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A Democratic Norm Endures January 6th: Congress and Deference to States' Election Certifications

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Abstract

The U.S. Congress rarely overturns elections to either of its chambers. Legislators tend to follow a norm of deference to election results lawfully submitted by states. This longstanding norm is the product of the Constitution, federal law, and habit. Yet, on January 6, 2021, the national legislature flirted with violating that norm and denying the presidency to Joseph Biden based on spurious claims of electoral fraud. Fortunately, legislators from both parties forged strong majorities to uphold the norm and subsequently reaffirmed it during Congress's review of a disputed Iowa congressional election. Viewing these events closely reveals both that those who sought to discard or uphold a norm argued from within the American democratic tradition and that partisan calculations were paramount.

Keywords: Congress, Electoral Count Act, election, presidency, transition of power

The siege of the U.S. Capitol on January 6, 2021, and the effort to subvert the counting of all states' lawfully submitted electoral slates appeared to validate the narrative of democracy's impending demise. The incident sent shock waves through all three branches of government, and the day will live in infamy.

Yet, for all the awfulness of January 6th, the day ended positively: The democratic norm of Congress respecting states' certified elections endured. Remarkably, this norm of deference was subsequently upheld a few months later when the House of Representatives chose to let the result of a disputed Iowa election stand, despite an obvious partisan incentive to overrule it.

In recounting the January 6th and Iowa election incidents, this article focuses on legislators' words and interests. The rationale for doing so is straightforward: Each legislator had a preferred outcome, and each of them had to consciously present themselves to external audiences (i.e., media, partisans, and voters generally) for validation in these highly salient, high-stakes phenomena.

Congress and the Dispute Over the 2020 Presidential Election

Concerns that U.S. government may slide into despotism date back to the nation's earliest days. Early Americans feared the collapse of self-governance due to weakening moral fiber and virtue (see Vetterli & Bryner, 1997). In crafting the Constitution, James Madison and others grappled with how to prevent the Polybian devolution from healthy governance to degenerate tyranny and the like.¹ Indeed, anxiety that America and its governance system is becoming debauched is a recurrent theme throughout American history (Murphy, 2009).

However, the events of January 6, 2021—and the long build-up thereto—appear almost inevitable in retrospect. For years, scholars, media, and other observers have warned about the erosion of American democracy, pointing to the increase in political polarization and hostility between citizens which goes beyond policy disagreement to matters of personal identity (see Iyengar et al., 2019). They have documented the ebbing of political forbearance and the concomitant rise of political and constitutional hardball, in which partisans stretch the legal and institutional rules to the utmost in pursuit of political wins (see Bright Line Watch, 2017; Levitsky & Ziblatt, 2018). Journalists and social scientists have warned that half-truths and outright lies are flooding Americans' minds, leaving them incapable of discerning political reality from fantasy (Rauch, 2021). Observers have also warned that democratic norms, the unwritten, fragile “shared expectations of appropriate political action” are being shattered, which is both symptomatic of political mistrust and a source of it (Deitz, 2021).

Those who climbed the ramparts in defense of democracy also cautioned that democratic decline was occurring globally, not just in America. Whether it was the youngest democracies in the Middle East or post-Soviet republics in Eastern Europe, autocracy was rising. Even in older, more established parliamentary nations, like France, far-right parties were gaining political power and popularity (Huq & Ginsberg, 2018; World Justice Project, 2020).

January 6, 2021, the infamous day when armed protestors breached the U.S. Capitol building in defiance of the 2020 election results, was the culmination of many peculiar factors. First, then-President Donald Trump, long before Election Day 2020, fomented doubt about the

¹ On the Founders and the cycle of *ankylosis*, see Chinard (1940) and, more broadly, Richard (1994, pp. 53–168).

upcoming election's legitimacy, claiming that "fraud" would be inevitable.² President Trump demonstrated a willingness to go to extraordinary lengths to maintain power, rendering him relatively anomalous in American presidential politics. Second, Trump's most loyal supporters were consistently dissatisfied with America's political institutions, thus prone to doubt the efficacy of the electoral process.³ Third, in 2020, the COVID-19 pandemic more than doubled mail-in voting rates from 2016 levels, with many states expanding vote-by-mail options and modifying their election administration practices (Stewart, n.d.). This significant change in voting procedure enabled already skeptical Trump supporters to perceive evidence of corruption.

