



The Winter of Our Discontent: the belief in election illegitimacy is spreading faster than COVID

Our 2021 Outlook will be released on January 1st, as usual. US economic activity is starting to hit some speed bumps given the surge in COVID hospitalization and mortality. Even so, further airdrops of money and vaccines¹ set the stage for a continued recovery in 2021, in large part since the bill for trillions in stimulus will be passed to future generations. How long it will take for vaccinations to drive infections down is unclear; vaccine acceptance will be a factor, and we also don't know which vaccines prevent asymptomatic infection and transmission as well as serious disease. In any case, the US will reach herd immunity one day² and there's a lot of pent-up consumption to be unleashed as we get there. More on all of this in our 2021 Outlook.

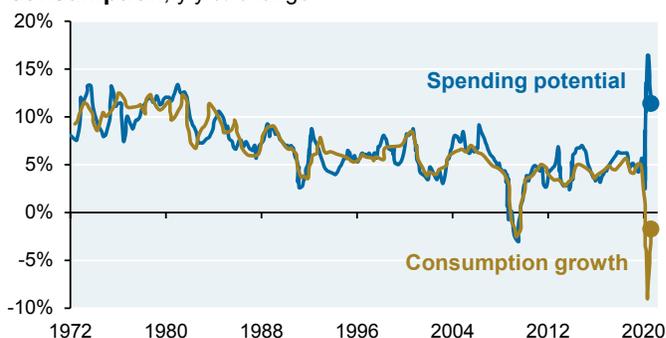
At this time each year, I write something more personal and this year is no exception. If you don't like this kind of thing, please swipe left. Otherwise, read on and I apologize in advance for page 4. Be safe and try to enjoy the holiday season.

Michael Cembalest, JP Morgan Asset Management

National credit and debit card spending trends



Due to COVID, potential spending exceeds actual consumption, y/y % change



Source: Empirical Research. Q3 2020. Spending potential: 65% of taxable income, 100% of transfer payments, 10% of housing wealth and 1.5% of financial wealth.

¹ White House Chief of Staff **Mark Meadows** reportedly threatened the head of the FDA if he did not approve the Pfizer mRNA vaccine. This is not a great confidence builder for people on the fence about getting one.

² As of October 22 (latest date available), **CDC antibody tests** showed the following COVID exposure levels: 22% NY, 10%-15% in MS/IA/NJ/AL/MD/NE/PA/TX, and less than 10% everywhere else. So, a long road ahead.



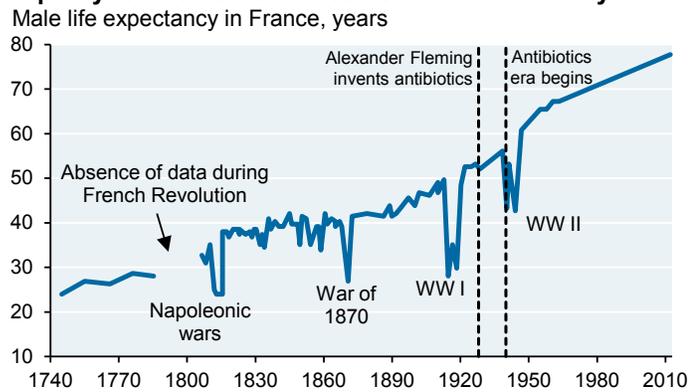
The Winter of Our Discontent³

The opening passage from *Richard III* conveys a harsh winter that’s coming to an end now that good things are on the way. While many hospital systems are overwhelmed and COVID deaths are elevated (see charts below⁴), successful vaccine trials suggest that better days are coming. A COVID vaccine was never a foregone conclusion: there’s still no AIDS vaccine, traditional vaccines using attenuated/dead viruses usually take years to develop (GSK encountered a setback last week on its COVID vaccine), and the mRNA and vector vaccine approaches used by Pfizer, Moderna and AstraZeneca have never been approved for use before in the developed world.

In March when things looked grim, I said on our webcast that the world might be 70%-80% back to normal a year later. My rationale was based on two things. First, the rapid pace of medical advances were culminating in global efforts to defeat the virus. Second, markets were pricing in a 7-10 year drawn-out economic recovery, the kind that typically follows a war or China’s *Great Leap Forward*. Pundits cited in our “*Armageddonists*” report in November were predicting a multi-year calamity as well.

