

Supreme Court rules Electoral College members must follow state vote in presidential elections

By Alan Gilman
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The Supreme Court on Monday in a unanimous 9-0 decision in *Chiafalo v. Washington* ruled that electors in presidential elections must cast their votes in the Electoral College for the candidate who won the popular vote in their state.

This case arose in the aftermath of the 2016 election when a handful of Democratic members of the Electoral College attempted to deprive Donald Trump of the 270 electoral votes needed to win the presidency. Although Trump lost the popular vote by three million votes, he carried 30 states with a combined total of 306 electoral votes.

A handful of Democratic electors, however, announced that they would vote for a “moderate” Republican rather than Hillary Clinton in the hopes that they could convince enough Republican electors to cast similar votes, thereby reducing Trump’s total below the 270 needed for election.

If that occurred, the Constitution would then require that the presidential winner would have to be decided by the House of Representatives, controlled at the time by Republicans, which could have elected a Republican other than Trump.

More than 30 states have laws penalizing or forbidding “faithless electors,” those who run on a slate chosen by the Democratic or Republican parties but then choose to vote for someone other than that party’s candidate. The case decided by the 9-0 vote involved the state of Washington, which fined its “faithless electors,” while a separate order without an opinion upheld the Colorado law, under which one of that state’s electors was removed and replaced by another Democrat who voted for Clinton.

In unanimously ruling that all electors must vote for

the presidential candidate who won their state’s popular vote, the Supreme Court is attempting to avert a potential constitutional crisis in the upcoming election, when the contest between President Trump and his presumptive Democratic challenger, former Vice President Joe Biden, could well come down to a handful of electoral votes.

The legitimacy of elections, and in particular, presidential elections, was clearly on the mind of the court when it heard oral arguments on this case in May. Justice Samuel Alito observed that if the popular vote is close, the possibility of “changing just a few votes” [in the Electoral College] would rationally “prompt the losing party ... to launch a massive campaign to try to influence electors, and there would be a long period of uncertainty about who the next president was going to be.”

Similarly, Justice Brett Kavanaugh alluded to what he called “the chaos principle of judging, which suggests that if it’s a close call ... we shouldn’t facilitate or create chaos.”

The unease in which the Supreme Court, comprised of some of the most class-conscious representatives of the ruling class, views the upcoming election is a backhanded acknowledgement that masses of people are deeply alienated from the two-party political system and view the entire electoral process as corrupt and illegitimate.

Not only has the voters’ will been nullified in two out of the last five presidential elections, with the popular vote winner turning into the Electoral College loser in both 2000 and 2016, but in the 2016 election, 47 percent of those who were eligible to vote for president chose not to do so.

Both capitalist parties have sought to discredit the electoral process, with the Democrats claiming Trump's 2016 victory was the product of Russian interference, while Trump now claims that any effort to accommodate the election process to the health concerns of the coronavirus pandemic—with more extensive early voting and greatly expanded voting by mail—amounts to “rigging” the election.

A 9-0 vote in the Supreme Court must reflect serious fears in the US ruling elite over allowing another element of uncertainty and arbitrariness in the already arcane and thoroughly antidemocratic process through which American presidents are selected.

Although many Americans think that they elect the president and vice president, in fact, it is the Electoral College, an obscure intermediary mechanism, that formally determines who wins the election.

There is an elector for every member of the House of Representatives and the Senate plus an additional three for people who live in the District of Columbia for a total of 538 with 270 votes needed for majority. If there is a tie or no candidate receives a majority, then the election goes to the House of Representatives.

This system had been considered a formality because usually the winner of the popular vote also wins the Electoral College vote. But twice in the past two decades the winner of the popular vote did not become president, and instead the winner in the Electoral College prevailed.

In 2000, George W. Bush became president, winning five more Electoral College votes than Al Gore, though Gore won roughly half a million more popular votes. In that election the winner was dependent on the result from Florida in which Bush held a lead of a few hundred votes out of six million cast. Legal issues arose regarding recounts, disputes over ballots and voters' intent, and the Florida state supreme court ordered all votes to be counted after the state government, headed by Bush's brother Jeb, had halted any further counting or examination of ballots.

The election was eventually decided by the Supreme Court in the infamous case of *Bush v. Gore* that upheld the termination of the vote counting by Florida and thereby installed Bush in the White House, following Gore's abject capitulation to the 5-4 court decision.

To further underscore the undemocratic character of presidential elections, the Supreme Court reiterated in

Bush that there is no constitutional right to for president or for presidential electors. The state legislatures have chosen to use statewide elections to select electors, but they could simply appoint the electors if they choose, the justices declared.

It is noteworthy that both the Democratic and Republican parties sided with the state laws on “faithless electors,” upheld by the court. Both parties are concerned that the entire antidemocratic apparatus of the Electoral College has come increasingly under scrutiny, after the debacles of 2000 and 2016, and they oppose any significant change in the electoral structure, which includes the longstanding political monopoly of the two corporate-controlled parties.

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