

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____

ARNOLD A. MOLLOT and
MURRAY NADITCH

Plaintiffs,
vs.

RICK SCOTT, in his official capacity as the Governor of
Florida, PAM BONDI, in her official capacity as the
Attorney General of Florida, and KEN DETZNER, in his
official capacity as the Secretary of State of Florida,

Defendants,
_____ /

**VERIFIED EMERGENCY COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, Arnold A. Molloy and Murray Naditch by undersigned
counsel, and file this lawsuit against the Defendants and as grounds therefor allege:

General, Jurisdictional and Venue Allegations

1. Plaintiff Arnold A. Molloy is a resident of Palm Beach County, Florida is sui juris and voted for Hillary Clinton in the State of Florida in the Presidential election of 2016.
2. Plaintiff Murray Naditch is a resident of Palm Beach County, Florida, is sui juris and voted for Hillary Clinton in the State of Florida in the Presidential election of 2016.
3. Defendant Rick Scott is the Governor of Florida and as its chief executive, has the power to enforce the laws of the State of Florida, including Title IX, Chapter 103.021 (1).
4. Defendant Pam Bondi is the Attorney General of Florida and in such capacity, enforces the laws of the State of Florida, including Title IX, Chapter 103.021 (1).

5. Defendant Ken Detzner is the Secretary of State of Florida and as such, gives notice of the time and place for the Presidential Electors to vote, provides documents pursuant to Title IX, Chapter 103.021, and certifies the results of the Presidential Electors' balloting and votes.

6. This Court has jurisdiction over the subject matter of this dispute as it relates to a federal question, 28 U.S.C. Section 1331 as well as 28 U.S.C. Sections 2201 and 2202.

7. The federal question presented by this case is the constitutionality of Florida's Presidential Election law, Title IX, Chapter 103.021(1) (hereinafter "The Act") which requires electors to take an oath to vote for "the candidates of the party that he or she is nominated to represent". This law violates Article II of the U.S. Constitution, the First Amendment, the Twelfth Amendment, and the Fourteenth Amendment.

8. Unless the Court issues the relief requested, Plaintiff's constitutional rights will be violated by the State of Florida through the various defendants. The Plaintiffs' votes and the votes of all those who voted for someone other than Mr. Trump, will be nullified and rendered meaningless if the Florida election law is carried out and the votes of all Floridians are counted as votes for Donald Trump, in violation of the equal protection clause. The unequal treatment is even greater when the votes of those who voted for Mr. Trump are given greater weight than their numbers should warrant because of the winner-take-all system established by The Act.

9. Moreover, no state, including Florida, can compel any person to cast his or her vote for any particular candidate whether in a general election, a special election, or the convention of the Presidential Electors as the oath required of Florida's electors purports to do under the Act because such forced speech this violates the first Amendment.

10. Venue is proper in this Court under 28 U.S.C. Section 1391(b).

Claim for Relief

11. Plaintiffs incorporate the prior allegations as if fully set forth herein.

12. Plaintiffs are United States citizens who voted for Hillary Clinton in the Presidential Election held on November 8, 2016.

13. Florida law Title IX, Chapter 103.021 requires electors to take an oath to vote for the “candidates of the party that he or she is nominated to represent”. In the state of Florida Donald Trump received more votes than Hillary Clinton, thus all the electors in Florida were chosen by the Republican Party, took an oath to vote for Donald Trump, and were selected not based on their intelligence, patriotism or loyalty to the United States, but rather were chosen based on their loyalty to the Republican Party.

14. The Democratic Presidential candidate is Hillary Rodham Clinton and the Democratic Vice Presidential candidate is Timothy Kaine.

15. Though the Democratic nominees for President and Vice President won the nationwide popular vote by over 2.5 million votes, Donald Trump and Michael Pence (the Republican presidential and vice presidential nominees) will win the majority of national electoral college votes on December 19, 2016 if the electors in each state vote consistent with the popular vote in their respective states.