We thought the recovery would be faster given tons of monetary and fiscal stimulus, and since pandemics are more closely related to natural disasters than economic depressions. Given the recovery in unemployment, spending, housing and production so far (see table), **our Spring 2021 forecast is still on track.**

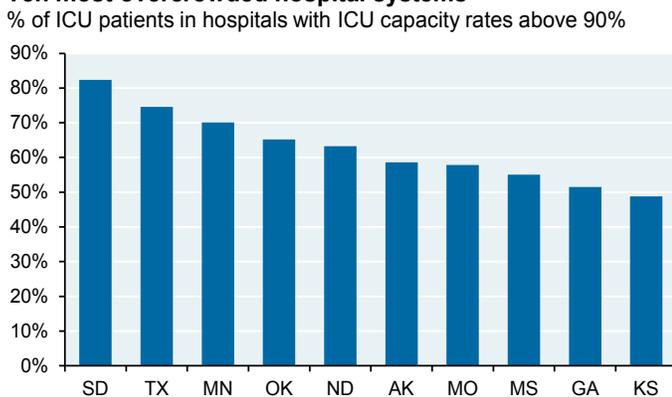
A proxy for medical advancement and inhumanity



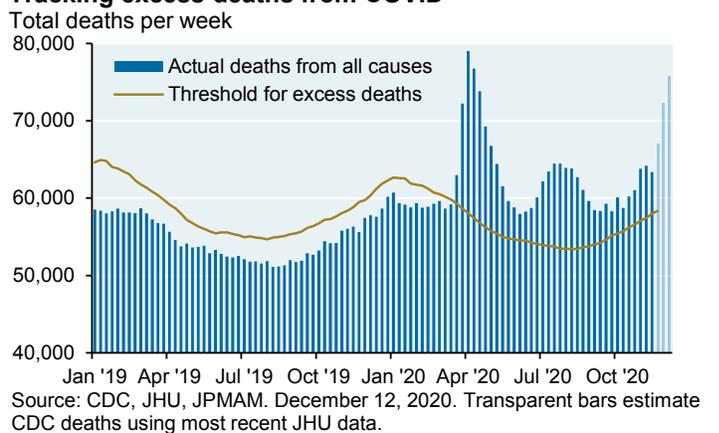
Economic indicators	Peak decline vs Dec. 2019	Current decline vs Dec. 2019	% of peak decline recovered
Total employment	-16%	-6%	61%
Leisure and hospitality sector	-49%	-20%	59%
All other employment	-23%	-7%	69%
Capacity utilization	-17%	-6%	66%
Industrial production	-20%	-5%	75%
Consumer spending	-18%	-2%	89%
Goods	-13%	9%	Recovered
Services	-20%	-6%	67%
Housing starts	-41%	-4%	91%
Retail sales	-21%	5%	Recovered
Core capital goods shipments	-7%	5%	Recovered
Rail traffic of consumer goods	-12%	15%	Recovered

Source: Census, Federal Reserve, BLS, BEA, NFIB, The Conference Board, Association of American Railroads. November 2020.

Ten most overcrowded hospital systems



Tracking excess deaths from COVID



³ “Now is the winter of our discontent, made glorious summer by this son of York”. Richard III, Act I, Scene I. Richard laments the present while celebrating the prospect of his brother Edward becoming King. **Spoiler alert:** Richard dies at the end. The body of the actual Richard III was found, exhumed and reburied in 2015.

⁴ **Excess deaths** are the clearest way to measure COVID impacts on mortality. In other words, “people are just dying from other causes instead” arguments don’t hold once you look at actual deaths vs seasonally adjusted predicted deaths.

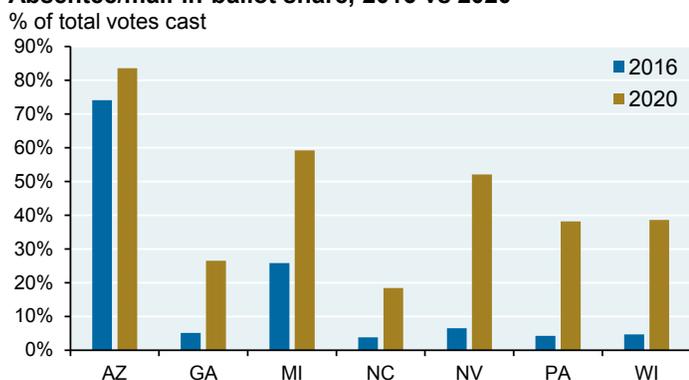


Even so, it’s hard to escape this winter of our discontent:

