

# Election Integrity Is Not the Guarantee

By Marly Hornik

With the progressive redefinition of liberty and justice in violent attack mode, modern Madisonians and Hamiltonians alike are getting badly beaten on the most important front: elections. Two serious mistakes are being made that erode republicanism, advancing national dissolution. First, we have conceded to the election administrative state the privilege of reversing accountability for their duty of accuracy and compliance. Under current logic, outsiders are responsible for proving election officials wrong, even as essential records are withheld or destroyed. Second, allowing an information warfare term, “election integrity,” to define what is at stake is a poison pill all but swallowed.

According to the Cambridge dictionary, integrity means “the quality of being honest and having strong moral principles that you refuse to change.” Wouldn’t it be wonderful if elections had strong moral principles? We could just sit back and watch them nobly self-administer. Political conflicts would diminish, or cease! Corruption would end! Parties, candidates and voters would gather together outside polling stations in circles, bursting forth in joyous song! Flowers would fill the nation’s air with sweet fragrance all the year round, if only elections had integrity!

Such utopian fantasies are the stuff of hand-knit, pink vulva hat wearers turned federal law enforcement disruptors; they are likewise popular on college campuses like Brown University, where students are made safe by the overwhelming force of niceness. The adults in the room know that elections must be administered by people, who can be “ambitious, vindictive and rapacious,” as Publius noted. Elections cannot have integrity; only people can. Election administrators must have integrity, but sometimes do not.

Although the focus of the US Constitution seems to be on creating government, rather than facilitating quiet enjoyment, this illusion is born of the extraordinary effort required to restrict “public servants” to their carve-outs from the whole sovereignty of the citizens, and the necessity of frequent elections with their concomitant, exaggerated grandstanding. In describing this conundrum during the Pennsylvania ratifying convention, James Wilson explained that the “citizens of United America” are not agreeing to an equal-footing *contract*; rather we “wish a principle established, by the operation of which the legislatures may feel the direct authority of the people.” In Hamilton’s words, “the people surrender nothing,” and pursue happiness inside the boundary of just laws.

The Constitution is therefore replete with descriptions of every *government* function and position, how it is attained and the specific powers and limits of each role. The political genius sets ambition against ambition, so that the “interest of the man” in office is “connected with the constitutional rights of the place,” creating a never-ending turf war that restrains opportunism through institutional guardrails jealously patrolled by the vigor of the adjacent office-holder’s ego.

## I. The Constitutional Authority to Choose

Before any of this unfolds, however, an astute citizen will notice there is one exception to the theme. There is one action assigned not to government, but to *us*, *our* job, *our* task, and *our turf to defend* in the grand arena, *our* faces marred by sweat, blood and nasty lawfare. The people are granted one power in the Constitution before retreating into private life, where we are limited to leveraging political influence through the collective energy of our factions and associations. The act of *choosing* Congress is granted expressly within Article I, § 2 of the Constitution to “the people of the several states.” We assigned ourselves the role, agreed that our individual state legislatures would clarify, by statute, exactly to whom the franchise was (and was not) granted, and *then* we ratified.

When we ratified the Constitution in our conventions, we were wary of the general government, even as we recognized its necessity. We vigorously declined to give the centralized power any authority over the qualification of voters (see Justice Thomas’ dissent in *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013)). Choosing Congress and, indirectly, the President is the greatest power in America and now the world. Leaving the question of exactly who votes *distributed* was viewed as an essential protection of the near-plenary power of individual citizens over their own lives. Article I, § 2, the Composition Clause, describes a binding agreement between the citizens and the states upon which American republicanism depends and by which it is defined; a means palatable to all by which this new power could safely rise.

Yet we have become so entranced by our right to vote, and the pursuit of elections with integrity, that we have functionally relinquished our duty to choose. The election administrative state has simply taken it, signing contracts with election technology providers who retain key intellectual property rights in a system too complex to understand or secure, meanwhile bullying citizens and courts alike with the infinite threat of racially charged disenfranchisement (arguments no longer considered plausible in the Eighth Circuit). As Bastiat said, they “accuse us of not wanting persons to eat because we do not want the state to raise grain.” Thus, we continue to be dragged by divisive demagogues into an “honor system” for voting, and the removal of any burden whatsoever on voters for registration and ballot access. This has, *in practice*, absolved election officials of verifying voters.

