



How to Prevent Another January 6th

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[00:00:00] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, president and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people. Today, on We the People, we're sharing a conversation from an event hosted by the National Constitution center in Coral Gables, Florida, last month, recorded with permission from the speakers.

[00:00:36] As the hearings on January 6th continue, you'll hear from Judge J. Michael Luttig, who testified before Congress this week, as well as from the leaders of the conservative, progressive, and libertarian teams working on the NCC's Restoring the Guardrails of Democracy project. Together, our panelists are considering ways to strengthen the Constitutional safeguards of American democracy against current and future threats. In addition to Judge Luttig, our guests were Edward Foley of the Ohio State University, the head of team progressive; Sarah Isgur of George Washington School of Media and Public Affairs in George Mason Law School, the head of team conservative; and Clark Neily of the Cato Institute, the head of team libertarian.

[00:01:24] First, we'll hear from Judge J. Michael Luttig, who served on the U.S. Court of Appeals for the Fourth Circuit with his reflections on how to prevent another January 6th.

[00:01:36] Judge, what was it that led you to decide that it was important for you to advise Vice President Pence that he lacked the constitutional power to overturn the election and how close were we to a constitutional coup?

[00:01:52] J. Michael Luttig: Uh, thank you, Jeff. At this point, much of this is, is public. I've done, uh, several interviews and including, uh, uh, a big story on CNN entitled Anatomy of a Tweet. The story goes something like this, on the night of, uh, January 4th, my wife and I were in, in Vail, Colorado, where we have a place, and, uh, we were having dinner and, and I got a phone call from, uh, a dear friend who happened to be also, uh, Vice President Pence's outside counsel, uh, Richard Cullen. Uh, Richard and I, dear friends for many, many years and, over the previous two years, at that point, had spoken pretty much every day multiple times about the state of America, uh, the politics in Washington, um, primarily rising, you know, because of his involvement with Vice President Pence, but then, uh, Richard and I are both, uh, mutual friends with then Attorney General Bill Barr.

[00:02:56] So Richard calls me and, uh, he said, "Judge, uh, do you know John Eastman?" and I said, "Yeah, Richard, I, I know John. Uh, what's going on?" And, and I said, uh, you know, "He was one of my clerks maybe 25 years ago," and Richard said, uh, "You don't know, do you?" And I said, "Know, know what?" And he said, uh, "John is advising President Trump and, and advising Vice President Pence that, uh, the vice president, on January 6th, has the power under the Constitution to reflect certain state electoral slates and, in effect, overturn the election." I said, "No, I, I did not know John was advising, uh, the president and vice president." He said, "Well, this is a problem."

[00:03:45] Uh, and, uh, I said, "Well, look, Richard, you can tell the vice president that, uh, that I said that, that he has no such authority whatsoever, uh, that his, uh, only power under the Constitution, and, incidentally, the Electoral Count Act, the lesser authority, of course, to do anything but accept the, uh, in constitutional terms, open the, the, the ballots or the certificates from the states after which the actual votes are, are counted by the tellers, uh, in Congress." And Richard said, "The vice president knows that. I told him." And he said, "Anything else?" And I said, "Well, no. I mean, I'll be glad to help the vice president in any way that he might, uh, need and, and ask," and we hung up.

[00:04:35] And the next morning, I, I get up early, and I get a call from Richard and he said, uh, "Judge, the vice president needs our help." Now this is the morning of January 5th, and I said, "Well, what does he need?" And Richard said, "Well, he doesn't know," and I said, "What do you think, uh, he needs?" And Richard said, "I don't know either." I said, "Well, if, if neither of you know what he needs, uh, I certainly have no idea what, what he needs," and Richard said, "Look, I think that we need to get your voice out to the country on the question of the, the vice president's authority, you know, on January 6th."

