

PRESS RELEASE

Wiley Files *Amicus* Brief in Two U.S. Supreme Court Cases Supporting States' Authority Over Presidential Electors Through Party System

April 8, 2020

Washington, DC – Wiley Rein LLP today filed an *amicus* brief in the U.S. Supreme Court on behalf of the Republican National Committee (RNC), supporting the states of Washington and Colorado, respectively, in two cases – *Chiafalo v. Washington* and *Colorado Department of State v. Baca*.

Michael E. Toner, partner and chair of Wiley's Election Law & Government Ethics Practice, served as counsel of record on the brief. Mr. Toner – along with partners Lee E. Goodman and Stephen J. Obermeier and associates Jeremy J. Broggi and Boyd Garriott – authored and filed the brief on the RNC's behalf.

Stemming from the results of the 2016 presidential election, both Supreme Court cases are based on challenges to state laws by "faithless" electors in the U.S. Electoral College – those who had cast electoral votes for someone other than the candidate of the party they had pledged to vote for. Thirty-two states and the District of Columbia have enacted laws to prevent elector faithlessness, but the state laws have not been previously enforced as they were in these two cases. In 1952, the constitutionality of state pledge laws was brought before the Supreme Court in *Ray v. Blair*. The Court ruled in favor of state laws requiring electors to pledge to vote for the winning candidate in order to be certified as electors, but did not rule whether those pledges were enforceable.

"The bottom line is that, contrary to the Electors' radical theory, the Electoral College has never been comprised of constitutional free agents able to select the President and Vice President at will," Wiley

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said in the brief. "From 1796 until today, the States have appointed electors based on their partisan identity and with the expectation that the parties will constrain electors' discretion. And they have not hesitated to adopt more formalized measures when they deemed it necessary."

"The various state designs only work if the State can bind its electors to the results of its popular vote," according to the brief. "For example, a statewide popular vote for the presidential and vice-presidential candidates will not work unless the State can ensure that the electors vote for the party ticket chosen by its citizenry."

The brief urges the Court to affirm the decision of the Washington Supreme Court in *Chiafalo v. Washington*, reverse the decision of the Tenth Circuit in *Colorado Department of State v. Baca*, and affirm the authority of the States to express effectively the will of their people in presidential elections.

The brief is viewable on the Supreme Court's website in each case docket, [here](#) and [here](#).