

Notes for SotRP 12/17/2020:

14th amendment stuff: <https://www.law.cornell.edu/constitution/amendmentxiv>

Texas Case: https://www.supremecourt.gov/DocketPDF/22/22O155/163215/20201209144840609_2020-12-09%20-%20Texas%20v.%20Pennsylvania%20-%20Amicus%20Brief%20of%20Missouri%20et%20al.%20-%20Final%20with%20Tables.pdf

Texas Case w/Trump Intervene: https://www.supremecourt.gov/DocketPDF/22/22O155/163234/20201209155327055_No.%2022O155%20Original%20Motion%20to%20Intervene.pdf

Definitions: <https://www.merriam-webster.com>

Sources listed in filing:

- <https://www.legislationline.org/download/id/1472/file/-3b50795b2d0374cbef5c29766256.pdf>
- <https://www.justice.gov/criminal/file/1029066/download>
- <https://www.gao.gov/assets/670/665966.pdf>
- <https://votingrights.news21.com/interactive/election-fraud-data-base&xid=17259,15700023,15700124,15700149,15700186,15700191,15700201,15700237,15700242>
- <https://www.riverfronttimes.com/newsblog/2016/08/16/fbi-secretary-of-state-asking-questions-about-st-louis-statehouse-race>
- <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>
- https://images.radio.com/wbt/Voter%20ID_%20Website.pdf
- <http://www.nydailynews.com/new-york/nyc-crime/bronx-pol-pleads-guilty-absentee-ballot-scheme-article-1.2884009>
- <https://www.nbcnewyork.com/news/politics/nj-naacp-leader-calls-for-paterson-mail-in-vote-to-be-canceled-amid-fraud-claims/2435162/>

Fourteenth Amendment:

Section 1 in full

- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1 in short

- The amendment declares that all persons born or naturalized in the United States are American citizens and citizens of their state of residence

Section 2 in full

- Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 2 in short

- describes how the state population would be counted in order to determine how many members of the House of Representatives each state would have. Prior to the amendment former slaves were counted as three-fifths a person. The amendment says that all people will be counted as a "whole number."

Section 3 in full

- No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 3 in short

- prohibits any person who had gone to war against the union or given aid and comfort to the nation's enemies from running for federal or state office, unless Congress by a two-thirds vote specifically permitted it.

Section 4 in full

- The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 4 in short

- allowed the federal and state governments to refuse to pay war debts of the Confederate army as well as any claims made by slave owners for their losses when slaves were freed.

Section 5

- The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Texas V. Penn., Georgia, Michigan, Wisconsin Case:

- States involved w/ Texas (*Amici Curiae*): Missouri, Alabama, Arkansas, Florida, Indiana, Kansas, Louisiana, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia
 - **Amicus Curiae**: one (such as a professional person or organization) that is not a party to a particular litigation but that is permitted by the court to advise it in respect to some matter of law that directly affects the case in question
- **Amici Statements of Interest:**
 1. States above “have a strong interest in safeguarding the separation of powers among state actors in the regulation of Presidential elections.”
 - Brings up The Electors Clause of Article II, section 1 and how it separates powers among states
 - **US Constitution Article II, Section 1, Clause 4**: Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.
 - “Our system of federalism relies on separation of powers to preserve liberty at every level of government, and the separation of powers in the Electors Clause is no exception. The States have a strong interest in preserving the proper roles of state legislatures in the administration of federal elections, and thus safeguarding the individual liberty of their citizens.”
 2. States above “have a strong interest in ensuring that the votes of their own citizens are not diluted by the unconstitutional administration of elections in other States.”
 - They believe that when unjust “actors” come into play of the authority of “Legislature thereof” of the election of a new president, the liberty of every United States citizen who lawfully participates is threatened
 3. States above “have a strong interest in safeguarding against fraud in voting by mail during Presidential elections.”
 - “Every voter...has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” (Anderson v. United States, 417 U.S. 211, 227 (1974))
 - Plaintiff (Texas) believes that “non-legislative actors” had broken down the safeguards against fraud regarding mail-in voting that were put in place by legislature of defendant states.
 - States above have “vital interest in protecting the integrity of the truly national election for President and Vice President of the United States”

- **Summary of Argument:**

- “The Bill of Complaint raises constitutional questions of great public importance that warrant this Court’s review. First, like every similar provision in the Constitution, the separation-of-powers provision of the Electors Clause provides an important structural check on government designed to protect individual liberty. By allocating authority over Presidential electors to the “Legislature thereof” in each State, the Clause separates powers both vertically and horizontally, and it confers authority on the branch of state government most responsive to the democratic will. Encroachments on the authority of state Legislatures by other state actors violate the separation of powers and threaten individual liberty. The unconstitutional encroachments on the authority of state Legislatures in this case raise particularly grave concerns. For decades, responsible observers have cautioned about the risks of fraud and abuse in voting by mail, and they have urged the adoption of statutory safeguards to prevent such fraud and abuse. In the numerous cases identified in the Bill of Complaint, non-legislative actors in each Defendant State repeatedly stripped away the statutory safeguards that the “Legislature thereof” had enacted to protect against fraud in voting by mail. These changes removed protections that responsible actors had recommended for decades to guard against fraud and abuse in voting by mail. The allegations in the Bill of Complaint raise important questions about election integrity and public confidence in the administration of Presidential elections. This Court should grant Plaintiff leave to file the Bill of Complaint.”