- Allegations of election fraud and 11th hour election law changes mandated by legislators and courts
- Pressure from Congress and the Executive Branch on state legislators to submit uncertified, competing slates of electors to the Electoral College, and blocs of legislators supporting this approach
- The Attorney General of Texas sued PA-MI-WI-GA for failing to conduct safe and secure elections. At least 20 states and 120 GOP House reps filed amicus briefs or sought to become co-plaintiffs
- Calls for martial law, suspension of habeas corpus and military tribunals while a new election is held; and instances of physical threats against elected and appointed officials
- Counter-allegations of voter suppression via postal service impairment, voter purges, dropbox rules, etc

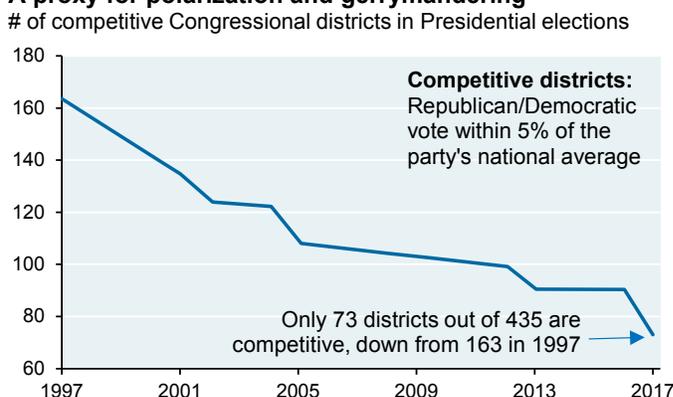
The judiciary has been clear so far: 30-40 Trump lawsuits dismissed including the Texas case, 10-15 still pending and no clear wins (CNN/Business Insider). Still, it would be interesting if an objective policy shop or academic team itemized many of the fraud and legal process allegations and provided a list of explanations for laypeople. **Peer-reviewed analyses of how 25%-60% absentee ballot shares can affect results in highly gerrymandered and polarized voting districts would benefit everyone**, particularly if that’s how future elections will take place. In addition, states like **PA, MI and WI** should join the rest of the states and allow absentee ballots to be processed well before Election Day; it’s a fair question to ask why they haven’t⁵.

Absentee/mail-in ballot share, 2016 vs 2020



Source: Election Assistance Commission, National Election Pool, NBC Decision 2020, JPMAM. December 2020.

A proxy for polarization and gerrymandering



Source: Cook Political Report. Wall Street Journal. 2017.

Historically, documented instances of voter fraud have been rare:

- The **Brennan Center for Justice** maintains a “Myth of Voter Fraud” website. Resources include academic analyses and judicial decisions from 2007 to 2017 on voter impersonation fraud, non-citizen and non-resident voting and fraud claims predicated on list-matching or list maintenance issues. **Some indicative findings:** voter fraud incidence rates of just 0.0025%, only 10 confirmed cases of voter impersonation fraud out of 2,068 analyzed, etc
- The **Heritage Foundation’s** voter fraud website has a lot of histrionic commentary, but cites only 1,300 proven cases of voter fraud in its database which begins in the year 2000

However, Brennan and Heritage data differ from many ballot handling and “data dump” allegations related to this year’s election. A WashPost Op-Ed rebutted some allegations⁶, and is worth reading. For those concerned about fraud, remember this: in Feb 2020, Senate Republicans blocked bills on election security, including election security funding and a proposal to ban voting machines from being connected to the internet⁷.

⁵ Almost all states allow processing of absentee ballots at least 5 days before Election Day. There are exceptions (WY/MS/KY/WV), but they’re not swing states. PA/MI/WI are outliers, and all three have GOP-run legislatures.

⁶ “No, Biden’s win wasn’t statistically impossible”, Philip Bump, Washington Post, December 7, 2020

⁷ “Senate GOP blocks three election security bills”, TheHill.com, February 11, 2020



The Purge

I generally like politicians who remind me of Bob Newhart. Unfortunately, politicians like that are increasingly rare in US politics, and may become rarer if there’s a GOP purge of politicians who were not supportive of the Texas lawsuit and other such efforts⁹.

