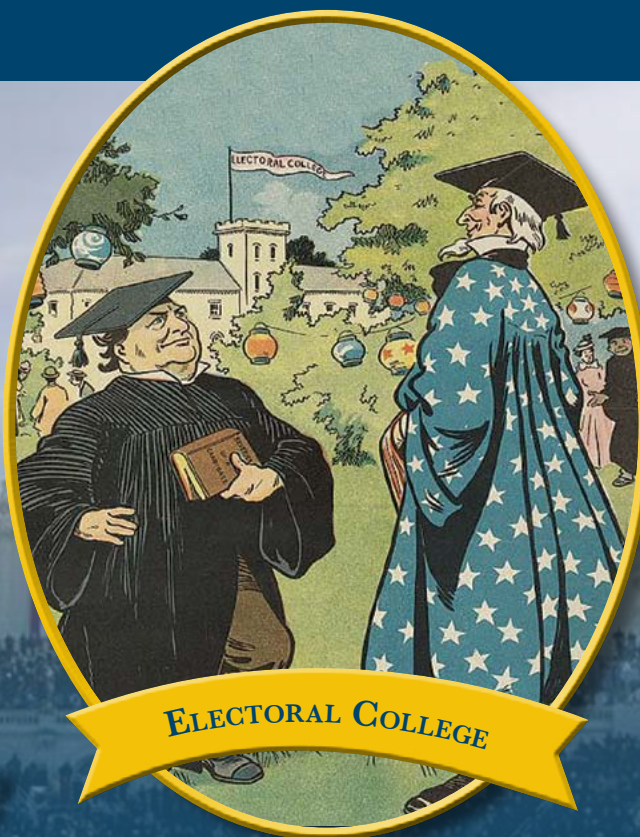
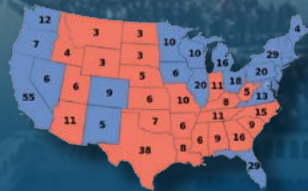


THE ELECTORAL COLLEGE: HOW IT GOT THIS WAY AND WHY WE'RE STUCK WITH IT



ELECTORAL COLLEGE



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THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

By Frederic D. Schwarz

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So it has happened again. A close presidential election has led to recriminations, cries of fraud, and talk of tainted mandates. Just as predictably, the 2000 election has inspired calls to reform the Electoral College—predictably, that is, because such proposals have followed every close presidential contest since the beginning of the Republic. The only difference is that this time no one asked why there's such a long delay between election and inauguration.

The controversy goes back to America's first contested presidential election, in 1796, when John Adams edged Thomas Jefferson by three electoral votes. On January 6, 1797—a month before the votes would officially be counted, though the results had already been leaked—Rep. William L. Smith of South Carolina introduced the first constitutional amendment to reform the Electoral College. Between Smith's initial sally and 1889, the centennial of the Constitution's adoption, more than 160 such amendments were introduced in Congress. From 1889 through 1946 there were 109 proposed amendments, from 1947 to 1968 there were 265, and since then, virtually every session of Congress has seen its own batch of proposals. Still, the Electoral College simply refuses to die.

More constitutional amendments have been offered to reform our procedure for electing Presidents than for any other purpose. Statesmen from James Madison, Martin Van Buren, and Andrew Jackson to Lyndon Johnson, Richard Nixon, Gerald Ford, and Hillary Clinton have endorsed an overhaul of the process. Opinion polls consistently show a large, sometimes overwhelming margin in favor of reform. Nonetheless, with the exception of a small procedural change in 1804, the Electoral College functions under the same rules today as it did in the horse-and-buggy era of 1789, when it was adopted. What accounts for the remarkable resilience of such an unloved creation? And why can't we get rid of it?

In brief, the Electoral College works as follows: On Election Day, citizens in the 50 states and the District of Columbia go to the polls and vote for a presidential/vice-presidential ticket. Within each state, the candidate who wins the most votes gets to

appoint a certain number of presidential electors, the number being equal to that state's total seats in the Senate and House of Representatives (the District of Columbia gets three). This winner-take-all feature, which has caused most of the trouble through the years, is not mandated by the Constitution, but it is virtually universal; only Maine and Nebraska have laws that provide for their electoral votes to be split. In fact, the Constitution permits states to choose their electors by any means they want, and in the early days many of them left the choice to their legislatures. Since the 1830s, however, winner-take-all popular elections have been all but obligatory.

