Carr*, 369 U.S. 186, 198, 228, 237 (1962); *see Political Question Doctrine*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/political_question_doctrine (last visited Nov. 15, 2021) [<https://perma.cc/E38T-Q732>] (explaining that the political question doctrine encompasses the idea that federal courts will refuse to hear cases that present political questions because the judiciary is supposed to be apolitical).

167. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966) (holding that states making the "affluence of the voter or payment of any fee an electoral standard" violates the Fourteenth Amendment Equal Protection Clause); *but see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 185, 204 (2008) (upholding a state statute requiring voters to show government issued photo identification to vote).

168. *See Bush*, 531 U.S. at 103.

169. *See id.* at 100–03.

170. *Id.* at 104.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

protection also applies to the way states provide their citizens with the right to vote.¹⁷⁵ After a state gives its citizens the right to vote equally, the state cannot then value one person's vote more than another through "arbitrary and disparate treatment."¹⁷⁶

"One person, one vote" is another voting rights principle that comes from equal protection.¹⁷⁷ It is the idea that each person's vote in a state should be weighted equally.¹⁷⁸ The Supreme Court has expressed this principle in several Supreme Court cases.¹⁷⁹ Specifically, in *Gray v. Sanders*, the Court held that the idea of equality among voters when choosing a candidate was the basis of many Supreme Court decisions.¹⁸⁰ If electors can subvert the will of the states' voters by voting faithlessly, this principle is destroyed.¹⁸¹ When a state has faithless elector(s), voters who voted for the candidate that the faithless elector(s) refused to vote for then have votes that count less than other people's votes in the state.¹⁸²

However, reconciling the idea of "one person, one vote" with the unequal weighting of votes inherent in the Electoral College can be difficult. In the Electoral College system, the weight of people's votes depends on how many Electoral College votes their state has, even if electors are faithful.¹⁸³ In *Gray*, the Court stated that "one person, one vote" is not applicable in the federal system.¹⁸⁴ The Court held that the Electoral College is different from state systems because it was "explicitly provided for in the Constitution, which 'validated the collegiate principle despite its inherent numerical inequality.'"¹⁸⁵

The Supreme Court should extend Equal Protection to another area of voting rights—faithless electors. This would protect citizens' votes and

175. *Id.*

176. *Id.* at 104–05.

177. See *One-Person, One-Vote Rule*, *supra* note 24.

178. See *id.*

179. See *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); see also *Gray v. Sanders*, 372 U.S. 368, 379–80 (1963); see also *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

180. See *Gray*, 372 U.S. at 371, 379–80 (involving a challenge to Georgia's county unit system, which caused votes in urban areas to count less than votes in rural areas and votes in some smaller rural areas to count more than votes in larger rural areas).

181. See *id.*

182. See *id.*

183. See *Gray*, 372 U.S. at 378; see also *The Electoral College: Population vs. Electoral Votes*, FAIRVOTE, https://www.fairvote.org/the_electoral_college#population_vs_electoral_votes (last visited Nov. 16, 2021) [<https://perma.cc/A34U-VF6A>]; see also *Problems with the Electoral College*, FAIRVOTE, <https://archive3.fairvote.org/reforms/national-popular-vote/the-electoral-college/problems-with-the-electoral-college/> (last visited Nov. 16, 2021) [<https://perma.cc/FXX8-GVPB>].

184. Matthew J. Festa, *The Origins and Constitutionality of State Unit Voting in the Electoral College*, 54 VAND. L. REV. 2099, 2137–38 (2001); see *Gray*, 372 U.S. at 378.

185. Festa, *supra* note 184; see *Gray*, 372 U.S. at 378.

ensure that the “one person, one vote” principle is maintained in each state.

4. Inherent Inequality of Faithless Electors

Depending on where a person lives, their vote might not matter if their state does not have a law to protect against faithless electors.¹⁸⁶ As such, there is inherent inequality in faithless electors being able to discount citizens’ votes in certain states, depending on where the citizens live and what the laws are in those states.¹⁸⁷ For example, if a person lives in Oklahoma, which has a strict faithless elector law that cancels the votes of, replaces, and punishes faithless electors, then a faithless elector will be unable to discount that person’s vote.¹⁸⁸ Whereas if a person lives in Pennsylvania, which does not have a faithless elector law, their vote can easily be ignored by faithless electors.¹⁸⁹ In addition, it is unfair that faithless electors have the power to potentially swing an election against the will of voters.¹⁹⁰