[00:05:20] I said, "Well, I, I don't, I don't have a job right now, um, uh, I don't have an office, I don't have a platform, I don't have even have a fax machine, and so I don't really know how I could do that." And he said, "This is of the utmost importance and we must do this immediately." I believe that Richard said that the reason for the urgency was that the vice president was going to meet with the former president in the Oval Office that day, presumptively, and, and tell him that he was not going to go along with the wishes of, of the president on January 6th. Uh, but in any event, Richard said, uh, "I'll call you back in five minutes."

[00:06:01] So I was sitting there drinking my coffee and, you know, racking my brain and, and he calls back in five minutes and he says, "Well, do you have any thought yet?" And I said, "Well, no, [laughs] I, I really don't." And he said, "I'll call you back in 10 minutes." He calls back in 10 minutes and says, "Well, what are you going to do?" And I said, "Well, Richard, I, I really don't have a thought." And he says, "Okay, I, I'll call you back in five minutes, but this is very, very important." You know, at this point, I'm, I'm getting pretty nervous or uptight, still can't think of anything, and he calls back in five minutes and, and I said, uh, "Okay, look, um, I guess the ... I, I could tweet something, but I, I don't know, uh, how to tweet [laughing]."

[00:06:50] And he said, "This would be perfect. This would be absolutely perfect," and I said, "Well, you didn't hear what I said. I, I said I don't know how to tweet." Uh, and he says, "Well,

this is the answer. Just, just tweet something as quickly as you can." And I said, "Well, I, I'm a pretty conservative, traditional guy, for sure," and, and I said, "Well, look, I'm not going to tweet anything if the vice president of the United States doesn't sign off on it himself." I said, "Richard, this is a critical moment in history and there's just no way that I'm going to say a word unless he approves it," and he said, "He'll be fine with whatever you say." And I said, "Well, I don't really care if he's fine with it or not. I'm not fine with it."

[00:07:35] And he said, uh, "Okay, I, I'll call you right back." And so he calls me right back and he says, uh, "The vice president will be, be fine with whatever you say, but we need to get this done very quickly." And I protested a little bit and Richard said, uh, "Judge, you, you must get this done now," so I said, "Okay." I had mean, in the meantime, typed out on my iPhone what I would say and what would later be the famous/infamous tweet. That was just the beginning for me and, and so I go down to my office. I don't know how to tweet more than 180 characters, but my son, uh, he tells me he's ru-, that he runs Silicon Valley, [laughing] uh, at age 26, and I'm beginning to believe it, he sends me the, the Twitter instructions to tweet a Twitter thread, uh, which I had never heard of.

[00:08:35] I transposed from my iPhone into a Word document this long tweet and then I proceed to carve it up into 180-character tweets, and then I copied and pasted those into the tweet thread, uh, and, uh, proofread it two or three times. And, meanwhile, Richard's breathing down my neck and saying that they're waiting. He said, uh, "This tweet's going to go straight to a major news organization." So I proofed it and took a deep breath and hit tweet. That was the end of it. Uh, I had no earthly idea that, uh, anyone would read it. Uh, I had no idea what its purpose was or was to be. I almost immediately got repeated calls from the national press, many of whom I'm close friends with, and, and, and those would say, "Judge, what have you just done?" And I would say, "Well, what do you mean?" And they said, "You just tweeted about the vice president's authority for tomorrow. Why did you do that, Judge?" And I said, to my friends, "If I knew, I wouldn't be able to tell you."

[00:09:50] The point of that digression was that I never knew anything else until the next day, January 6th, around noon, and I got two emails from two of my former clerks, separately, and they said, uh, "Judge, what are you doing?" And I said, uh, "Well, I'm ... Elizabeth and I are just out here in Vail, you know, spending some time [laughing]. I'm doing, I'm doing nothing," and, you know, my clerks, they don't get it from me, but they're smart alecks and they said, um, they said, "Don't be coy with us," and, uh, you know, "What on earth are you doing?" And I said, "Guys, I really don't know," and they sent me the, uh, the letter that the, uh, Vice President Pence had just addressed to Congress and, and released for the nation saying that he would not, he, he would not, uh ... he would do, only count the, the, the votes as they'd been cast and not do what the president was asking him to do. And, of course, in that letter, he had cited, uh, some great Supreme Court justice and then me. And so, uh, that's the story of the tweet.