On a specified date in December, the electors assemble in their states and go through the formality of casting their votes for the candidates from the party that appointed them. Each state reports its totals to Congress, and in early January the Vice President opens and counts the votes in the presence of both houses. Whichever candidates receive a majority of the electoral votes are declared President- and Vice President-elect.

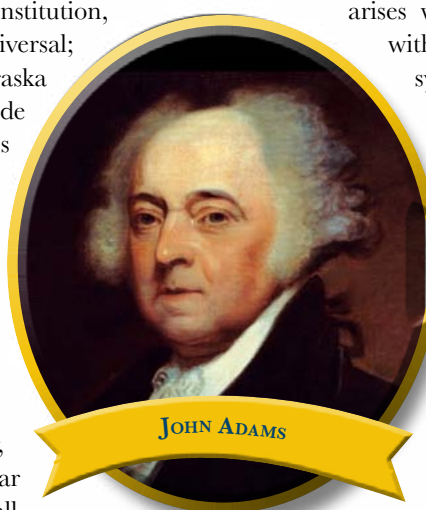
If no candidate for President has a majority (this can happen if there is an exact tie or if more than two candidates receive votes), the House of Representatives chooses a President from among the top three electoral vote-getters. In this process, each state's congressmen combine to cast one vote, regardless of the state's size, and the House keeps on voting until someone receives a majority. Meanwhile, if no candidate for Vice President has a majority of the electoral votes, the Senate

chooses between the top two electoral vote-getters. That's more important than it sounds, because if the House remains unable to make a choice from among its three candidates, the Vice President serves as President.

The first question that naturally arises when one is confronted with such a convoluted system is: Where did it come from? Most of us know that the Electoral College was adopted by the Constitutional Convention in 1787 as a compromise between large and small states. The large states wanted presidential voting to be based on population, as in the House of Representatives, while the small states wanted each

state to have the same number of votes, as in the Senate (and the Constitutional Convention itself, for that matter). So they split the difference by giving each state a number of electors equal to its combined total of seats in both houses of Congress.

That was one reason for the Electoral College, but far from the only one. From the start, almost everyone favored some sort of indirect process for choosing a President. Although a few delegates suggested a direct popular election, the states had different qualifications for voting, and those with tight requirements—ownership of a certain amount of property, for example—worried that they would be shortchanging themselves in a nationwide poll. In particular, the Southern states had a large group of residents who were automatically disqualified from voting: slaves. (Something similar might be said about women, of course, but they were not concentrated in any one section.)



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For purposes of allotting seats in the House of Representatives, the framers finessed this problem by counting each slave as three-fifths of a person. To retain the same measure of influence in a nationwide popular election, though, the South would have had to let its slaves vote. That, obviously, was out of the question. But with the Electoral College acting as an intermediary, the Southern states retained these “extra” votes based on their slave population. If not for the three-fifths rule, Adams would have defeated Jefferson in their 1800 election squeaker.

Slavery aside, there were other reasons the framers settled on an indirect scheme for choosing a President. Few of them thought the general public would be competent to make such a choice. George Mason of Virginia was particularly scathing in his denunciation of popular election. As summarized in Madison’s notes, “He conceived it would be as unnatural to refer the choice of a proper character for chief Magistrate to the people, as it would, to refer a trial of colours to a blind man.” This remark sounds supercilious until you read the next sentence: “The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.”

In a country without nationwide media, where traveling 20 miles was an arduous undertaking, this concern made ample sense. Even nowadays, how many Americans can name the governors of more than two or three states besides their own? Or consider the most recent election. Without television, would you have known any more about the Vice President than you know about the Secretary of Commerce? The world of the average eighteenth-century American was parochial to an extent that

is unimaginable in the information age. To most of the framers, a popular vote for President would have been about as useful as drawing names from a hat.

The most important point to understand about the Electoral College is this: The Constitution’s framers never actually expected it to choose the President. George Mason of Virginia thought the electors would give a majority to a single candidate only once in 20 times.

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With this in mind, the framers thought of the Electoral College not as a formality to ratify the popular will, as it is now, but as an assembly of respected figures (not unlike themselves) who would exercise their judgment to bring forth deserving candidates for the nation’s highest office. At one point, in fact, the Constitutional Convention considered a plan to have electors from across the country meet in a single place and hash things out as a body.

Also noteworthy is that in the original version of the Electoral College, electors did not specify one candidate for President and one for Vice President, as they do today. Instead, they put on their ballots two names for President, at least one of which had to be from outside their state. In this way, the framers thought, the electors could satisfy

their local loyalties with one vote and use the other to recognize a man of national prominence. Under this system, if the first-place finisher was named on a majority of ballots, he would become President, and the second-place finisher—regardless of whether he was named on a majority of ballots—would become Vice President.