5. Argument that Winner-Take-All is Unconstitutional

In our current election system, all but two states use a winner-take-all process, where the winner of the state’s popular vote receives all of the state’s Electoral College votes.¹⁹¹ Some argue that the winner-take-all allocation of Electoral College votes violates equal protection because, under this system, the votes of the people who vote for a candidate other than the majority winner in the state do not count equally with other people’s votes.¹⁹² Therefore, this violates the “one person, one vote” principle.¹⁹³ Under “one person, one vote,” each citizen’s vote is supposed to be weighted equally, but winner-take-all defies that because the votes for candidates who do not win the popular vote are ignored.¹⁹⁴ Another problem with the winner-take-all system is that this system causes elections to focus on “battleground” states, rather than the entire country.¹⁹⁵

186. See *Faithless Elector State Laws*, *supra* note 14.

187. See *id.* (explaining what happens to the votes cast by faithless electors in each state).

188. *Faithless Elector State Laws*, *supra* note 14.

189. *Faithless Elector State Laws*, *supra* note 14.

190. See Lambert, *supra* note 18.

191. *Frequently Asked Questions*, *supra* note 29.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

Equal Votes is a crowdfunded movement that attempts to legally challenge the winner-take-all system.¹⁹⁶ The Equal Votes movement identifies voters disenfranchised by the winner-take-all movement and hopes to argue in court those voters' claims that their equal protection rights have been violated by the winner-take-all system.¹⁹⁷

Similarly, faithless electors violate equal protection because, when an elector votes faithlessly, the people's votes for the candidate that the elector refused to vote for did not count equally with other votes. If people have become disenchanted by the winner-take-all system discounting their votes,¹⁹⁸ it is likely they will become disenchanted by faithless electors being able to discount their votes in a similar manner, which could lead to even lower voter turnout.¹⁹⁹

6. Electors Should Have Discretion in Voting

A main argument for allowing faithless electors is that electors should have discretion and should be allowed to vote for whomever they choose.²⁰⁰ While this argument was rejected by the Supreme Court in *Chiafalo*, it is still a popular perspective among some voters.²⁰¹ And it is an important viewpoint because people who believe that electors should have discretion to vote faithlessly would likely also argue that states should have discretion and not be forced to enact faithless elector laws, since those laws are not mandated right now. However, like the Court pointed out in *Chiafalo*, elector discretion should not outweigh the opinions of millions of other voters, since electors act as "agents of others."²⁰²

B. *State Faithless Elector Laws*

The current landscape of state faithless elector laws can be split into different categories, depending on what the law does. The current laws either bind electors to vote for pledged candidates, punish electors who fail to do so, cancel the votes of electors who vote faithlessly, remove

196. *Id.*

197. *Id.*

198. *Id.*

199. See Ahmed, *supra* note 129 (explaining that some nonvoters are "not confident that election results reflect[] the will of voters and thus ha[ve] doubts about the impact of their votes").

200. *Chiafalo v. Washington*, 140 S. Ct. 2316, 2325 (2020).

201. *Id.*

202. *Id.* at 2328.

faithless electors from their positions, or some combination of the preceding.²⁰³

1. States Without Faithless Elector Laws

Although the Supreme Court made clear in *Chiafalo* that states could enact faithless elector pledge laws and enforce those laws with penalties, many states have yet to do so.²⁰⁴ As of this writing, there are 16 states that do not have faithless elector laws: Idaho, South Dakota, Kansas, Texas, Missouri, Arkansas, Louisiana, Illinois, Kentucky, Georgia, West Virginia, Pennsylvania, New Jersey, New York, Rhode Island, and New Hampshire.²⁰⁵ Therefore, citizens' votes in these states are in jeopardy of not being counted due to faithless electors.²⁰⁶ This occurred in the 2016 presidential election, when two Republican electors from Texas did not vote for Donald Trump.²⁰⁷ A third Texas Republican elector withdrew before voting and was replaced.²⁰⁸

2. States with Laws that Only Bind Faithless Electors and Do Not Punish or Cancel the Votes of Faithless Electors

There are 16 states (and the District of Columbia) with faithless elector laws that bind electors but fail to punish or cancel the votes of faithless electors: Alabama, Alaska, Connecticut, Delaware, Florida, Hawaii, Maryland, Massachusetts, Mississippi, Ohio, Oregon, Tennessee, Vermont, Virginia, Wisconsin, and Wyoming.²⁰⁹ In these states, faithless electors' votes are counted, and faithless electors are not sanctioned in any way for voting faithlessly.²¹⁰ As such, there is no deterrent to voting faithlessly. For example, in the 2016 presidential election, a Democratic elector from Hawaii voted faithlessly, casting a vote for Bernie Sanders over Hillary Clinton.²¹¹

203. See *Faithless Elector State Laws*, *supra* note 14.

204. *Chiafalo*, 140 S. Ct. at 2328.