16. Many states, including Florida, require their Presidential Electors to vote consistent with the popular vote in the state. Thus, despite the plain language of Article II of the U.S. Constitution, as amended by the Twelfth Amendment, and the Founders’ intent that the Presidential Electors be a deliberative and independent body free to cast votes for whomever they deem to be the most fit and qualified candidates, if the Act is enforced,

Messrs. Trump and Pence will automatically win the election, and the electors of Florida will be prohibited from investigating, deliberating and exercising their judgment, all in violation of the First Amendment, Article II of the U.S. Constitution, the Twelfth Amendment, and the 14th Amendment.

17. Plaintiffs, like millions of other Americans, including the vast majority of newspaper editorial boards, many Republicans, and the majority of people in this country who did not vote for him, believe that believe that Donald Trump is unfit for office and the type of person that the founding fathers who crafted the Electoral College warned us about,(See Federalist 68 by Alexander Hamilton who described the purpose of the Electoral College was inter alia to avoid electing a President who only has “[t]alents for low intrigue, and the little art of popularity.” *Id.*

18. According to a large number of his fellow Republicans, Donald Trump is the type of unfit candidate who our founding fathers believed should not be elected by the Electoral College, regardless of the number of votes he obtained in the November election for reasons which include, but are not limited to the following: 1) he has difficulty separating fact from fiction or as Republican Mitt Romney has said “he is a fraud and a con artist; 2) he has numerous financial conflicts of interest which he said he would explain to America how he would resolve on December 14, 2016, but then he cancelled the announcement and said his children would run his financial affairs which many experts believe will create numerous and repeated violations of the prohibition in Article I, Section 9, Clause 8 of the U.S. Constitution which prohibits the President and other officials from receiving emoluments; 3) his claim that global warming is a hoax invented by the Chinese; 4) his desire to punish women who seek abortion; 5) his

bragging about sexual abuse of women and then his denial of what he admitted and falsely threatening to sue those women who corroborated his claims of assault; his fixation on women's body parts and demeaning those women who do not measure up to his standards of beauty, and then falsely claiming that no one respects women more than he does; 6) his false claims that he knows more about ISIS than the generals and then saying that he would rely upon the generals to tell him what to do about ISIS; his insatiable need for attention and his tantrums and threats, including encouraging others to engage in physical assault against those who do not sufficiently admire and praise him; 7) his promising to discriminate against Muslims and deport millions of undocumented people and then contradictory statements about these policies making it impossible for anyone to know his true intentions, and generating many hate crimes attributed to his influence after Election Day; 8), his selection for cabinet positions of people who have committed themselves to oppose the very agencies they are chosen to lead; 9) his threat to use nuclear weapons, order the military to use torture, his lack of respect for those in the military who have been captured by the person who will potentially become the Commander and Chief of the American armed forces; 10) his lack of interest in intelligence briefings, and statements that demonstrate that Mr. Trump is unfit to take office, and thus it is a violation of the U.S. Constitution Article 2 and the Twelfth Amendment for any government official such as the Defendants, to force the electors to vote for such an unqualified person as Donald Trump, who appears to be one of the most despised candidates in American history; and other actions and statements too numerous to recount herein that indicate that Mr. Trump is unfit to be President of our nation.

19. After the voters cast their ballot for President on Election Day, November 8, 2016, or prior thereto on absentee ballots, new facts and new circumstances have come to light, which are now known to the electors, but were unknown to the voters when they cast their ballot for President on or prior to Election Day, which indicate that Russia used nefarious and improper influence to sway the election in favor of Donald Trump according to the CIA and others. While all seventeen national security organizations concurred that Russia was behind the hacking of the Democratic National Committee, Mr. Trump cavalierly dismisses all of their findings, and offers no facts to support his skepticism of these unanimous findings.

20. Shockingly, Mr. Trump is the only candidate in American history who actually invited and encouraged another country, i.e. Russia to hack into the computers of the opposing party for the purpose of assisting him in his campaign.

