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SUPREME COURT NO. 95347-3

Thurston County Superior Court No. 17-2-02446-34

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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Bret Chiafalo, Levi Jenet Guerra, and Esther Virginia John,  
*Appellants*

v.

State of Washington,  
*Respondent*

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**BRIEF OF *AMICUS CURIAE*  
MICHAEL L. ROSIN**

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## **INTRODUCTION**

*Amicus curiae* Michael L. Rosin respectfully submits this brief in support of Appellants' request that this Court reverse the Superior Court's December 8, 2017, Order and vacate the fines imposed on Appellants.

### **IDENTITY AND INTEREST OF THE *AMICUS CURIAE***

*Amicus curiae* Michael L. Rosin is a published independent historian who has performed extensive original historical research regarding the electoral college. Rosin has reviewed and analyzed the contemporaneous records reflecting Congressional debates about the electoral college and the relevant constitutional provisions and amendments. Rosin has an interest in helping inform the Court's knowledge and understanding of the historical source material. The parties have consented to the filing of this brief.

### **STATEMENT OF THE CASE**

This case centers on whether the State of Washington has the authority to sanction presidential electors for casting electoral ballots for persons other than their political party's nominees. The *amicus* adopts the facts set forth in the Appellant's Statement of the Case.

### **ARGUMENT**

The Framers understood electors to be independent actors, entitled to vote freely. While the method of their selection was left to the States,

electors' independent judgment was and remains a key component of the constitutional system.

Congress has consistently demonstrated the same understanding, during its debate and adoption of the Twelfth and Twenty-Third Amendments and through its debates on proposed amendments to electors' functions. Moreover, Congress has never declined to count an electoral vote because the elector did not vote for a particular candidate.<sup>1</sup> This is true even when that elector previously swore to vote for someone else (referred to as an "anomalous elector") or the elector's vote violated a state law that purported to control that vote. History strongly supports Appellants here.

**I. The Framers Understood Electors to be Independent.**

**A. The Federalist Papers and Other Contemporaneous Evidence Establish the Framers' Intent that Electors Would Exercise Independent Judgment.**

The Federalist Papers envision the electoral college as a group "capable of analyzing the qualities adapted to the station" of selecting the president and vice-president. THE FEDERALIST No. 68 (Hamilton) ("A small number of persons, selected by their fellow-citizens from the general mass,

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<sup>1</sup> In February, 1873, Congress excluded three electoral votes from Georgia cast for Horace Greeley, but did so because Greeley had died after the popular vote had been cast but before the electoral vote occurred. Notably, in the same election Congress counted the electoral votes of an anomalous elector. *See* Congressional Globe, 42nd Cong. 3rd Sess., 1296–1305. Thus, while Congress has never rejected an electoral vote because an elector voted anomalously, it has done so when an elector so blindly followed his 'pledge' as to vote for a dead man.

will be most likely to possess the information and discernment requisite to such complicated investigations.”); *see also* THE FEDERALIST No. 64 (Jay) (“as an assembly of select electors possess, in a greater degree than kings, the means of extensive and accurate information relative to men and characters, so will their appointments bear at least equal marks of discretion and discernment.”). Emphasizing judgment and analysis, Hamilton and Jay described electors as independent actors.

In addition, Maryland’s electoral college likely served as a model for the system ultimately enshrined in Article II. The Maryland Constitution explicitly envisioned electors voting according to their “judgment and conscience” in electing state senators. Md. Const. of 1776, Art. XVIII. The Framers were undoubtedly aware of this system as they designed the electoral college. *See* Robert J. Delahunty, *Is the Uniform Faithful Presidential Electors Act Constitutional?*, *Cardozo L. Rev. De Novo* 165, 171-72 (2016) (hereafter *Delahunty*)<sup>2</sup>; *see also* Charles R. King (ed.) 6 *The Life and Correspondence of Rufus King* 532-34 (G.P. Putnam, New York 1900)<sup>3</sup> (“in this way the Senate of Maryland is appointed; and it appears . . . Hamilton proposed this very mode of choosing the Electors of the

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<sup>2</sup> Available online at:  
[http://www.cardozolawreview.com/content/denovo/DELAHUNTY\\_2016\\_165.pdf](http://www.cardozolawreview.com/content/denovo/DELAHUNTY_2016_165.pdf)

<sup>3</sup> Available online at:  
<https://babel.hathitrust.org/cgi/pt?id=hvd.hn4rwz;view=1up;seq=570>.