205. *Faithless Elector State Laws*, *supra* note 14.

206. See *Faithless Elector State Laws*, *supra* note 14.

207. See *Faithless Electors*, *supra* note 83 (explaining that one Republican elector voted for John Kasich and the other voted for Ron Paul).

208. *Id.*

209. *Faithless Elector State Laws*, *supra* note 14.

210. *Id.*

211. *Faithless Electors*, *supra* note 83.

3. States with Laws that Bind and Only Punish Faithless Electors and Do Not Cancel Their Votes

There are three states that punish faithless electors, but fail to cancel their votes: California, New Mexico, and South Carolina.²¹² The penalties in these states include: a fine of up to \$1,000, imprisonment for 16 months or 2 or 3 years, or both (California),²¹³ a 4th degree felony conviction (New Mexico),²¹⁴ and a criminal conviction (South Carolina).²¹⁵ While these states have pledge laws and provide for faithless electors to be punished, those faithless electors' votes still count as cast.²¹⁶ As such, the citizens' votes that the faithless electors represent are not counted equally with other citizens' votes.

4. States with Laws that Bind and Only Cancel the Votes of Faithless Electors and Do Not Punish Them

There are 12 states that cancel the votes of and replace—but do not punish—faithless electors: Arizona, Colorado, Indiana, Iowa, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, Utah, and Washington.²¹⁷ It is relevant to note that in *Chiafalo*, electors challenged the Washington law that imposed a \$1,000 fine on faithless electors.²¹⁸ However, Washington has since repealed the fine.²¹⁹ In these states, while faithless electors are removed and their votes are not counted, they suffer no penalty for voting faithlessly.²²⁰ As such, there is not as much of a deterrent effect to prevent faithless votes. This was apparent in the 2016 presidential election, when one Democratic elector from each of Maine, Minnesota, and Colorado and four Democratic electors from Washington all originally voted faithlessly, although some of their votes were ultimately not included in the final count.²²¹

212. *Id.*

213. CAL. ELEC. CODE § 18002 (West 2023).

214. N.M. STAT. ANN. § 1-15-9 (West 2023).

215. S.C. CODE ANN. § 7-19-80 (2022).

216. *See Faithless Elector State Laws, supra* note 14.

217. *Id.*

218. *Chiafalo v. Washington*, 140 S. Ct. 2316, 2322 (2020).

219. *Id.*

220. *Faithless Elector State Laws, supra* note 14.

221. *See Faithless Electors, supra* note 83 (explaining that the electors from Minnesota and Colorado were replaced, so their deviant votes were not included in the final count, and the elector from Maine was ruled out of order and switched his vote back, so his original faithless vote was also not in the final count).

5. States with Laws that Punish and Cancel the Votes of Faithless Electors

Only two states penalize and cancel the votes of faithless electors: North Carolina and Oklahoma.²²² The penalties in these states include a \$500 fine (North Carolina)²²³ and a misdemeanor conviction and fine of up to \$1,000 (Oklahoma).²²⁴ In the 1960 presidential election, a Republican elector from Oklahoma voted faithlessly and tried to convince other electors to do the same.²²⁵ However, the law penalizing faithless electors in Oklahoma did not become effective until January 1, 1975.²²⁶ In the 1968 presidential election, a Republican elector from North Carolina voted against his party, although it did not violate North Carolina law at that time.²²⁷ The elector also claimed that he would not have voted faithlessly if it would have changed the outcome of the election.²²⁸

6. States Considering Faithless Elector Legislation

There are many states currently considering faithless elector legislation. As of this writing, Arkansas has pending legislation which would require faithful electors.²²⁹ California, Illinois, and South Dakota are considering enacting the Uniform Faithful Presidential Electors Act.²³⁰ Recommended by the Uniform Law Commission and adopted by several states, the Uniform Faithful Presidential Electors Act binds electors to vote faithfully and removes those who fail to do so.²³¹

Hawaii also has pending legislation that would cancel the votes of faithless electors.²³² New York is considering legislation to bind faithless electors and cancel their votes.²³³ North Dakota enacted the Uniform

222. *Faithless Elector State Laws*, *supra* note 14.