21. Because Mr. Trump and some of his cabinet have reaped huge profits in Russia, and are poised to reap millions more if our relationship with Russia stays cozy, Mr. Trump and some of his cabinet picks, heap praise upon Russia, which is an adversary of the United States, has acted aggressively in Crimea and is an ally of the Mr. Assad in Syria, who is currently continuing to commit such large scale barbaric treatment of his own people, that our government has described the situation as a “meltdown of humanity” and has prompted the United States Ambassador to the United Nations today to ask the governments of Syria and Russia “Are you truly incapable of shame?”

22. Mr. Trump has acknowledged that he heaps praise upon Russian leader Vladimir Putin, because Mr. Putin has said nice things about him, and also apparently because Mr. Putin helps Mr. Trump’s businesses make money, and indicates Mr. Trump’s willingness

to overlook barbaric cruelty and murder, as long as the perpetrator is a business partner of Mr. Trump and says nice things about him.

23. These facts that have occurred after Election Day, further indicate Mr. Trump's unfitness for office, and the necessity to free the electors in Florida to vote their conscience, as provided by the U.S. Constitution and as intended by the drafters.

24. These new facts further indicate that if Donald Trump were elected President he would pose a significant risk to the security of the United States, the integrity of our Presidential elections, and the ability of our country to prevent further aggressive acts by Russia against this country.

25. These new facts include, but are not limited to the following: 1) The CIA revealed on Saturday, December 10 that it placed "high confidence" in its conclusion that Russia hacked into the Democratic National Committee e-mails and other private electronic communications and improperly intervened in the November election for the purpose of trying to elect Donald Trump President of the United States; 2) Donald Trump has nominated for key positions in his cabinet two individuals with very cozy ties to the Kremlin, i.e. Michael Flynn, as National Security Adviser and Rex Tillerson as Secretary of State; 3) Donald Trump has cavalierly dismissed the conclusions of the CIA and the wide consensus of the intelligence community as "ridiculous" without offering any evidence to support this disparagement of the entire United States intelligence community; 4) While key Republican leaders such as Senate Majority leader Mitch McConnell, R-Ky., said on December 12, 2016 that he had "the highest confidence in the intelligence community and especially the Central Intelligence Agency" and called this breach of our cybersecurity "disturbing" and have called for further investigation into

Russian hacking and interference in the United States Presidential elections, Donald Trump has shown no interest in this breach of our security by a foreign, hostile power and instead has indicated that if elected, he will not pursue any investigation of Russia; 5) As further evidence that Mr. Trump chooses to ignore reality regarding this important threat, shortly after the CIA made known its conclusions on Saturday, December 10, 2016, Donald Trump tweeted on Monday, December 12, "Why wasn't this brought up before election [sic]?", despite the fact that 17 U.S. agencies voiced their concerns in October in a joint statement about Russian hacking in our elections and Mr. Trump himself had raised questions during a presidential debate in September about whose hackers were responsible, after Ms. Clinton blamed Russia. "She keeps saying 'Russia, Russia, Russia, and maybe it was. It could be Russia, but it could be China, could also be lots of other people, it could be someone sitting on their bed that weighs 400 pounds.'"

26. This denial of basic facts that are well known to all, including himself, is just one more example of Mr. Trump's inability to separate fact from fiction, which renders him unfit to be President and the type of person that Article II was intended to preclude from being elected President of the United States regardless of the majority vote in Florida.

27. Due to all of the above factors and more, the electors should not be forced to vote for a candidate that they may deem unfit, and should be permitted to make an independent choice for President as intended by the Constitution. While their choice may be to vote for Mr. Trump, the Constitution requires them to be free to deliberate, investigate and to make this choice independently.

28. Russia, under the leadership of Vladimir Putin, has also acted aggressively in Crimea, and threatened the stability and the interests of the NATO alliance, which is an

essential part of the security of the United States. Vladimir Putin also acts like a tyrant, reportedly denying freedom of speech and murdering his political opponents.