President”); Ky. Const. of 1792, Art. I, § 10, Art. II, § 2 (authorizing electors chosen by the voters in each county “to elect such person for governor, and such persons for senators, as they in their best judgment and conscience believe best qualified for their respective offices”).

**B. The Framers Rejected the Idea of Denying Discretion to Electors.**

The plain language of the Constitution authorizes state legislatures to decide how their state’s electors will be chosen, but not how they must vote. U.S. Const., Art. II, § 1, cl. 2. Indeed, Article II’s bar of those who hold federal offices of “profit or trust” from serving as electors only makes sense if electors may exercise independent judgment. *Id.* Further, the Framers clearly knew how to constrain electors’ discretion and chose to do so in precisely two respects: Electors were required to (1) vote for two persons, (2) at least one of whom was not an inhabitant of the same state as the elector. *Id.* There was no suggestion that states could pass laws expanding on this exclusive list, and it would turn constitutional interpretation on its head to permit state laws purporting to cabin electors’ judgment to augment the Constitution’s exclusive enumeration.

Had the Framers or Congress intended to deny electors the discretion to decide how they would cast their electoral votes they could have eliminated the office of elector, as was proposed in the first half of the

nineteenth century. *See, e.g., Cong. Deb.* 22d Congress, 1st Sess. at 1964 (Mar. 2, 1832) (statement of Rep. Erastus Root); *id.*, 2d Sess. at 940 (Jan. 3, 1833).

**II. Every Congress to Consider the Question Has Understood That Electors May Exercise Independent Judgment.**

Neither the Eighth Congress, which approved the Twelfth Amendment, nor the Eighty-Sixth Congress, which approved the Twenty-Third Amendment, suggested that presidential electors could be bound by state law (or anything other than party loyalty). Nor did the Eighty-Seventh Congress in implementing the Twenty-Third Amendment. Instead, as explained below, Congress has consistently reaffirmed its view that the Constitution authorizes, and expects, electors to use their discretion, and to drive the point home, Congress has consistently tallied the votes of faithless electors.

**A. The Twelfth Amendment Was Drafted to Address Possible Strategic Bad-Faith Voting By Electors Seeking Party Advantage.**

The four presidential elections held before the Twelfth Amendment was ratified all saw electors cast anomalous votes. The 1796 election had the greatest variety, with as many as 59 anomalous votes from ten different states. This was driven, in large part, by the efforts of Hamilton and the Federalists to undermine soon-to-be President Adams by trying to get

electors to vote anomalously for Jefferson and for Thomas Pinckney, Adams's running mate.<sup>4</sup>

Although Hamilton's intra-party jockeying in the 1796 election did not feature in Congress's debates about the electoral system, there was great concern about another issue: attempts to place a winning ticket's vice-presidential nominee in the presidency by strategically "sloughing off" presidential electoral votes. Prior to the adoption of the Twelfth Amendment electors did not distinguish between their votes for president and vice president. Rather, the top vote-getter became president, the runner-up vice president. Thus, there was the potential for electors to strategically shift votes that "should" have gone to the winning party's presidential nominee to a third party, causing the vice-presidential nominee to become the top vote-getter, and president. As early as January 25, 1789, Hamilton wrote "[e]very body is aware of that defect in the constitution which renders it possible that the man intended for Vice President may in fact turn up President. Everybody sees that unanimity in Adams as Vice President and a few votes insidiously withheld from Washington might substitute the former to the latter." Harold C. Syrett, and Jacob E. Cooke, (eds.), 5 *The Papers of Alexander Hamilton* 248 (Columbia, 1961–1987). Hamilton

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<sup>4</sup> For an overview of the 1796 electoral vote see, generally, Jeffrey L. Pasley, *The First Presidential Contest: 1796 and the Founding of American Democracy* 348–404 (Kansas, 2013).

concluded that it would “be prudent to throw away a few votes” for vice president to avoid this possibility. *Id.* at 248–49.

Although the 1800 election featured only a single anomalous vote, it caused great alarm. Jefferson and his running mate Burr defeated Adams and his running mate Charles Pinckney (Thomas’s cousin), but Jefferson and Burr each received 73 votes, sending the election to the House of Representatives, which took 36 ballots before finally electing Jefferson president. 10 *Annals of Cong.* 1025-33 (1801).