- **The share of Congressional moderates in both parties has declined sharply**, and as this has happened, long term US growth rates have declined too (Exhibit 1)
- The decline in moderates has occurred in both parties, but the rise of more extreme politicians is more present in the GOP (Exhibit 2-4)
- A growing % of people in both parties see the other side as **“immoral”** (Exhibit 5), and for the first time, more people vote based on antipathy for the opposing party than on support for their own (Exhibit 6)
- With the exception of Biden (whose positions could change as President), almost all other 2020 Democratic Primary candidates supported:
 - **elimination of the Electoral College** in favor of a popular vote, a step that would better reflect the aggregate national preference but disenfranchise states that produce the food and energy that allow giant urban centers to exist in the first place, a topic we covered in detail [here](#)
 - **elimination of the Senate filibuster**, which would give a President presiding over unified government the ability to pass major legislation with a 51-50 majority in the Senate (using the VP as a tie-breaker). This would allow the narrowest of Congressional majorities to enact legislation that would impact the country for decades, possibly without any consent or support from the opposing party
- As shown below, major 20th century legislation almost **always** received *some* level of bipartisan support, even on issues such as civil rights, immigration and war powers. **That era ended** with the hyper-partisan passage of the Financial Crisis Recovery Bill (2009), the Affordable Care Act (2010) and Dodd-Frank (2010), followed by the passage of the Trump tax cuts, the most partisan major bill in history (2017)

As moderate politicians keep losing elections, voters increasingly have to pick between the two extremes. This is a choice that many people dread having to make. But if things keep moving in the direction they are now going, I know what choice I will make. See you, I hope, in 2021.

Michael Cembalest, JP Morgan Asset Management (see next page for Exhibits cited above)

