

# Did Mike Pence Had the Authority to Decide the Election in Favor of Trump?



By Greg Holt

**The presiding officer over the electoral vote count, the President of the Senate, is largely a figurehead.**

I recently wrote an article about Republican representative Adam Kinzinger who stated that Trump needed to be removed from office immediately. I also stated that Trump was wrong in what he said about Mike Pence.

From [News With Views](#):

“Trump in my opinion *did* fall short in his [comments attacking Mike Pence for refusing to decertify the electoral vote](#). I personally do not like Pence (not because of this situation), but he did not at all deserve this kind of treatment from Trump. The Vice President does NOT have the power to unilaterally decide what electoral votes are authentic and count, and those votes that do not. Pence said as much, and I agree with him 100%. President Trump owes Mike Pence an apology for this one.”

This statement of course did not go over well with other Trump supporters. I received many emails telling me I was wrong, like the email below (name withheld):

“VP Pence had plenary powers dictated by the US constitution and he had a DUTY to throw our [sic] fraudulent slates of electors.[sic]I do NOT think DJT owes him an apology; he

betrayed DJT and the American people. If you have any questions, you can direct them to Professor Eastman, a constitutional scholar.

HARD WORKING AMERICAN CITIZENS CAST LEGAL VOTES and they were nullified by MASSIVE ELECTION FRAUD.

THIS CANNOT BE TOLERATE! [sic]"

Yes there was [election fraud](#), and I and many others have [written about it extensively](#). Yes the election was stolen from We the People. NO Pence did not have this "plenary power".

I'm rather tired of hearing this nonsense from people who obviously repeat what they read or hear – without investigating the truth of it for themselves. I have read many like minded comments online that Pence betrayed Trump, that Pence lost the election for Trump – its all Pence's fault, blah, blah, blah. *No actually it is is not.*

I'm not out to disc or insult anyone or even attempt to take away their right to express their opinion, that's the Left's job. That being said, I can likewise express mine, and my opinion is that all of these people that say this stuff about Pence are wrong.

Understand that as I stated in a previous article, *I don't like Mike Pence at all*. I think Pence is a globalist and does not have Trump's (or this country's) best interests at heart.

**What the does the Constitution say about presidential elections?**

It may come as a surprise to many, but the Constitution actually says very little about the Electoral College and related procedures – meaning the election of the president and vice president.

[Article II, Section I, Clause 2](#) states:

“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.”

[Article II, Section I, Clause 4](#) states that:

“The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

The comment made in the above email (and by many others online) was that Pence has “plenary powers” to accept or reject the votes of electors. What does the term plenary powers even mean?

[Definition](#) of plenary

“1: complete in every respect: ABSOLUTE, UNQUALIFIED – plenary power”

There is no *absolute – plenary* power stated in the Constitution with respect to the President of the Senate, who in this case was and is Vice President Mike Pence. In fact, if you read what the Constitution specifically lays out here, the *plenary powers* are indicated as belonging to the states, not the federal government, as described by the Constitution’s framer’s:

*Each State shall appoint, in such Manner as the Legislature thereof may direct...*

In other words, the states decide who the electors are going to be, they also get to decide *how* the electors must vote. The states can also change the elector’s votes. More on that later.

[Article II, Section I, Clause 3](#) states that:

“The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted.”

I only referenced a small section of clause 3 as the rest of it is superseded by the [Twelfth Amendment](#). Basically, the President of the Senate’s job is to preside over the Electoral College vote certification, *that’s it*.

Where all these folks and even the attorney [John Eastman](#) got the idea that Mike Pence had the power to decide which elector’s votes count, and which elector’s votes do not – is beyond me. I’m not seeing that power listed in the Constitution, are you?

### **What does the Electoral Count Act say about presidential elections?**

Section four of the Electoral Count Act (which governs the counting of the electoral votes) states:

“[N]o electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section three of this act from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified.”

Note that it is specified that *the two houses* may reject a slate of electoral votes – not the presiding officer over the count, that would be the President of the Senate, in this case Mike Pence.

All quotes following are from [The Conscientious Congressman’s Guide to the Electoral Count Act of 1887](#) unless otherwise specified.

On multiple slates of electors from one state (section four):

“[A]nd in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the Executive of the State, under the seal thereof, shall be counted.”