- **Argument:**

- “[o]ur constitutional system of representative government only works when the worth of honest ballots is not diluted by invalid ballots procured by corruption.” U.S. Dep’t of Justice, Federal Prosecution of Election Offenses, at 1 (8th ed. Dec. 2017).

1. **The Separation-of-Powers Provision of the Electors Clause Is a Structural Check on Government That Safeguards Liberty.**

- They are explaining how allowing state legislators to set up and confirm when and where elections take place, both at the state and federal level, is not only important to the State that the election is being held, but for the nation as a whole, and is an absolute power granted by the US Constitution. Hence, their belief that “non-legislators” are diminishing this absolute power of the state legislator in regards to presidential-election conduct, which is also a threat to the idea of Separation of Power.
- They believe that this power of the legislator is important in terms of the separation of power because it effects both the “vertical” and “horizontal” of said separation of power, since these legislators are of the state they reside, and not federally appointed, and it is recognized that legislators have the most direct impact on the people
- Since they believe that non-legislators involved themselves, they believe the core idea of checks and balances has been violated and attacks the peoples liberties

2. Stripping Away Safeguards From Voting by Mail Exacerbates the Risks of Fraud

- The plaintiff explains that voting by mail creates a whole new playing ground in terms of potential fraud since there is no way to help verify and identify a voter.
- They go into multiple cases from previous election years and bring up data from a News21 database citing that between 2000-2012, which was used to *refute* that voter fraud was prevalent, 491 cases of absentee ballots were identified. They continue with multiple cases presented in Missouri, a case in North Carolina, and a case in the Bronx, as well as citing the Carter-Baker Commission on what they deemed as necessary to help reduce the risk of mail-in vote fraud.
- The section ends with the plaintiff saying these cases of voter fraud is a recurring issue, is “hard to detect and prosecute, that there are strong incentives and weak penalties, and that it has the capacity to affect the outcome of close elections.”

3. The Bill of Complaint Alleges that the Defendant States Unconstitutionally Abolished Critical Safeguards Against Fraud in Voting by Mail

- Abolishing Signature Verification:
 - As it implies, Texas points that non-legislators within the defendant states helped push for the abolishment, and/or the weakening signature requires that typically go with mail-in voting, which is a key part of keeping votes secure, which was brought up within the Carter-Baker Commission
- Insecure Ballot Handling:
 - The plaintiff believes that ballot handling was inappropriately handled in the defendant states in different ways. In Pennsylvania, they argue that in Democratic areas, ballots were opened and reviewed prior to Election Day, going against state statutes.
 - Michigan’s Secretary of State sent 7.7 million unsolicited absentee-ballot applications to voters “flooding Michigan with millions of absentee ballot applications prior to the 2020 general election”, violating state law.
 - The plaintiff also alleges that since the Wisconsin Voting Committee placed hundreds of “unmonitored boxes” for mail-in ballot submission, they were violating state law
- Inconsistent Statewide Standards:
 - Alleging that in Philadelphia and Allegheny County, Pennsylvania, different standards were applied to voters, which is a violation of state law
 - In Milwaukee, Wisconsin, Texas alleges that state law was violated when election officials were authorized to “correct” disqualifying omissions on ballot envelopes by entering information that the voter should have entered with a red pen, while no similar “correction” process was granted to other voters in that State.’
 - “And it alleges that Wayne County, Michigan provided differential treatment of its voters, in violation of state statutes, by simply ignoring statutorily required signature-verification requirements.”

- Quoting the Court from the *Bush V. Gore* case, “[T]he idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.” 531 U.S. at 107 (quoting *Moore v. Ogilvie*, 394 US 814 (1969)).
- Once more from the Carter-Baker Report: “inconsistent or incorrect application of electoral procedures may have the effect of discouraging voter participation and may, on occasion, raise questions about bias in the way elections are conducted.”
- Excluding Bipartisan Observers:
 - “alleges that election officials in Philadelphia and Allegheny County, Pennsylvania, violated state law by excluding Republican observers from the opening, counting, and recording of absentee ballots in those counties”
 - “alleges that election officials in Wayne County, Michigan violated state statutes by systematically excluding poll watchers from the counting and recording of absentee ballots.”
 - Plaintiff believes that this alleged exclusion diminishes the “neutral and professional manner” in which vote counting should be done, and threatens the integrity of the count
- Extending the Deadline to Receive Ballots:
 - “alleges that a non-legislative actor in Pennsylvania—its Supreme Court—extended the statutory deadline to receive absentee and mail-in ballots without authorization from the “Legislature thereof,” and that it directed that ballots with illegible postmarks or no postmarks at all would be deemed timely if received within the extended deadline.” Fear of this post-election window of time could be used by wrong-doers to wait until the call is close before jumping into action and interfere with the result. This window, mixed with no-postmarks needed, muddy the waters in terms of if the vote was mailed in by election day, hence skewering results.
 - “[E]lection fraud is most likely to occur in electoral jurisdictions where there is close factional competition for an elected position that matters.” Dept. of Justice Manual
 - The previous point is used as an accurate description of the defendant states in the 2020 election

• Conclusion

- The allegations in the Bill of Complaint raise important constitutional issues under the Electors Clause of Article II, § 1. They also raise serious concerns relating to election integrity and public confidence in elections. These are questions of great public importance that warrant this Court’s attention. The Court should grant the Plaintiff’s Motion for Leave to File Bill of Complaint.