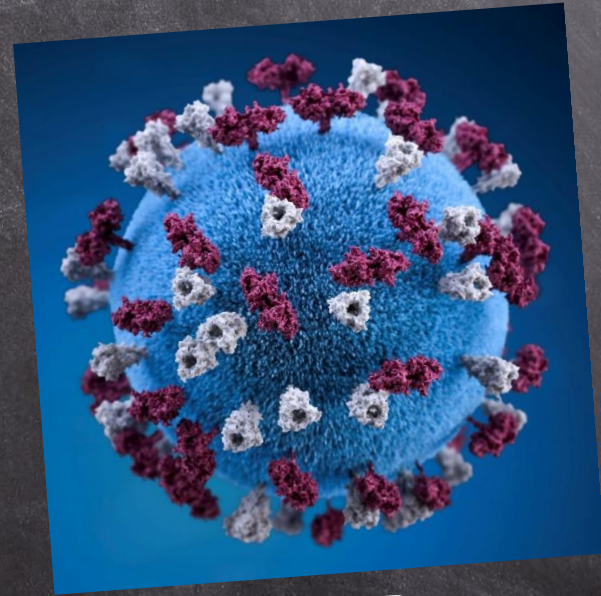


# Election 2020

What Could Possibly  
Go Wrong?

Things that could go very  
wrong:



COVID

# Congress's Role In Elections

**U.S. Const. Art. I, Section 4:** “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”

**U.S. Const. Art. II, Section 1:** “The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

# *Foster v. Love*

“The Elections Clause of the Constitution, Art. I, §4, cl. 1, provides that ‘[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.’ **The Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections, \* \* \* but only so far as Congress declines to pre-empt state legislative choices[.]** Thus it is well settled that the Elections Clause grants Congress ‘the power to override state regulations’ by establishing uniform rules for federal elections, binding on the States.”

*Foster v. Love*, 522 U.S. 67, 69 (1997).

# *Crawford v. Marion County*

General Rule: “[E]venhanded restrictions that protect the integrity and reliability of the electoral process itself’ are not invidious and satisfy the standard set forth in *Harper* [under the Equal Protection Clause of the Fourteenth Amendment]. \* \* \* Rather than applying any ‘litmus test’ that would neatly separate valid from invalid restrictions, we concluded that a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment’ that our adversary system demands.

*Crawford v. Marion County Election Bd.*, 553 U.S. 181, 189-90 (2008).

## Interests Found Legitimate in *Crawford*:

1. Deterring and detecting voter fraud.
2. Improving and modernizing election procedures.
3. Safeguarding voter confidence.

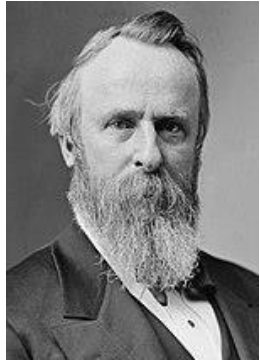
# *Purcell v. Gonzalez*

*Purcell v. Gonzalez*, 549 U.S. 1 (2006)

