

CHIAFALO V. WASHINGTON

This term, the U.S. Supreme Court will hear *Chiafalo v. Washington*, a constitutional challenge to the requirement that presidential electors – the people who physically cast their state’s electoral votes – must vote for the candidate who won the popular vote in their state.

What is *Chiafalo v. Washington* about?

In the first half 2020 the U.S. Supreme Court will decide if a presidential elector is free under the Constitution to vote for anyone, even if it violates the law in their appointed state, and cast an electoral-college ballot that is not in line with the popular vote of that state. The case, [Chiafalo v. Washington](#) is linked with [Colorado Department of State v. Baca](#)

What is a Faithless Elector?

A faithless elector is a member of the Electoral College who does not vote for the presidential candidate for whom they had pledged to vote. In most states, members of the Electoral College are pledged to vote for the candidate that wins the majority of the votes in their state. When a member of the Electoral College fails to vote for the candidate that wins the popular vote in their state they break faith with the state’s voters.

What is at Stake?

There are currently no federal ethics or transparency laws for presidential electors. A ruling to “unbind” them from their home-state voters will introduce new opportunities for wealthy special interests to influence our politics and for electors to cast their votes in favor of the highest bidder.

Numerous federal laws require elected officials and policymakers to follow financial ethics and transparency rules. These rules seek to ensure that officials act in the public’s interest rather than to line their own pockets. Presidential electors, however, have never been considered true elected officials or policymakers, so these laws don’t currently cover them.



For example, federal law strictly regulates the money federal officeholders and policymakers can accept in connection with their official duties. Other statutes require these officials to publicly disclose their financial interests and sources of income so corruption can be caught when it happens.

None of these laws currently apply to presidential electors. An elector could legally accept contributions worth millions of dollars in connection with their official duties, and the public would never know. The absence of transparency laws combined with unfettered discretion is a recipe for corruption that could threaten the very legitimacy of the presidential election.

What does this mean for the Electoral College?

The case does not challenge the Electoral College itself. The Electoral College will continue to exist as it does currently, with electors being allocated to each state based on population, regardless of the outcome of the case. But a Supreme Court ruling to unbind the electors would mean that the presidential election cannot be settled by the voters on election night. Instead, we won't know until weeks later, when the electors actually vote, whether the candidate who appeared to win on election day has actually been elected president. And because of the gaps in our ethics laws, we won't know who tried to influence the electors during that intervening time.

What is the Solution?

If the Supreme Court unbinds presidential electors, federal laws will need to be broadened right away to ensure electors are subject to the same anti-corruption rules as government officials. Specifically, electors will need to be covered by the federal laws that restrict who can give officials money and require them to disclose their sources of income. And state laws will need to be changed so that voters have information about the individual electors, allowing voters to assess which electors are most likely to follow the will of the people.

About Campaign Legal Center

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