[00:11:03] Jeffrey Rosen: You recently wrote a piece saying that it could happen again. All that stood between us and a existential threat to the Constitution last time was a tweet, and you've said that, in the next election, thanks to the intersection of two obscure legal doctrines involving the Electoral Count Act and the Independent State Legislature Doctrine, two doctrines that I'm

sure that many friends in this room have not heard of before, you think that we face an existential threat and it could happen again in 2024. Tell us why you believe that to be the case.

[00:11:41] J. Michael Luttig: Look, I, I believe and I believe that I know, as, as all of you do in this room know, that January 6th represented a potential constitutional crisis and, therefore, a crisis for the country. Now, uh, you know, I've been asked to define, many times in my life, what's a constitutional crisis, uh, and I, and I don't remember an instance where I've ever said that we were in a constitutional crisis, and that's because the way I define a constitutional crisis is, um, events or circumstances that represent a crisis to the nation, uh, that have not been contemplated, foreseen, and provided for in the Constitution itself.

[00:12:31] So, in short, to me, what that means is that we never have a constitutional crisis in the country unless or until there is, uh, an assault, if you will, on the institutions of our democracy, by which I mean the presidency, the Congress, and the Supreme Court, and an assault and breach on the instrumentalities of democracy, which I define as the various laws, including the Constitution, under which our democracy is governed. I saw January 6th as an assault and a breach, uh, of the four walls of the, of our tripartite governance, a breach, not just an assault, a breach, uh, and then I saw, uh, uh, an assault and a breach on all of the instrumentalities of our democracy, which I defined as, as I said.

[00:13:43] What I wrote in the, the CNN piece was that ... the title of which was The Republican Blueprint to Steal the 2024 Election. Well, even I had to pause initially because, of course, all we've heard is, is that the Democrats stole the election from the Republicans, right, and here I was authoring a piece entitled The Republicans' Blueprint to Steal the 2024 Election. So, so what I did in that piece was, uh, explain everything that was going on January 6th and exactly how the Republicans, with Trump as the leader, intended to do the same thing in 2024, uh, if the Republican party, led by Donald Trump or his anointed successor, were to lose the popular vote, uh, in the states, and that was a story that had not been told. I did not believe it was understood. People, regular people, uh, of which most of us are not, uh, they don't think about these individual pieces, like the Electoral Count Act, like the 12th Amendment, uh, and they certainly don't think about the Independent State Legislature Doctrine, and the several other constitutional clauses that I, I discussed in that CNN piece.

[00:15:13] But what I did was lay out exactly what the plan was in 2020, and then explained how the Republicans, under Trump at the moment, are doing the exact same thing in order to pull off this in 2024, if they lose the popular election, and, of course, as you know, that, that entails some discussion, at least, of the, of, uh, of, uh, the Electoral College, uh, which very few people in the country understand. I actually thought of it as just explaining and putting in my words what Trump and the Republicans had been telling us they're doing since the morning of January 7th.

[00:16:02] Jeffrey Rosen: And, in a few sentences, tell us how it could happen.

[00:16:08] J. Michael Luttig: The real crux of it is the Electoral College, which can lead to the election, uh, as president and vice president of, of candidates who do not receive the, uh, the popular vote, uh, in the country. That's been debated forever. It will be debated forever more.

That fact's critical, but, when you wind your way through all of the apparatus of the electoral process, including the Electoral College Act and the electors clause of the Constitution and, therefore, the state electoral votes, vote process, and then you add to it the Electoral Count Act of 1887, which empowers Congress to decide the presidency in a host of circumstances under ambiguous and undefined terms, you really have a recipe for the kind of chaos that Trump brought on the country in 2020.