29. The Electoral College was designed by our founders to prevent someone like this from becoming the President of the United States, even if he was able to mislead and deceive many Americans, by placing the actual vote for the President in the sound and independent judgment of the Electors, free of any requirement for a loyalty oath.

30. There is nothing in the Constitution which permits or requires electors to vote the same as the popular vote in their states. In fact, this is the antithesis of the intent of the framers, and thus such a requirement, as found in Florida law is unconstitutional.

31. Alexander Hamilton explicitly stated “that the immediate election should be made by men most capable of analyzing the qualities adapted to the station.” Federalist No. 68. The electors would be “most likely to possess the information and discernment requisite to such complicated investigations.” *Id.* The electors were created so that they, as a deliberative body, would be “detached and less prone to be influenced by the “heats and ferments” of a raucous election. *Id.* The electors would help ensure “the office of President [would] never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications.” *Id.* The electors create an “obstacle” to “cabal, intrigue and corruption” and prevent “foreign powers [from] gain[ing] an improper ascendant in our councils,” *Id.*,

32. According to experts of history, the Electoral College as it currently exists does not reflect the intent of the drafters of Article II of the U.S. Constitution and the 12th Amendment. See affidavit from Dr. Robert Watson attached hereto as Exhibit A.

33. In a case where Ms. Clinton won over two and one half million more votes than Mr. Trump in the national popular vote, the equities in this case favor permitting and even requiring the electors to exercise their independent decision, since Mr. Trump did not win a majority or even a plurality of votes in this election, thus if the electors chose a candidate other than Donald Trump, this would not thwart the will of the majority.

34. The founders of the Electoral College chose this system so that the electors could conduct investigations of all issues surrounding the election in a “deliberative” manner, thus as an alternative remedy, the Plaintiff asks this Court to postpone the decision of the Electoral College beyond December 19, 2016, to provide a chance for the electors to investigate and to deliberate upon the new revelations that are daily emerging from our intelligence sources and elsewhere that have convinced all fair-minded observers, from both parties, that Russia exerted improper influence to sway the election, apparently for Mr. Trump.

35. Requiring an elector to cast a vote in accordance with the will of party leaders, rather than according to their own best judgment is compelled speech. It also renders superfluous the Electoral College and defeats the purpose for which it was created as articulated by Alexander Hamilton, for if the electors are merely to vote for the candidate who won the popular vote in their state, then there is no need for the Electoral College.

36. Also, by forcing electors to vote a certain way, Florida has created a winner-take-all system when it comes to Presidential elections, which takes away the vote of those who did not vote in the majority, and thus violates the Equal Protection Clause.

37. Injunctive relief is necessary to prevent the Defendants from violating Plaintiff's constitutional rights as described herein.

38. This Court can provide declaratory relief because an actual, substantial controversy now exists between Plaintiff and Defendants with respect to Plaintiff's rights and Defendants' rights and duties under the laws of Florida, Title IX, Chapter 103.021(1). Plaintiff's constitutional rights will be directly, substantially, and irreparably violated, affected, and injured unless and until this Court declares any law or regulation requiring electors to vote consistent with the popular vote in their state to be unconstitutional.

39. Due to the highly unusual and unprecedented "intrigue" and appeal to "popularity" warned about by the founders, there are electors all over the country, who are expressing their intention to violate their sworn oath to vote for the person who won the popular vote and there are many others who are unsure of the legality of such a decision. Thus, there is not only a current controversy surrounding this issue, but this controversy affects the vital interests of the United States, the integrity of our electoral system, the ability to prevent our elections from being improperly interfered with as

40. Plaintiff also seeks a declaratory judgment that any oath taken is of no force and effect because it violates the U.S. Constitution and the public interest, thus freeing all electors to vote their conscience and according to their best judgment as originally intended by the U.S. Constitution and the Twelfth Amendment.

