



1300 I STREET N.W | SUITE 400 E | WASHINGTON, DC 20005  
(202) 216-9309 | WWW.JUDICIALACTIONGROUP.COM

December 29, 2020

Senator Ted Cruz  
United States Senate  
Washington, DC 20510

*Re: Constitutional Duty of Senators to Object to and Vote Against Acceptance of State  
Certifications of Elections that Rely upon Unconstitutional Ballots*

Dear Senator Cruz,

It is undisputed that millions of ballots in the states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin are illegal and unconstitutional because they were cast contrary to the clearly established laws of each state Legislature as is strictly required by Article II, Section 1, Clause 2 of the United States Constitution. Accordingly, and for the reasons stated in this letter and the attached memorandum, we respectfully request that you either (1) object to, and vote against, the counting of ballots from these six states if you believe the Electoral Count Act, 3 U.S.C. §§ 1-15 is constitutional, or (2) if you believe Section 15 of the Act is unconstitutional, that you (a) insist that ballots from these six states not be counted, (b) find that both main Presidential candidates are without the required 270 electoral votes, and (c) require that the House of Representatives “choose immediately, by ballot, the President” pursuant to the Twelfth Amendment.

You presciently stated in 2012: “Millions of Americans are standing up and saying, 'We want our country back!' Republicans, Democrats, Independents, will not go down the path of Greece, we will not go quietly into the night.” The more than 74 million people who stood up and cast legal votes for President Trump, and even those who did not vote for him but believe in fair elections, understand the gravity of our present situation. When Congress meets on January 6, 2021 to review the progress of the Presidential election, the survival of our Republic will hang in the balance. Recent polls indicate that up to forty-five percent (45%) of American voters and more than 77% of Republican voters believe that “widespread fraud” occurred in the 2020 general election. Electors favoring former Vice-President Biden claim to be the properly certified Electors of the states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin. However, alternate slates of Electors for President Trump in these same states also claim to be the proper constitutional Electors because the elector selection process and vote counting processes in their states violated their state election law and, thus, Article II, and the equal protection mandate of the 14th Amendment. Unauthorized officials in the above states defied the Constitution, made voting more susceptible to fraud, and ignored the mandates of the Constitution. Our Country is based not on force but on trust and once trust is lost it may never be recovered.

Our constitutional freedoms and liberties depend upon lawful elections. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 10 (1964). Trust in the integrity of that process is the glue that binds our citizenry and the States in this Union. As a United States Senator, you are empowered to ensure that the Constitution is followed on January 6, 2020. Article VI requires that “The Senators ... shall be bound by oath or affirmation, to support this Constitution ...” and you have authority under Section 5 of the 14th Amendment to enforce its terms. Just as our Founding Fathers’ were destined to create our new Nation, you and colleagues are now destined before Almighty God to preserve it.

There is substantial disinformation about the processes of the Electoral College established in our Constitution and statutes. The Constitution must be followed. Any statutes that contradict the Constitution must be disregarded. There are at least four constitutional requirements at issue when the President of the Senate opens the certificates and votes of the Electors.

First, the Constitution exclusively empowers the President of the Senate to open only those ballots signed, certified, and transmitted from “Electors.” Electors alone are constitutionally empowered to certify their ballots, and any conflicting or competing certifications by other officers or individuals—including Governors or Secretaries of State—are illusory. Seven states have sent alternate slates of electors due to the voting irregularities or fraud that occurred in the elections held in those states. In the event multiple sets of Electors “sign and certify and transmit” votes, the Constitution gives no additional priority or weight to purported certifications of governors or other state actors as is made clear in the plain text of the 12th Amendment to the Constitution which makes no reference to non-legislative actors having any role in this process. *Id.* (stating “The Electors shall meet in their respective states and vote by ballot for President and Vice-President ... which lists they [the Electors] shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate.”) (emphasis added). The President of the Senate has the sole authority to open only ballots that comport with the Constitutional requirement of being signed, certified and transmitted from “Electors.”