## II. The Election Administrative State and Accountability

The problem is not quibbling over some minor, inevitable “human error” by government; it is political overreach we condone through acquiescence. The election administrative state oversees a system currently running roughshod over our agreement to restrict registration and voting to those *known by administrators* to be qualified under state law. Bureaucrats tell us who won, and anyone who does not simply believe them and their self-audits is punished. We must understand the situation like Founders, invigorate our egos, and claim our territory. *No one can choose Congress but legally qualified voters.*

Consider the extreme example of California, where the Secretary of State—one individual—certifies on behalf of 39 million inhabitants the choice of representatives for one-twelfth of the seats in the U.S. House of Representatives. A formal complaint prepared by a professional big-data auditor, based on official records obtained from the Secretary of State and then submitted back to that office without response, tells a puzzling tale about the 2022 midterm. Either there were 11,146,620 votes counted, or there were 10,983,878 voters recorded as voting. According to voter history records obtained from Secretary Weber’s office, 1,857,714 individuals *whose votes were counted* in that election, voted in it before registering. How did anyone verify that many identities before accepting the ballots? To accept *either* a 16.67 percent *or* a 16.91 percent “clerical” error rate as legitimate on its face is *very* nice, excessively so. Perhaps it can be proven valid within victory margins or some definitive standard of accuracy. But this is what the official record says about how much concern California government holds for natural rights on Earth. When someone shows us who they are, we should believe them.

In the Help America Vote Act of 2002, Congress did request an accuracy standard “in the count of ballots” from the FEC. What emerged was a nebulous substitute covering only the scanning of ballot positions, that was accepted unchallenged. The issue has not been revisited, leaving any petitioners to argue a maximum error rate in capturing the intent of voters of 0.0008 percent. It is absurd for an election to have 10,000 times this amount of error and be certified as accurate, as happened in California, but the law is as clear as mud.

This works for the election administrative state, which is not obviously controlled under the post-Chevron framework. Since the Supreme Court overturned Chevron in 2024, burying administrative deference under a “tombstone no one can miss” according to Justice Gorsuch, law restrains process in *federal* Executive agencies. Logically this should also control state officers of Congress, but the APA does not encompass such logic, although criminal law provides remedies for election misconduct once attempted. Yet consider the consequence of extending endless deference in the prophetic warning of Madison, writing as Publius, “may it not happen in fine that the minority of CITIZENS may become a majority of PERSONS, by the accession of alien residents, of a casual concourse of adventurers, or of those whom the Constitution of the State has not admitted to the rights of suffrage?” Everything old is new again, except that unlike our forefathers we are letting it slide.

### **III. The Composition Clause as Constitutional Command**

The right to vote is *not* a privilege or immunity of citizenship under the Fourteenth Amendment, according to all but one Supreme Court opinion, *Oregon v. Mitchell*, which garnered a majority of one! Every parameter of election “fairness” is measured against restricting the act of choosing to qualified voters. Ballots can only be given to qualified voters, only ballots originating from qualified voters can be counted, and each qualified voter’s ballot must be equally counted. In writing to convince the inhabitants of Quebec to join their experiment, a unanimous Continental Congress explained why in 1774: “The first grand right, is that of the people having a share in their

own government by their representatives chosen by themselves, and, in consequence, of being ruled by laws, which they themselves approve, not by edicts of men over whom they have no control.” Once we have chosen legislators, the vast majority of Americans can neither access Congress nor effectively use the courts. We cannot give a sliver of our authority away. Put differently, a fool and his hard-won liberty are soon parted.

The right to choose is often conflated with the right to vote, which is likewise confused with the right to a ballot. The right to receive and fill in a ballot is determined by state authority, under state statute, and administered by state officials who are simultaneously officers of Congress (*In re Coy*, 127 U.S. 731 (1888)) when a federal candidate appears on the ballot. The federal right to vote, as defined by Congress in the 1964 Civil Rights Act, includes “all action necessary to make a vote effective including...casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast.” This shows that voting is broader than ballots, and includes knowing a vote was effective through fair counting.

But the agreement about who *chooses* is actual heels-digging-in, down-to-the-mat turf that precedes the existence of Congress, federal law, and directly incorporates state law as a condition of ratification. In 1941 the Supreme Court defined it as a “constitutional command without restriction or limitation.” The clause is upheld through chief State election officials and their statewide staff faithfully policing voter registration and voting in accordance with their laws. Like all constitutional territory, ours is forever at risk of jealous encroachment, political opportunism, and the ensuing collapse of structured liberty. The prize is access to every American’s wallet, a multi-trillion-dollar budget, and the reins of world power.

#### **IV. Transparency Secures Republicanism**

To defend our authority to choose we need transparency. Seeking to mandate the preferences of *some* citizens in election process, i.e. mob rule, is a symptom of a constitutional auto-immune disorder. Election process decisions were granted to state legislatures and Congress. Citizens directly controlling election process is anti-republican by our own definition, a non-solution of rebellious advocacy that could become insurrection if enough people believe it is righteous.

The Founders’ solution is far more elegant. Congress must remain forever yoked to the people, for the American system to work. “The people,” said President Monroe in his famous *Commentaries on the Constitution*, are “the highest authority known to our system, from whom all our institutions spring and on whom they depend.” The tether between constituents and Congress is the lifeline of liberty, and is broken when any part of the election process is kept secret, or voter qualifications are ignored. We can trust no one to have that much integrity.