[00:17:16] And, uh, as of today, we, we've addressed zero of these issues. I've been advising any number of the senators and members of, of the House on a reform of the Electoral Count Act for a year now. It's not difficult at all, except that the first thing that Congress has to be willing to do is surrender power that, in my view, it doesn't have under the Constitution in the first place. In every discussion I've had, I begin by saying that, with my typical cynicism, and I say, "Look, you know, you can amend this act, and you really must, but, uh, the, the problem you have is that all of you on the Hill, you want to have the power to decide the presidency when you want to have that power, and you don't want to give it up." And, you know, they've acknowledged that, the people on the Hill. They've said, "Well, that's right."

[00:18:19] They're still at a stalemate. I've reviewed, uh, any number of, of full legislative proposals, um, at least one of which would be as near perfect an, uh, an amendment to the, to the ECA as, as I believe could be made and that's politically palatable, or ought to be politically palatable, uh, but that, that draft hasn't even emerged, uh, you know, from, uh, the small group that, that, that has written it. Uh, the other problem, uh, is the, the state electoral process. That gets into the, the Independent State Legislature Doctrine, which, for our purposes tonight, can be explained as, uh, under the Constitution, the, uh, the state legislatures are given plenary and, arguably, exclusive authority over the appointment of state electors and all things of the state electoral process to the extent that, uh, such that, in particular, the state Supreme Courts, uh, cannot change what the state legislatures do by way of appointments.

[00:19:34] And this, this doctrine applies, also, uh, under the elections clause of the Constitution to Congressional redistricting. You can already begin to understand the political disincentives by all people on the Hill to touch that doctrine. Uh, nonetheless, this, this doctrine was at, at the, uh, the centerpiece of, of, uh, the Republicans' efforts to overturn the 2020 election. Uh, this is the, the, the basis on which, uh, they took all of the cases, election cases, in 2020, uh, to the Supreme Court of the United States and, uh, the breakdown on the Court ... well, it split the Court, telling all of us in the know, uh, that this is a momentous, momentous constitutional issue that the Court must address.

[00:20:33] But, very interestingly and importantly, the Court refused to address it in the 2020 election, and, uh, the Republicans believe, to their core, that if, if the Court had, uh, had addressed the issue, it would have decided in favor of the existence of, of the doctrine and, therefore, would have, uh ... the, the Republicans would have been able to overturn the election, uh, through the state legislatures via the state legislatures forwarding to, to Congress, uh, on January 6th, different electoral slates from those that had, that had been officially certified, uh, under the state laws, uh, initially.

[00:21:19] Jeffrey Rosen: Thank you so much for explaining the intersection of these two crucial doctrines so well. Friends, just so you understand, uh, the momentousness of what the judge has said, he's arguing that, um, the Independent State Legislature Doctrine, which the Supreme Court hasn't squarely embraced, might be interpreted to say that, after an election, a state legislature can certify a different winner of the election than the one, uh, certified by the courts who's actually won the popular vote. And then, that under the Electoral Count Act, senators might raise objections to ballots on the grounds that they weren't properly cast and recognize the slate cast by the state legislatures, rather than by the people, and that this could have the effect of overturning the election.

[00:22:04] Now, as it happens, our three Guardrails teams have addressed these very questions and that's why it's so significant, in this important time we have together, for me to ask each of them to talk about what their teams concluded about the need for reforming the Electoral Count Act in particular. And this is a bipartisan effort in Washington, as the judge said, um, to reform the act and we have some of America's leading experts on the act to propose reforms.

[00:22:32] So Ned Foley, team progressive, proposed revising the Electoral Count Act to make unambiguously clear that the task of the Joint Session of Congress, in the event of a dispute over the state's electoral vote, is to count the votes cast by the electors, whose appointments has been confirmed by the courts as made pursuant to the laws established in advance of their appointment, so Congress will have unambiguously foreclosed the power of its Joint Session to invalidate these judicially-confirmed results. Tell us more about your conclusions on that question and, specifically, in what ways you think it is important to reform the Electoral Count Act.

