

EQUAL ELECTORS OUR LEGAL FIGHT TO ALLOW ELECTORS TO VOTE THEIR CONSCIENCE

FAQ

OUR PLAN

In 2016, 7 electors — 5 Democrats and 2 Republicans — voted contrary to their pre-election pledge in the Electoral College. Most of these electors cast their ballots based on the good faith belief that the Constitution entitled them to depart from their pledge, but ended up facing fines or threats of criminal prosecution from their state governments.

Even though the number of electors who voted their conscience were significantly below what was needed to affect the 2016 result, they would have been enough to change the result in other recent elections. (In 2000, for example, a shift of just two votes would have altered the election outcome.) That fact could encourage others to do the same in the next election— so there is an urgent need to resolve the question of whether an elector is free to disregard his or her pledge, or whether the states have the power to force electors legally to vote as they direct.

Equal Citizens is currently providing legal support to the electors in Colorado and Washington who were threatened or fined by their state government for voting their conscience in 2016. In Washington State, we are defending three electors who were each fined \$1,000 for voting contrary to their pledge. In Colorado, we have filed a voter intimidation action against the Colorado Secretary of State, responding to the removal of one elector, and threats to two others.

We entered this litigation because we believe it is critical for the Supreme Court to clarify the constitutional freedom of electors before it creates a constitutional crisis. Moreover, we believe that either way it is resolved, it will advance the cause of Electoral College reform. If it is resolved to confirm the power of the states to control electors, it will remove that uncertainty from the process. If it is resolved to deny the power of the states to control electors through legal sanction, it will

make more urgent the demand for more fundamental reform.

Equal Citizens strongly believes that the Constitution does not permit the states to control the votes of electors. We believe that these states' actions violated the electors' rights, because the Constitution secures to electors the freedom to vote their conscience. Our argument will draw on the understanding of the framers about the role of the Electoral College, as well as relatively recent Supreme Court authority that affirms electors' freedom.

We believe the Supreme Court will affirm the electors' freedom through our cases in 2019. That will give states the opportunity to respond before the next election.

If the court rules to affirm the electors' freedom as we expect, the most likely and effective response would be for states to join the National Popular Vote Interstate Compact. Also, if 270 electors were pledged to the winner of the national popular vote automatically, then the additional electors from non-Compact states would be certain to create a margin significant enough to neutralize any plausible defection by electors in Compact states.

Whether or not the Court ultimately rules that electors are free to vote their conscience, we are hopeful that these cases will be the vehicle for **resolving this crucial issue before the next election.**

ABOUT OUR LAWSUITS

We have appealed the administrative determination affirming the fine against the Washington State electors, and are now on emergency appeal to the Washington State Supreme Court. In Colorado, the District Court has granted a motion by the state to dismiss. We are currently appealing that decision to the 10th Circuit.

Nemanich v. Colorado Department of State (2017)

We have filed a lawsuit on behalf of three electors in Colorado who sought to defend their constitutional freedom to vote their conscience in the last presidential election as federal electors. Michael Baca, Polly Baca, and Robert Nemanich believed the special circumstances of the last election required that they vote their conscience, contrary to a pre-election pledge. Secretary of State Wayne Williams threatened them with removal, if they indeed did vote against their pledge, as well as criminal prosecution.

Guerra v. Washington State Office of Administrative Hearings (2017)

Washington State fined three electors, Peter Bret Chiafalo, Levi Jenet Guerra, and Esther Virginia John, who voted their conscience, contrary to a pre-election pledge. This case raises the question whether the state of Washington has the constitutional power to compel its electors to vote for a particular presidential and vice-presidential candidate, i.e. whether states may penalize an elector who votes contrary to her pledge, by imposing a civil fine or other penalty. We are supporting the legal defense of these electors to resolve the constitutional question.