Second, the 12th Amendment to the Constitution dictates that in the event no person has a majority of Electors, then “the House of Representatives shall choose immediately, by ballot, the President.” The Constitution does not delegate and cannot delegate the power of the House to choose the President to “the executive of the state” and any attempt to transfer such power is unconstitutional. The Constitution’s demand of immediacy has two important facets here. First, there is not room for the Electoral Count Act’s dispute-resolution process. Second, there is no time to allow lobbying or other intrigue: the two chambers vote immediately on the two offices.

Third, the voting by the House of Representatives in these matters must be by state delegation and cannot be by individual Members of the House. *Id.* (stating “in choosing the President, the votes shall be taken by states, the representation from each state having one vote ...”) (emphasis added). To the extent that any provisions of 3 U.S.C. §§ 1-15 require votes in the House of Representatives, those votes can only be by state delegations and not by individual Members. Therefore, Senators should not acquiesce to any process that countenances or recognizes votes of the House of

Representatives by Members as it would violate the Constitutional mandate that the House act with “each state having one vote.”

Fourth, the Constitution mandates that Electors be chosen only pursuant to ballots cast in a manner directed by states’ Legislatures. As detailed in the complaint filed in the U.S. Supreme Court three weeks ago by your state, Texas, against the Commonwealth of Pennsylvania and the states of Georgia, Michigan, and Wisconsin, non-legislative officials in those states used the COVID-19 pandemic as a justification to usurp their legislatures’ authority and unconstitutionally revised their state’s election statutes in violation of Article II, Section 1, Clause 2, and the Fourteenth Amendment of the U.S. Constitution. Not only were the elections held in those states constitutionally invalid, there is clear evidence of outcome-determinative illegal or fraudulent ballots improperly counted in former Vice-President Biden’s favor. Electors chosen through those elections are constitutionally invalid.

We are confident that you fully appreciate our present situation. Please recall that within three days of Texas filing that complaint, eighteen other states sought to intervene to stand with Texas or filed supporting briefs. That was an historic event. Importantly, in that and all other court decisions that have declined to address the constitutionality of these states’ elections, the courts have declined to address the merits by finding that the given plaintiffs lacked standing under Article III. Accepting those courts’ conclusions as true means that those courts lacked jurisdiction to reach the merits of the underlying legal issues. By contrast, the House and Senate have not only “standing” but also the sworn duty of upholding the Constitution in the actions that the House and Senate take.

The consequences of the Senate acquiescing in the face of these unconstitutional elections is more than a theoretical discussion for constitutional scholars. If the Democrats are allowed to steal this election, the consequences for the Nation will be grave. First, the very idea of free and fair elections will be called into question. Second, the economic consequences of the policies they promised to undertake will devastate all states. For example, a Biden administration’s energy policies would eliminate the entire income of hundreds of thousands of families that depend upon the oil and gas industry that Democrats have said they will destroy.

Attached hereto is a Memorandum of Law documenting the mandates of the U.S. Constitution, the indisputable failures of six states to follow those mandates, and the inability of those states to truthfully, lawfully and constitutionally certify the former Vice-President Joe Biden as the winner of the electoral votes of those states. Absent these electoral votes, Biden does not have the required 270 votes and the Constitution then mandates that “the House of Representatives shall choose immediately, by ballot, the President.” It is undisputed that millions of ballots in the states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin are illegal and unconstitutional because they were cast contrary to the clearly established laws of each state Legislature. Accordingly, we respectfully request that you either (1) object to, and vote against, the counting of ballots from these six states if you believe the Electoral Count Act, 3 U.S.C. §§ 1-15 is constitutional, or (2) if you believe Section 15 of the Act is unconstitutional, that you (a) insist that ballots from these six states not be counted, (b) find that both main Presidential candidates are without the required 270 electoral votes, and (c) require that the House of

Representatives “choose immediately, by ballot, the President” pursuant to the Twelfth Amendment.

Thank you for your consideration of these critically important issues.

Respectfully,

A handwritten signature in black ink, appearing to read "Phillip J.", written in a cursive style.

Phillip L. Jauregui  
President, Judicial Action Group