

# Electoral College

## Anachronism or Bulwark of Democracy?

*"He who decides a case without hearing the other side . . . Tho he decide justly, cannot be considered just" — Seneca*

### F O R E W O R D

Aside from riveting the attention of the American public, putting the candidates in a five-week limbo, and causing sleep deprivation for untold numbers of lawyers, election officials, campaign workers, and media operatives, the 2000 presidential election cliffhanger has revived an old debate about the Electoral College — a system that dates back to the Nation's founding.

As required by the Constitution, when Americans cast their ballots for President, they are really picking a slate of electors pledged to each of the presidential tickets. Every State is allotted one elector for each of its House and Senate seats (with three for the District of Columbia). A candidate for President needs a majority of these (currently 270 out of a total of 538) to win. But as the 2000 election and three others in our Nation's history have shown, it is possible for a presidential candidate to win the popular vote but fall short of an Electoral College victory.

The Framers of the Constitution devised the Electoral College system at a time when travel was difficult and there were no national party organizations. The Framers also feared that an election with many regional candidates would result in a broadly distributed vote, with no clear winner. Requiring a candidate to win a majority in the Electoral College was a way of ensuring a national consensus.

Over the years, the drawbacks of the Electoral College have become apparent, and hundreds of measures have been introduced in Congress to eliminate or reform it. Many believe the simplest way to elect a President would be through a direct popular election, with instant runoff voting when no ticket receives 40 percent of the vote. Others have proposed allocating States' electoral votes in a proportional system. Such a system is used in Maine and Nebraska, which award one electoral vote to the winner of each congressional district and two to the statewide winner.

But reforming the current system would require a constitutional amendment, and no congressional proposal has ever gained enough support to obtain the two-thirds vote

in both Houses of Congress necessary for passage. However, in the aftermath of the 2000 election, the Electoral College is certain to be debated by the new Congress — along with other proposals to modernize the process, such as through standardized ballots and improved voting machinery.

Defenders of the Electoral College maintain that it is rooted in federalist principles and that its abolishment would weaken the role of States in electing Presidents. The current system ensures that candidates must campaign in small States and rural areas; in a direct national campaign, there would be no incentive for presidential contenders to address local concerns. In addition, supporters warn, multiple parties could vie for the national vote with none garnering a significant majority; thus, we might always be electing minority Presidents. They use the recent election to bolster their case: Imagine a scenario, they say, in which this year's contest in Florida would be played out across the country, with calls for a national, instead of a State, recount.

Opponents of the Electoral College call the current system archaic and undemocratic, charging that it gives an unfair advantage to less populous States. They point out that it was created at a time when there were no national newspapers, let alone television and the Internet. In today's pluralistic, electronically connected, mobile society, geographic boundaries no longer define meaningful political communities. Opponents further contend that the winner-take-all provision in most States deprives many voters of any influence on the election and makes it all but impossible for third-party or independent candidates to win any electoral votes. Many also argue that a "minority" President (one elected without a majority of the popular vote) would not have a clear mandate to govern the Nation.

Despite what may be a new bandwagon of support for Electoral College reform, advocates of such change face a formidable barrier in the constitutional amendment process. Even if legislation were to pass the House and Senate, it would still require ratification by three-quarters of the States — and small States, reluctant to lose the clout of their electoral votes, are unlikely to support change. Nevertheless, the 2000 election has put our democracy to the test, and a reevaluation of the process can only help to ensure a smoother ride in future presidential races. ■

# Electoral College Overview

## How the Process Works

Every four years, Americans elect a President and Vice President, thereby choosing both national leaders and a course of public policy. The system that governs the election of the President combines constitutional and statutory requirements, rules of the national and State political parties, political traditions, and contemporary developments and practices.

The process of electing the President is essentially divided into four stages:

1. The prenomination phase, in which candidates compete in State primary elections and caucuses for delegates to the national party conventions.
2. The national conventions — held in the summer of the election year — in which the two major parties nominate candidates for President and Vice President and ratify platforms of the parties' policy positions and goals.
3. The general election campaign, in which the major party nominees, as well as any minor party or independent contenders, compete for votes from the entire electorate, culminating in the popular vote on Election Day in November.
4. The Electoral College phase, in which the President and Vice President are officially elected.

The following describes the fourth phase, the Electoral College, and how it functions.

### ■ The Electoral College in the Constitution

The manner in which the President was to be elected was debated at great length at the Constitutional Convention of 1787. At one point, the delegates voted for selection by

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*From the Library of Congress, Congressional Research Service reports Presidential Elections in the United States: A Primer and The Electoral College: How it Works in Contemporary Presidential Elections.*

Congress; other proposals considered were for election by: the people at large; governors of the several States; electors chosen by State legislatures; and a special group of Members of Congress chosen by lot. Eventually, the matter was referred to a "committee on postponed matters," which arrived at a compromise — the Electoral College system.