42. In the alternative, Plaintiff seeks to require the Defendants to choose electors based by political party proportionally to the number of votes received by each candidate from that party in the Presidential election of November 8, 2016, and to require these electors to deliberate and then cast their vote according to their best judgment.

43. The current procedure in Florida, which is similar to all other states, that requires Florida Electors to take an oath to vote for a candidate dictated by a political party,

according to the vote of the majority of people in the state, rather than based on their own best judgment in light of all the facts, violates Article II and the Twelfth Amendment. Nothing within the Constitution permits states to bind the vote of Electors and prohibit them from using their best judgment, or grants the right to any political party to demand loyalty to the party so that all the Electors in a state will vote for the same candidate, rather than have the State reflect the diversity of opinions within the State.

44. The winner-take-all scenario of Florida Laws Title IX, Chapter 103.021 which requires Electors to take an oath to vote for the “candidates of the party that he or she is nominated to represent”, violates the spirit and the letter of Article II and the Twelfth Amendment to the U.S. Constitution.

45. Florida Laws Title IX, Chapter 103.021 which requires electors to take an oath to vote for the “candidates of the party that he or she is nominated to represent”, violates the Equal Protection Clause of the Fourteenth Amendment by erasing the votes of those who did not vote for the Republican candidate, and only reflecting the views of less than half the voters of Florida who voted for Mr. Trump.

46. A bipartisan group of electors from the Electoral College — including at least two members of the Hamilton Electors, the group that has vowed to support a moderate Republican instead of allowing Donald Trump the 270 electoral votes he’ll need to become president — has written an open letter to Director of National Intelligence James Clapper demanding that he release the facts regarding alleged Russian interference in the 2016 presidential election.

“As Electors, we also believe that deliberation is at the heart of democracy itself, not an empty or formalistic task,” they wrote. “We do not understand our sole function to be to

convene in mid-December, several weeks after Election Day, and summarily cast our votes. To the contrary, the Constitution envisions the Electoral College as a deliberative body that plays a critical role in our system of government— ensuring that the American people elect a president who is constitutionally qualified and fit to serve.”

After explaining the premise of Federalist Paper No. 68, in which Alexander Hamilton wrote that a main purpose of the electoral college was to avoid a “desire in foreign powers to gain an improper ascendant in our councils,” the electors argued that they need complete information about the allegations regarding Russia in order to fulfill their constitutional duty. They cited Trump’s repeated denials of Russia’s involvement in the hacking, his “direct plea” to Russia that they continue to hack into Clinton’s campaign, and reports from The Washington Post and The New York Times that the American intelligence community has definitively pinned the blame on Russia and to Russian dictator Vladimir Putin’s desire to get the Republican nominee elected.

47. Many of the facts in this Complaint did not come to light until the past few days and today, which is why the complaint is filed today, and why there is a need for emergency relief.

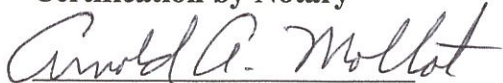
48. If the relief is granted, no harm will come to the Defendants, the public interest will be served, the equities tip in favor of the Plaintiffs, there is no alternative remedy, and the Plaintiffs and the United States will suffer irreparable harm.

Wherefore, Plaintiffs seek the following relief;

- a) Declare the Act unconstitutional;
- b) Select a system based on the fair apportionment of electors according to the proportion of votes gained by each party and allow each elector to vote his conscience;

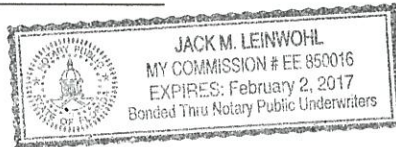
- c) In the alternative, postpone the vote of the Electoral College until more investigation can be done regarding the Russian influence upon the Presidential election;
- d) Any other remedy deemed just and proper by this Court.

Certification by Notary


Arnold A. Mollot

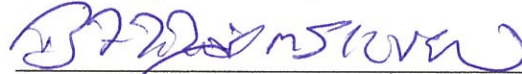
Before me this day of Dec 14 2016 appeared Arnold A. Mallot and upon presenting proper identification, swore that this complaint is true and correct.