In the wake of the 1800 election, stories surfaced of Burr’s efforts to persuade electors to vote anomalously and swing the presidency to him. See Julian P. Boyd (ed.), 36 *Papers of Thomas Jefferson* 82-88 (Princeton, 1950) (hereafter *Boyd*); James Cheetham, *A View of the Political Conduct of Aaron Burr, Esq. Vice President of the United States* 44 (Denniston & Cheetham, 1802) (hereafter *Cheetham*).<sup>5</sup> For example, in a letter dated December 10, 1801, New York journalist James Cheetham wrote to President Jefferson that Anthony Lispenard, a New York Jefferson-Burr elector, almost cast his vote for a third candidate instead of Jefferson, so as to place Burr in the presidency, but DeWitt Clinton forced the New York electors to display their ballots to each other. *Boyd* at 82–88. Cheetham also

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<sup>5</sup> Available online at: <https://catalog.hathitrust.org/Record/006540014>.

claimed that Burr had attempted to recruit electors from New Jersey and South Carolina to change their votes from Pinckney to him. *Cheetham* at 43-45. Had even one of these electors switched his vote, Burr would have been elected president.

Although some historians doubt the veracity of Cheetham's claims, *see, e.g.*, Milton Lomask, 1 *Aaron Burr* 322 (Farrar, Straus, Giroux 1979), their truth is beside the point. It is undisputed that such accounts were in the air by 1802 and that members of Congress were aware both that electors had voted anomalously in recent presidential elections and of the phenomenon of sloughing off votes. As a result, they focused on preventing the election of the winning ticket's vice presidential candidate as president by the House or by electors from the losing party voting for him. They were also concerned with the election of the losing ticket's presidential candidate as vice president as a result of sufficient counter-sloughing by the winning side. *See, e.g.*, 13 *Annals of Cong.* 87 (1803) (recording statement by Democratic-Republican Senator Butler of South Carolina that absent a constitutional amendment "the people called Federalists will send a Vice President into that chair").

Critically, Congress might have considered an amendment binding electors to the popular vote, but according to the *Annals of Congress* it did not. Instead, it developed the Twelfth Amendment, which required electors

to designate their votes for president and vice-president—a requirement entirely consistent with electors’ ability to exercise independent judgment.<sup>6</sup>

**B. The Twelfth Amendment Does Not Bind Electors.**

By requiring electors to designate their votes for president and vice-president, the Twelfth Amendment prevented strategic voting designed to place a nominal candidate for vice president in the presidency. Indeed, the debates in the Eighth Congress reveal that lawmakers were trying to prevent such voting and avoid a repeat of 1800—when the House threatened to invert the public’s choice of president and vice-president. They did nothing, however, to prevent electors from voting for whichever presidential and vice-presidential candidates they chose.

In February 1802, during the Seventh Congress, the Federalists introduced a designation amendment, requiring electors to designate their votes for president and vice president, along with an amendment requiring popular election of electors from single-electoral districts. 11 *Annals of Cong.* 509, 602-603 (1802). In the waning days of the session, and with no substantive discussion, the designation amendment passed the House 47-14, but failed by one vote in the Senate. *Id.* 304, 1288-94. The next year, the

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<sup>6</sup> The actions of the early Congresses are widely accepted as strong evidence of constitutional meaning and intent. *See, e.g., Harmelin v. Michigan*, 501 U.S. 957, 980 (1991) (“The actions of the First Congress . . . are of course persuasive evidence of what the Constitution means.”).

Eighth Congress approved the Twelfth Amendment, with the Senate voting in favor by 22-10, and the House Speaker casting the 84th vote in favor, exactly the count needed to pass in the face of 42 nay votes. 13 *Annals of Cong.* 209, 776 (1803).

At no point in the process did any member suggest that states could bind electors or that designation was intended to cabin electors' independent judgment. Rather, inversion of the presidential and vice presidential nominees in a House contingent election animated the debates and the ultimate passage of the Twelfth Amendment. *See, e.g., id.* at 421 (Representative George Campbell stating that designation would “secure to the people the benefits of choosing the President, so as to prevent a contravention of their will [by a House vote, if no majority was achieved] as expressed by Electors chosen by them”). Congress was also focused on avoiding strategic electoral voting, calculated to subvert the popular will, as was attempted in 1796 and 1800. *Id.* at 87, 98, 186 (recording statements that, absent designation, tactics like those attempted in prior elections could yield a Federalist vice-president alongside a Republican president). The Twelfth Amendment thus embodies a balance between Congress's understanding that electors may vote *independently* (contrary to their pledged position) and its desire to prevent electors or the House from voting *strategically* to achieve a result contrary to the popular will.