The Electoral College, as established by the Constitution and modified by the Twelfth and Twenty-Third Amendments, currently includes 538 members: one for each senator and representative, and three for the District of Columbia (under the Twenty-Third Amendment of 1961). It has no continuing existence or function apart from that entrusted to it.

Each State has a number of electoral votes equal to the combined numerical total of its Senate and House delegation. Since the size of State delegations in the House of Representatives may change after the reapportionment mandated by the decennial census, the size of State representation in the Electoral College has similarly fluctuated. The most recent House reapportionment and reallocation of electoral votes followed the 1990 census, in effect for the 1992, 1996, and 2000 presidential elections.

Article II, Section 1 of the Constitution provides that "No Senator or Representative, or person holding an office of trust or profit under the United States shall be appointed an elector." Aside from this disqualification, any person is qualified to be an elector for President and Vice President.

### ■ How Electors Are Chosen

**Nomination of Elector Candidates.** The Constitution does not specify procedures for the nomination of candidates for the office of presidential elector. The States have adopted various methods of nomination for elector candidates, of which the two most popular are by State party convention, used in 36 States, and by State party committee, used in 10 States. In practice, elector candidates tend to be prominent State and local officeholders, party activists, and other citizens associated with the party by which they are nominated.

A list of elector candidates and those chosen as electors in each State may be obtained from the Secretary of State

(Commonwealth) at the State capital. Lists of electors for 1992 and 2006 and other related information may be obtained from the National Archives and Records Administration Electoral College home page at: [www.nara.gov/fedreg/ec-hmpge.html](http://www.nara.gov/fedreg/ec-hmpge.html).

**Selection of Electors.** The Constitution left the method of selecting electors and of awarding electoral votes to the States. In the early years of the Republic, many States provided for selection of electors by the State legislatures. Since 1864, all States have provided for popular election of electors for President and Vice President.

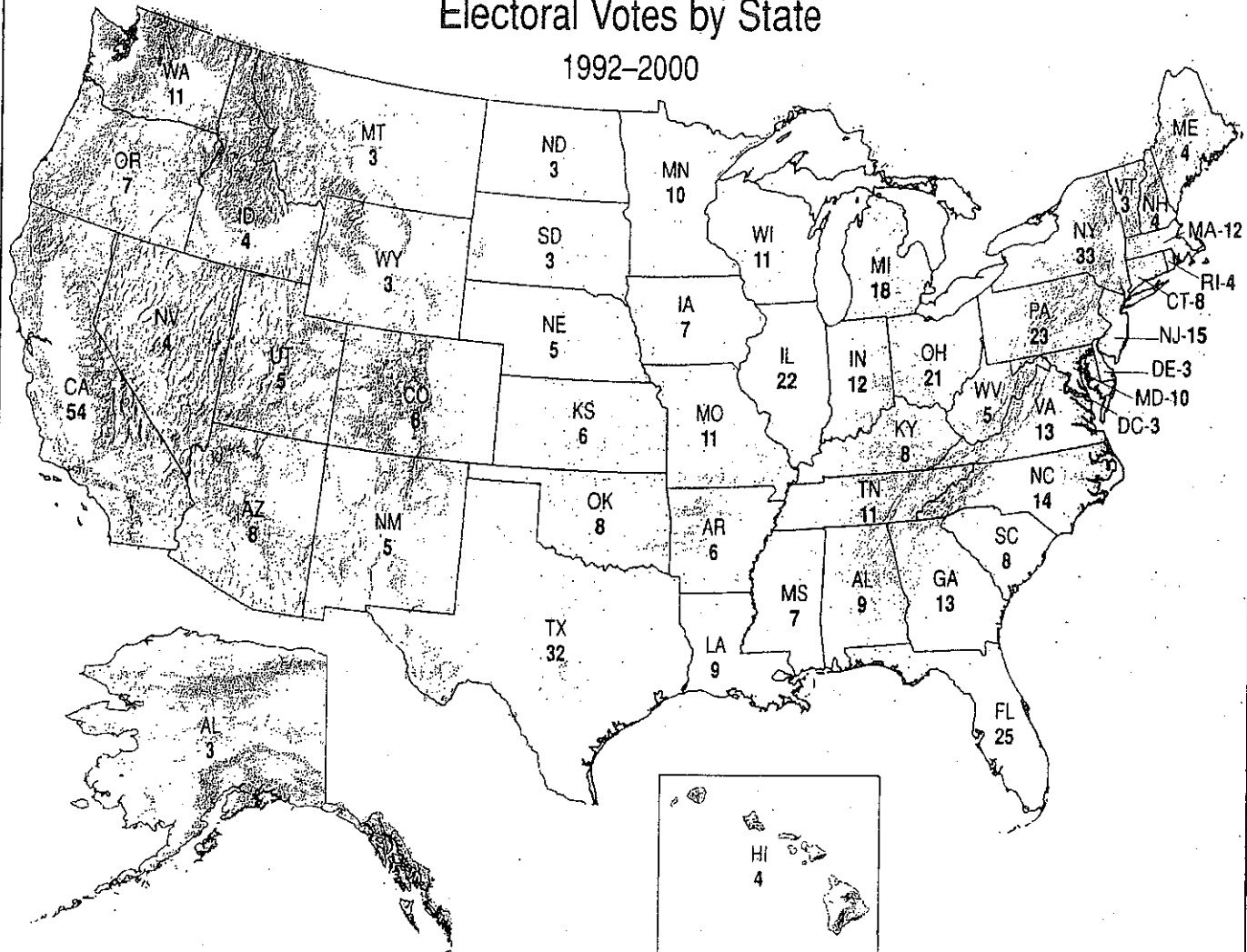
According to practices adopted by the States beginning early in the nineteenth century, popular votes are cast for a unified ticket of party candidates for President and Vice President. This ensures that they will be of the same party, avoiding a source of partisan divisiveness in the Executive Branch.