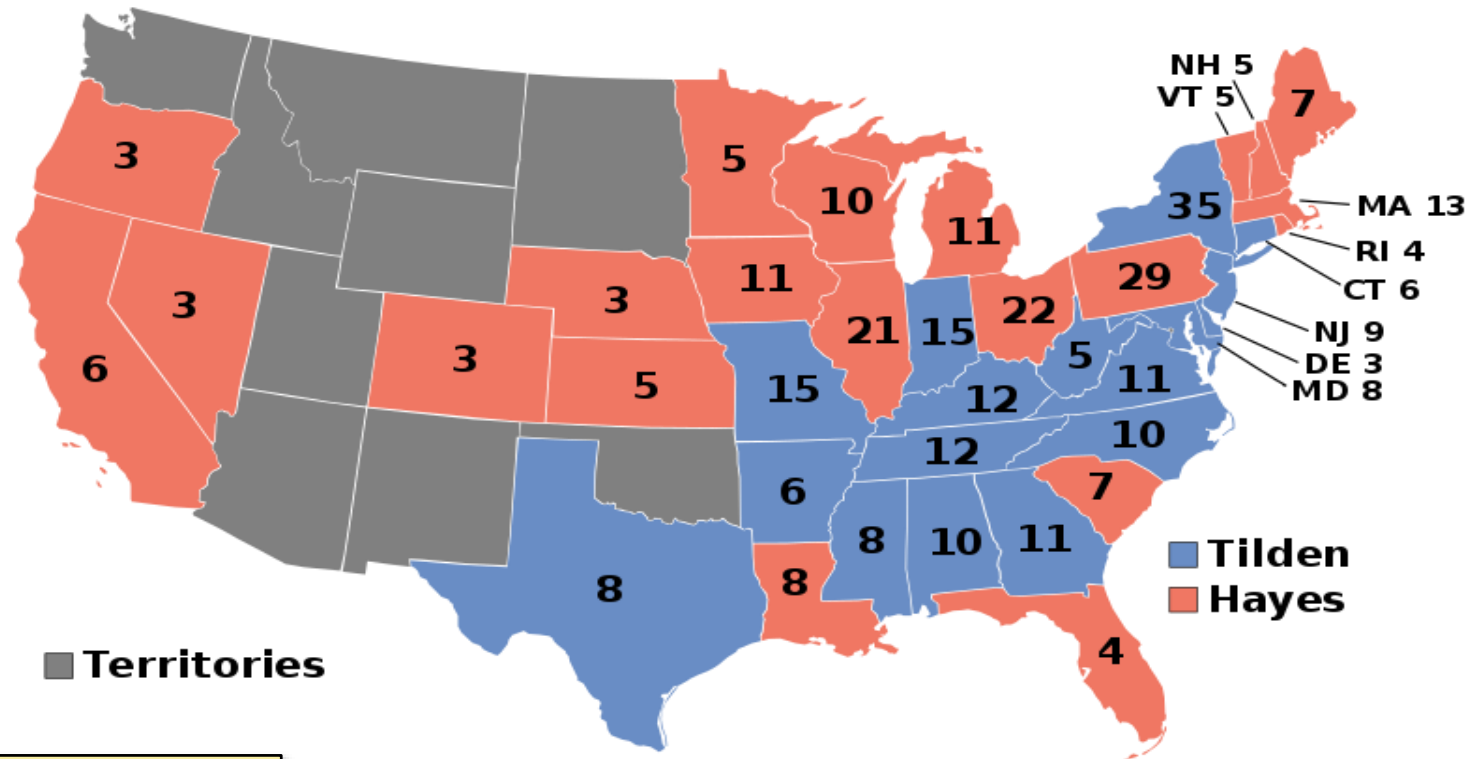
- District Court: Denied preliminary injunction to block Arizona voter ID law.
- Ninth Circuit: On October 5, a two-judge motions panel issued a four-sentence order enjoining law until appeal on merits, in effect changing the rules for the election.
- Supreme Court: Reversed, based on the short amount of time between the Ninth Circuit order and the election, the need of Arizona election officials for clear guidance, and the Ninth Circuit's lack of explanation. Per curiam opinion stated that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."

*Purcell* is often cited as supporting a presumption against last-minute changes to election procedures

# Hayes/Tilden Election of 1876



## Rutherford B. Hayes (R)



Samuel J. Tilden (D)

## Oregon

Statewide results favored Hayes, but Democratic governor claimed one GOP elector was ineligible and substituted a Democrat.

## Florida, Louisiana, S. Carolina

Tilden reportedly leading, but widespread voter intimidation and fraud → Democratic votes disallowed → Hayes certified.

# Electoral Count Act

**3 U.S.C. § 5:** “If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, \* \* \* and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law \* \* \* shall be conclusive, and shall govern in the counting of the electoral votes.”

“[W]hatever else may be the effect of this section, it creates a ‘safe harbor’ for a State insofar as congressional consideration of its electoral votes is concerned. If the state legislature has provided for final determination of contests or controversies by a law made prior to election day, that determination shall be conclusive if made at least six days prior to said time of meeting of the electors.”

*Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70, 77-78 (2000).

# 12<sup>th</sup> Amendment

“The Electors shall meet in their respective states, and vote by ballot for President and Vice-President \* \* \*;

The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and **if no person have such majority, then** from the persons having the highest numbers not exceeding three on the list of those voted for as President, **the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote \* \* \*, and a majority of all the states shall be necessary to a choice.** And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the [20<sup>th</sup> day of January] next following, then the Vice-President shall act as President\* \* \*.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President \* \* \* .”





## Cast

Zack Abrahamson

Jonathan Baum

Hon. Laurel Beeler

Micah Block

Anastasia Bondarchuk

Chris Campbell

David Degroot

Anthony Giles

Kevin Yeh

Anchor Hal, Al Gore

Cesar Millan, AG Blondie

Anchor Joan

Pete Buttigieg, Ed Zhang

Sen. Knope, Hillary Clinton

Sen. Lee, Gov'nr

Sen. Jamm, AM 1776

Steve, Alexander Hamilton

Sen. Dexhart, Lin-Manuel Miranda