Partisanship gap for major US legislation

Average difference in "yea" votes between parties in House and Senate



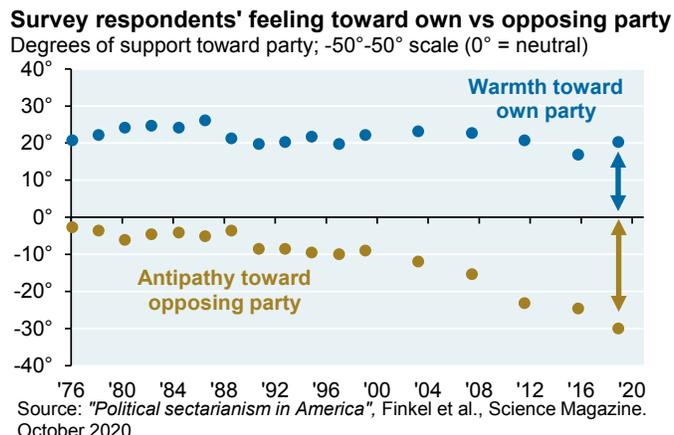
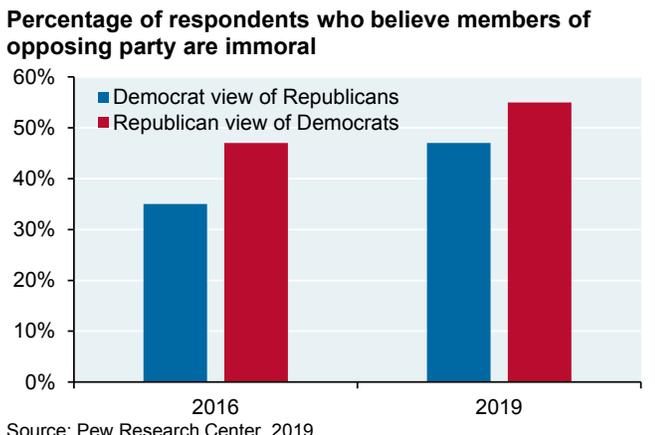
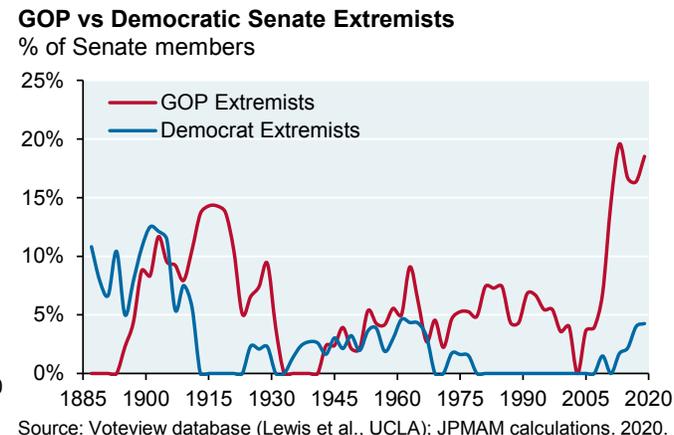
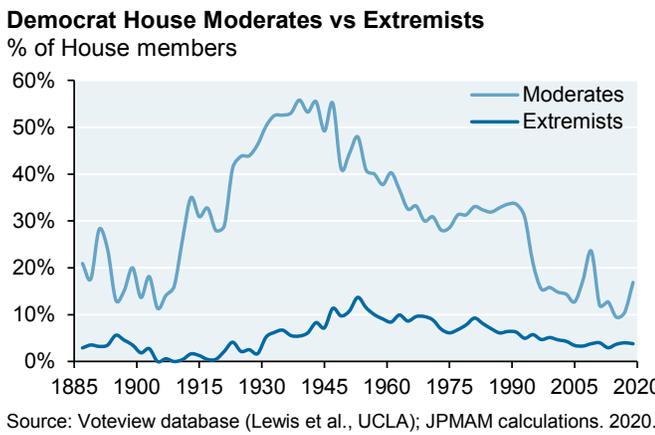
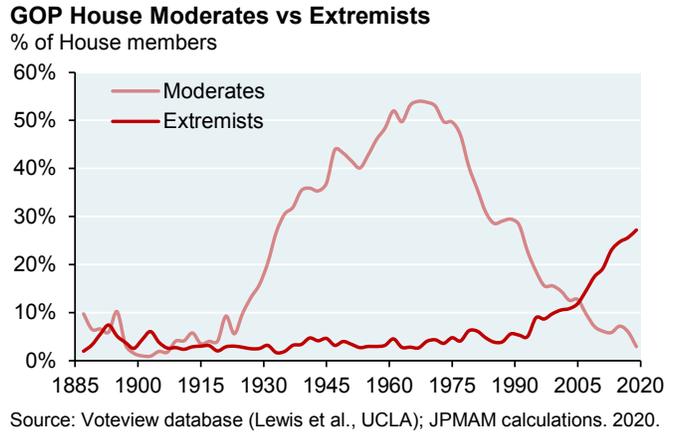
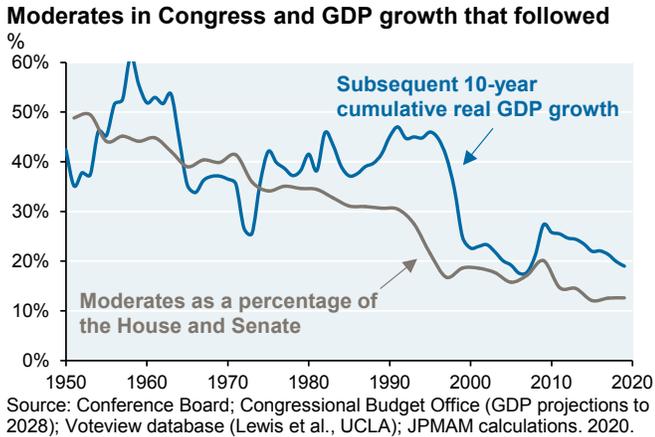
Source: Congressional Quarterly Almanac, Library of Congress, US Senate, US House of Representatives, UCSD, JPMAM. 2020.

⁹ For an example of how interparty political purges sometimes play out, read up on what the **Jacobins did to the Girondins** during the French Revolution. The Girondins were the radicals in 1791, but by 1793 they were outflanked by the Jacobins who were even more radical; Girondin leaders were then executed.



Exhibits 1 - 6

On the political ideology scores in the first 4 charts. The VoteView project (now maintained by UCLA) computes empirically derived partisanship scores for every politician in Congress since 1787. These partisanship scores measure the degree to which politicians voted with their bloc or against it. Based on observed ranges of political ideology, we define moderates as those with partisanship scores between -0.25 and +0.25, and extremists as those with partisanship scores below -0.6 or above +0.6. There are examples of when voting against one’s bloc is *not* a sign of moderation; the Tea Party or Progressive blocs voting against their own party’s legislation since the bills in question didn’t go far *enough* is one example. But as an overall measure of partisanship, the scores are the basis for many academic studies on polarization and conform to similar measures using other data.