Yet, despite these powerful dynamics in the Republican Party, Congress affirmed its longstanding and hitherto unbroken tradition of certifying presidential and vice-presidential election results. For both Pennsylvania and Arizona, states where results faced objection, Senate Republicans overwhelmingly voted to affirm the state-certified election outcomes. House Republicans were more divided, but, nonetheless, many opposed the objections.

The significance of congressional Republicans defying inner-party trends suggests that, in moments of institutional crisis, norms are sometimes the controlling factors in partisan action. That is, norms still carry weight in American political institutions by influencing party action even when incentives seem to point elsewhere.

To understand how institutional norms prevailed on January 6th, we examine the rhetoric of congressional Republicans on both sides of the certification question and draw out some general themes and norms referenced. As we highlight, Republicans who objected to the Arizona and Pennsylvania electoral results cited alternative norms as higher reasons to discount those states' electoral votes in disregard of the longstanding interpretation of the roles and procedures dictated by the Electoral Count Act (ECA; 3 U.S.C. §§3–21).

Congressional Republicans' Rhetoric Around the Election Results

The ECA of 1887 was enacted in response to the disputed Hayes–Tilden election of 1876. That contest was marred by confusion over what to do when four states submitted two conflicting slates of electors. The statute built upon the Constitution's 12th Amendment and Article II, Section 1. The ECA provides that, during a joint session of Congress, the sitting vice president preside over the chamber, open the official electoral slates submitted by states, and tally them to determine which candidate receives "a majority of the whole number of electors appointed." The statute requires that, should one representative and one senator jointly object to the counting of a state's electoral slate, the joint session pause; each chamber must then vote on the objection (Congressional Research Service, 2020). In theory, Congress could vote to reject a state's electoral slate—but that has never actually occurred.

Before the armed rioters breached the Capitol building, there were reports that GOP senators would object to perhaps six states' electoral slates, all of which went for Biden (Haberman & Karnie, 2021). Were Congress to vote to reject those slates, or were Vice President Mike Pence to refuse to count those slates, President Trump would win reelection.

² For example, in August 2020, Trump tweeted, "The fraud and abuse [of the 2020 election] will be an embarrassment to our Country" (Parks, 2020).

³ To a degree, Trump as a 2016 candidate was a protest vote against the GOP, to say nothing of the Democratic Party.

Ultimately, all Democrats and most Senate Republicans opposed the objections to the Arizona and Pennsylvania results raised by Senators Ted Cruz (R-TX) and Josh Hawley (R-MO). After the Capitol was breached, even fewer Republican senators supported raising objections, and votes were taken only on two states’ electoral slates. In neither chamber was the vote close (Table 1).

Table 1

Final Vote Count on Objections to the 2020 Election Results

Count Description	Yea	Nay
Senate vote totals on objecting Arizona election results	6 (all Republicans)	93 (45 Republicans, 46 Democrats, 2 Independents)
House vote totals on objecting Arizona election results	121 (all Republicans)	303 (83 Republicans, 220 Democrats)
Senate vote totals on objecting Pennsylvania election results	7 (all Republicans)	92 (44 Republicans, 46 Democrats, 2 Independents)
House vote totals on objecting Arizona election results	138 (all Republicans)	282 (64 Republicans, 218 Democrats)

The legislators who debated whether to respect states’ certified electoral results endeavored to prove that their positions were the right ones according to American governance traditions. This was the case whether they argued for or against the norm of deference.