But that wasn’t supposed to happen very often. The most important point to understand about the Electoral College is this: The Constitution’s framers never actually expected it to choose the President. George Mason of Virginia thought the electors would give a majority to a single candidate only once in 20 times; later he amended this figure to 1 in 50. That’s how rarely most of the framers thought anyone would be well known and well respected enough across the country.

Almost always, they expected, the Electoral College would serve as a nominating committee, winnowing a large body of candidates down to the top five vote-getters (reduced to three in 1804), from whom the House of Representatives would make the final choice. The framers, then, saw the Electoral College chiefly as a mechanism for bringing candidates to nationwide prominence. It sounds very cumbersome and inefficient until you look at how we do the same thing today.

This explains why the Constitutional Convention spent so much time debating which house of Congress would choose the President if no one had an Electoral College majority. Nowadays that’s an afterthought, something that hasn’t happened since 1824, but the framers expected it to be the normal course of events. After considerable discussion, the final choice was given to the House, rather than the presumably aristocratic Senate. To appease the small states, though, each state was given a single vote without regard to its size.

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During the ratification debate, the Electoral College inspired remarkably little controversy. As Alexander Hamilton wrote in *The Federalist* No. 68, “The mode of appointment of the chief magistrate of the United States is almost the only part of the system [i.e., of the entire proposed Constitution], of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.” Sure enough, the first two presidential elections went more or less as expected. Every elector used one of his votes for a figure of national prominence (in this case George Washington, though it was not expected that there would always be such an overwhelmingly obvious choice), and the second votes were scattered among a wide variety of local and national figures. In both elections, John Adams won the second-highest number of votes and thus the dubious honor of the Vice Presidency.

Even while Washington was in office, however, a change occurred that made a mockery of the framers’ vision of disinterested wise men carefully weighing the merits of the nominees. This was the development of political parties. Madison, in his classic *Federalist* No. 10, had praised the Constitution’s “tendency to break and control the violence of faction,” predicting that in a country as large and diverse as the United States, nationwide factions, or parties, were unlikely to form. Yet all theory went out the window almost as soon as the First Congress assembled. What Madison and his fellow framers did not realize was that the very existence of a

government makes people align themselves one way or another, pro or con, like iron filings under the influence of a magnet. Any time you have ins, you will also have outs, and parties will form spontaneously around these two poles.

In recognition of this reality, the Twelfth Amendment, ratified in 1804, imposed the only major change that the Electoral College has ever seen.

By then the failure of the founders’ vision was clear; in 1796 and 1800 electors had run as Adams men or Jefferson men, instead of standing on their own merits, as had been expected. Yet although the notion of a presidential/vice-presidential ticket had developed, electors still

had to put two names on their ballots, both officially candidates for President.

In 1800 the duo of Jefferson and Aaron Burr won the election with 73 electoral votes against 65 for the Adams ticket. The trouble was that Jefferson and Burr each received exactly 73 votes, because every Jefferson elector had named both men on his ballot. The election went to the House of Representatives, where Jefferson’s opponents managed to forestall a majority until they finally yielded on the thirty-sixth ballot. (In this case, the House was restricted to breaking the tie between Jefferson and Burr rather than choosing from the top five vote-getters, as it would have done if no one had gotten a majority.)

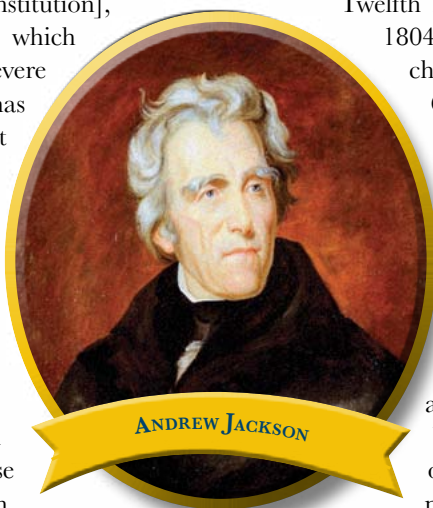
To avoid a repetition of such a fiasco, the Twelfth Amendment required electors to specify separate candidates for President and Vice President. (A similar plan had been the subject of Representative Smith’s 1797 proposal.) Outside of this change,

however, the rest of the Electoral College was left in place. Most Americans saw no need to open a can of worms by designing a new procedure from scratch.