Ratifiers in the state legislatures also understood that designation addressed these twin concerns. As Massachusetts Senator Bidwell commented, “[i]t is a manifest absurdity, that votes given for a candidate, with a view to one office, should without the consent of the voters, through the agency of other electors, or by mere calamity, be liable to be thus converted into votes for another office not intended.” *Massachusetts Legislature Debate on The Amendments to the Constitution*, Boston Independent Chronicle (Feb. 16, 1804).

Notably, several amendments proposed in Congress in the early nineteenth century would have replaced the provision requiring the House to elect a president when no candidate received a majority of the electoral vote (U.S. Const., Art. II, § 1, cl. 3 as amended) with one sending the choice of president and vice president back to the electors. 41 *Annals of Cong.* 41, 43-46, 74, 864-66, 1179-81 (1823-24). The mere consideration of that option only makes sense if Congress understood the electors to have the freedom to change their votes even after the ratification of the Twelfth Amendment.

Justice Story’s *Commentaries* are consistent with this view. Justice Story bemoaned what he saw as the frustration of the Framers’ expectations by the “notorious” fact that “the electors are now chosen wholly with reference to particular candidates” and that as a result “the whole foundation

of the system, so elaborately constructed, is subverted.”<sup>3</sup> Joseph Story, *Commentaries on the Constitution of the United States*, § 1457 (1833). He was concerned that electors felt even morally compelled to vote in accordance with prior pledges, and he cannot be read to suggest that they can or should be legally bound to do so by states. Justice Story’s view harmonizes with those of the Framers, the early Congresses, and other leading nineteenth-century constitutional authorities. See William Rawle, *A View of the Constitution of the United States of America* 57–58 (Phillip Nicklin 2d, 1829)<sup>7</sup> (arguing that public pledges of electors destroy the foundations of the electoral college, and noting that they are bound by political not legal compulsion); William Alexander Duer, *A Course of Lectures on the Constitutional Jurisprudence of the United States; Delivered Annually in Columbia College, New York* 96 (Harper, 1843)<sup>8</sup> (same); Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 161 (Little, Brown, & Company 3d, 1898)<sup>9</sup> (“The theory of the Constitution is that there shall be chosen by each State a certain number of its citizens . . . who shall independently cast their

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<sup>7</sup>Available online at:  
<https://babel.hathitrust.org/cgi/pt?id=nyp.33433081767034;view=1up;seq=7>.

<sup>8</sup> Available online at:  
<https://babel.hathitrust.org/cgi/pt?id=nyp.33433081766796;view=1up;seq=9>.

<sup>9</sup> Available online at:  
<https://babel.hathitrust.org/cgi/pt?id=mdp.49015000646852;view=1up;seq=5>.

suffrages for President and Vice President of the United States, according to the dictates of their individual judgments.” (emphasis omitted)).

**C. Congress Has Counted Every Anomalous Electoral Vote.**

Congress’s consistent practice of counting anomalous electoral votes is perhaps the most compelling evidence of its understanding of electors’ independence. At least four nineteenth century elections saw electors vote anomalously for president, and at least eight saw anomalous votes for vice-president.<sup>10</sup> Critically, Congress tallied all those votes without question. See Vasan Kesavan, *Is the Electoral Count Act Unconstitutional?*, 80 N.C. L. Rev. 1654, 1678-94 (2002) (hereafter “*Kesavan*”) (surveying congressional debates questioning legitimacy of electoral votes). Actions speak louder than words; Congress’s unbroken track record of tallying anomalous votes is powerful proof of its longstanding view that state laws may carry moral suasion, but they do not, because they cannot, override the authority conferred on electors by the Constitution to vote as they choose.

The election of 1896 is instructive. William Jennings Bryan received the presidential nomination of the Democratic Party and the Populist Party. Arthur Sewall of Maine was his running mate on the Democratic line. On

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<sup>10</sup> For president these were 1808, 1816, 1820, and 1872. For vice president they were 1812, 1816, 1820, 1824, 1828, 1840, 1872, and 1896.

the Populist line it was Thomas Watson of Georgia.<sup>11</sup> Bryan's strategy was to run a single slate of electors in as many states as possible, some pledged to Bryan and Sewall, others pledged to Bryan and Watson.<sup>12</sup>

In Kansas, however, two separate Bryan lines appeared on the ballot with the same set of electors. *Breidenthal v. Edwards*, 46 P. 469, 469 (Kan. 1896). Knowing that the Bryan electors all intended to vote for Sewall rather than Watson, Kansas Populist Party chairman John Breidenthal brought suit to have Watson's name removed from the ballot. The Kansas Supreme Court ruled against Breidenthal seven days before the general election, opining, "if these electors should be chosen, they will be under no legal obligation to support Sewall, Watson, or any other person named by a political party, *but they may vote for any eligible citizen of the United States.*" *Id.* at 470 (emphasis added).

