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Subject: Horowitz: How Republican-controlled state legislatures can rectify election fraud committed by courts and governors - TheBlaze

This article makes the case.

<https://www.theblaze.com/op-ed/horowitz-state-legislatures-rectify-election-fraud>

Horowitz: How Republican-controlled state legislatures can rectify election fraud committed by courts and governors

[Daniel Horowitz](#)

Who determines the outcome of the presidential election in a given state? Governors? Secretaries of state or boards of election superintendents? The courts? Fox News' decision desk? Nope. The president wins a state when electors selected by state legislatures conduct a vote in their respective states on Dec. 14. Thus, ultimately, according to the Constitution, the state legislators wind up serving as the kingmakers in a disputed election.

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Endless pots of unverified mail-in ballots that often fail to meet state election law standards weren't created overnight at 3 a.m. on Nov. 4. They were created by a mix of illegal administrative actions taken by Democrat administrations in the key states and state and lower federal courts overriding long-standing state election laws. This has been going on for years, but accelerated to a fever pitch over the past few months.

The Constitution, in Art. I, §4, cl. 1, gives state legislatures the power over the times, methods, and procedures of elections and provides no "public health emergency" exception that enables governors or judges to override them and create a new system for elections. At its core, this is why we have such post-election chaos, and it was by design – set in motion for years by the courts and

crystalized over the past few months by using COVID-19 to remake the in-person voting electorate into a postal ballot free-for-all, in what Justice Gorsuch described as the greatest judicial intervention in elections in 230 years.

Well, now state legislatures can have their revenge and have the final say, as intended by the Constitution. Mark Levin reminded his audience today that state legislatures are the ones who choose the electors who directly vote for president in each state.

In case you think this is some desperate tactic Levin has concocted because he doesn't like the impending results of the state ballot tallies, he has been warning about this for months. While everyone slept as the courts rewrote election law, Levin, a constitutional lawyer, warned on Sept. 18, "As in Pennsylvania, the Michigan legislature is controlled by the Republicans. They must meet in emergency session and exercise their Article II power under the federal Constitution and seize back control over the election system."

In the run-up to the election, courts have allowed "late voting, namely submission of ballots after Election Day so long as they are postmarked before. In addition, a Michigan court allowed ballot-harvesting under certain circumstances, which appears to have occurred late at night in Wayne County. There has been a series of rulings or administrative decisions in numerous states, which are contrary to state law and in some cases federal election law, that enabled Democrats to upend the electoral process – putting aside questions of additional fraud in the early morning of Nov. 4.

Liberals say they want every vote to count, but having votes submitted by insidious special-interest groups that violate the terms and conditions of absentee balloting ensures that the lawfully cast votes of individuals indeed do not count. We can debate the policy merits of some of these anomalous voting procedures, but everyone agrees that state legislatures control the process. In many blue states, they have already codified Democrat priorities on ballot-harvesting, registration deadlines (or lack thereof), and weak voter verification systems. But in states like Michigan, Wisconsin, and Pennsylvania, there were laws on the books that were illegally ignored by the Democrat governors and the courts.

In his 2005 book "Men in Black," Levin noted that the reason the Supreme Court ruling on the Florida recount in 2000 was final was not because the courts are supreme over the electoral process. Quite the contrary, the Supreme Court was merely rectifying a mistake the state court made, because Democrats were

the ones who involved the courts in the election process to begin with. But why did Al Gore ultimately accept the decision in *Bush v. Gore*?

"The Florida legislature could have (and, in fact, was preparing) to intervene and name a slate of electors if the Florida Supreme Court continued to interfere with the election," wrote Levin on page 170. "The legislature, which was controlled by the Republican Party in 2000, had absolute authority under the Constitution to choose Florida's members of the electoral college."

Art. II, Sec. 1, §2 of the Constitution stipulates that "Each State shall appoint, in such Manner as the Legislature thereof may direct" the electors to vote for president. The Constitution gives Congress the authority to set the date of that vote, which, pursuant to 3 U.S.C. §7, is the Monday after the second Wednesday in December of presidential election years. This year it is Dec. 14.

Notice how the Constitution specifically gives the job of choosing electors to the legislature, and unlike with standard legislation, there is no shared jurisdiction or responsibility with the governor, much less some random state or federal judge. Charles Pinckney, one of the signers of the Constitution from South Carolina, reiterated on the Senate floor on Jan. 23, 1800, how careful the framers were to cut Congress out of the process.

"The Electors are to be appointed by each State, and the whole direction as to the manner of their appointment is given to the State Legislatures," said Pinckney during a Senate debate. "Nothing was more clear ... that Congress had no right to meddle with it at all; as the whole was entrusted to the State Legislatures, they must make provision for all questions arising on the occasion."

Technically, this means that state legislatures could even appoint electors and completely avoid or cancel out popular election ballots we have today, at least for the president and vice president. This was the practice in some states in the early days of the republic. As Justice Joseph Story wrote in his 1833 "Commentaries on the Constitution," state legislatures choosing the electors themselves "has been firmly established in practice, ever since the adoption of the constitution, and does not now seem to admit of controversy, even if a suitable tribunal existed to adjudicate upon it."

Indeed, in 1892 (*McPherson v. Blacker*), in upholding Michigan's practice of dividing the state's electors by congressional district (as done today in Maine and Nebraska), the Supreme Court wrote, "The legislature possesses plenary

authority to direct the manner of appointment, and might itself exercise the appointing power by joint ballot or concurrence of the two houses, or according to such mode as it designated." In *Bush v. Gore*, the high court reiterated that any state legislature "may, if it so chooses, select the electors itself."

Obviously, none of us wants to abolish popular elections, but why would the Constitution even grant state legislatures such power? Well, the framers understood that, unlike Congress, these are the bodies that are closest and most accountable to the people, and unlike judges or executives (state or federal), they are numerous in a deliberative body and won't wield unilateral authority without some degree of consensus.

By overriding the legislatures in how to properly conduct the popular elections that choose these presidential electors, the courts and governors have disenfranchised their voters. A Michigan court extended Election Day for two weeks. A Pennsylvania court, along with the Democrat secretary of state, essentially nullified signature verification for mail-in ballots.

Thus, if there is ample evidence of voter fraud that would be sufficient to alter the will of the people through this popular election, it is incumbent upon the state legislatures in those states to reclaim their authority over the Electoral College and rectify the fraud that has upended our election process.