After the excitement in 1800, the next five elections saw little controversy, with 1812 the only one that was at all close. Still, the inadequacies of the Electoral College—even in its new, improved form—were manifest. As Adams’s old Federalist party dissolved and new factions started to crystallize, the 1824 election promised to be splintered, and some observers wondered if the Constitution’s creaky old machinery would be up to the task. In 1823 Sen. Thomas Hart Benton of Missouri wrote: “Every reason which induced the convention to institute Electors has failed. They are no longer of any use, and may be dangerous to the liberties of the people.” That same year, James Madison, the father of the Constitution, candidly admitted the failure of his beloved progeny and suggested dividing the states into districts and having each district choose its own elector.

In fact, the 1824 election worked closest to what the framers had in mind, and it was a God-awful mess. Four candidates—Andrew Jackson, John Quincy Adams, William Crawford, and Henry Clay—received electoral votes, with none having a majority. Three New York electors who were supposedly pledged to Clay voted for other candidates, while two Clay supporters in the Louisiana legislature were unable to vote for electors after falling from their carriage on the way to the capital. This combination of treachery and bad luck bumped Clay down to fourth place, eliminating him from the balloting in the House, of which he was the Speaker.

At this point the normally fastidious Adams, who had finished second to Jackson in the electoral vote, put aside his scruples and began making deals for all he was worth. Adams won the House vote on the first ballot by a bare majority and



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immediately made Clay—whose support had swung Kentucky’s House delegation into the Adams column, though the citizens of that state had chosen Jackson—his Secretary of State. This led many to accuse the two men of a “corrupt bargain.”

Jackson, it is often pointed out, won the most popular votes in this election. But 1824 was the first year popular votes were widely recorded, and the figures are of questionable accuracy. The reported turnout was a derisory 27 percent nationwide and less than 15 percent in some states where the race was one-sided. On top of that, in 6 of the 24 states, the legislature chose the electors, so there was no popular vote.

The 1824 election was the last gasp for legislative selection, though. In 1828 only South Carolina and tiny Delaware still used it, and by 1836 every state except South Carolina (which would stubbornly retain legislative selection until the Civil War) had adopted the popular vote, winner-take-all method. Give or take a few small anomalies, then, the electoral system in place by the 1830s was identical to the one we are still using.

After a one-sided election, everyone shrugs off the Electoral College. After a close election, there’s a fuss, and then the always fades away.

The dismay and outrage that have greeted the 2000 election were nothing compared with the public’s reaction to the 1824 disaster. When the next Congress assembled, a flood of schemes was offered to reform America’s procedure for electing a President. None of them got anywhere. And the pattern has repeated itself through the years: After a one-sided election, everyone shrugs off the Electoral College, and after a close election, everyone makes a fuss for a year or two, and then the issue fades away.

Through the years, numerous

inadequacies of the Electoral College have come to the fore: potentially fractured multi-party elections (including 1912, 1924, 1948, and 1968); contested results (Hayes-Tilden in 1876 and Bush-Gore in 2000, plus a near-miss with Nixon-Kennedy in 1960); “minority” Presidents (1824, 1876, 1888, and 2000, with near-misses in 1960 and 1976); and “faithless” electors voting for candidates other than the ones they were chosen to vote for (as some Southern

Electoral College
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possibility for
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electors threatened to do in 1948 and 1960).

It’s safe to say that if you were designing an election method from scratch, it wouldn’t look like the Electoral College. Yet it’s worth pointing out what’s not wrong with our current system before we think about fixing what is. The famous 1876-77 Hayes-Tilden fiasco, for example, is not a good argument for abolition; it was the result of outright fraud and corruption, which could occur under any system. Indeed, the present Electoral College decreases the possibility for vote fraud (while admittedly increasing the payoff if it’s successful) by restricting it to a few states where the vote is close. In a direct nationwide popular election, votes could be stolen anywhere, including in heavily Democratic or Republican states where no one would

bother under the current rules. In this way, the Electoral College acts as a firewall to contain electoral tampering.

It is also often said that under the Electoral College a popular-vote winner can be an electoral-vote loser. But this “problem” dissolves upon closer examination. Popular-vote totals are not predetermined; if they were, there would be no use for campaign consultants and political donations. Rather, the popular vote is an artifact of the electoral system. With a winner-take-all Electoral College, candidates tailor their messages and direct their spending to swing states and ignore the others, even when there are lots of votes to be had.

