



Written by [Michael Tennant](#) on July 13, 2020

Supreme Court Sets Stage for Nullifying Electoral College

Last week, the Supreme Court unanimously ruled that states could force presidential electors to vote as their legislatures directed them and even punish them for failing to do so. While the constitutionality of this decision may be debated, its likely effect is clear for all to see: the nullification of the Founding Fathers' vision for electing presidents.



The case, [Chiafalo v. Washington](#), concerned three Washington-state electors who refused to vote for Hillary Clinton in 2016 despite the fact that she had won the state's popular vote. The state fined the electors for reneging on their pledges. They sued but lost in county court and the Washington Supreme Court, so they appealed to the U.S. Supreme Court.

The high court concurred with the lower courts, though the justices arrived at this conclusion by different routes. The majority opinion, written by Justice Elena Kagan, reasoned that since the Constitution mandates that each state appoint electors "in such a manner as directed by the legislature thereof," states could therefore force electors to vote in a particular way. Justice Clarence Thomas, in a concurring opinion, disagreed with this line of reasoning but still argued states had the power to control electors' votes under the 10th Amendment.

Regardless of the decision's faithfulness to the Constitution, its net result is that "the Framers' original vision for the Electoral College is now officially dead," Tomas McIntee declared in a [Medium.com essay](#).

The Framers' intent for the Electoral College was perhaps best expressed by Alexander Hamilton: "A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation" as determining who should be president.

In other words, the presidency was not to be decided in a purely democratic fashion. Instead, explained *National Review's* [Andrew McCarthy](#), "the idea was that the people of each state would choose electors — prominent, patriotic citizens who ... could be trusted to vote in their state for the president, with the interests of their state as well as the nation at heart."

Since 1789, of course, the Electoral College has been watered down to be mostly a ratification of each state's popular vote, and a movement known as the National Popular Vote Interstate Compact is now afoot to turn it into a ratification of the *national* popular vote. Already, 15 states and the District of Columbia have signed on to the agreement; together, they represent 196 of the 270 electoral votes needed to capture the presidency.

Not coincidentally, these states — even small ones that stand to lose influence as a result of such a



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system — are also dominated by Democrats, who recognize that the large populations of liberal cities such as New York, Chicago, and San Francisco tend to tilt the popular vote in favor of Democrats and that the Electoral College is the only thing standing in the way of practically permanent Democratic control of the executive branch. If the National Popular Vote Interstate Compact had been in force since the turn of the century, the White House would have been occupied by Democrats for the last 27 years. Only the Electoral College spared us the presidencies of Al Gore and Hillary Clinton.

Chiafalo, observed McCarthy, “prepares the ground for future extravagant claims of undeniable state authority to dictate how electors must vote,” including making them rubber-stamp the national popular vote. “Nobody, it seems, wants to defend the original idea that electors are free agents, bound to vote for the person they believe is the most suitable candidate, not necessarily the candidate victorious in their state’s [or nation’s] popular vote,” he wrote.

Even if the National Popular Vote Interstate Compact ends up being ratified by enough states to cause it to take effect, it may still run into one major snag: The Constitution prohibits states from making compacts with each other absent the consent of Congress. As long as Republicans control at least one chamber of Congress, the body is unlikely to consent to the agreement. “But,” remarked McCarthy, “if you don’t think a Democrat-controlled Congress would approve a Democrat-driven compact to make Democrat-controlled cities the determinant of American presidential campaigns, you’re not paying attention.”

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