

Originally published in

New York Law Journal

Letter to the Editor

June 17, 2020

Binding Electoral Votes: A Bad Idea for New York



By [Jerry H. Goldfeder](#)

William Josephson, in a recent essay, is right to criticize the current New York State Senate bill that would bind presidential electors to cast their votes for the winner of the popular vote, or strip them of their office.

William Josephson has, once again, written on these pages about the electoral college ("[To Bind or Not To Bind](#)," June 3, 2020). He is right to criticize the current New York State Senate bill that would bind presidential electors to cast their votes for the winner of the popular vote, or strip them of their office.

Apart from the fact that there have not been, in modern history, any so-called "faithless" electoral votes from New York, and the very few cast throughout the country in the last hundred years have been nevertheless counted as valid by the United States Congress, it is not a good idea for the state legislature to mandate such obeisance. After all, unanticipated events can occur between Election Day and the date electors meet that may inform an elector's vote. A perfect example of this occurred when presidential candidate Horace Greeley died right after

Election Day in 1872, and most of his pledged electors cast ballots for another candidate. (Greeley had not won the election, so the ultimate outcome was not affected.)

The real solution is for a political party to select a slate of electors who are tried-and-true supporters of both the party and the presidential standard bearer. This method has worked almost perfectly.

In any event, as pointed out by Mr. Josephson, the issue as to whether a state can even attempt to compel such voting is sub judice in the United States Supreme Court.

Mr. Goldfeder is special counsel at Stroock and teaches Election Law and the Presidency at Fordham Law School. He submitted an amicus brief in the Supreme Court's case on the issue.

Reprinted with permission from the June 17, 2020 edition of the *NEW YORK LAW JOURNAL*
© 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382 or reprints@alm.com.