[00:23:06] Edward Foley: Well, thanks, Jeff. I mean, I agree that this is the number one short-term issue that we need to address in order to protect our democracy from [inaudible 00:23:15]. We said, uh, there are other items in the draft paper that you alluded to, but this is priority number one because, as the judge said, we haven't fixed the vulnerabilities. All of the weaknesses are still there and could be exploited next time, so we could have a disaster. The disaster could be of either the subversion of the will of the voters in the states, um, if that's perpetrated, or it could be deadlock in Congress between the two parties and the two chambers, in between the vice president and the Speaker of the House, leading to stalemate chaos between January 6th and January 20th. So there are sort of two different nightmare scenarios that a reform of the Electoral Count Act should be designed to achieve.

[00:23:59] And I think a reform statute could deal with the problem, in the way that you alluded to, by saying voters vote in November, pursuant to the state laws that the state legislatures adopt to have that vote. And, if there's a debate about who won the popular vote in battleground states necessary for electoral college majority, we're going to see recounts or litigations that are going to take place on a state-by-state basis. We saw that in Bush versus Gore in 2000 in a very close election. We saw it in 2020 when it wasn't close, but the litigation was employed. The courts will achieve a rule of law answer as to who won the popular vote in the state if there's any doubt or debate about that, and that rule of law answer will be achieved by the, the time in December when the electors themselves meet and cast their electoral votes.

[00:24:57] So the way to uphold the system as a whole, as the judge said, is have Congress, on January 6th, bind itself by statute ahead of time to accepting that rule of law answer because, if there's a coup, to use that controversial word, it will take place in Congress on January 6th. So, so the way to avert a coup is by having Congress pledge itself to follow the rule of law, the rule of law as determined by the courts. So that's why the imperative of the reform is for Congress to, ahead of time, behind the veil of ignorance, so to speak, when it doesn't know, you know, who's going to be ahead and who's going to be behind, say, "Okay, we all pledge to accept what the rule of law achieves and whatever litigation might happen between November and December."

[00:25:46] Jeffrey Rosen: Thank you so much for that. What's so significant about this convening is that the three teams hadn't met or discussed any of these issues before. They're, they're coming together for the first time, and both team progressive and team libertarian independently agreed on the importance of reforming the Electoral Count Act. Clark Neily, the proposal by team libertarian, which was written by Walter Olson, said that it's essential to reform the Electoral Count Act of 1887, you need to clarify clearly the grounds for objections and should also clarify that the vice president doesn't have discretion to reject duly certified electoral slates. Tell us more about the reforms to the Electoral Count Act that you think are important and do you agree with Ned about the ones that he suggested?

[00:26:33] Clark Neily: I do. I mean, look, we've got a 135-year-old law that is not a model of precision, and I think what we learned, um, unfortunately, in the last couple of years, is that the states are enormous because we really, um ... I don't think we can place much faith on the institutional good faith of certain actors. I would say some of the institutions held, uh, more firmly than others did and I think we need to narrow and make much more clear and specific grounds for objecting, um, when a state certifies its electors, and we need to do that with the assumption that there will be more concerted effort than we've seen in the past to challenge the results of an election. There will be, I think, uh, a larger measure of, uh, unfortunately, of bad faith. I think that's reasonable to anticipate.

[00:27:17] And so we need specificity, we need clarity, uh, and we need to, um, I think place less faith in the good faith of system actors and we need to constrain them by tightening up the statute and, uh, making sure that it's very clear to everybody that the grounds for objecting to state certification of electors is very narrow and actors like the vice president have virtually no discretion in this area.

