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11‑5‑20 Stetson Law.

Community Conversation on the Legal Aspects of the 2020 Election JoCynda Hudson, Louis Virelli, Ciara Torres‑Spelliscy, Christine Cerniglia, Michele Alexandre, & Corey Roberts

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>> Good evening. Thank you so much for joining us here today. We are very excited to be having a community conversation about the 2020 Election and the legal implications for the profession.

We have a handful of faculty here that are going to help us with our discussion to keep the discussion moving along. We also have with us Dean Alexandre. I'm going to have the panel go ahead and introduce themselves right now. Dean, would you like to start?

>> Hi everyone. Just happy to have SBA provide this forum for any questions you may have. We understand there are (indiscernible) is monitoring the news. In case you have questions and we need to be updated on what's happening. We are not as nimble during the day because we're meeting in classes.

But most informal so we want to be here for any question. I will say this is why we do what we have a legal education, this is why we have lawyers, for these times and many other times. That's what we're here for and what you're hearing on the ground more than anything. And I know Professor Torres‑Spelliscy can testify to that lawyers are being called on to act and explain and be the backbone no matter what side you're on.

So I'm happy that you will be part of the army of lawyers that will engage in this work in the future.

>> Professor Torres‑Spelliscy.

>> I'm Ciara Torres‑Spelliscy. I teach Constitutional and Election Law at the law school. I have been talking to the press nonstop since before the election. And I thought we would have a result by now, but here we are.

>> All right. Professor Virelli.

>> Hi, I'm Lou Virelli. I teach Procedural Constitutional Law and Administrative Law. I've been talking to the press with Professor Torres‑Spelliscy for a while. I'm not an election expert, but I too was hopeful we had a decision by now and I'm still going to remain hopeful we'll have one soon.

>> And Professor Cerniglia.

>> Hi. I'm the least of the clinical experts education, I have no expertise at all on any of this, but I do work on depolarization issues nationally that I really am passionate about. And I am not monitoring the news, like it's possible, but I know we have two experts who are always on the news that I'm excited to hear and learn on this panel.

>> Thank you so much.

We're really hoping that this is a conversation and that you all would be very much wanting to go ahead and give us some of your questions into the chat. And we would like the panel to address that.

One person that's not here is Corey Roberts, the SBA President. He is going to join us here in a few minutes. And be a part of the panel.

So, if you have questions, go ahead and put them into the chat to. To get us started while you're doing your questions, I thought we would start with Professor Cerniglia getting in right mind set for the discussion.

>> Hi everybody if you know me I do this a lot in class. It's just a little bit of centering. I know that everybody's anxiety and frustration is high. So if we can just take a minute to center ourselves at the end of the busy day.

You can close your eyes and just take a breath. Slow your thoughts down, release whatever tension. And then really think about using this moment, even though we're in a virtual space, of coming together as a community. As a Stetson community of lawyers. As the Dean had mentioned, an Army of lawyers.

Take a moment to stretch if you need a stretch. And then just to do a little bit of framing here is the hope is to be present to listen to each other, to learn from our legal experts who are on this panel, an then to really think how we're going to build and what is the role of lawyers in this process of rebuilding. And then what is the role for future lawyers, you in particular.

And I think that will set us off.

>> Thank you so much. We really appreciate that.

So, when we're looking at this, I had a couple of questions that were submitted earlier to get us started. And the first thing is, what are the lawsuits impact on the election and will it delay results?

That is probably one of the most common questions that we're seeing in the news. So, whoever wants to start.

>> I can start. So, before the election, I was part of a bipartisan group that met at the UC Urbine campus. What we discussed there in February, was how to run a election during a crisis.

And at the time, COVID was something that only existed in China and Italy. But we could see it coming.

And we also talked about natural disasters, whether it's fires in California or hurricanes in the southern United States.

And, so this bipartisan group put together a group of recommendations, you can find it on the web. It's called fair elections during a crisis. And one of the things we recommended in light of COVID was that there should be more vote by mail options for voters and that states should adopt new laws that would allow them to open ballots days before the election so that they could process what was going to be millions of mail in ballots.

Now, some states listen to us and I think they have had the benefit of changing those rules so that they can process these hundreds of thousands of ballots that are mailed in instead of in person because of the pandemic. And then other states didn't listen to us. And it's a little about of shock for them because we warned them this would happen and what you're seeing this woke is what's completely predictable. It takes more time to process a mailed ballot than an in‑person vote. And if you don't build that into your timeframe, then you end up with what we have now, which is a lot of states who are not used to this volume of mail‑in voting, counting them slowly.

Now, I prefer them to count slowly and carefully than quickly and poorly, but this was the product of legislative choices.

Now, in terms of lawsuits, there were over two hundred COVID election related lawsuits filed preelection. And all of that was fights over what accommodations would be given to voters or not.

And the general rule that the Supreme Court seemed to settle on was to use the Purcell Principle. So the Purcell Principle discourages litigation to change election rules on the eve of an election. And essentially what the Supreme Court seems to have settled on is if the legislature of a state actually changed the election laws, that was okay. But what they were sort of allergic to was plaintiffs coming into federal court and asking is for relief and expanded voting power under the courts equitable powers when those got appealed either to the pellet court or to the Supreme Court, most of those expansions by the judiciary of voting rights were knocked down by the Supreme Court before the election. And I'll stop there.

