In the face of the proposition that electors are state officers, the Court has upheld the power of Congress to act to protect the integrity of the process by which they are chosen.[89] But, in *Ray v. Blair*,[90] the Court reasserted the conception of electors as state officers, with some significant consequences.

Electors as Free Agents

"No one faithful to our history can deny that the plan originally contemplated, what is implicit in its text, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices."[91] Writing in 1826, Senator Thomas Hart Benton admitted that the framers had intended electors to be men of "superior discernment, virtue, and information," who would select the President "according to their own will" and without reference to the immediate wishes of the people. "That this invention has failed of its objective in every election is a fact of such universal notoriety, that no one can dispute it. That it ought to have failed is equally uncontestable; for such independence in the electors was wholly incompatible with the safety of the people. [It] was, in fact, a chimerical and impractical idea in any community."[92]

Electors constitutionally remain free to cast their ballots for any person they wish and occasionally they have done so.[93] In 1968, for example, a Republican elector in North Carolina chose to cast his vote not for Richard M. Nixon, who had won a plurality in the state, but for George Wallace, the independent candidate who had won the second greatest number of votes. Members of both the House of Representatives and of the Senate objected to counting that vote for Mr. Wallace and insisted that it should be counted for Mr. Nixon, but both bodies decided to count the vote as cast.[94]

The power either of Congress[95] or of the states to enact legislation binding electors to vote for the candidate of the party on the

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[89] *Ex parte* Yarbrough, 110 U.S. 651 (1884); Burroughs and Cannon v. United States, 290 U.S. 534 (1934).

[90] 343 U.S. 214 (1952).

[91] 343 U.S. at 232 (Justice Jackson dissenting). *See* THE FEDERALIST, No. 68 (J. Cooke ed. 1961), 458 (Hamilton); 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1457 (1833).

[92] S. REP. No. 22, 19th Cong., 1st Sess. 4 (1826).

[93] All but the most recent instances are summarized in N. Pierce, supra, 122–124.

[94] 115 CONG. REC. 9–11, 145–171, 197–246 (1969).

[95] Congress has so provided in the case of electors of the District of Columbia, 75 Stat. 818 (1961), D.C. Code § 1–1108(g), but the reference in the text is to the power of Congress to bind the electors of the states.