Regardless of their positions, Republicans tended to justify their stance by invoking norms fundamental to America’s democratic process. Senate Majority Leader Mitch McConnell’s remarks warned that democracy was imperiled by Congress’s flirtation with discounting legitimately cast votes:

Mr. President, we are debating a step that has never been taken in American history: whether Congress should overrule the voters and overturn a Presidential election. I have served 36 years in the Senate. This will be the most important vote I have ever cast.... If this election were overturned by mere allegations from the losing side, our democracy would enter a death spiral. (167 Cong. Rec. S14, 2021)

Notably, both pro-objection and anti-objection Republicans channeled rhetoric about democratic integrity being at stake. Republicans who supported certification tended to evoke principles of federalism, noting that the Constitution assigns a narrow role to Congress in the presidential election process:

- Senator Pat Toomey said, “Does Congress have the constitutional authority to decide which States’ electoral college votes should be counted and which should not based on how well we think they ran their elections?... The answer, Mr. President, is no, there is no such authority under the Constitution. The Constitution assigns to the States the responsibility to conduct elections. It is clear in article II, section 1” (167 Cong. Rec. S16, 2021).
- Senator Rand Paul said, “The vote we are about to cast is incredibly important. Now more than ever, the question is, Should Congress override the certified results from the States and nullify the States’ rights to conduct elections? The vote today is not a protest; the vote today is literally to overturn elections.... It is about whether to seat the electors certified by a State.... This is about overturning a State certified election. If you vote to overturn these elections, wouldn’t it be the opposite of States’ rights Republicans have always advocated for?” (167 Cong. Rec. S24, 2021).

Republicans who favored objections frequently framed the issue as a matter of democracy: Because a high percentage of voters doubted the legitimacy of the results, as trustees of constituent opinions, members of Congress are obligated to raise these concerns on the floor:

- Senator Ted Cruz said, “Recent polling shows that 39 percent of Americans believe the election that just occurred ‘was rigged.’ You may not agree with that assessment, but it is, nonetheless, a reality for nearly half the country.... Even if you do not share that conviction, it is the responsibility, I believe, of this office to acknowledge that is a profound threat to this country and to the legitimacy of any administrations that will come in the future” (167 Cong. Rec. S15, 2021).
- Representative Jim Jordan said, “Eighty million Americans, 80 million of our fellow citizens, Republicans and Democrats, have doubts about this election; and 60 million people, 60 million Americans think it was stolen” (167 Cong. Rec. H79, 2021).
- Representative Lauren Boebert said, “Madam Speaker, I have constituents outside of this building right now. I promised my voters to be their voice. In this branch of government in which I now serve, it is my separate but equal obligation to weigh in on this election and object. Are we not a government of, by, and for the people? They know that this election is not right; and as their Representative, I am sent here to represent them. I will not allow the people to be ignored” (167 Cong. Rec. H83, 2021).

Proponents of objecting also cited concerns about whether states, Pennsylvania particularly, violated their own constitutions and election administration laws:

- Senator Josh Hawley said, “I say to Pennsylvania, quite apart from allegations of any fraud, you have a State constitution that has been interpreted for over a century to say that there is no mail-in balloting permitted except for in very narrow circumstances, which is also provided for in the law. Yet, last year, Pennsylvania’s elected officials passed a whole new law that allowed for universal mail-in balloting, and they did it,

irregardless [*sic*] of what the Pennsylvania Constitution said” (167 Cong. Rec. S25, 2021).

- Congressman Steve Scalise said, “Madam Speaker, I rise today to object to a number of States that did not follow the constitutional requirement for selecting electors.... [E]ach State has a process for selecting their electors and sending them to Washington. Madam Speaker, in a number of those States, that constitutional process was not followed, and that is why we are here to object” (167 Cong. Rec. H77, 2021).

Both proponents and opponents of certification invoked constitutional concerns, claiming that the document and pertinent law supported their position:

- Senator Mike Lee, who favored certification, said, “You see, because in our system of government, Presidents are not directly elected. They are chosen by Presidential electors, and the Constitution makes very clear, under article II, section 1, that the States shall appoint Presidential electors according to procedures that their legislatures develop. Then comes the 12th Amendment. It explains what we are doing here today in the Capitol. It explains that the President of the Senate—the Vice President of the United States—shall open the ballots, ‘and the votes shall then be counted.’ It is those words that confine, define, and constrain every scrap of authority that we have in this process” (167 Cong. Rec. S20, 2021).
- Representative Mike Johnson, who objected to certifying the election results, said, “Since we are convinced that the election laws in Arizona and some other key States were changed in this unconstitutional manner, we have a responsibility today. The slates of electors produced under those modified laws are thus unconstitutional. They are not ‘regularly given’ or ‘lawfully certified,’ as required by the Electoral Count Act, and they are invalid on their face.... Look, in our unique system, Congress is positioned as the last bulwark in a Presidential election to ensure the Constitution has been followed.... Madam Speaker, I urge my colleagues today to look at the facts, to follow the law, and to follow our congressional oath. We are supposed to support and defend the Constitution. That is what we do here today. I urge everyone to do the right thing” (167 Cong. Rec. H84, 2021).