>> JoCynda, you're on mute.

>> Yep. Sorry.

Follow‑up question. Under what kind of circumstances would the Supreme Court get involved? Are these state issues or are these federal issues?

>> Lou, why don't you take that for me.

>> Is it my turn, that sounds fair. At least I'm safer with this answer than the one, the last one.

The first thing I think is reminder to you the accidents the Supreme Court doesn't do anything first. All right. So if the Supreme Court ends up with a lawsuit it will have started either in a state trial court or in a federal trial court. And it will be appealed through those respective systems and it will end up in the United States Supreme Court maybe if they decide to take it. That's always true and that's true here.

I'm thinking particularly of the President saying he's going to Supreme Court on election night. No he's not. He's going to a trial court and the question is, is he going to get anywhere?

The circumstances where the Supreme Court could get involved in a case, there is a federal Constitutional effectively issue that draws into question what the states have done. The run of the mill on the ground choices as to when to count, when to stop count, how long to receive ballots after election day that were cast by election day. All of those things are generally up to the states.

The question that the Supreme Court would get involved in are things like equal access, right, pro section clause sort of things. Or in the Pennsylvania case, did the state legislature actually make the decision. That's because Article 1 of the Constitution says the state legislature sets the rules for election.

Now anyone who is gotten in the weeds with administrators. Legislators generally tell someone else, they generally make an agency do it or sometimes the courts have to get involved. What happened in Pennsylvania, was the legislature required all ballots to be in, if they're going to be counted to be in by election day.

The Pennsylvania Supreme Court, the Pennsylvania Supreme Court said, Pennsylvania Constitution allows for a three day window after election day to receive ballots. Not to cast them. Nobody has ever talked about counting a ballot that was cast after election day. But received in that three day window.

The Supreme Court of the United States got involved on the issue of whether the Pennsylvania Supreme Court is allowed to set that rule for when you can receive ballots and still count them. As opposed to the legislature.

Three of the eight justices at the time indicated that they would like to revisit the issue after the election because they all agree there wasn't enough time to get involved preelection.

That leaves four justices who didn't want anything to do with the case or would have allowed Pennsylvania's rule to exist and then we have Justice Barrett.

So, if it's the same five, justice calf nah effectively stays where he is. Then it's unlikely the Supreme Court will get involved with Pennsylvania either. But that's, I'm hoping that sounded confusing for this reason, right? It is a idiosyncratic situation with the Supreme Court of United States is going to get involved.

I also will remind everybody that were I abetting person I would say none of them want to get involved. Or if they want to be involved, not too much. Right? Because the court is still reeling reputationally. He America didn't like Supreme Court picking a winner in 2000 and certainly didn't like them doing it 5/4. I'm sure Chief Justice Roberts wants something to do with this. And hopefully we will be in a position and hopefully isn't anything come than arise to the level of a federal Constitutional problem that could trigger that challenge.

Pennsylvania seems to be the one situation where maybe some members of the court have an appetite to get involved but again you're fighting whether a state Supreme Court or state legislature had a separate rule and that gets really sort of into the separation of powers and Article 1 weeds. And I don't think that's going to be the fulcrum of the F of this election.

>> Lou, can you talk about for the students who have not common law, about why that hesitancy particularly for justice Roberts who is really wants to maintain the separation of powers, but also committed to federalism. Why would they want to respect these, what's particular about voting in the United States and how that's allocated and what we're seeing on the ground right now that makes your point even more important for them to understand?

>> Good. I think there is two answers Dean, but if I'm missing one, you'll let me know.

First one I think is that the constitution tells states it's your job to figure out how the to do this in Article 1. There is a textual component to that. There aren't too many sites where you can have an Constitutional (indiscernible) but this is one of them.

So the state are involved. Why it is that important because each state has its own needs and requirements. Now, of course the flip side of that is you see things that are essentially troubling. Like in Texas when each county has one DropBox and one Texas County is larger than Rhode Island, right? That's a problem. But the Constitution that is said that's the state's job. Why does the court not want to get involved in that? Because we have a system in the US where states retain frankly the majority of governing power at least in terms of the quantity of issues that can be dealt with my date governments versus the federal government. An you'll learn that when you goat the Connecticut law if you haven't taken it already. An that principle of federalism of letting states govern themselves of state sovereignty is an important part of our Constitutional structure.

The flip side of that is, is when states go afoul of the federal constitution it is the Supreme Court's job and the federal courts job to reign them in to make sure they are acting in a way that's consistent with the requirements of the US Constitution. Why oh would the court be hesitant to make that next step? It's basically a quote from Alexander Hamilton. The court has neither fist or sword but merely judges. What does that mean, that means done greatest has all the money which is always a good position to be in. The executive branch has all the guns you can decide if that's better or worries than the money but still a good position to be in. And the court has as much paper and ink as it needs, probably, right? If Congress gives in to it.