- **General ticket system** — In 48 States and the District of Columbia, all electoral votes are awarded to the slate that receives a plurality of popular votes in the State. This practice is variously known as the “general ticket” or “winner-take-all” system. The general ticket system usually tends to exaggerate the winning candidates’ margin of victory, as compared with the share of popular votes received. For instance, in 1996, Bill Clinton and Al Gore won 49.2 percent of the popular vote, as compared with 40.7 percent by Bob Dole and Jack Kemp. The Democrats’ electoral vote margin of 379 to 159 was a much higher 70.4 percent of the total, due to the fact that the Democratic ticket received a plurality vote in 32 States and the District of Columbia.

- **District system** — Currently, Maine and Nebraska provide the only exception to the general ticket method,

## Electoral Votes by State

1992–2000



## Electors Bound by State Law

Electors in the States listed below are bound by State law or by pledges to cast their vote for a specific candidate. Electors in all other States are, in theory, free to use their own judgment in voting for candidates.

|                      |                |
|----------------------|----------------|
| Alabama              | Nebraska       |
| Alaska               | Nevada         |
| California           | New Mexico     |
| Colorado             | North Carolina |
| Connecticut          | Ohio           |
| District of Columbia | Oklahoma       |
| Florida              | Oregon         |
| Hawaii               | South Carolina |
| Maine                | Vermont        |
| Maryland             | Virginia       |
| Massachusetts        | Washington     |
| Michigan             | Wisconsin      |
| Mississippi          | Wyoming        |
| Montana              |                |

Source: National Archives and Records Administration

awarding one electoral vote to the ticket gaining the most votes in each of their congressional districts and awarding the remaining two (representing their senatorial allotment) to the winners of the most votes statewide. This variation, more widely used in the nineteenth century, is known as the "district" system.

## ■ The Faithless Elector

The Founding Fathers intended that individual electors be free agents, voting for the candidates they thought most fit to hold office. In practice, however, electors are not expected to exercise their own judgment, but rather to ratify the people's choice by voting for the candidates winning the most popular votes in their State.

Despite this understanding, there is no constitutional provision requiring electors to vote as they have pledged. Over the years, a number of electors have voted against the voters' instructions, a phenomenon known as the "faithless elector." Although a number of States have laws that seek to bind the electors to the popular vote winners, the preponderance of opinion among constitutional scholars holds that electors remain free agents.

Moreover, all seven votes of the faithless electors between 1948 and 1988 were recorded as cast. The most recent occurrence, in 1988, was when a West Virginia Democratic

elector voted for Lloyd Bentsen for President and Michael Dukakis for Vice President.

## ■ Determining the Winning Ticket

The Twelfth Amendment to the Constitution requires that winning candidates receive an absolute majority of electoral votes (currently 270 of the 538 total).

**General Election Day.** Elections for all Federal elected officials are held on the Tuesday after the first Monday in November in even-numbered years; presidential elections are held in every year divisible by four. Congress selected this day in 1845. Previously, States held elections on different days between September and November, a practice that sometimes led to multiple voting across State lines and other fraudulent practices.