Notary 



Dated December 14⁵, 2016

Respectfully Submitted,



Barry Silver

FBN 382108

barryboca@aol.com

18624 Cape Sable Drive

Boca Raton, Fl. 33498

Telephone (561) 302-1818

Attorney for the Plaintiffs

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served by e-mail on Pam Bondi at oag.civil.eserve@myfloridalegal.com this December 14⁵, 2016.


Barry Silver FBN 382108

SERVICE LIST

Barry Silver
Barryboca@aol.com
18624 Cape Sable Drive
Boca Raton, Fl. 33498
Telephone (561) 302-1818
Attorney for the Plaintiffs

Pam Bondi
oag.civil.serve@myfloridalegal.com
(850) 414-3300
P.O. Box 10069
Tallahassee, Fl. 32302
Attorney for the Defendants

Exhibit 1

Electoral College Electors' Letter to James Clapper

Open Letter to Director of National Intelligence James Clapper:

We are Electors who were selected by the voters of our states to represent them in the Electoral College on December 19, 2016. We intend to discharge our duties as Electors by ensuring that we select a candidate for president who, as our Founding Fathers envisioned, would be “endowed with the requisite qualifications.” As Electors, we also believe that deliberation is at the heart of democracy itself, not an empty or formalistic task. We do not understand our sole function to be to convene in mid-December, several weeks after Election Day, and summarily cast our votes. To the contrary, the Constitution envisions the Electoral College as a deliberative body that plays a critical role in our system of government — ensuring that the American people elect a president who is constitutionally qualified and fit to serve. Accordingly, to fulfill our role as Electors, we seek an informed and unrestrained opportunity to fulfill our constitutional role leading up to December 19th — that is, the ability to investigate, discuss, and deliberate with our colleagues about whom to vote for in the Electoral College.

We further emphasize Alexander Hamilton’s assertion in Federalist Paper #68 that a core purpose of the Electoral College was to prevent a “desire in foreign powers to gain an improper ascendant in our councils.” The United States intelligence community has now concluded with “high confidence” that a foreign power, namely Russia, acted covertly to interfere in the presidential campaign with the intent of promoting Donald Trump’s candidacy. During the campaign Russia actively attempted to influence the election outcome through cyber attacks on our political institutions and a comprehensive propaganda campaign coordinated through Wikileaks and other outlets.

Allegations that Donald Trump was receiving assistance from a hostile foreign power to win the election began months before Election Day. When presented with information that the Russian government was interfering in the election through the course of the campaign, both in private briefings and public assessment, Donald Trump rejected it, refused to condemn it, and continued to accept their help. Donald Trump even made a direct plea to the Russian government to interfere further in the election in a press conference on July 27,

- Michael Flynn, Trump campaign aide and the announced incoming National Security Advisor, traveled to Russia in December of 2015 for a gala event celebrating RT, a state-controlled propaganda network, at which he was seated next to Russian President Vladimir Putin.

The Electors require to know from the intelligence community whether there are ongoing investigations into ties between Donald Trump, his campaign or associates, and Russian government interference in the election, the scope of those investigations, how far those investigations may have reached, and who was involved in those investigations. We further require a briefing on all investigative findings, as these matters directly impact the core factors in our deliberations of whether Mr. Trump is fit to serve as President of the United States.

Additionally, the Electors will separately require from Donald Trump conclusive evidence that he and his staff and advisors did not accept Russian interference, or otherwise collaborate during the campaign, and conclusive disavowal and repudiation of such collaboration and interference going forward.

We hope that the information and actions described in this letter will be provided in an expeditious manner, so that we can fulfill our constitutional duty as Electors.