I even have a building for several years. Right. The court powers comes from its independence but that is that serious limitation. The court power depends on us complying or consenting to their authority. They need to persuade us in order to get us to go along or at least persuade the executive branch to the executive branch with their coterie of guns can enforce the decisions that the courts makes. See precedence in Brown v. Poor.

So, that question about the legitimacy, the courts need to pier impartial and reasoned and careful and responsible is key to its power in a way that the elected branch, Congress and President don't have to worry much ba because once they get elected, their legitimacy comes from being elected.

Is that what we were going for?

>> I think it's perfect and great for our first year students.

>> I agree. Thank you.

>> And we have been joined by Corey Roberts, SBA President, SBA is sponsoring this program. Corey do you want to say a few words?

>> Julie, does Corey need to do anything?

>> Corey, we're not hearing you, you may need to go to the control panel and the sound check and make sure you've selected the right microphone.

>> Okay. While Corey is working on that, we'll go to the next question.

The if election laws make it to the Supreme Court with being appointed by one of the candidates be grounds for recuse sal?

>> All right. I mean.

>> Yeah. Because Lou our resident expert on recuse sal I have to give that to him.

>> Did I get this one, huh? Fair enough.

So, I for the last ten years, I've been doing sort of this stuff in Supreme Court refusal and my position is almost always Supreme Court recusal is not as easy as it looks. Because when a supreme court justice recuses them unlike any judge in the system there is no replacement for them. So when you lose a justice you now change the nature and size of the court that you could get things like tie vote. Theoretically you could lose quorum. So I've always taken the position and I've taken this for justices on both sides of the political aisle that recusal the knot as common nor should it be for the Supreme Court and I do not think simply being pointed by the President who needs you is grounds for recusal, otherwise we would have, first of all a large problem on our hands and I think that says too little about the justices ability as professionals.

However, in this case, with Justice Barrett in particular and this has nothing to did with Justice Barrett's character. With Justice Barrett in particular I've taken a position publicly so I have to be consistent the she should recuse hers in election cases. The reason I think that's true is her appointment was directly associated with the people associated with it, like Senator McConnell, by Senator Graham and by the President. They are quotations apply to all of them tying her appointment to the election. Same with senator cruise they're even tiled to do that, they're entitled to say whatever they want, they're elected officials.

I believe Justice Barrett's involvement in particular because of its direct correlation by the political actors involved to the election should disqualify her from election related votes. That leaves an eight person court. My hope is that make them act like adults frankly and reach consensus. Because I know for sure they don't want to talk. Right?

That nobody on the Supreme Court wants to tie and tell the country that the lower courts that a tie on the Supreme Court means the lower court decision holds. And that actually governs. Not a single member of the Supreme Court wants a national election to be decided by a Court of Appeals for one of the 13 circuits. Nor should they.

So I'm hopeful that Justice Barrett will refrain because I think it's the best thing for her and the court. Again I am not impuning her credibility, I don't have to. McConnell and Graham and the President created the appearance of partiality that is the standard for recusal. A reasonable person would worry about whether Justice Barrett is tied too closely to this election is enough. So I think she should recuse and we have to let the eight people who are left to do the right thing.

>> Powerful. Wow. Students you heard.

>> Well I wrote it down.

>> We have a clear, we've a clear ‑‑ (indiscernible) and like many things in common law you did not get independence. So that's wonderful.

JoCynda. Or Corey you're back on right?

>> Are you able to hear me now?

>> Yes.

>> I'm sorry about that. Thank you for having me and sorry for being late, just getting out of class and getting back to a little bit longer than expected. I'm really excited to here from our great panel that we have here and thank you again for having me.

>> So happy you collaborated and led this with student, doctor Hudson made this happen. We have a number of people, nice group on the call and I think that's a test amount to all of your all work.

>> And Corey, if you have a question or if you want to pipe in at any time, just let us know. You're part of this too, so.

>> Thank you.

>> Do you have a question or do you want us to go to the list?

>> We can keep working on the list. I wasn't quite sure where we were when I jumped in so I don't want to ruin the flow that we have going here.

>> Oh, moving away is like so informal. I'm already up with a question.

>> The next question again is, about the Supreme Court. So, if the Supreme Court agrees to hear the case presented by the President about any of the election issues, do they have a time limit for example January 20th? So what are they looking for as far as a time?

>> One of the things that will influence them is when the electors are scheduled to meet, which is December 14th. So, I would think that they would want to resolve anything before that, so that each of the states can properly send their electoral college members to vote.

An then there is just the reality that we need a President before January 20th, for all sorts of reasons, from who gets the nuclear football, like all of those things.

But I would say this. The Constitution does not require candidates to concede. Who is President is who wins 270 votes in the electoral college, full stop. And so, whether Trump ever concedes, if he loses, he can not stay.

>> That brings up a really good point. What about conceding the election? Is that, it's not a requirement, but what is the pros and cons of the candidate conceding?

>> Well, it tends to end the ak cri money. I think one of the things that Al Gore did after Bush versus Gore was decided. Was he saved the republic. And he saved the republic by saying I strongly disagree with what the Supreme Court just did but I will abide by this decision. Pause of his belief in the rule of law.