On January 6th, then, Republicans presented democracy, federalism, deference to public opinion, rule of law, and constitutional sovereignty as higher norms to be protected. Higher principle, then, made it appropriate to ignore a plain reading of the ECA’s requirement to count votes lawfully submitted.

Observers may dismiss the various GOP arguments as self-serving tartuffery that aimed to do no more than advance partisan goals or the ambitions of individual legislators.⁴ The absence of any evidence that any GOP legislator attempted to amend and improve the ECA in the months or years preceding January 6th is damning on this count. Debating a more than century-old statute the very day it applies gives amounts to trying to change the rules to alter the outcome.

Nonetheless, scholars have long recognized that the ECA does contain ambiguities, and some have argued that certain provisions are unconstitutional (Foley, 2019; Kesavan, 2002). The

⁴ Senators Ted Cruz and Josh Hawley are widely thought to be considering their own runs for the Republican nomination for president.

statute demands a legislature, which is free to debate anything it likes, to bind itself to perform a ministerial function. The shortcomings of the ECA, and the 2005 incident wherein Democrats objected to Ohio's electoral slate, made it easier for some GOP legislators to attack the normative consensus on deference and do so in a way that some Americans—most obviously the January 6th rioters—found persuasive (Congressional Research Service, 2020).

In the end, however, the norm endured as strong majorities refused to vote against dismissing states' electoral slates. Principle and partisan interests aligned perfectly for Democrats, who voted unanimously against the challenges. Some Republicans defected from the norm, yet many did not, despite the possible reward of reclaiming the presidency. They might have been restrained by belief in the norm, their calculations that their own constituencies would respond poorly, or fear of tit-for-tat wherein a Democratic vice president and Congress could thwart a GOP president-elect from assuming office. Still other Republican legislators were horrified by the storming of the Capitol and realized it was exceedingly damaging to the GOP brand.

Congress and the Disputed Iowa Election

The events of January 6th left the House of Representatives' Committee on House Administration (CHA) with much to do. Its jurisdiction includes much of the chamber's internal operations, which necessitated that it review the performance of the Capitol Hill Police during the invasion of the Capitol and work with the Architect of the Capitol regarding repairs from the rioters and new security protocols.

However, the committee's responsibilities also extend to the "election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally" (Johnson, 2021, p. 8). This meant that CHA also had to report the "For the People" elections reform act, an extraordinarily ambitious piece of legislation that congressional Democrats and President Biden wanted to be voted upon (Biden, 2021; For the People Act, 2021).

Additionally, the CHA had to review a disputed election in Iowa's 2nd congressional district, wherein Democrat Rita Hart lost to Republican Mariannette Miller-Meeks. The initial vote tabulation showed that Miller-Meeks had defeated Hart by 282 votes out of nearly 400,000 cast on November 3, 2020. After the outstanding mail-in ballots were counted, the lead shrank to 47. A subsequent recount found that Miller-Meeks had won by a mere six votes, and Hart alleged that 22 voters—most of whom who supported her—had their ballots thrown out (Smith & Pfannenstiel, 2020).

In early December 2020, Hart announced she would appeal her defeat to the committee under the Federal Contested Elections Act (FCEA) and filed her complaint with the CHA on December 22 (Ferris & Mutnick, 2020; Hart, 2020). The statute was enacted in 1969 to set the ground rules for Congress's review of complaints about the results of general elections to the House of Representatives (FCEA, 1969).