223. N.C. GEN. STAT. ANN. § 163-212 (West 2019).

224. OKLA. STAT. ANN. tit. 26, § 10-109 (West 2023).

225. *See Faithless Electors*, *supra* note 83.

226. *See* OKLA. STAT. ANN. tit. 26, § 10-109 (West).

227. *See Faithless Electors*, *supra* note 83; *see also* History, *supra* note 1.

228. *See Faithless Electors*, *supra* note 83.

229. *State Elections Legislation Database*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/elections-legislation-database.aspx> (last visited Oct. 24, 2021) [<https://perma.cc/6FGV-KPES>].

230. *Id.*; *Faithful Presidential Electors Act*, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=6b56b4c1-5004-48a5-add2-0c410cce587d> (last visited Nov. 16, 2021) [<https://perma.cc/S2NM-JJQS>].

231. *See Faithful Presidential Electors Act*, *supra* note 230; *see also Faithless Elector State Laws*, *supra* note 14.

232. *State Elections Legislation Database*, *supra* note 229.

233. *Id.*

Faithful Presidential Electors Act in 2021.²³⁴ Lastly, Vermont enacted legislation in 2021 to bind electors and make faithless electors vacate their position.²³⁵

While it is good progress that more states are considering legislation to prevent faithless electors, these laws might not all pass, and too many states still leave their citizens unprotected from faithless electors.

7. States Should Have Discretion in Choosing Their Own Laws

Others might argue that mandating that states have faithless elector laws would violate states' broad power over their electors granted by the Constitution.²³⁶ As such, it should be up to each state to choose its laws, and potentially choose not to prohibit or punish faithless electors. However, state discretion cannot—and should not be allowed to—violate citizens' voting rights and equal protection. In addition, as noted before, the Supreme Court made its disdain for faithless electors fairly clear in its *Chiafalo* opinion.²³⁷

As such, states should enact strict faithless elector laws that cancel the votes of, and punish, faithless electors, like the laws in North Carolina and Oklahoma.²³⁸ However, states should also provide for the immediate removal of an elector who votes faithlessly.²³⁹ This would prevent electors from successfully voting faithlessly and potentially disrupting election results, against the will of the people.²⁴⁰

C. History of Faithful Voting

In arguing that they should be allowed to use discretion in voting, electors attempted to use history to bolster their argument.²⁴¹ However, the Supreme Court noted that historical practice actually disfavored electors exercising independence in voting.²⁴² Throughout history,

234. *Id.*

235. *Id.*

236. *See* *Chiafalo v. Washington*, 140 S. Ct. 2316, 2324 (2020) (explaining that Article 2, Section 1, Clause 2 of the Constitution conveys broad power over electors).

237. *See id.* at 2328 (holding that electors are given no constitutional rights, are agents of others, and that State pledge laws “instruct electors that they have no ground for reversing the vote of millions of its citizens,” which accords with the Constitution).

238. *Faithless Elector State Laws*, *supra* note 14.

239. *See id.* (listing states with laws that replace faithless electors).

240. *See* Blake, *supra* note 15 (explaining how faithless electors could have changed the outcome of the 2000 presidential election); *see also* Lambert, *supra* note 18 (depicting scenarios in which faithless electors could have decided the outcome of the 2020 presidential election).

241. *Chiafalo*, 140 S. Ct. at 2326.

242. *Id.*

electors have not regularly exercised discretion; states have always sent electors to vote for certain candidates, not to exercise their own judgment, and most electors have fulfilled this role.²⁴³ In addition, electors were pledged to certain candidates even in the first contested United States election in 1796.²⁴⁴ Then, the Twelfth Amendment affirmed that the Electoral College had become an instrument for party-line voting, rather than elector discretion.²⁴⁵ Throughout the 19th century, courts and commentators, including Justice Story and William Rawle, also reinforced the view that electors are “merely acting on other people’s preferences.”²⁴⁶ State laws then backed up this principle, guaranteeing that state’s electors would follow the will of the state’s citizens.²⁴⁷ While electors tried to use history to their advantage, the Court pointed out that faithless votes are anomalies, not an established historical pattern that should be followed.²⁴⁸