By tradition, November was chosen because the harvest was in, and farmers were able to take the time needed to vote. Tuesday was selected because it gave a full day's travel between Sunday, which was widely observed as a strict day of rest, and Election Day. (In most rural areas, the only polling place was at the county seat, frequently a journey of many miles on foot or horseback.) Travel was also easier throughout the north during November, before winter had set in.

**Convening of Electors.** Once the voters have chosen the members of the Electoral College, the electors meet to ratify the popular choices for President and Vice President. The Constitution provides (again in the Twelfth Amendment) that they assemble in their respective States. Congress has established the first Monday after the second Wednesday in December following their election as the date for casting electoral votes, at such place in each State as the legislature directs.

In practice, the electors almost always meet in the State capital, usually at the State House or Capitol building, often in one of the legislative chambers. They vote "by ballot" separately for President and Vice President. The votes are counted and recorded, and the results are certified by the governor.

They are then forwarded to the Vice President (in his capacity as President of the U.S. Senate), the Secretary of State of each respective State, the archivist of the United States, and the judge of the Federal district court of the district in which the electors met.

Having performed their constitutional duty, the electors adjourn, and the Electoral College ceases to exist until the next presidential election.

## Past Presidents Elected Without a Plurality of the Popular Vote

| Year              | Candidates           | Party | Popular Vote | Electoral Vote |
|-------------------|----------------------|-------|--------------|----------------|
| 1824 <sup>1</sup> | Andrew Jackson       | D-R   | 152,933      | 99             |
|                   | John Quincy Adams*   | D-R   | 115,696      | 84             |
|                   | William H. Crawford  | D-R   | 46,979       | 41             |
|                   | Henry Clay           | D-R   | 47,136       | 37             |
| 1876              | Samuel J. Tilden     | D     | 4,287,670    | 184            |
|                   | Rutherford B. Hayes* | R     | 4,035,924    | 185            |
| 1888              | Grover Cleveland     | D     | 5,540,365    | 168            |
|                   | Benjamin Harrison*   | R     | 5,445,269    | 233            |

<sup>1</sup>Elected by the House of Representatives.

D-R = Democratic Republican; D = Democratic; R = Republican.

\*Popular returns for 18 States; in 6 States, electors were appointed by the State legislatures.

Source: *Paice and Longley, The People's President*, pp. 241-242.

- In 1876, Republican Rutherford B. Hayes received fewer popular votes than his opponent, Democrat Samuel J. Tilden (4,035,924 for Hayes and 4,287,670 for Tilden) and won the election by one electoral vote.
- In 1888, Republican Benjamin Harrison received fewer popular votes than his major opponent, Democrat Grover Cleveland (5,334,269 for Harrison and 5,540,365 for Cleveland), but won the election with more Electoral College votes (233 for Harrison and 168 for Cleveland).

## ■ Electoral Contingencies

**Electoral College Deadlock.** The Constitution, in the Twelfth Amendment, provides for cases in which no slate of candidates receives the required Electoral College majority, a process usually referred to as contingent election. Under these circumstances, the House of Representatives elects the President, choosing from among the three candidates receiving the most electoral votes, with each State casting a single vote.

In the course of the usual presidential election, in which only the two major party candidates have a chance of victory, such occurrences are extremely unlikely. In those elections characterized by the emergence of a strong third-party candidate (George Wallace in 1968, John Anderson in 1980, and H. Ross Perot in 1992), Electoral College deadlock is possible. Only once since adoption of the Twelfth Amendment, in the four-candidate election of 1824, was the President, John Quincy Adams, elected by the House of Representatives. If there is no electoral vote majority, election of the Vice President is entrusted to the Senate, with each member casting one vote, choosing from the two candidates with the most electoral votes.

In the event contingent election is necessary, the House has two weeks between counting the electoral votes (January 6) and Inauguration Day (January 20) in which to elect a President. If it is unable to do so during this time, the Vice President-elect, assuming one has been chosen by the electors or the Senate, serves as acting President until the House resolves its deadlock.

In the event the Senate has been similarly unable to elect a Vice President, the Speaker of the House of Representatives serves as acting President until a President or Vice President is elected, but he must resign the offices of both Speaker and Representative in order to so serve. In the event there is no Speaker, or the Speaker fails to qualify, then the President Pro-tempore of the Senate (the longest serving senator of the

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**Counting and Certification by Congress.** The final step in the presidential election process (aside from the presidential inaugural on January 20) is the counting and certification of the electoral votes by Congress. The House of Representatives and the Senate meet in joint session in the House chamber on January 6 of the year following the presidential election. The Vice President, who presides in his capacity as President of the Senate, opens the electoral vote certificates from each State in alphabetical order. He then passes the certificates to four tellers (vote counters), two appointed by each House, who announce the results. The votes are then counted, and the results are announced by the Vice President. The candidates receiving a majority of electoral votes are declared the winners by the Vice President.