[00:27:44] Jeffrey Rosen: Thank you so much for that, uh, significant recommendation. Sarah Isgur, as it happens, team conservative, in its meany excellent recommendations, did not take up Electoral Count Act reform. I'm certainly not asking you to speak for your colleagues 'cause you haven't had a chance to talk about it, but do you have any reaction to Ned and Clark's suggestion for reform of the Electoral Count Act?

[00:28:07] Sarah Isgur: Well, luckily, one of my team members is here, David French, so if I do say something wrong, hopefully, he still has his dinner roll and can just chuck it right up here. Uh, and David and I have talked about this extensively on our podcast as well. I don't think I disagree with anything that's been said, so let me instead point out what I think some of the

difficulties are that aren't being given, uh, perhaps their full due, which is it's one thing to legislate against something that's already happened in 2020. I think it's very difficult to have the creativity and imagination, uh, to legislate against 2024.

[00:28:38] So, for instance, we have assumed, so far on this panel, that the threat really comes from Congress. It's objecting to electoral slates. But imagine a scenario in which the electoral slate that is sent by the state, we all here in this room believe to be sort of fraudulently concocted, then you do want Congress to be able to object to it and, on top of all of that lies, I think, some of the judge's concerns, um, which are interesting and we could spend an entire other panel on, which is the constitutionality of the Electoral Count Act and any of the changes that we're talking about.

[00:29:17] So, look, I'm all for having rules before a problem and I think that's something that the three of us all agree on and we probably even agree what we'd like those rules to be. Then you have to look at the constitutionality of it though and then you have to look at whether it would actually address all of the problems. The Independent State Legislature Doctrine has not been taken up by the Supreme Court yet and I think it very much implicates any changes to the Electoral Count Act in terms of its constitutionality. Um, and then, lastly, I would just say that our Guardrails of Democracy, I, I don't want folks in the audience to think that we didn't take up the Electoral Count Act 'cause we don't think it's a problem, we do. I counted every single word and punctuation mark in the Electoral Count Act at one point, and I might have this slightly wrong 'cause it's been a little while, but I believe 359 words in one sentence that had 19 commas and two semicolons. I mean, it's indecipherable, uh, to everyone.

[00:30:14] We talked much more about the problem of Congressional inaction and the guardrails that have not worked to have a healthy first branch of government, and I think we're seeing very much, when it comes to the Electoral Count Act, the results of that. Everyone agrees it needs to re-, be reformed. Everyone agrees that nobody knows what those 359 words really mean in practice. The judge is there advising folks on how they could do it, plenty of other legal scholars doing the same, probably talking to the same people, providing, frankly, very similar advice, and it's not getting done. Why? Because Congress is so fundamentally broken when it comes to legislating that I think that is the core of the rot more than our concerns over the Electoral Count Act in some ways.

[00:31:01] Jeffrey Rosen: Thank you so much for that. Judge, you heard the three teams both agree in principle on the need for Electoral Count Act reform, but express some skepticism about the likelihood that Congress is actually going to adopt these reforms that everyone thinks could prevent an existential threat to the Constitution. What, what's your response and, given the possibility or likelihood of Congressional inaction and given the seriousness of the threat in your view, what else can be done to prevent another existential threat to the U.S. Constitution?

[00:31:36] J. Michael Luttig: I think that I was one of the first to say that the act itself is unconstitutional to the extent and for the reason that it, that it gives Congress authority to decide the presidency in, in any circumstance where, uh, it's crystal clear the founders never intended Congress to have that power. But what I was faced with then, uh, was, it was incumbent upon me

to, to say, "Well, who does decide these questions if it's not Congress?" And, you know, there were only a couple of choices and it was Congress or the states. On the question of whether it's the states, you're met with, uh, a political question doctrine and I knew that. I did not believe that would be a problem 'cause I thought this went to core structural constitutional provision, but, nonetheless, most people would have said, and, and said in Bush versus Gore, et cetera, that, that this was a political question that the Supreme Court should never address.