When the electoral votes were tallied the Bryan electors in Colorado, Idaho, and North Carolina did not cast their vice-presidential votes as originally pledged. See "*Election in All States*," *The New York Times* (Nov. 4, 1896).<sup>13</sup> Nevertheless, their votes were counted by Congress

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<sup>11</sup> Karl Rove, *The Triumph of William McKinley: Why the Election of 1896 Still Matters* 295–96, 302, 304–05 (Simon & Schuster 2015).

<sup>12</sup> William Jennings Bryan, *The First Battle. A Story of the Campaign of 1896* 293 (W. B. Conkey Company 1896). Available online at <https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t93778b3h;view=1up;seq=1>.

<sup>13</sup> Available at <https://timesmachine.nytimes.com/timesmachine/1896/11/04/106851347.pdf>.

without question. Congress has consistently counted anomalous electoral votes up through the 2016 election.<sup>14</sup> 163 *Cong. Rec.* H189-90 (daily ed. Jan. 6, 2017).

Finally, the one time Congress even *debated* the question of whether to accept a vote cast for a living person by an anomalous elector,<sup>15</sup> it decisively adhered to past practice and counted the vote. In 1968 an elector cast his vote for George Wallace and Curtis LeMay rather than Richard Nixon and Spiro Agnew. A member of each chamber filed a formal objection, arguing the Twelfth Amendment constitutionalized an obligation for electors to vote according to the popular vote. 115 *Cong. Rec.* 146 (Jan.

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<sup>14</sup> For a compendium through 1992 see 139 *Cong. Rec.* 961 (1993). In 2000, one of the electors abstained and the joint convention of Congress took no notice. 147 *Cong. Rec.* 33-34 (Jan. 6, 2001). In 2004 John Edwards received a presidential electoral vote and a vice presidential electoral vote from the same elector and once again Congress recorded the votes per its usual practice. 151 *Cong. Rec.*, H85 (Jan. 6, 2005). In 2016, seven electors voted anomalously for president and six did so for vice president, and Congress accepted all of these electoral votes without comment. See 163 *Cong. Rec.*, H186-90 (daily ed. Jan. 6, 2017). Five electors from Hawaii and Washington cast their votes in violation of State law. There was no statute in Texas applying to its two Republican electors, who failed to vote for Donald Trump. The process by which Congress counts votes and may choose to reject them is set forth in the Electoral Count Act of 1887, codified at 3 U.S.C. §§ 5-6 15-18.

<sup>15</sup> Notably, Congress has not hesitated debating questions relating to the legitimacy of electoral votes for other reasons. In 1856 a blizzard hit Madison, Wisconsin making it impossible for Wisconsin's electors to meet. They cast their electoral votes the next day, one day after the day prescribed by law and Congress spent the better part of two days debating whether or not to accept the votes. See *Cong. Globe*, 34th Cong., 3rd Sess., 644-60, 662-68 (1857). Similarly, in 1873, the Congress decided not to count votes for Horace Greeley, who had died after the popular election, but before the electors met, and had received a handful of electoral votes from electors who voted for him even knowing that he was dead, but only after close votes. *Kesavan* at 1687. Other incidents occurred in 1809, 1817, 1821, 1837, 1873, and 1877. *Id.* at 1679-92.

6, 1969). In the end, the objection failed by votes of 33-58 in the Senate (*id.* at 246) and 170-228 in the House. *Id.* at 170-71, 246.

**D. Congress Understood That It Lacked the Power to Punish Anomalous Electors When It Enacted and Implemented the Twenty-Third Amendment.**

The Twenty-Third Amendment provides for the appointment of electors for the District of Columbia “as the Congress may direct.” While crafting the amendment in 1960 Congress explicitly noted that this power paralleled the Elector Clause of Article II. When Congress enacted the relevant enabling legislation in 1961, it recognized that the Constitution did not grant it the power to penalize faithless electors. The most it could do was enact a statute providing “moral suasion” that electors vote in accordance with the popular vote.