And so I'm hoping whoever loses this election, has the same gravitas and will concede.

>> So, following on that very somber note. I have a question for Connecticut law colleague. Though, if concession does not happen, it does pull on acrimony, but the Constitution is clear about the (indiscernible) of delegate in who whence. Does this become a separation of powers issue, Lou? In terms of how we, affect the transition?

>> Yes. But I think, I am not, I am not, I don't know if anybody else is, I'm not particularly concerned about that. So I want to make sure, first correct me if I'm wrong if I'm about this Congress has a role if the electoral college votes, is that January 6th.

>> Yes.

>> Is that right? Right. So January 6 the college will.

Congress receives electoral votes. That's when they become official I think. That's above my pay grade but I think that's right 134 that's right. And the new Congress that does it, not the old one.

>> Right. Which is, you know there is a bit of irony for that because the new Congress is although hasn't changed majority is still slightly more favorable to the current President who I believe is who we're talking to when we're talking about concession. I could be wrong about that but I'm pretty sure that's what we call mean.

If he doesn't concede, then what would happen, right? So you would have a President, an out going President who did not win the 270 electoral votes. Let's be clear we're not talking about an ongoing legal dispute about who won, right?

I totally defer to the timing Professor Torres‑Spelliscy talked about, I believe that's going to be true. But assuming we know who won 270 as a matter of law which well. Then it's a matter of separation of powers because the question is who decides who to swear in. And I would suspect the Chief Justice will only swear in the person who has 270 votes and that opens part of the transition and it happens at noon on January 20th. For those of you that are less geeky than me about this. I want to romanticize it a little bit. It's truly overwhelming that as the clock goes from 11:59 to noon, the most powerful position in the world changes hand.

There are movers at the Whitehouse taking it out and bringing it in. That image, I never lose sight of that on Inauguration Day and it's not like a national holiday, but it dawns on me how great that is. What happens if there is really a thing? I think that's what accuse look like. I am not suggesting that we are heading anywhere like that because I frankly don't think any of the institutions that would be required to create a stand off will side with the President of America who didn't get 270 electoral votes.

So you would need a lot of help to create a separation of powers problem and I don't anticipate that forthcoming for President Trump.

What do I mean by help? I mean the military. And or the Chief Justice or the majority of Congress. None of who are going to ride to the rescue of someone who didn't get 270 electoral votes. Which is to our credit. That's what the rule of law is.

So for two incidents here, the praise rule of law is also important. What does it mean, it means the person who gets 270 by law, the law says gets 270 wins. And when you win that's the end. And if you have revolve it some other way you have abandoned the rule of law.

When we see president's talk about other ways to do thing, that is a violation of the principles of rule of law and that is dereliction of duty. And I, you can tell I've gotten to the point in these interviews and it's not interview, but in talking this, where we just need to be clear about that. Right? You're not allowed to say the election was fake unless you know it was. You're not. That's a rule of law problem. We have a legal system that you are now trying to circumvent. That's why we have to be serious about that.

I also realize I look like the Blair Witch Project right now. I'm going to turn on a light in my room. I do not have enough gravitas to pull that off.

>> Well it was an interesting look for awhile.

>> Yeah. Well the sun we want down, who knew the time would continue carrying on while I talked but it did.

>> You know, on a simpler level there is a couple of really good, this is why we started with law, right. This is the comfort we have. For better or worries, our yield is actually an anchor. It's anchor for society. And when all fails we can look at the text perfect or imperfect as you may see it in the text is a guide, right? How the transfer of power happens, at what time. I am a sucker for these rituals and I do appreciate our attendance at inauguration, they are capable. And you know, over decade ago it was powerful. It is important that we signal and even in the Old Indies, we have these rituals. So the saying long live the king, the king is dead or that. That is a seamless transfer of power to keep society going. Because we have very few rules that we have did he involving. And our system is strong and that was very imperfect but it's strong in that way, and we make it stronger.

So, I really appreciate that, that kind of background. And there you can fight about the in between. JoCynda and Corey?

>> Right. Corey do you have anything?

>> No, not as of right now. I'm trying to think. I don't know like I said I missed a little at the beginning so time not quite sure what was discussed while I wasn't here and I'm sorry again about that. But.

>> I mean what's your (indiscernible) as a student. We got to tune it on and off and I know the sounds are coming. What's your head in terms of what goes on in the word and what could be helpful for you as a student?

>> Well for me I have been checking a lot online just to see the progress and everything and all the votes that have been coming in for the election. And for me at least, it's tough that it's taking a little bit of time to get everything completed.

I know we had discussed before about when would be the good time to be able to have this panel and discuss this and was hoping that it will be a couple days after election day. Being that on the 3rd.

So, it's tough. I think, but that's just how I feel. And yes, it is a lot going on with the exams and everything coming on. I'm not quite sure about that.

>> No, that's helpful. I think it's tough for us too. What do you all think, anything you can share with Corey, all of you?