## ■ Minority Presidents

The Electoral College system can result in the election of a "minority" president winning the electoral vote but losing the popular vote. The system has led to the election of minority Presidents on three occasions, in 1824, 1876, and 1888.

- In 1824, National Republican John Quincy Adams received fewer popular votes than his major opponent, Democrat Andrew Jackson (115,686 for Adams and 152,933 for Jackson), but was elected President when the election fell to the House of Representatives, which gave a majority of its votes to Adams.

# Issues for Debate

## Strengths and Weaknesses of the Electoral College

There have been, in its 200-year history, a number of critics of the Electoral College system — many proposing reforms but most advocating its elimination. But there are also staunch defenders of the Electoral College, who, though perhaps less vocal than its critics, offer powerful arguments in its favor.

### ■ Arguments Against the Electoral College

**Electing a Minority President.** Opponents of the Electoral College are disturbed by the possibility of electing a minority president (one without the absolute majority of popular votes). This concern is not entirely unfounded since there are three ways in which that could happen.

One way is if the country were so deeply divided politically that three or more presidential candidates split the electoral votes among them such that no one obtained the necessary majority. This occurred in 1824 and was unsuccessfully attempted in 1948 and again in 1968.

Should that happen today, there are two possible resolutions: either one candidate could throw his electoral votes to the support of another (before the meeting of the electors), or else, absent an absolute majority in the Electoral College, the U.S. House of Representatives would select the President in accordance with the Twelfth Amendment.

Either way, though, the person taking office would not have obtained the absolute majority of the popular vote. Yet it is unclear how a direct election of the president could resolve such a deep national conflict without introducing a presidential runoff election — a procedure that could add substantially to the time, cost, and effort already devoted to selecting a president and that might well deepen the political divisions while trying to resolve them.

A second way in which a minority President could take office is if, as in 1888, one candidate's popular support were heavily concentrated in a few States, while the other candi-

date maintained a slim popular lead in enough States to win the needed majority of the Electoral College. The question here is whether the distribution of a candidate's popular support should be taken into account alongside the relative size of it.

A third way of electing a minority President is if a third party or candidate drew enough votes from the top two that no one received 50 percent of the national popular total. This has happened 15 times, including Wilson in both 1912 and 1916, Truman in 1948, Kennedy in 1960, Nixon in 1968, and Clinton in both 1992 and 1996.

The only remarkable thing about those outcomes is that few people noticed and even fewer cared. Nor would a direct election have changed those outcomes without a runoff requiring over 50 percent of the popular vote.

**"Faithless Electors."** The "faithless elector" is one who is pledged to vote for his party's candidate for President but nevertheless votes for another candidate. There have been seven such electors in this century. Faithless electors have never changed the outcome of an election, though, simply because most often their purpose is to make a statement rather than to make a difference.

Still, if the prospect of a faithless elector is so fearsome as to warrant a constitutional amendment, then it is possible to solve the problem without abolishing the Electoral College merely by eliminating the individual electors in favor of a purely mathematical process (since the individual electors are no longer essential to its operation).

**Depressing Voter Turnout.** Opponents of the Electoral College are further concerned about its possible role in depressing voter turnout. Their argument is that, since each State is entitled to the same number of electoral votes regardless of its voter turnout, there is no incentive in the States to encourage voter participation. Indeed, there may even be an incentive to discourage participation so as to enable a minority of citizens to decide the electoral vote for the whole State.

While this argument has a certain surface plausibility, it fails to account for the fact that presidential elections do not occur in a vacuum. States also conduct other elections

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*From The Electoral College, by William C. Kimberling, Deputy Director, Federal Election Commission Office of Election Administration.*

(for U.S. senators, U.S. representatives, governors, State legislators, and a host of local officials) in which these same incentives and disincentives are likely to operate, if at all, with an even greater force.

**Failure to Reflect the National Popular Will.** Finally, some opponents of the Electoral College point out, quite correctly, its failure to accurately reflect the national popular will in at least two respects.

First, the distribution of electoral votes in the College tends to over-represent people in rural States. This is because the number of electors for each State is determined by the number of members it has in the House (which more or less reflects the State's population), plus the number of members it has in the Senate (always two regardless of the State's population).