D. View of the Majority: Anti-Electoral College and Pro-Popular Vote Sentiment

A Gallup poll from 2020 showed that 61% of Americans favored amending the Constitution to ensure that the national popular vote winner became president.²⁴⁹ Although there are fluctuations in this sentiment, Gallup has conducted this poll 7 times in the previous 20 years, and only once was the support for abolishing the Electoral College under 50%.²⁵⁰ In fact, a majority of Americans first voted that the Electoral College should be abolished in a 1948 Gallup poll.²⁵¹ In 2013, 63% of Americans indicated that they would vote for a law to abolish the Electoral College.²⁵² Data from the Pew Research Center also indicates that a majority of Americans favor the national popular vote winner becoming president.²⁵³

243. *Id.*

244. *See id.*

245. *Id.* at 2327.

246. *Id.*

247. *Id.* at 2328.

248. *Id.*

249. Megan Brenan, *61% of Americans Support Abolishing Electoral College*, GALLUP (Sept. 24, 2020), <https://news.gallup.com/poll/320744/americans-support-abolishing-electoral-college.aspx> [<https://perma.cc/4S9N-JQTQ>].

250. *Id.*

251. Tarrance, *supra* note 81.

252. *Id.*

253. Bradley Jones, *Majority of Americans Continue to Favor Moving Away from Electoral College*, PEW RSCH. CTR. (Jan. 27, 2021), <https://web.archive.org/web/20210130191539/https://www.pewresearch.org/fact-tank/2021/01/27/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/> [<https://perma.cc/FD4M-78PM>].

This is typically a partisan issue, with Democrats wanting to eliminate the Electoral College and Republicans wanting to keep it.²⁵⁴ Nevertheless, these studies indicate popular support for changing the current system, which could indicate potential support for strict faithless elector laws.

E. *National Popular Vote Interstate Compact (NPVIC)*

1. Explanation of the NPVIC

The National Popular Vote Interstate Compact (NPVIC) is an agreement among states to pledge their electors to the winner of the national popular vote.²⁵⁵ The agreement will take effect when enough states agree for at least 270 electoral votes.²⁵⁶ The NPVIC keeps the Electoral College but guarantees that the president will be the candidate who wins the popular vote.²⁵⁷ The idea is that the NPVIC gives equal weight to each vote cast in every presidential election.²⁵⁸

The NPVIC was created to address the perceived shortcomings of the winner-take-all system used in 48 states where all of the state's electoral votes go to the candidate who won the popular vote in the state.²⁵⁹ This system causes presidential candidates to focus on states where the outcome is uncertain.²⁶⁰ As such, general election campaign events are held in a small portion of states, with a large majority of states being ignored.²⁶¹ The winner-take-all system also has an impact after a candidate is elected.²⁶² For example, states with uncertain outcomes, also known as “battleground” states, receive more federal funding than other states.²⁶³

As of this writing, the National Popular Vote bill, to implement the NPVIC, has been passed by 15 states and the District of Columbia, which

254. *Id.*; Brenan, *supra* note 249.

255. Barry Fadem, *Supreme Court's “Faithless Electors” Decision Validates Case for the National Popular Vote Interstate Compact*, THE BROOKINGS INST. (July 14, 2020), <https://www.brookings.edu/blog/fixgov/2020/07/14/supreme-courts-faithless-electors-decision-validates-case-for-the-national-popular-vote-interstate-compact/> [<https://perma.cc/5Z45-VQRY>].

256. *Id.*

257. *Agreement Among the States to Elect the President by National Popular Vote*, NAT'L POPULAR VOTE, <https://www.nationalpopularvote.com/written-explanation> (last visited Jan. 17, 2022) [<https://perma.cc/6KNM-MF3R>].

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

comprise 195 electoral votes.²⁶⁴ The states that have passed the NPVIC are a mix of small states (four), medium states (eight), and large states (three).²⁶⁵ The bill has also made it through at least one chamber of the state legislature in nine other states.²⁶⁶ However, the states that have thus far signed onto the NPVIC all tend to be Democratic leaning, which could make this a partisan issue.²⁶⁷ Nevertheless, there may be some Republican support for the NPVIC, including Michael Steele, former Republican National Committee chair.²⁶⁸