EXHIBIT A

AFFIDAVIT OF ROBERT P. WATSON

The Electoral College: A Primer on its Creation, Design, and Intent to Permit Electors to "Vote their Conscience"

Name: Robert P. Watson

Occupation: Professor, historian, author, media commentator

I, Robert P. Watson, do swear or affirm:

1. That I am a college professor at Lynn University, historian, author, and media commentator.
2. That I have studied, lectured, and written about the history of presidential campaigns, the Electoral College, the Constitution, and office of the presidency.
3. That the Electoral College was not designed to serve as a rubber stamp or direct reflection of the popular vote in a state, but rather it was the intent of the Framers to both permit and even require electors to vote their conscience and to use their best intelligence and sagacity in voting for president.
4. That the Electoral College was, by its very design, a compromise and a temporary solution to a variety of problems. It was developed chiefly to establish a safeguard against the public directly selecting the president. Whether we now agree with this approach, worry that it might not reflect our contemporary views of voting rights, or feel the time has come to change the system, the fact remains that it is how the system was created and it was the clear intention of the Framers. Quite simply, the Framers worried about the ability of the public to make an informed, dispassionate decision, just as they worried that a tyrant could manipulate public opinion in a direct election and rise to power. The safeguard they developed was the Electoral College. In so doing, the Framers placed their faith in the electors, a group that met only once and would therefore be less susceptible to political influence. It was, maintained the majority of the Framers, the best way to select a president.
5. That this point is widely agreed upon by historians and is stated by the Framers in both their notes from the Constitution Convention of 1787 and in the Federalist Papers. For instance, one of the chief architects of the Constitution and driving forces in Philadelphia, Alexander Hamilton, wrote in the Federalist Papers (Federalist 68):

"It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations. It was also peculiarly desirable to afford as little

opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief."

6. That, secondarily, it was created in order to allay concerns of smaller states that they would have little power in selecting a president. Interestingly, today the system may be said in at least one way to favor small states and provides a precedent against the "one man, one vote" principle. For instance, the smallest state in the nation – Wyoming – might cast slightly over 200,000 votes in a presidential election and receive 3 electoral votes as a state. Whereas, California might cast well over 9 million votes and receive 54 electoral votes. This means each elector in Wyoming represents roughly 70,000 votes, but the electors in California represent fully 170,000 or so voters. The system was not designed to be a "one person, one vote" system and has, in practice, provided disproportionate powers to the electors of certain states.

7. That, between this second compromise and the fact that nearly all the states cast their electoral votes in a winner-take-all system (except Maine and Nebraska), it makes no difference if one wins a state by one vote or 1 million votes and the votes are neither reflective of the popular vote nor proportional to the voting in the states.

8. That, thirdly, American democracy was an experiment in popular governance. The Framers were going far beyond what the great Greek political philosophers had pondered or the Roman Senate had debated. It was of practical necessity. With much of the public being illiterate, limited by primitive communication and transportation systems, and little to no means of facilitating or counting a popular vote in such a large country (and today such a populous nation), how would they conduct an election and be sure of the results? The answer was to convene the Electoral College.

9. That there are plenty of examples historically of electors in the Electoral College voting their conscience rather than in a manner reflective of how the states voted. These instances were permitted within the system and not deemed to be unconstitutional. Likewise, there are several instances in American history where contentious elections were decided in ways other than the electors simply mirroring the votes of the states. In each case, the results of the election were upheld. And it started in the beginning.

The election of 1800 was a 73-73 tie in the Electoral College, necessitating a revote by the House of Representatives, who, on the thirty-sixth ballot selected Thomas Jefferson over Aaron Burr. Two decades later, the election of 1824 produced a popular vote victory by Andrew Jackson, but the electors met in state capitals soon thereafter and selected John Quincy Adams. The year 1876 produced an intriguing scenario. Samuel Tilden was in the lead but three states had yet to cast their electoral votes. Tilden's opponent, Rutherford B. Hayes, needed those states to vote for him in order to win the presidency... and they did, with electors in three southern states (one of them being Florida) determining the outcome of the election. The elections of 1888 and 2000 produced presidents who lost the popular vote – Benjamin Harrison over Grover Cleveland and George W. Bush over Al Gore, respectively.