>> Yes. I have something to say. One of the most powerful testimonies I've ever heard I was actually a staff attorney at the 6th circuit and there was hand election law case that came up. And I sat back and listened to the testimony of the supervisor of elections who actually described step‑by‑step of everything that has to be done with the ballots. And a chain of custody. And really unwrapping and labeling.

And election law experts are out there. I'm not one of them. Lou, literally said the same thing, he's not one of them. But this is really where the rule of law is some powerful and the role of lawyers is so powerful to watch this very tedious process happen. To be anchored in so much of what we do as lawyers, which is read, right? And then act. According to that rule.

So, I think there is a good take away from this. I feel like we're all learning a lot at a really depth full level. I think there is so much that has happened this past year, to be in law school is such an exciting time. And then to know that your work in the future. There is tons of work to be done no matter what side you're on. And so it's exciting to see what all of the students are going to do.

>> All right. The next question. President Trump recently tweeted there was plenty of proof of fraud but is showing, but is there any admissible evidence showing this? I believe most if not all of what has been argued by the President is hearsay.

>> Well I'm always careful when talking. I'll take that one. I'm always careful in talking to Stetson students about the rules of evidence because you all know them better than I do. But I would say this. I think that is a very mature sophisticated and overly generous character says of what happened. At 2:22 in the morning after election day.

I think the President just simply made up what he said. And I like the Dean, I am respectful of our institutions. I revere them. Which is why that speech upset me so much.

There isn't a shred of evidence of fraud. It may be because I prosecuted fraud at the DOJ for five years. I may be a snob of fraud, but there is no version of what we know about the election that triggers fraud or allegations of fraud. So everything he said is absolutely right. There is no admissible evidence. It would be hearsay if he had anything at all. There isn't any evidence.

Now that doesn't mean there won't be. I'm not blessing the election, that's not my place and I don't know anything that you all don't know. But I do know that to be the President, right, who is counting on getting the job by virtue of this election, to call it a fraud because he's losing. And he has said in the past. If I don't win it will be because of a fraud. Of course, you don't need to be a logic Professor to say, what he means, he also means the opposite. If I do win I won't think it's a fraud.

That's not a defensible proposition. And that is in my mind a dereliction of duty for the President.

The reason you're not seeing a lot of support from the parties R party for that position is because the other people in the party need the election to be good also, because they're trying to get elected. Right? So, let's not lose focus on the fact ha if election was bad for him, it was bad for everybody. And we need a new government on January 3rd. I don't mean a different one, I mean a new one. There is a new Congress every other January 3rd.

So, I think it's a very specific question. I think it's very interesting way to look at it. I think the answer is no, there is no evidence. And if any, hearsay would be the nice thing to say about it. But I do think it's fair as a professional. I'm not Cavalier about this. I might be glib, because that is my way, I apologize. I do not say this Cavalierly ever.

What he did is a dereliction of Presidential responsibility. Not illegal, but it is a serious problem because he said something base less that goes to the very core of what democracy is. If your election is not trusted, you are not a democracy. You are not. Because there is no way to make an election more convincing. Right? The election doesn't get to make a case for itself. We have to trust the process.

It is a procedure. And if we don't trust the process, in the absence of real allegations that it went badly, right? I am not unfamiliar with things like voter expression and historical misconduct. But that is not what he said. Right?

So I think we need, we are entitled as lawyers to turn around to the general public who wants our view and say, that sentence of not okay. It is not no okay because I didn't vote for anymore. It's not okay because he's not my political party. It's not okay because of his office. And if I am over doing it, I hope, I trust my co‑panelist to real me in. Maybe I've lost it over the last couple of weeks. But I've done TV interviews to this degree too and I think that sentence is a dereliction.

And we are entitled April frankly obligated to say the rule of law doesn't allow that. That is inconsistent with the rule of law. And that's something very serious that deeply upsets me because if our elections become political football than they no longer, function to choose our government.

>> So, there is a lot of points you made there that are very important. The next to on one level to what Corey was saying. What I appreciate about what you're sharing, Professor Virelli. I will slip into a robe that's what I due. Lou.

What I appreciated is how Corey shared how distraught, right, he is. And I think you are showing that we too can get distraught when we are all in charge of maintaining institutions and helping you transferring healthy institutions to you including this lawsuit, including the country. And we see extremes that we have no power to make better for you, except for following the rule of law and helping you understand the rule of law.

So there is that important point. And Lou, you know, I have lived in many countries, including countries where elections are contested and people die exercising their right to vote. So, that testimony that you just shared about how upset you get also gets at the core of that. The reason we buy into American democracy and the great adventure we're all part of is not because it's perfect but because it has enough structure and foundation to make it perfect, to make it a more perfect union. As we go back to that, not because it's flat, because it's literally the work right from generation to generation and to have that be endangered.

So I wondered, hearing you and hearing this question which is so important, what do we tell our students about the road ahead? Because the reality is that we can see that and as lawyers we have a better vantage point, but the country is divided. I don't think we can hide from it anymore. And many people will hear the other side of the fraud and may not understand that there is no basis.

Fraud of an election, for example, is punishable by imprisonment. It is a serious crime. So you have to literally be the kind of criminal prosecutor to, to make it stick. And the evidence is required.

