



Trump's Last Gasp for Presidency May Hinge on 'Faithless' Electors

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Debates continue to surge about rumors that Donald Trump has plans to sway the Electoral College in his favor and against President-elect Joe Biden.

The New York Times recently reported that the defeated Trump is privately pressing advisers about the possibility of Republican state legislatures appointing electors to vote for him in the Electoral College, bypassing voters' wishes.

In 2016, Trump won 306 electoral votes, well above the 270 needed to claim the presidency. But at least two of those 306 electors declined to vote for Trump.

Electors who defect from their states' wishes become identified as "faithless electors."

With the president ramping up rhetoric that Democrats stole the 2020 race and his administration continuing to withhold essential transition documents and funds, some wonder if enough electors could ignore the will of the people and vote to keep Trump in office.

In total, 538 members comprise the Electoral College who gather in their respective state capitals to cast the formal vote for president.

They're selected at state and local party conventions and are almost always supportive of their party's candidate. Chosen electors cannot be sitting senators, members of Congress and they cannot hold any office of trust or profit in the country.

Following the Nov. 3 election, the District selected its three presidential electors: statehood advocate Barbara Helmick, grocery store cashier Jacqueline Echavarria and registered nurse Meedie Bardonille.

"I would never have thought in a million years that I would be representing the District of Columbia with the Electoral College, as a delegate — it's fantastic," Echavarria told WJLA. "And it's for the anniversary of the Women's Suffrage Movement, so it's an honor to mark that occasion too."

The Electoral College was established as a compromise that brought founding states together, explained former Pennsylvania State Rep. David Parker.

"It has stood the test of time and unwinding the Electoral College after an election would produce civil war," the Republican remarked in an earlier interview.

"Each campaign using the most advanced political technology and campaign experts undertook their best strategy to win 270 electoral college votes. Neither campaign set out to win the popular vote," Parker said.

Currently, President-elect Joe Biden leads the popular vote over Trump by about five million. Biden has been projected to garner 308 electoral college votes once results have been certified.

On Dec. 14, members of the Electoral College will convene in each state and in the District of Columbia. They will mark their votes on the ballots, seal both the electoral and popular votes and forward them to the District for safekeeping until Jan. 6. Then, the new Congress will host a meeting to open the ballots and officially name a winner. Vice President Mike Pence, the president of the Senate, must declare whether he and Trump have been reelected or defeated.

“If there is evidence of fraud in the appointment and, or voting of presidential electors, they can be challenged when they are counted in January,” said Paul Engel, founder of The Constitution Study.

“Since it appears different political parties will control the two houses of Congress, I do not think any such challenge would succeed,” Engle determined.

Isolated instances of faithless electors have occurred in the past but there have never been enough to affect the outcome. The most significant attempt to overturn an election occurred in 2016 when some electors tried to force the election into the House of Representatives.

“But some states had laws that corrected those votes – the Supreme Court recently affirmed that such laws are permissible – and the total number was only around 10 anyway,” said Kermit Roosevelt, a professor of law at the University of Pennsylvania Law School who’s a distant cousin of President Franklin Delano Roosevelt and a great-great-grandson of President Theodore Roosevelt.

“If the results of the state votes stand, Biden’s electoral total will be large enough that faithless electors won’t be an issue. Faithless electors are quite rare because electors are typically party officials who are very loyal to the party,” Roosevelt remarked. “So I would not expect the president’s claims about fraud to affect them.”

Roger Pilon, a B. Kenneth Simon Chair in Constitutional Studies at the Robert A. Levy Center for Constitutional Studies at the Cato Institute in Northwest, recalled one history-making faithless elector from 1972.

“Roger MacBride was a faithless elector who made history before going on to become the Libertarian Party’s nominee for president in 1976,” Pilon said. “As treasurer of the Republican Party of Virginia, he was a party elector pledged for Richard Nixon and Spiro Agnew. But in the Electoral College, he voted instead for the nominees of the Libertarian Party — John Hospers and Tonie Nathan. Ms. Nathan was thus the first woman in U.S. history to receive an Electoral College vote.”

Pilon emphasized that lawsuits which Trump has filed in various states could produce evidence that might sway electors.

“But, not likely since there is little evidence so far of electoral fraud and the margins in critical states seem sufficient to hold, absent evidence of fraud large enough to reverse those outcomes,” he concluded.