Should you require a better description of republican government than the Preamble and first two sentences of the Constitution create, look no further than the Federalist. In its opening salvo, Hamilton exclaims that republicanism is the “OBJECT” of the entire scheme. The term is not mentioned again until Federalist #9, when Hamilton defines it:

*The regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; **the representation of the people in the legislature by deputies of their own election**: these...are means, and powerful means, by which the excellences of republican government may be retained and its imperfections lessened or avoided.*

While the guarantee of a republican form of government is often called a “political question,” relative to rebellion only, a review of the debate from the Federal Convention reveals several purposes for its adoption. James Wilson of Pennsylvania initially saw the guarantee as purely for the purpose of suppressing rebellion, but Mr. Gorham of Massachusetts “thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be...compelled to remain an inactive witness of its own destruction.” Edmund Randolph felt it had a primary purpose of securing republican government, and Madison offered that “the Constitutional authority of the States shall be guarantied to them.” This was objected to by Governor Morris of Virginia, who disliked the laws of Rhode Island enough to think they deserved no such protection, and William Churchill Houston of New Jersey who felt the same way about the Constitution of Georgia. Wilson proposed “that a Republican form of Governmt. shall be guarantied to each State & that each State shall be protected agst. foreign & domestic violence,” clearly addressing each of two distinct problems, not a single guarantee made twice. All agreed; the discussion ended.

In the Founders’ view, republicanism is synonymous with government having direct dependence on the people. Article I, § 2 establishes this as a *legal* question. Either the states are, or are not, following their own laws. Either the voters and votes are qualified, and the counts legitimate, or they are not. If the election officials cannot prove it, and are not willing to investigate, a serious challenge to the guarantee of republican government is raised, and they must be held accountable.

Thanks to the anti-federalists this self-evident fact is double protected, defensible in the Bill of Rights as a Fifth Amendment, due process liberty right. Before any member of Congress dips her paws in our bank accounts, gives an aye or nay, gets briefed on sensitive intelligence, is wined and dined, or otherwise represents our interests on the job, we need to *know* we chose him. The same goes for the President and Vice President, and especially so. Trust in government, and domestic tranquility, begins with transparent elections.

The Composition Clause is getting its first test in New York federal court, where NY Citizens Audit (NYCA) filed suit against Letitia James and the NYS board of elections for retaliating against their efforts to get redress of election grievances. Thousands of NYCA volunteers collaborated to audit official records of the 2020, 2022 and 2024 elections in New York, publish reports, and bring the results of their audits to 363 town boards, dozens of county legislatures, and Albany asking for answers. Facts reported, and now submitted as evidence, include an aggregate discrepancy of 436,864 more votes counted than voters recorded as voting; 1,558,302 unique registered voters with at least two and as many as 27 unique ID numbers; 254,713 votes counted in New York City

in 2020 but missing from New York State records; 2,783,369 voter records with plainly false registration dates like Christmas, New Year's Eve, prior to the voter's birth, etc.; over 223,000 double votes added to the 2020 election in 2023; and a double-blind, expert-peer-reviewed study of hidden algorithmic programming that appears to facilitate data-injection inside the state's voter rolls, published in the cyber-intelligence *Journal of Information Warfare*. The suit begins by accusing the state officials of conspiring to retaliate against First Amendment rights, but ultimately accuses defendants of intending to usurp the choice of congressional representatives permanently. Counsel for defendants directed the judge to "ignore them," referring to NYCA and several individual plaintiffs, substantiating their concerns precisely.

"However useful jealousy may be in republics," "whenever any one of the departments may commit encroachments on the chartered authorities of the others," the "breach" must be corrected, according to Publius.

## **V. Restoring the Republic's Electoral Covenant**

Election integrity has never been the guarantee. The unadulterated authority of qualified citizens to choose Congress, thereby controlling and restraining government to what the majority believes is virtuous and just, is the beating heart of the greatest system yet devised for securing the peace and prosperity of a nation. What America needs to ensure this principle is TRANSPARENCY in elections. We do not need to eschew all technology; republicanism demands that voting systems be fully transparent and auditable, with public access to counting methodologies, source code, and records. We do not need to prove election outcomes were improper; election systems need to be scrutinized end-to-end under existing national security risk assessment standards, and continually monitored for threats by credentialed cyber experts at all control points. If that is too expensive and complicated, we need simpler systems. The SAVE Act must be a constitutional amendment; meanwhile we need the Department of Justice to enforce criminal penalties on election officials who refuse to verify the qualifications of voters before counting the votes. The war is won, if Americans would only defend our turf with the spirit of those who endured innumerable trials to gift us the victory.



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