So, there are serious allegations made. So how do we guide our students in navigating the post world of this? And people will be one day, and one belief?

>> I fear I've been too long on a soapbox but I do have two things I would say to that. One is and I made the speech to my class in the past.

It is our job and my view as a profession to understand where the limitations of an opinion. Right? So there are things that are a party of opinion and we are entitled to them, we should respect each other opinions we should treat each other with civility and dignity. That's the end of that sentence and that is true.

There are some things that are not opinion. I had a reporter say to me, President Trump's sentence about fraud is his opinion. I said no, no. He might have the opinion that it's fraud. But he made an allegation. He made a statement of fact that is untrue. Or at least at the time could not be supported by anything that he knew or at least that he offered right? And he has every incentive to offer it.

So it is not, I don't think close minded to say that there is a kind of sentence that may reflect one's wishes that is not simply defensible by saying (indiscernible) it's an irresponsible way to do something. Like make an allegation or accusation.

So, there is that, right? And I think it's fair for a lawyer to say, listen, you are entitled to your opinion, what you just said is not one. Or the thing you asked about. Gravity is not a matter of opinion. If it is, that's a philosophical question, that's fine, but not as a matter of law, as a matter of government it is not.

The second thing and I'm worried that I forgot what the second thing is. What are we talking students. I got all wound up about the first thing.

>> The first one is obedience but don't mistake them as fact.

>> Yeah. It's fair (indiscernible). It's also fair as a matter of law for us to defend our institutions and be serious about them. Right and say, it is not a matter of party to be critical of someone in office taking a particular view that is inconsistent with the rule of law, right? So the Dean's point I have not lived in another country or I have not resided in another country. I've visited other countries, sure.

But I can think of lots of moments in American mystery where our democracy was in serious jeopardy. Lots of them. The civil war is easy. McCarthyism is easy right? Jim Crow is easy. Right. Those are times in our democracy was not functioning like one. And arguably was lost for periods of time or potentially forever.

We do not have a 250 year history of a smoothly running democracy which is not our fault, right? That's neither did Britain. They got a head start and they still haven't perfected it right? But what lawyers do in the system is represent the truth about the system. How is it supposed to work? What is supposed to happen? What are the rules?

And we should not be sorry about that. We should not be compromising about that. And we should be consistent to say the rules and out comes around the same thing. I will accept the out comes of my choices. That's not a unempathetic view that's not my point. It's not whatever happens happens. It's when we're talking about structures of government, separation of powers. We're talking about how elections work.

It is a lawyer's job to explain to people how it works. And to not be afraid to be an expert about that. Even if there may be other lawyers who are more expert than us. Right? If I waited to be the biggest expert on campus about elections I would never get to say anything, because Professor Torres‑Spelliscy is there and I'll never get near here. Compared to who I'm talking to, I have something to teach. So do you. You know something about the legal system that your colleagues and friends and loved ones don't. And you should not be afraid to say, listen, not because of who said it, because of what was said and the office they occupy, that's not okay.

Oh, I remember what, one more thing, I'm sorry.

When we're talking about how we talk to each other. Right? It cannot be that the only time we are credible is when we're making a statement against interest. So toes of you that have taken evidence, we have gotten to a place sometimes in our dialogue in America where we only believe people who are saying things that would hurt them if they were true.

So, only a Democrat can support President Trump or only Republican can support the outcome of an election that doesn't favor him. That can't be right. It can't be the only time we're telling the truth is when we're saying something that harms up. We can be telling the truth when we're telling the truth. And we can prove we're telling the truth by offering evidence of our positions so we have gotten to this weird place where on the news says, that's a Republican judge and then they say the president's is wrong. Well every judge would probably think that argument was wrong, because every judge is capable of making that decision and their credibility doesn't turn on their political preferences. Right. So we need to be respectful of each other and give each other the benefit of the doubt and expect reasons and argument not preconditions and ideologies.

>> I want to follow up on Lou although I never want to follow Lou.

>> Right?

>> His, so I want to take this thought of truthfulness and kind of capitalize on it just a little bit.

Are we true to each other when we are together? So we see a country that is totally divided. But are we actually mixes it up? Are we actually friends with people who are on the other side and having truth null conversations and touch conversations, difficult conversations, honest dialogue? And that's the hard work of the future is how I feel. And this is obviously a point of passion for me.

But this polarization ha has happened the only way to depolarize it is to have these circle conversations to truly understand each and then find the commonalities of where we can build together.

I just saw a quote that I absolutely love that said, the right wing and the left wing belong to the same bird. Which means we have to learn how to fly together. We absolutely have to. And so to be silent is not going to get us anywhere. And what I do see sometimes in the classroom or on campus or in my own circle, people will just shut down and not say anything because they don't want to have a conflict in the room. And I think we have to figure out civil discourse in a way that we lawyers as leaders are the ones who can show case and emulate how civil discourse works. And that's really where I think our role is. That will be the work of our lifetime.

>> We have another question that kind of goes along with what we were starting. From a more policy centered perspective given the disinflammation increase of political polarization between the two major parties, how could or would modification or revocation of certain provision within the 12th amendment mitigate this divisiveness if at all?