**1. The Twenty-Third Amendment Parallels Article II and the Twelfth Amendment.**

The Twenty-Third Amendment provides that the District of Columbia shall appoint electors to “perform such duties as provided by the twelfth article of amendment.” U.S. Const., Amend. XXIII, § 1. The Judiciary Committee report accompanying the resolution that eventually became the Amendment, noted that the proposed language “follows closely, insofar as it is applicable, the language of article II of the Constitution.”

H.R. Rep. No. 86-1698, at 4 (1960).<sup>16</sup> Two representatives reiterated this equivalence during the House's sole, two-hour debate on the Twenty-Third Amendment. 106 *Cong. Rec.* 12553, 12558, 12571 (June 14, 1960). The Senate then approved it after no more than an hour of debate, and without a recorded vote, on June 16, 1960. *Id.* at 12850-58. There is no evidence in the Congressional Record of any comment or discussion regarding whether the amendment empowered Congress to bind the District's electors.

**2. When Implementing the Twenty-Third Amendment, Congress Recognized it Could Not Enact Legislation to Punish Anomalous Electors.**

The Eighty-Seventh Congress considered the extent of congressional power granted by the Twenty-Third Amendment as it crafted legislation to implement the amendment. These hearings reveal a consensus view that all Congress could do was enact a statute offering "moral suasion" that electors vote faithfully.

The question of Congress's power to bind the District's electors first arose when Representative J. Carlton Loser inquired during the testimony of Walter Tobriner, President of the District of Columbia Board of

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<sup>16</sup> Committee reports are considered a particularly reliable source of Congress' intended meaning. *Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.") (internal quotation omitted).

Commissioners, “[i]s there some Constitutional provision involving the question of electors, how they shall vote?” *To Amend the Act of August 12, 1955 Relating to Elections in the District of Columbia*, hearing on H. R. 5955, House of Representatives Subcommittee No. 3 on the Committee of the District of Columbia, 87th Cong. 34-37 (1961).<sup>17</sup> The colloquy among Tobriner, Loser, and Representative George Huddleston made clear their understanding that a “statement that the electors are required to support a candidate . . . has no legal effect at all.” *Id.* at 34-37; *see also id.* (Rep. Huddleston) (“Once the electors are appointed and certified as the electors of that party, if that party carries the election these electors are still authorized to vote for whomever they please.”).

The Senate passed the bill 66-6 without discussing the possibility of legal consequences for a faithless elector. 107 *Cong. Rec.* 20217 (Sept. 19, 1961). When the bill came back from the conference committee the reporting senator noted that “it was agreed that a duty would be imposed on a person chosen as an elector to vote in the electoral college for the candidate of the political party which he represents” and the Senate approved the report without further discussion. *Id.* at 21052 (Sept. 23,

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<sup>17</sup> Available online at:  
<http://congressional.proquest.com/congcomp/getdoc?HEARING-ID=HRG-1961-DFCH-0014> (May 15, pp. 1-67) and  
<http://congressional.proquest.com/congcomp/getdoc?HEARING-ID=HRG-1961-DFCH-0015> (May 16, pp. 68-147).

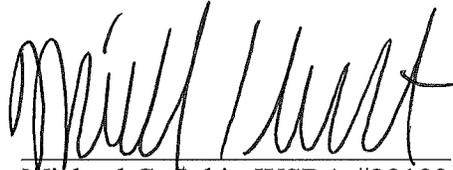
1961). However, the statute provides no legal consequences, requiring only that an elector must “take an oath or solemnly affirm that he or she will vote for the candidates of the party he or she has been nominated to represent, and it shall be his or her duty to vote in such manner in the electoral college.” D.C. Code § 1–1001.08(g) (2017).

The historical record thus shows that Congress did not pass a law binding electors with legal consequences because it believed such a law would be unconstitutional.

### **CONCLUSION**

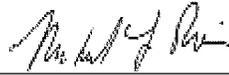
The historical record shows that elector independence has remained an unbroken constant in every Congress’s consideration of elector-related questions. The Superior Court decision holding that it was constitutionally permissible for the State to fine the appellants for not voting in a particular way should thus be reversed.

Respectfully submitted this 7<sup>th</sup> day of December, 2018:



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I hereby certify under penalty of perjury under the laws of the State of Washington, that on December 7, 2018, I served a true and correct copy of the forgoing document via electronic mail upon the following:

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