Republicans and observers on the right quickly raised the prospect that Democrats might overturn Miller-Meeks' victory (Zito, 2020). In a crude sense, it would be a rational partisan power play that could augment House Democrats' thin majority (222 to 213), and it would be easy to do, since they held six of nine seats on the CHA. Democrats would simply need to vote in committee and on a floor resolution.

These fears were not baseless. In 1985, a Democratic majority refused to seat a Republican who was the certified victor in Indiana's eighth district. Congress then proceeded to review the election results and had the General Accounting Office (as it was then called) recount the votes. The CHA and the House reversed the State of Indiana's determination and awarded the seat to the Democrat. This precedent was well known to the committee's minority (CHA, 1985; Zelizer, 2018).

Representative Rodney Davis (R-IN), ranking member of the CHA, publicly denounced the complaint before Hart filed it, emphasizing that Indiana had certified Miller-Meeks as the winner and accusing "national Democrats [of] trying to sidestep Iowans by filing a federal objection to maximize Speaker Pelosi's currently razor-thin majority" (Davis, 2020a). Davis also delivered a floor speech reminding legislators and any media or public onlookers that Democrats "stole a seat" in 1985 and could do it again (Davis, 2020b). He warned that overruling the Iowa election could result in retribution should the GOP regain the majority. Davis also wrote an op-ed with this same theme which was published in a highly trafficked news website the same day as his speech and which framed the issue as either respecting Iowans' votes or not (Davis, 2020c).

Iowa's two Republican senators and its incoming Republican House members sent a letter to Speaker Nancy Pelosi (D-CA) criticizing Hart for failing to file suit in Iowa's court and urged the CHA to reject Hart's plea (Barton, 2020). Senator Joni Ernst (R-IA) tweeted about the issue repeatedly. On December 2, she wrote,

Iowans elected, and the state officially certified, @millermeeks as the winner of #IA02. Instead of going through Iowa's process—letting our courts have a say—Rita Hart has decided to go to Nancy Pelosi and a Democratic House to reject Iowans' votes and voices. (Ernst, 2020)

Speaker Pelosi agreed to seat Miller-Meeks, but her spokesperson described it as provisional (Ferris et al., 2020). Although any Democratic legislator could have objected to the swearing in of Miller-Meeks, none did. Doing so would have come with the cost of forcing a vote on an issue that the Speaker clearly wanted considered by the CHA.⁵

The very nature of the Iowa election dispute made it a highly salient event for both political parties and for the media, and the parties' battle lines were drawn before the end of December. The GOP wanted Hart's petition rejected, and the Democrats urged the CHA to hear the appeal.

Shortly after the CHA received the petition,⁶ Miller-Meeks filed a motion to dismiss with the committee (Miller-Meeks, 2021b). Her brief argued that the votes were counted in accordance with Iowa law, that a recount had occurred, and that the bipartisan State Board of Canvas had reviewed the matter; in each instance, the process showed that Hart had lost. In short, the brief argued that the process was fair and according to state law, and Hart knew she would lose in Iowa's nonpartisan contest court and chose to shop the dispute to a partisan venue.

⁵ This stands in stark contrast to the 1985 effort to swear in Rick McIntyre, the Republican who was certified as the winner of Indiana's eighth district. Representative Jim Wright (D-TX) objected, and majority Democrats voted to not seat McIntyre pending CHA review (Committee on House Administration Republicans, 2020; Zelizer, 2018).

⁶ All filings for the dispute may be found at <https://cha.house.gov/Contested-Elections>.

Hart responded to the motion to dismiss on February 2 and returned to the main argument of her initial brief: 22 votes had not been counted due to election administrators' errors, which she contended violated Iowa election law. If counted, those votes would have produced a net gain of 15 votes for Hart, making her the victor. Hart again argued that the U.S. Constitution's Article I, Section 5, clause 1 empowers the House of Representatives as the judge of "the Elections, returns, and Qualifications of its own Members." Accordingly, it was absolutely appropriate for the CHA to review the matter—especially since it involved disenfranchisement of voters (Hart, 2021).

From January through early March, the two parties filed responses to each other's contentions. The conversation between the two briefs centered largely on a constitutional question: Should Congress fault Iowa's election administrators and overrule it, or should it defer to the state's judgment?