>> Disinflammation?

>> Whoever wrote that question, that's like a dissertation right there.

>> Can I just interject real quick? So I really encourage students to read this report on the hidden tribe by Daniel youth akin that actually has a whole report on the different types of party politics. And although our country looks and show cases only two, there are actually 7 to 12 different hidden political tribes. To better understand where the exhaustion rate is for many of us, who fall somewhere, not on the wings, but maybe somewhere in the middle, right? And this polarization is exhausting all of us.

And so, I think the heart of the question is whether or not there is a mechanism in place to depolarize or create more parties. I don't want to infer from the question, but I'm going to pitch it to Lou because he can answer anything.

>> We totally send it to lieu. About your point is beautiful and thank you for providing sources to students which is also part of this conversation. Some information and more scholarship and data that they can go read.

>> So, I'm going to take the twelfth amendment cue in the question have it be about the electoral college.

>> Um‑hmm.

>> And if anybody is looking for a cause, the fix is making Puerto Rico a state. And the reason that works is you get three more electoral votes and now you have an odd number. We had an odd number. And I read this, I never thought about this, so before I get too much credit I don't deserve it. I read about it in the time or post recently. Someone wrote an op‑ed. 23 Amendment is what gave DC electoral status. DC is not a state, but they have three electoral votes because the amendment gave it to them or acknowledged their right to do that.

Those of you that follow, this is might be the obvious. Every state has whatever number of electors is equal to the number of representatives in the house plus the number of senators. So the Wyomings of the world get three electoral votes and that's the smallest number you can have. Wyoming has no people so they have one member of the House of Representatives. I don't mean literally none, but you get the point.

Delaware, road islands, one member of the house but they all have two senators. That's three electoral votes. Puerto Rico gets the state, they have three electoral. We're now at 541. You can't tie, ball game.

The better way, I think and this is more controversial but getting rid of the electoral college would solve a fair amount of this right? Because we have, what ends of you can a majority, a minority of the population cheesing the President too often. At least in my view.

We can respectfully disagree about that. But if that's the question I'm hearing and I may not be but if it is. We are fought fixing the electoral college by the Constitution we have. (indiscernible).

You could have a state, a state agreement where enough states agree that their electors will follow the national vote. So that if you get 270 electoral votes worth of states to sign a contract that says, all of our electorates go to the national vote winner then it will matter. Then you make electoral college irrelevant. The problem is Congress has to sign off on state contract, article next 9 or someone of woes. They're not going to do that, too many small states lose.

So we have an electoral college problem. If you think that regularly having a minority of the people in the country choose the President is a problem. There are reasonable people who disagree about that but that's what I understood the question to be. If I'm wrong about that. Well ignore everything I said in the last power but feel free to ignore that. Because I wasn't trying to start an electoral college fight but that's one thing the twelve amendment covenant.

>> Yeah. I think that's the big elephant in the room so it's good to really talk about the electoral college and its unique nature in governance, right?

Students may not know I'm sure, but it's worth reminding the American Constitution was unique in its form when it was created. And it became a model for many.

The weird thing about it is that countries subsequently perfected it. And many constitutions after, after it including the south African Constitution actually saw it, took it and with it's spirit and expanded it, many of the things that are laws for us, right on statutes whether or not integrated into the Constitution.

>> (indiscernible) on purpose. They left some things out too. They did. Yeah.

>> Yeah. And so, the framer, et cetera, all of that is in the balance. So that's why the electoral college conversation is important. But as Professor Virelli pointed out, it's a long process and you maybe the one to change it. And the way, the worth of changing it is all a national debate. Whether it's worth to engage in that.

But you also have other measures like the state Avenue that Professor Virelli just referred to. And which will take congressional approval but more immediate.

The third is (indiscernible) for all of us is what we see with the electoral college in the last few elections is an unpredictability that didn't exist before, right? So formerly we relied a lot on California and you know, particularly swing state and the states April how you play with it has changed. So I wonder if there is also a lesson there about how to use the electoral college on the grass root level? How to strategize and get people engaged on the ground to anticipate the problems that we saw for getting to 270 and how the people would be more informed to represent their interest. I don't know what the panelists think. Is there too much hope there? From my part?

>> Professor Cerniglia looks like someone who wants to talk and I'm not expert on this.

>> Should we leave the electoral college more aggressively than what you saw in the last years.

>> My understanding of the electoral college is actually to ensure that there is an equal representation so that you know, Kansas actually has a vote, right, because there is not as many people in Kansas as there are in Florida.

So I think there has been fits fought electoral college. I don't know the answer to that question of whether or not we can strategically flip the tech lower college in a way.

I like the port reek canal strategy. I'm also really curious about a third party. And there is some, there is some thoughts about a third party and maybe some funding for a third party, but of course we have so much campaign finance issues in place, that it's really difficult to financially fund a third party.

So, until we fix that, I'm not sure how we're ever going to kind of get there. But again I'm not the expert on this. This is why we have.

