

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

2021

President's Column, Vol. 57, No. 2

Peter Sferrazza

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

President's Column

Peter Sferrazza

In the conclusion of *Nineteen Eighty-Four: A Novel*, George Orwell describes his protagonist Winston: “[E]verything was alright, the struggle was finished. He had won the victory over himself. He loved Big Brother.” Winston had tried to fight against Big Brother but failed. To achieve domination, Orwell’s dystopian state had used physical and mental torture, drugs, as well as control of news and history. Even control of the English language was used, reducing it to Newspeak, which only allowed for limited thought and expression. In the end, the individuals were subjugated to the complete control of the state.

In the non-fiction world, the year 1984 came and went without the thought police. But in 2020 we saw how a coordinated segment of the media could shape the belief of our citizens and create disparate views of core facts. In *Nineteen Eighty-Four* there was no external or objective truth. The “truth” was what the collective mind says it was, a prescient forerunner of our “wiki” on the Internet.

Is it a fact that Joe Biden won the election? Despite scores of failed legal challenges, numerous recounts, and Congress’s confirmation of Joe Biden’s Electoral College victory, a large majority of those who voted for Donald Trump say their candidate received the most votes cast by eligible voters in enough states to win the election.

According to Pew Research, “Among Trump voters, 40% say he ‘definitely’ won and another 36% say he ‘probably’ won the election. Only 7% of Trump voters concede that Biden definitely won the 2020 election, while another 15% say he probably won. Biden voters nearly unanimously believe their candidate won.” Among Trump voters, 70% believe he lost because of widespread election fraud.

“In free countries, every man is entitled to express his opinions and every other man is entitled not to listen.” G. Norman Collie.

In light of the disputed 2020 election results, one must ask whether every person is now entitled to their own facts. I say “no” and am grateful that in our society we have institutions like the courts dedicated to determining the facts. In our society, we all have the right to our own opinion. However, we rely on the courts to weigh the evidence to separate fact from opinion. Under our Constitution, judges and juries have the awesome responsibility to determine what is true.

With respect to the facts of the 2020 election, the courts have decided these issues contrary to the majority of Trump voters who believe he won. Helping each other understand the role of

courts in our democratic system is more important than ever before. Your AJA, in partnership with the National Judicial College, is presenting a webinar on “The Role of the Judiciary in Preserving Our Constitutional Democracy.” Please mark your calendars for April 15, 2021 at noon pacific time for a fascinating discussion of these issues.

Distinguished Professor Erwin Chemerinsky will be our lead panelist discussing the cases that were appealed to the United States Supreme Court relative to the 2020 election, and prior election law cases decided by the court.

We will have presentations on four states, Pennsylvania, Nevada, Arizona, and Georgia, that were not decided on election night and were determinative of the outcome of the election.

Nevada Attorney General Aaron Ford, former majority leader of the Nevada State Senate, will discuss the cases that were filed in the state of Nevada challenging the 2020 election results.

Professor Neil Kinkopf, staff member for President Joe Biden’s Senate Judiciary committee, will give his perspective on the cases that were filed in the state of Georgia challenging the 2020 election results and the aftermath.

Retired Arizona Chief Justice Scott Bales will share his insight on the Arizona election challenges. He taught election law courses as a professor at Arizona law schools before joining the Arizona Supreme Court.

Attorney Mark Aronchick defended Pennsylvania in the lawsuits challenging the results. He will share his story about going head-to-head with Rudy Giuliani.

This is an important webinar because our fragile democracy is at stake.

For the first time in the history of our country on January 6, 2020 we witnessed an armed insurrection to delay certification of the electoral college votes by the U.S. Congress.

A majority of voters believe they have a constitutional right to vote for president.

They don’t realize an armed insurrection is not necessary to overturn the popular vote.

When members of the Florida legislature in 2000 threatened to abandon the results of the statewide popular contest and appoint Electors for a particular candidate, the Supreme Court in *Bush v. Gore* (2000) held that “The individual citizen has no federal constitutional right to vote for Electors for the President of the United States.” When it comes to presidential elections, the voters are at the mercy of the state legislatures.