This framing of the problem was very much in keeping with the facts of the dispute and fit within Congress's modern norm of handling elections disputes within the confines of the FCEA. By law, "the burden is upon the contestant [i.e., election loser] to prove that the election results entitle him to a contestee's [i.e., election winner's] seat" (FCEA, 1969, §385). The House's precedents also declare that a state-issued election certificate "constitutes evidence of a prima facie right to a congressional seat in the House" (Deschler's Precedents of the United States House of Representatives, 1994, ch. 8, sc. 15, p. 946). This position of deferral to state certifications helps explain why the House rarely overturns elections and seats the contestant. There have been only three such incidents since 1933 (Congressional Research Service, 2011).

If Democrats wished to overcome this norm of deference, they needed to make a case for action that was sufficiently persuasive that all Democrats would be willing to vote to remove Miller-Meeks and install Hart. This would prove challenging for an array of reasons.

As soon as the dispute broke, Representative Cindy Axne of Iowa's third district found herself in a difficult position. Partisan loyalty obligated her to support Hart's challenge. Yet, her own political well-being offered a contrary incentive. Axne is the lone Iowa Democratic House, and had a very narrow victory in November 2020. Full-throatedly supporting the Hart challenge would have put her crosswise to Iowa's other representatives and senators and risked alienating any Republicans or independents who had supported her. Very quickly, Axne disassociated herself from the issue.⁷ In December, she issued a single press release on the matter, noting that Hart had a legal right to pursue her protest and that all Iowans' votes should be counted. Axne spoke little of the matter subsequently (Axne, 2020). Any floor vote to remove Miller-Meeks could be used against Axne, and Democratic chamber leadership may have calculated that she could not be expected to vote yes. That was no minor problem since Republicans were all but guaranteed to stay united and Democrats' margin in the chamber was so slim.

The Committee on Administration held one public hearing on Hart v. Miller-Meeks on March 10. Chairperson Zoe Lofgren (D-CA) emphasized the CHA's constitutional and statutory responsibility to examine contested elections. She also emphasized how close the race had been and stated that Hart had raised "specific, credible allegations" that not every valid vote had been tallied (CHA, Majority, 2021, 12:31 to 14:27).

⁷ Axne won by 6,208 of the 447,947 (1.3%) of votes cast (Ballotpedia, n.d.).

Ranking Member Davis responded to Lofgren by first complaining that the majority had violated the committee's rules by failing to give adequate notice. Davis called for bipartisan fairness in addressing all contested elections before the committee and emphasized the fairness and bipartisan nature of the Iowa electoral processes. Davis reiterated the minority's request to dismiss Hart's complaint and decried that the majority was fueling intra-chamber and public partisanship by "jamming through" the "For the People Act" along party lines and "moving forward to overturn the election of one of our Republican colleagues" (CHA, Majority, 2021, 14:28 to 18:28).

Chairperson Lofgren then introduced a resolution in response to Miller-Meeks's motion to dismiss Hart's complaint. That resolution declared that the committee would postpone the possible dismissal, and Lofgren argued that doing so would give the committee more time to study the facts of the matter (CHA, 2021; CHA, Majority, 2021, 19:48 to 23:52).

Ranking Member Davis countered with an amendment to strike the text of Lofgren's resolution and replace it with text dismissing Hart's complaint (Davis, 2021a). The CHA voted on party lines to reject the amendment and approve the resolution.

The CHA's refusal to dismiss the complaint meant its investigation would commence, and it might impose a remedy. The next day, Speaker Pelosi said it was possible the CHA could remove Miller-Meeks (Grayer, 2021). Rita Hart called for the CHA to conduct a hand recount of all the votes, a request that, if honored, would have pulled the committee deeper into the issue for months (Olson, 2021). In response, the CHA minority and the GOP went public with its criticisms, focusing on major media and also on Iowa voters.

The minority continued to argue that Democrats were trying to steal the Iowa race and raised concerns that the firm representing Hart had a conflict of interest—and perhaps so did the HCA majority:

Not only is Elias, and his firm Perkins Coie, representing Rita Hart in this case, but they also represent Chairperson Zoe Lofgren and committee members, Reps. Pete Aguilar and Mary Gay Scanlon, which account for half of all the Democrats charged with deciding this case before the Committee on House Administration. (Davis et al., 2021)

The minority further contended that the resolution adopted in the March 10 proceeding violated congressional tradition by deviating from acceptable practice (Davis, 2021b).