>> Well (indiscernible). Both you and Lou put on the table food for thought. We all see more strategies. We see states doing different potentially they're close in term, blue or red, whether prior or this election, in ways that we're not predicted. So I think there is a lot of lessons that we need to just digest.

>> Well ‑‑

>> I'm sorry. (Talking at the same time).

>> I was going to say, there is a lot of information out there right now that people are talking about how the different campaigns targeted different sections, like trumps campaign, they looked at Florida and targeted sections of Florida instead of targeting the state.

So I think that you're looking at demographics. You're also looking at who is getting out the vote. I remember in 2000, I think that 18 to 24 vote I believe was really an important demographic for them.

And so, I didn't hear so much about younger votes, just more votes in general this year. So, I think it's going to be really interesting to see how the demographics come out and how they were, they were targeted.

I think what I'm thinking about the electoral college from more of a Social Science perspective, it was representative government at a time when we right now are global, right? So, is that really, as we have evolved, there is lots of conversation about we have evolved past that.

So, I've always really been interested in the more information that the pop last has, does the popular vote count more? And so I know in conversations I've had with students, with my nephew, who he is 18. This was his first election. He decided not to vote because he just didn't think he would matter, because of the electoral college, because of all of these other things.

So, I think that as we're looking at the impact, this election I think showed that there was a greater impact to each individual than we've had in the past, but we still haven't seen that really been as spread as wide as we thought it was. I think.

>> That's a powerful point.

>> And Lou ‑‑

>> Good points. As it is two fun civic points I could make too.  One is the House of Representatives is too small. So 435 people should not be trying to represent 360 million. That was not the original ratio, nothing like that. And there no reason we can't expand it but Congress would have to expand that. But if you did you would change all the electoral votes in each at a time. So each state would become potentially more powerful.

But another thing, Nebraska and Maine may have something to teach us. Both Nebraska and Maine allocate electoral votes in districts. And then all of a sudden your vote looks more like your Congress person, which is more impactful even though nobody goes and does that. I'm hoping they will. But all of a sudden if you're voting for the electoral vote from Pinellas, or whatever our electoral is South Hillsboro and South Pinellas. That might.

(indiscernible). I think we can handle the matter.

>> That's powerful.

>> That's a good point, because we focus so much on the Presidential election, we as a nation, I think. Looking at the Senate and the Congress, those raises, being as close as they are, is that a greater impact in the nation watching those raises than the Presidential election or vice versa?

>> I've always learned, I'm a Political Science major so I was always taught and I'm from Louisiana. So all politics is local. That's what I was taught.

And why we think, right, why don't we think that way? Why don't we have more voter turn out or local politics is something we should be thinking about. Our country wasn't born with a two party system. It was born out of crisis and born with multi parties. So how I feel like we have to get back there. Not the crisis part, but the difference local.

>> (indiscernible).

>> We can skip that part, right? The crisis part. Although, there is, I mean I've studied crisis before and I'll say, there is really great innovation that comes out of crisis. So I know it's not a time to be excited but I will just tell you with any great growth comes this really hard lesson, right, this hardness that we have to go through.

So, even though it's hard, I'm really optimistic about the growth.

>> And this is why we have Christine Cerniglia on, she provides sunshine and rays anywhere. Thank you. You're right, you're absolutely right. I do understand that many people aren't there yet but that is true. Whatever doesn't kill us makes us stronger.

>> Together.

>> Together.

>> Yeah. Well, I have enjoyed this.

>> Yeah. We are about at time. The only last question we had is a question about impartial resources that any of you would recommend in order to follow the potential legal issues of the election as they arise and we would be happy to share those with those, the participants in the webinar right now.

So, if do you have some, please send it to me and we'll make sure that they get posted for the students.

But is there any closing remarks from anyone on the panel?

>> You all heard enough from me for sure.

>> I would say practice self care. Just everybody practice self care and breathe, stay calm. That's all I would say right now.

>> That's some great advice. Corey do you have anything to offer?

>> I do not. Like I said, thank you again for having me. I agree we just all need to sometimes take a deep breath and everything will end up working out.

>> I'll just say I know you're going to exams and you have many things on your mind. I'll share my (indiscernible) this week. I have really nice sheets that I order for myself because you know when all else fails your body should be taken care of.

And I received my (indiscernible) yesterday and my vegan cake is on its way waiting for me. And I will feast on that.

While I say I can be a good human when I come back to work tomorrow. And I recommend you to find whatever. You are full people, you deserve love. And the first person that should give you love, should be you. But if you find that to be difficult, please call on us. Because we've been there. We know what it is to be young or to be struggling. And we can help you find your path to self love.

But without it, everything is harder. So that is my little par taking.

JoCynda?

>> Well, thank you all for being with us today. We did record this event. And we will have it posted for those that weren't able to join us tonight. Thank you to our panelists, Ciara Torres‑Spelliscy, Lou Virelli, Christine Cerniglia, Corey Roberts, and Dean Alexandre.

So thank you all for being here with us and really appreciate you alls participation and hope that the finals go well for all of you. Thank you.

>> Thank you all. Thank you JoCynda and Corey. Bye‑bye.

>> Thank you, bye‑bye.

(End of session).