The result is that, in 1988 for example, the combined voting age population (3,119,000) of the seven least populous jurisdictions of Alaska, Delaware, the District of Columbia, North Dakota, South Dakota, Vermont, and Wyoming carried the same voting strength in the Electoral College (21 electoral votes) as the 9,614,000 persons of voting age in the State of Florida.

Each Floridian's potential vote, then, carried about one-third the weight of a potential vote in the other States listed.

A second way in which the Electoral College fails to accurately reflect the national popular will stems primarily from the winner-take-all mechanism whereby the presidential candidate who wins the most popular votes in the State wins the electoral votes in that State.

One effect of this mechanism is to make it extremely difficult for third-party or independent candidates ever to make much of a showing in the Electoral College. If, for example, a third-party or independent candidate were to win the support of even as many as 25 percent of the voters nationwide, he might still end up with no Electoral College votes at all unless he won a plurality of votes in at least one State. And even if he managed to win a few States, his support elsewhere would not be reflected.

By thus failing to accurately reflect the national popular will, the argument goes, the Electoral College reinforces a two-party system, discourages third-party or independent candidates, and thereby tends to restrict choices available to the electorate.

In response to these arguments, proponents of the Electoral College point out that it was never intended to reflect the national popular will.

As for the first issue, that the Electoral College over-represents rural populations, proponents respond that the U.S. Senate — with two seats per State regardless of its

population — over-represents rural populations far more dramatically.

As for the second issue of the Electoral College's role in reinforcing a two-party system, proponents find this to be a virtue.

## ■ Arguments for the Electoral College

**Contributes to the Country's Cohesiveness.** Recognizing the strong regional interests and loyalties that have played so great a role in American history, proponents argue that the Electoral College system contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected President.

Without such a mechanism, they point out, Presidents would be selected either through the domination of one populous region over the others or through the domination of large metropolitan areas over the rural ones. Indeed, it is principally because of the Electoral College that presidential nominees are inclined to select vice presidential running mates from a region other than their own.

For as things stand now, no one region contains the absolute majority (270) of electoral votes required to elect a President. Thus, there is an incentive for presidential candidates to pull together coalitions of States and regions rather than to exacerbate regional differences.

Such a unifying mechanism seems especially prudent in view of the severe regional problems that have typically plagued geographically large nations such as China, India, the Soviet Union, and even, in its time, the Roman Empire. This unifying mechanism does not, however, come without a small price. And the price is that in very close popular elections, it is possible that the candidate who wins a slight majority of the popular votes may not be the one elected President.

Proponents thus believe that the practical value of requiring a distribution of popular support outweighs whatever sentimental value may attach to obtaining a bare majority of the popular support.

**Enhances the Status of Minority Groups.** Proponents also point out that, far from diminishing minority interests by depressing voter participation, the Electoral College actually enhances the status of minority groups. This is so because the votes of even small minorities in a State may make the difference between winning all of that State's electoral votes or none of that State's electoral votes.

And since ethnic minority groups in the United States happen to concentrate in those States with the most electoral votes, they assume an importance to presidential can-

didates well out of proportion to their number. The same principle applies to other special interest groups, such as labor unions, farmers, environmentalists, and so forth.

It is because of this "leverage effect" that the presidency, as an institution, tends to be more sensitive to ethnic minority and other special interest groups than does the Congress as an institution. Changing to a direct election of the President would therefore actually damage minority interests since their votes would be overwhelmed by a national popular majority.

**Contributes to National Political Stability.** Proponents further argue that the Electoral College contributes to the political stability of the Nation by encouraging a two-party system. There can be no doubt that the Electoral College has encouraged and helps to maintain a two-party system in the United States. This is true simply because it is extremely difficult for a new or minor party to win enough popular votes in enough States to have a chance of winning the presidency.

Even if they won enough electoral votes to force the decision into the U.S. House of Representatives, they would still have to have a majority of over half the State delegations in order to elect their candidate — and in that case, they would hardly be considered a minor party.

In addition to protecting the presidency from impassioned but transitory third-party movements, the practical effect of the Electoral College (along with the single-member district system of representation in the Congress) is to virtually force third parties to have every incentive to absorb minor party movements in their continual attempt to win popular majorities in the States.

In this process of assimilation, third-party movements are obliged to compromise their more radical views if they hope to attain any of their more generally acceptable objectives. Thus we end up with two large, pragmatic political parties that tend to the center of public opinion, rather than dozens of smaller political parties catering to divergent and sometimes extremist views. In other words, such a system forces political coalitions to occur within the political parties, rather than within the government.