Again, the power resides with the two houses of Congress, NOT the presiding officer.

The Electoral Count Act was instituted to solve the problems and issues with counting the vote and dealing with past issues. I won't go into all that here, you can read more about past issues [here](#).

To summarize the Act's purpose:

“The ECA's procedural provisions have two purposes. The first is to facilitate an expeditious meeting so that difficulties in electoral vote counts can be resolved, and a new President elected, before the current President's term ends. The second is to drain away as much power as possible from the Senate President, whom the ECA appoints to preside at the joint session when Congress counts the votes.”

Sections four through seven detail actual electoral vote count procedure:

“Section 4 also called for the electoral returns from the states to be presented in alphabetical order.<sup>571</sup> No debate is

allowed in, and no question may be put to, the joint session.<sup>572</sup> If there are any objections to a state's vote, section 4 requires that it "be made in writing" and "be signed by at least one Senator and one Member of the House of Representatives."<sup>573</sup> After all the objections to the vote of a particular state are received, the Senate returns to its own chamber and the two houses independently debate and rule on the objections.<sup>574</sup> Section 6 of the ECA limits debate at the separate meetings. Each congressman may speak only once, for up to five minutes, and the entire debate must end after two hours."

Again, I cannot emphasize this enough, the power in the electoral vote count procedures rests in (A) the states, and (B) both houses of Congress. The presiding officer, the President of the Senate, is largely a figurehead.

Some of this is open to debate of course, such as whether or not the presiding officer has the power to NOT present some of the electoral count slates (as in two sets from one state). I personally don't see an issue here – remembering that Article II, Section I, Clause 3 of the U.S. Constitution states that: the President of the Senate shall, "open all the Certificates." Open ALL the votes in other words, I think that is pretty clear.

Then there is this:

"[T]he effect of [the amendment] is to prevent the President of the Senate from doing more than announcing the state of the vote as ascertained and delivered to him by the tellers; and such announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice-President. Two things about the House of Representatives's change should be noted. First, Congress was unwilling to allow the Senate President any minimal ability to interpret the outcome of the vote count. Second, the Conference Committee Report asserts that it is the tellers—mere minions of the two houses—who

ascertain the vote. The Conference Report confirms that the Senate President is meant to be something of an automaton.”

As I stated before, Mike Pence in his role as President of the Senate, is largely a figurehead, or a ceremonial role if you will.

The so-called [plenary power](#) resides with the states.

“In the ruling of [Bush v. Gore](#), the [United States Supreme Court](#) stated ‘the state legislature’s power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by state legislatures in several States for many years after the framing of our Constitution. ... The State, of course, after granting the franchise in the special context of [Article II](#), can take back the power to appoint electors”

Remember also that any objections to elector votes must be endorsed in writing by *one member of the House, and one from the Senate*. I recently wrote about this when [Rep. Louie Gohmert sued Mike Pence over this very issue](#). Gohmert and other Republicans stated that Pence had authority to unilaterally decide which electors votes should be counted. That lawsuit was rightly tossed, Pence did not have that power.

Stop and think about this for a moment – who in their right mind would want the President of the Senate to have the power to decide an election? It matters not what party the presiding officer of the vote count is. What does matter is this:

If the officer that presides over the electoral vote count can make decisions that in effect decide the outcome of the presidential election, what happens to the voice of We the People? Answer – we longer have one! The candidates may as well be presented before Congress, and they or the President of the Senate can decide at will who the next president of the

United States will be.

Lastly, objections to the 2020 vote WERE filed in the proper manner before Congress. Both houses of Congress met (separately as required) and the objections were rejected.

The presidential election (and the Georgia runoff) of 2020 was without a doubt stolen. The legitimate president of the United States is Donald J. Trump, not Joe Biden.

That being said, Trump was and is wrong in what he said and how he treated Mike Pence, I will NOT recant on that. For the sake of our country, people ought to be glad that Pence had the character (in this case) to say he did not have the authority to decide, because as I exhaustively pointed out here via the Constitution and the Electoral Count Act – he did not.

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Article sources:

[United States Senate](#)

[Merriam-Webster](#)

[Wikipedia](#)

[Florida Law Review](#)

[TCP News](#)