Some argue the NPVIC is unconstitutional and should not be used to change the election system by circumventing the Constitution.²⁶⁹ One argument is that, by changing the election process without using a constitutional amendment, the NPVIC is allowing only the states who join the NPVIC to change the process without considering the other states, which robs those states of their power.²⁷⁰ There is also the possibility that the NPVIC violates the Compact Clause of the Constitution, which says that states cannot enter into agreements with each other without the consent of Congress.²⁷¹ However, others argue that the Constitution actually gives states total control over how to award their electoral votes, so states can choose to join the NPVIC.²⁷² The winner-take-all method is state law and not in the Constitution, so it can be changed in favor of direct elections.²⁷³

Another potential problem with the NPVIC is that some argue it is ambiguous and could lead to uncertainty about who won the presidential election.²⁷⁴ This could be dangerous with the current climate of disputed

264. *Id.*

265. *Id.* (the four small states are Delaware, Hawaii, Rhode Island, and Vermont, the eight medium states are Colorado, Connecticut, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, and Washington, and the three big states are California, Illinois, and New York).

266. *Id.*

267. See Alexandra Orbuch, *National Popular Vote: Circumventing the United States Constitution*, PRINCETON LEGAL J. (Oct. 6, 2021), <https://legaljournal.princeton.edu/national-popular-vote-circumventing-the-united-states-constitution/> [<https://perma.cc/BE2T-RGZ9>].

268. Elliott Ramos, *There's a Plan Afoot to Replace the Electoral College, and Your State May Already be Part of It*, NBC NEWS (Nov. 10, 2020, 10:07 AM), <https://www.nbcnews.com/politics/2020-election/map-national-popular-vote-plan-replace-electoral-college-n1247159> [<https://perma.cc/TG6T-DHYT>].

269. See Orbuch, *supra* note 267.

270. *See id.*

271. *See id.*

272. See *Agreement Among the States to Elect the President by National Popular Vote*, *supra* note 257.

273. *See id.*

274. Andy Craig, *The Fatally Flawed National Popular Vote Plan*, CATO INST. (Nov. 17, 2021, 2:58 PM), <https://www.cato.org/blog/fatally-flawed-national-popular-vote-plan> [<https://perma.cc/9UQS-ZQJ3>].

elections and because presidential election laws already have ambiguities.²⁷⁵ Without clear rules for figuring out who actually won the presidential election, the NPVIC could result in a constitutional crisis.²⁷⁶ However, others argue that the current winner-take-all system itself has produced “unnecessary artificial crises” that would have been avoided by a national popular vote.²⁷⁷

2. Intersection of the NPVIC and Faithless Elector Laws

Some argue that the *Chiafalo* decision supports the implementation of the NPVIC because the Court affirmed states’ broad power over electors.²⁷⁸ Therefore, states should have the power to pledge their electors to the national popular vote winner through the NPVIC.²⁷⁹

V. CONCLUSION

Without strict faithless elector laws, citizens in every state are at risk of losing the guarantee that their votes matter and count equally. The Supreme Court upheld the validity of faithless elector laws; now each state needs to protect the rights of its citizens by implementing strict versions of these laws to prevent electors from being able to vote faithlessly.

Faithless electors are unconstitutional as a violation of the Fourteenth Amendment Equal Protection Clause because, when faithless electors discount the votes of citizens in a state, they cause those citizens’ votes to count less than other citizens’ votes. Faithless electors are also analogous to other voting situations in which the Fourteenth Amendment Equal Protection Clause has applied, such as redistricting. There is also inherent inequality in a system that allows electors to vote faithlessly because citizens’ votes may not count depending on which state they live in and whether the electors of that state choose to vote faithlessly.

There is currently no cohesive system for faithless elector laws. Some states have no laws at all, while others have laws which exert varying degrees of control over faithless electors. And some states are considering faithless elector legislation. The history of faithful voting; the

275. *Id.*

276. *Id.*

277. 9.15 *Myths About Recounts*, NAT’L POPULAR VOTE, https://www.nationalpopularvote.com/section_9.15 (last visited Sept. 26, 2022) [<https://perma.cc/XT42-LECU>].

278. Fadem, *supra* note 255.

279. *Id.*

view of the majority, which is anti-electoral college and pro-popular vote; and the National Popular Vote Interstate Compact all impact the idea of faithless electors.

Returning to the scenario depicted in the Introduction, faithless elector laws would prevent dangerous Candidate B from becoming president against the will of the people. These laws would also prevent citizens from losing faith in the power of their votes. As the Supreme Court stated in *Chiafalo*, faithless elector laws ensure that “We the People rule.”²⁸⁰

280. *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).