A direct popular election of the President would likely have the opposite effect. For in a direct popular election, there would be every incentive for a multitude of minor parties to form in an attempt to prevent whatever popular majority might be necessary to elect a President. The surviving candidates would thus be drawn to the regionalist or extremist views represented by these parties in hopes of winning the runoff election.

The result of a direct popular election for President, then, would likely be a frayed and unstable political system

characterized by a multitude of political parties and by more radical changes in policies from one administration to the next. The Electoral College system, in contrast, encourages political parties to coalesce divergent interests into two sets of coherent alternatives. Such an organization of social conflict and political debate contributes to the political stability of the Nation.

**Maintains a Federal System.** Finally, its proponents argue quite correctly that the Electoral College maintains a Federal system of government and representation. Their reasoning is that in a formal Federal structure, important political powers are reserved to the component States.

In the United States, for example, the House of Representatives was designed to represent the States according to the size of their population. The States are even responsible for drawing the district lines for their House seats. The Senate was designed to represent each State equally regardless of its population.

And the Electoral College was designed to represent each State's choice for the presidency. To abolish the Electoral College in favor of a nationwide popular election for President would strike at the very heart of the Federal structure laid out in our Constitution and would lead to the nationalization of our central government — to the detriment of the States.

Indeed, if we become obsessed with government by popular majority as the only consideration, should we not then abolish the Senate, which represents States regardless of population? Should we not correct the minor distortions in the House (caused by districting and by guaranteeing each State at least one representative) by changing it to a system of proportional representation?

This would accomplish "government by popular majority" and guarantee the representation of minority parties, but it would also demolish our Federal system of government. Why then, apply a sentimental attachment to popular majorities only to the Electoral College?

The fact is, proponents argue, that the original design of our Federal system of government was thoroughly and wisely debated by the Founding Fathers. State viewpoints, they decided, are more important than political minority viewpoints. And the collective opinion of the individual State populations is more important than the opinion of the national population taken as a whole.

Nor should we tamper with the careful balance of power between the national and the State governments, which the Founding Fathers intended and which is reflected in the Electoral College. To do so would fundamentally alter the nature of our government and might well bring about consequences that even the reformers would come to regret. ■



# Electoral College Reform

## How to Keep, But Improve, the Current System

The Presidential election of 2000 served to highlight both the strengths and the weaknesses of the Electoral College and the essentially indirect method by which the citizens of the United States elect their Presidents.

The weaknesses seem at first glance more obvious. It is, at this writing, at least possible that the next President of the United States will not have received a plurality of the popular votes cast by the electorate and will ascend to the office only through the electoral votes of the several States. That, in the best of all possible worlds, is not the most desirable result.

But it should be noted that this has occurred three previous times in the Nation's history and the Nation has survived and, some might say, prospered despite these earlier political anomalies. It should also be noted that many Presidents — including Andrew Jackson, Abraham Lincoln, Woodrow Wilson, Harry Truman, John F. Kennedy, Richard Nixon, Ronald Reagan, Bill Clinton, and eight others — became President despite not receiving a majority of votes cast and governed effectively. In addition, Vice President Albert Gore, should he be denied the presidency because of electoral college votes, received only a 48 percent plurality of the Nation's votes (and only 24 percent of the eligible electorate) and a winning margin of 300,000, or less than three-tenths of 1 percent of the votes cast.

Because of the present alignment of the two major political parties and the winner-take-all feature of the present system of choosing electors in all but two States (Maine and Nebraska), the presidential campaign was concentrated in 17 so-called battleground States, which were competitive between the two major party candidates. For 33 States and the District of Columbia, it was as if the presidential campaign did not exist, save as entertainment on television. There were no candidate visits, no advertising, no billboards and bumper stickers, and precious little campaign activity. That, too, is not a desirable situation.

But it was in the 17 battleground States that one could see the virtues of the Electoral College. Candidates had to

learn about and speak to regional, State, and local concerns. They had to address the concerns of a variety of legitimate interests and build from among them the coalition of organized concerns that would be the basis of their future governance. They had to engage in massive efforts at grassroots mobilization in order to maximize their votes. And, as could be seen in the narrowness of the Florida margin, it was possible for citizens to see how their individual votes might make a difference in the outcome.

If the Electoral College were replaced by direct popular vote, the Nation would be treated to a national media campaign, appealing to whatever the lowest common denominator of advocacy that the candidates' polls would produce. There would be no incentive to address the concerns of specific sub-groups within American society, no incentive to mobilize at the grassroots level, no incentive to acknowledge and address the various regional, State, and local concerns, and no incentive to visit any but the most populous areas of the Nation.