The GOP's campaign arm also ran advertisements against Democrats in swing districts, goading them to call for a stop to the CHA inquiry (Grayer, 2021). Nine of the GOP House members who voted to impeach Trump sent a letter to Speaker Pelosi and asked that the CHA desist from the inquiry. Iowa Senator Joni Ernst called out Axne and tried to show a gulf between her and Iowa voters: "Where is Cindy Axne saying, 'This is an outrage and the Iowa voters have spoken?'" (Rogers & Raju, 2021). House Republicans, led by Iowa's Representative Ashley Hinson, sent a letter signed by 124 House members to Speaker Pelosi excoriating her for "hypocrisy" for supporting "an investigation into this free and fair election while simultaneously claiming voter fraud does not exist nationally" and "election security claims are unwarranted" (Hinson et al., 2021). Minority Leader Kevin McCarty also visited Iowa with Miller-Meeks and demanded the Speaker and Democrats "put their faith in democracy" and end the CHA investigation (Zanona, 2021). The Republican National Committee also released a video

attacking Axne for ignoring “the will of Iowa voters” and abetting a “Pelosi power play” to “steal an election here in Iowa” (NRCC Communications, 2021).

Simultaneously, some Democrats publicly voiced their concerns about the possibility of rejecting a state-certified election when the party had been decrying the GOP for doing just that on January 6th. Representative Lou Correa (D-A) said he wanted to see “compelling reasons [for] the feds to get involved in this” (Rogers & Raju, 2021). Representative Dean Phillips (D-MN), tweeted on March 22, “Losing a House election by six votes is painful for Democrats. But overturning it in the House would be even more painful for America. Just because a majority can, does not mean a majority should” (Phillips, 2021). His statement came in response to a media claim that a source close to the CHA process had said House leadership supported the inquiry. Representative Josh Gottheimer (D-NJ), a leader of the bipartisan Problem Solvers Caucus, expressed “deep reservations” about the CHA investigation, and Michigan Representative Dan Kildee said the CHA would need to present “a really compelling case” to earn his vote (Mutnick et al., 2021).

Susan Wild (D-PA) summed up the dilemma for Democrats who had been faulting the GOP for their votes on January 6th:

As I have said before in connection with the 2020 presidential election, legislators should be heeding states' certifications of their elections. Unless there is rampant error and substantial evidence thereof, I do not believe it is the role of House members to dictate the outcome of elections. (Mutnick et al., 2021)

At least half a dozen Democrats signaled they were willing to defect if a vote was called to remove Miller-Meeks. This was a problem as the majority was only 219 to 211 in late March due to five vacancies.

On March 31, Rita Hart announced she was withdrawing her contestation of the election results, thereby saving the CHA and Democrats from taking votes that were deemed more costly than beneficial. She condemned the entire process. “The reality is that the toxic campaign of political disinformation to attack this constitutional review of the closest congressional contest in 100 years has effectively silenced the votes of Iowans” (Barton, 2021).

From the start, overcoming the norm of deference to state certificates was a significant challenge for the Democrats. It required them to make a strong case that Congress had to step in because the Iowa election grossly disenfranchised voters and/or that Miller-Meeks was an egregious person who deserved to be drummed from Congress. They did not accomplish either of these goals, for a number of reasons.

Iowa has a lengthy history of competent election administration, and its processes are difficult to fault. The state held the election, had each county conduct a recount with representatives of Hart’s and Miller-Meeks’s campaigns involvement, and conducted a final bipartisan review of the results. Ostensibly, this looked like sound process, not easily faulted as partisan or suspicious. Additionally, the optics of Hart’s complaint were weakened by her simultaneous assertion that Iowa election administrators had broken the law but refusal to seek judgment on this legal claim before the state’s bipartisan elections tribunal. Indeed, to a degree, she was a candidate running to represent Iowa while complaining that Iowa’s government had cheated her. There is little evidence that this message had great resonance in Iowa.