Here is a partial list of Electors who voted in a way that did not reflect the vote of their home states:

1808 – 6 Democratic-Republican electors
 1812 – 3 Federalist electors
 1828 – 7 Democratic electors
 1832 – 32 Democratic electors
 1836 – 23 Democratic electors
 1872 – 63 Democratic electors
 1896 – 4 third party electors
 1912 – 8 Republican electors

In the year, 1836, the slate of electors from Virginia decided to switch their entire vote. There were also instances where electors cast (or did cast) a vote in protest over the election. One such instances was in 2000, when Democrat Barbara Lett-Simmons of DC refused to vote. A similar situation occurred in 1832.

There are some recent examples. In 1968, a Republican from North Carolina, Lloyd Bailey, did not vote for his party's nominee, Richard Nixon. Rather, he chose George Wallace, who was the the Independence Party nominee. Similarly, during the 1976 vote, Mike Padden, a Republican from Washington, decided to write in Ronald Reagan even though he was not on the ticket and Padden was supposed to be pledged to vote for the Republican nominee that year, Gerald Ford. In 1956, W. F. Turner, a Democrat from Alabama, voted for a local circuit court judge from his hometown rather than for the party's nominee (Adlai Stevenson). In 1988, Margaret Leach, a West Virginia Democratic elector, reversed her vote for the Democratic ticket, picking Lloyd Bensten for president and Michael Dukakis for vice president. The final one being in 2004, when an anonymous Democrat from Minnesota cast a vote for John Edwards rather than for the presidential nominee John Kerry.

10. That all these instances were legal and within both the intent of the Framers and rights of the electors. Even though 29 states and DC attempt to require electors to vote the way the states voted in the popular vote, 21 states do not impose such restrictions. Moreover, it is uncertain as to whether such prohibitions on the electors would withstand a legal challenge today. [There was a case that upheld the prohibitions, but only in the narrow sense of small fines be placed on the "faithless" electors by the states, but it did not impeded electors from voting their conscience. See *Ray v. Blair*, 343 U.S. 214 (1952)] The Framers were clear in the design of the Electoral College. Electors can vote for someone from another party, against someone for whom their state pledges them to vote, or however they desire to vote.

If the matter was put before a court of law, there is an abundance of evidence in the form of notes and documents from the Founding that point to the clear intent of the Framers to have Electors vote their conscience. Using a popular sports metaphor, the Electors are free agents, able to vote in a way that, while it considers the vote of the public they reflect, is not tied in any way to the vote in their state.

Sources for further consideration:

"The Electoral College," Federal Election Commission

http://www.fec.gov/pdf/elec_coll.pdf

"The Electoral College," National Archives and Records Administration

<https://www.archives.gov/federal-register/electoral-college/about.html>

"Faithless Electors," Fair Vote

http://www.fairvote.org/faithless_electors

Robert P. Watson, Ph.D. is Professor of American Studies at Lynn University in Florida. He has published 40 books and hundreds of scholarly articles, chapters, and essays on topics in American politics and history, is a frequent political commentator for numerous media outlets in Florida, throughout the United States, and internationally, has lectured as a visiting scholar at numerous universities and historic sites including Yale, the U.S. Military Academy at West Point, the Harry Truman Presidential Library, Gerald Ford Presidential Museum, and the National Archives, and has served on the boards of numerous scholarly journals and academic associations.

I swear or affirm that the above and foregoing facts and conclusions are true and correct to the best of my information and knowledge.

Dec 13, 2016
Date

RP Watson
Robert P. Watson

State of Florida
Palm Beach County

I, the undersigned Notary Public, do hereby affirm that Robert P. Watson personally appeared before me on the _____ day of December 2016, and signed the above Affidavit as his free and voluntary act and deed.

Deborah Jean Berg
Notary Public



Deborah Jean Berg
Commission # FF934280
Expires: November 5, 2019
Bonded thru Aaron Notary