The Nation would have a campaign of tarmac visits to capture free television and enormously expensive television advertising of the type which continues to turn people away from the political process. The individual's vote would not appear to matter among the 300,000 or more that would decide the election, and were the election as close as this year's, any demand for a national recount would be both an administrative and political disaster.

The Founding Fathers could not have envisioned the advent of television and other forms of mass communications. But their creation of the Electoral College serves as the best protection in a complex democracy for the important values of federalism, pluralism, citizen participation, and the worth of the individual citizen's vote in this age of mass media. The preservation of these values, against the onslaught of consultant-driven politics, makes the case for continuation of the Electoral College more compelling than the claims of those who would substitute majoritarianism for these more subtle but necessary underpinnings of American democracy.

This is not to say that the current winner-take-all by State aspect of the Electoral College could not be improved.

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*By Curtis Gans, Director of the nonpartisan Committee for the Study of the American Electorate. Special to Congressional Digest.*

# The 2000 Election

## A Test of America's Democratic Institutions

If Americans chose their Presidents through direct popular elections, Vice President Al Gore would be preparing to move into the Oval Office. Instead, the Constitution established the Electoral College, where slates of electors from each State determine who becomes the President.

In the 2000 election, final counts in 49 States gave Vice President Al Gore, the Democratic candidate, approximately 50.1 million popular votes and Texas Governor George W. Bush, the Republican nominee, approximately 49.8 million votes. In the Electoral College, Gore's lead was 267 to 246, with the final outcome resting on the disputed results in the State of Florida and its 25 electoral votes.

But how did the election get drawn out for weeks after Election Day?

The confusion in Florida began early on election night, when all the major networks and the Associated Press declared Gore the winner of the State. At about 10 p.m., the networks retracted their projections, putting Florida back in the "undecided" column. At 2:16 a.m. on November 8, Fox News declared Bush the winner in Florida and the Nation, and other networks followed suit. But at 4:04 a.m., the media reversed its projection, saying that, with Bush holding a scant 1,784-vote lead out of nearly 6 million votes cast in the State, Florida remained "too close to call."

Amid questions about voting errors and ballot confusion, resulting in 19,000 votes being disallowed in Palm Beach County, the Gore campaign requested a hand recount (as allowed under Florida law) in Palm Beach and three other heavily Democratic counties — Broward, Miami-Dade, and Volusia. Much attention was focused on the so-called "butterfly ballot" in Palm Beach County, which many voters claimed led them to vote mistakenly for Reform Party candidate Pat Buchanan (who received 3,400 votes in a typically Democratic area) instead of Al Gore.

On November 11, the Bush campaign filed suit in the U.S. District Court to stop the manual recount — the first of many lawsuits to come from both campaigns. While Gore contended that every vote must be counted, Bush questioned the validity of the recounts, in part because counties have different voting machinery, as well as different standards for determining "the intent of the voter" when ballot results aren't clear. In counties using the punch card ballots,

confusion reigned over whether "hanging chads" (punched pieces of paper left hanging on a ballot) and "dimpled" and "pregnant" chads (ballot indentations) should count as legitimate votes.

On November 14, with partial recounts completed in three counties and a full recount completed in Volusia County, Florida Secretary of State Katherine Harris, a Republican, certified Bush the winner in the State by a 300-vote margin.

In a series of legal battles that followed (see the "2000 Presidential Election Timeline" on page 14), it became apparent that deep divisions existed not just among the voters, but in the legislative and judicial branches of government as well. Eventually, the conflict went all the way to the U.S. Supreme Court, which, on December 12, overturned a Florida Supreme Court decision to hold a manual recount across the State. The Court stated that "the count cannot be conducted in compliance with the requirement of equal protection and due process without substantial additional work" and that "any recount seeking to meet the December 12 date [for naming a slate of electors] will be unconstitutional . . ."

Lost in the legal shuffle was the impact on the election of consumer advocate Ralph Nader, the Green Party's presidential nominee. Democrats had implored Nader to get out of the race before the election, fearing that he would draw crucial votes away from Gore in a handful of States, thereby giving Bush victories in typically Democratic areas. In the final tally, Nader garnered more than 2.7 million votes, or about 3 percent, but did not cost Gore any States — except Florida, where Nader received about 97,000 votes.

With the slate of electors certified by Secretary of State Harris committed to voting for George W. Bush on December 18 — the day on which electors around the country meet to formally select the President and Vice President — the question of who would assume office on January 20 seemed no longer in doubt. Yet other questions appeared likely to linger on, unanswered. The ongoing drama might best be summed up by the words of Florida Chief Justice Charles Wells, who wrote in his dissenting opinion: "The margin of error in this election is far greater than the margin of victory, no matter who wins." ■