Nor was it workable to characterize Miller-Meeks as loathsome and hence worthy of rejection. There was no evidence that her campaign had cheated. Once she arrived in Washington, DC, Miller-Meeks did nothing to elicit enmity from House Democrats. In fact, on January 6th she voted with Democrats to accept the electoral slates submitted (and against Trump) and issued a press release explaining her position as consistent with the Constitution (Miller-Meeks, 2021a). She stood in sharp contrast to Representatives Marjorie Taylor Greene (R-GA) and Madison Cawthorn (R-NC), both of whom attracted the ire of Democrats over their insistence that Trump won the election and their propagation of peculiar theories (Castronuovo, 2021; R. Williams, 2021).⁸

For Democrats to consider voting to overturn the Iowa election, they also would have needed to clarify why doing so would be qualitatively different from the GOP's protests against state electoral slates on January 6th. This was no easy task as Democrats had been shaming the GOP for attempting to steal the 2020 presidential election.

Lastly, making a case to remove Miller-Meeks also carried the peril of retribution. As noted earlier, Representative Davis, very early in the CHA's process, cautioned that tit-for-tat might come. Certainly, House Democrats had paid a price for seating McCloskey over McIntyre in 1985 (Zelizer, 2018). The GOP shut the chamber down for 3 days and tarred the Democrats in the media. The incident also helped unify Republicans in their belief that working with Democrats was a fool's errand and that the smart course was to do as Representative Newt Gingrich had advised—aggressively confront Democrats and fight to win a majority in the chamber. Going back further still, busting the norm of respecting election results risked plunging the House back into the seating wars it experienced between 1875 and 1905, when the House replaced 59 apparent victors with their defeated opponents (Rove, 2021). Whatever the complex stew of motivations, the result was that the CHA affirmed the norm of deference to states' certified electoral determinations.

Concluding Observations

January 6th was a terrible day when an alarming number of Republican legislators acted contrary to a longstanding democratic norm. The two-century-old stability of peaceful presidential succession was imperiled.

Yet, as this article suggests, for all the badness, there was a noteworthy and positive upshot. The norm of deference endured on January 6th and was subsequently reaffirmed by the Committee on House Administration by Republicans and Democrats.⁹ In both instances, there were legislators who did not follow the obvious incentive to support their party's candidate.¹⁰ The article also underscores the critical role of norms in governance. In this instance, the norm of deference restrains legislators from acting in ways that destabilize governance. Deference

⁸ Ironically, Taylor Greene's frequently incendiary comments and behavior provoked majority Democrats to remove her from two committees, which was a violation of a longstanding norm (D. Williams, 2021).

⁹ Notably, in spring 2021, CHA Republicans joined CHA Democrats in turning down a GOP complaint to overturn an Illinois election (Pearson, 2021).

¹⁰ Remarkably, the CHA's decision might have added an additional component to the norm: the requirement that aggrieved candidates first exhaust their challenges in state courts before appealing it to the CHA. The FCEA does not require this, but the CHA minority relentlessly flagged Hart's appeal on this count, and this contention was frequently mentioned by other elected officials and media.

functions as a tacit treaty among political actors to forebear a certain pernicious option in the political struggle.

For those who are concerned about the crumbling of democratic norms, this article also suggests that norms are upheld by a multiplicity of forces. Neither case can be reduced to a story of good guys acting purely on principles and bad guys motivated by anti-democratic impulses. Motives low and high led individual legislators to calculate their courses of action and either affirm or challenge the norm of deference. To be clear, however, those who challenged the norm of deference were indubitably in the wrong no matter their motivations.

A final takeaway from recounting these instances is the recognition that the endurance of an institutional norm does not rest wholly or perhaps even mostly on the shoulders of political paladins. Political actors can have selfish, partisan, or other unattractive rationales for upholding institutional norms. Additionally, this article illustrates the ease with which legislators can draw upon democratic principles while subverting a critical governing norm. This latter phenomenon is especially troublesome and presents a significant challenge to those who wish to protect the democratic norms essential to preserving the constitutional democratic republic.

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