[00:32:41] I decided to name the judiciary as the entity that's responsible on to the Constitution for, uh, for deciding these disputes, not Congress, not the states, not the state legislatures, for the simple reason that, when the states are, are legislating, uh, under either the electors clause or the elections clause of the Constitution, you know, they are, they are, uh, exercising federal constitutional authority and, therefore, my reasoning went, if there are issues with that federal constitutional decision by the states, then it's appropriate for the Supreme Court to have the final, uh, decision o- o- over those.

[00:33:28] I'm hopeful, um. I, I, the hope springs, actually, from this, uh, latest CNN piece that, that I wrote because that really seemed to, uh, put the burr under the saddle and I've gotten many, many calls, uh, in the aftermath of, of that from the Hill, saying, "Okay. We got to do something," uh, and so I'm hopeful. And then I'm hopeful that, that we can resolve, through the Supreme Court, of necessity, this Independent State Legislature Doctrine, uh, and my hope is is that it will be resolved in such a way that would preserve, at the very least, ultimate federal review, uh, by, uh, the Supreme Court of the United States, uh, and if, if we make any kind of amendment to the Electoral Count Act, I'm positive it would be salutary and, and very good.

[00:34:29] So the, the kind of proposals that are, have been circulating for a year are to ratchet up, significantly, the number of, uh, House and Senate members can, who can object to a state electoral slate. Currently, under the law, one member in the House, one member of the Senate, can actually, you know, engage the entire Electoral Count Act process, which is circuitous, cumbersome, but which, in the end, gives Congress the authority to decide the presidency. You ratchet up those numbers and then you ratchet up the numbers that are required in the House and Senate to sustain an objection, read as, even if Congress wants to overturn the election, for instance, it might require two-thirds vote in both Houses. If we can make changes to those effects and to those extents, I believe that we, that we, we solve the problem largely, if not totally.

[00:35:34] The vice president's authority is, is a nonissue. No one will ever again even be tempted or be tempted by another to, to, uh, assert a, uh, unilateral authority to overturn a presidential election. That's not the problem. That's sort of the, you know, the red herring, if you will, because that's what everyone saw in 2020 was the vice president, so Congress, of course, they gravitate to low-hanging fruit, right? So they go, "Okay. Well, we're going to make crystal clear that the vice president has n- no authority other than a ceremonial authority." You know, the only problem with that is that they really can't say that because that's a question under the 12th Amendment of the Constitution, so ... but it's not the issue anyway. It's the state electors and Congress' own power. But I'm hopeful.

[00:36:28] Jeffrey Rosen: Well, thank you for that note of hope, thank you for your service to the country, and thanks to all of our teams for having thoughtfully converged on this crucially important reform that, free from partisan politics, could do so much to preserve the U.S. Constitution. This conversation will continue. We will discuss the other recommendations of our Guardrails of Democracy teams and the National Constitution Center stands ready to do exactly what we're doing this weekend, which is a kind of dress rehearsal for the role that we're going to play in the months and years ahead bringing together thoughtful people of different perspectives to think in a nonpartisan way about structural constitutional issues and propose meaningful reforms that everyone can converge around. And for doing exactly that, please join me in thanking our panelists.

[00:37:24] Today's show was produced by Melody Rowell. Research was provided by Sam Desai, Lana Ulrich, and Colin Thibault. Please rate, review, and subscribe to We the People on Apple Podcasts and recommend the show to friends, colleagues, or anyone anywhere who is eager for a weekly dose of constitutional debate.

[00:37:42] And, always remember, friends, that the National Constitution Center is a private nonprofit. In order to continue our mission of bringing together people of diverse perspectives to discuss the central issues in American constitutional life, we rely on the generosity, the enthusiasm, the engagement, the commitment to civil dialogue and debate of people like you from across the country who are inspired by our mission. You can support the mission by becoming a member at ConstitutionCenter.org/membership or give a donation of any amount to support our work, including this podcast and conversations like the one you've just heard, at ConstitutionCenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.