**Appendix: Understanding the rules at the Joint Session of Congress on January 6th**

Is there a way for Trump to remain President? Yes, *technically*. There's news this morning from White House Senior Advisor Stephen Miller that competing slates of electors will be submitted today. At the Jan 6th Joint Session, Congress will sort out competing slates, presumably using the rules spelled out in the Electoral Count Act. The Constitution does not provide a framework for resolving electoral vote disputes, which led to a constitutional crisis in a bitter post-Civil War 1876 election eventually won by Rutherford B Hayes. The ECA was passed in 1887 and provides a process for resolving electoral disputes¹⁰. The ECA has only been used to sort out competing slates once since its enactment: in 1961, when multiple slates were submitted for Hawaii (the outcome would not have affected JFK's victory). It has also been invoked on multiple occasions to deal with objections to states' submissions.

The ECA requires the House and Senate to meet on Jan 6th and vote separately on competing slates. Voting within each chamber follows ordinary rules: each *member* casts a single vote, rather than each state *delegation* casting a single vote. Under these rules, Democrats effectively control the outcome in the House. A competing slate debate in the Senate is less clear; the balance will be 51R–48D on Jan 6 for reasons related to Georgia runoff elections, one of which is a special election. I can imagine Romney, Sasse and other GOP Senators accepting certified Biden electors instead of any uncertified competing Trump slates. **Note that it would only take 2 GOP Senators to accept Biden slates instead of competing Trump slates to doom a competing slate effort in the Senate.**

What are the Jan 6th Joint Session permutations for each state with competing slates?

- Both chambers could agree to accept the official Biden slate
- Both chambers could agree to accept the uncertified competing Trump slate
- If the two chambers disagreed, the tie-breaker would go to the slate already approved by the state's governor¹¹. In PA/MI/WI/NV/AZ/GA, **governors have already approved the Biden slate**
- This sounds pretty clear, but there are a number of procedural issues that involve decisions by Vice President Pence (as President of the Senate) that could impact the process, such as determination of Safe Harbor status

So, using the most common interpretation of the ECA *and* assuming Congress adheres to it, the **only way for Trump to win would be for both chambers to accept three competing Trump slates which have neither been signed by the state's Governor nor approved by the majority of any state legislature or court (at least so far)**. You can judge for yourself how likely this is to occur; in my view this is "preposterously implausible while still technically possible".

In states without competing slates of electors, members of Congress can still raise objections to certified Biden slates on Jan 6. However, such an effort would be **doomed to fail**, since objections to single slates require both chambers to agree to discard. Given Democratic House control, that's not going to happen. However, I'd like to clarify one point. If a single slate *were* discarded by Congress, electors would be removed and NOT transferred to the other candidate. Furthermore, discarded electors would in most (but not all) cases be removed from the numerator *and* denominator of Electoral College math: in that case, a candidate only needs a majority of remaining electors to win. There's no "270" referenced in the Constitution, only a requirement to win a majority of appointed electors.

One last thing. News stories and Twitter fascination with **Contingent Elections** described in the 12th Amendment of the Constitution (one vote per state in the House to pick the President) are often **misleading**. This would only occur in case of an Electoral College tie, in "faithless elector" scenarios¹², or if the winner of the Electoral College as of December 14th passed away or became incapacitated before January 6th.

¹⁰ There is academic scholarship claiming that the Electoral Count Act is unconstitutional. One main argument: the 12th Amendment grants authority directly to Congress to determine the validity of electoral votes and the procedures used to count them, and federal laws are incapable of imposing binding restrictions on the scope of that authority. However, challenges to the ECA's constitutionality would only be an issue if one of the chambers didn't want to abide by its procedures; no members have indicated any desire to ignore it. If that *were* to happen one day, the US would be in no-man's-land, with no way out except an eventual Congressional compromise.

¹¹ The Act refers to the state's highest "Executive". I don't know how someone could argue that this is not the Governor, but I suppose they could try.

¹² In this scenario, appointed electors switch votes on December 14th to runner-up and other candidates so that no one candidate wins a majority of appointed electors. Most states prohibit faithless electors but only 14 states have effective enforcement that treat faithless electors as invalid and allow states to replace them (Supreme Court upheld in July).

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