In the recent election, for example, neither presidential candidate made more than a token effort in New York, which was known to be safely in Gore’s pocket. To residents, it seemed as if neither man visited the state at all except to ask for money. Gore ended up receiving around 3.7 million votes to Bush’s 2.2 million. Now suppose Bush had campaigned in New York enough to induce 170,000 of those Gore voters, or less than 5 percent, to switch. He would have made up the nationwide popular-vote gap right there. Instead, both candidates spent enormous amounts of time and money fighting over handfuls of uncommitted voters in Florida, Michigan, and a few other states. That’s why in a close election, it doesn’t make sense to compare nationwide popular-vote totals when popular votes don’t determine the winner. You might just as well point out that the losing team in a baseball game got more hits.

As for faithless electors, not since the anomalous situation of 1824 have they made a difference in a presidential election. There is some reason to believe that if an elector broke his or her trust in a close race today, the switch would be ruled invalid.

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In any case, this problem can easily be eliminated with state laws or an act of Congress. These laws could also be tailored to take account of what happens if a candidate dies before the Electoral College meets or if a third-party candidate wishes to give his or her votes to another candidate. Flexible electors can even sometimes be useful, as in the three-way 1912 race, when some Theodore Roosevelt electors said before the election that if Roosevelt could not win, they would switch their votes to William Howard Taft.

Nonetheless, the flaws of the Electoral College, however exaggerated they may be, are clear. It magnifies small margins in an arbitrary manner; it distorts the campaign process by giving tossup states excessive importance; it gives small states a disproportionate number of votes; and perhaps worst of all, many people don't have a clue about how it works.

Each of these except the last can be turned around and called an advantage by traditionalists: Magnified margins yield a "mandate" (though have you ever heard anyone who wasn't a journalist talk about presidential mandates?); the need to pander to a diverse set of constituencies makes candidates fashion platforms with broad appeal; and after all, small states deserve a break. Still, nobody really loves the Electoral College—until a specific alternative is proposed.

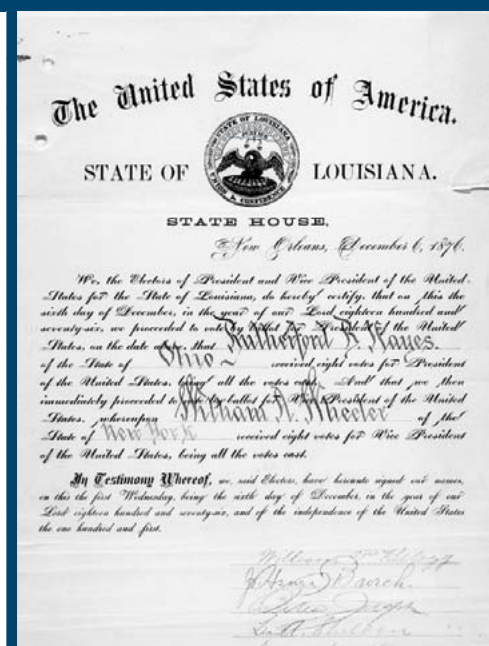
The lack of agreement among would-be reformers has allowed the Electoral College's vastly outnumbered supporters to defend it successfully against all attacks for nearly two centuries. Before the Civil War, slavery, called by its polite name of States' Rights, stymied electoral reform in the same way it stymied so many other things: The Southern states would not consider any reform that did not increase their region's importance in national elections. Oddly enough, by losing the war, the South got the influence it had always wanted.

Today's controversy goes all the way back to our country's first contested presidential election, in 1796, and the first proposal for Electoral College reform, in January of 1797.

From the end of Reconstruction into the 1940s, Democrats could count on a sure 100 to 120 electoral votes from the Solid South—the 11 states of the old Confederacy. Though the three-fifths rule was gone with the abolition of slavery, it had been replaced by something even worse, for while blacks were effectively disenfranchised in most of the South, their states now got full credit for their black populations in the House of Representatives and thus in the Electoral College. This allowed Southern whites not only to keep blacks from voting but in effect to vote for them. For most of a century after the 1870s, then, the Electoral College was a racket for the Democratic party.

Today the Solid South is a thing of the past. Nonetheless, since 1804 no electoral reform amendment has even made it through Congress. Why not? Who benefits from the Electoral College? Briefly put, two groups benefit: big states and small states. The winner-take-all feature favors the first of these groups, while the disproportionate allotment of electors favors the second.

With their tempting heaps of electoral votes, the big states attract by far the greatest bulk of the candidates' attention. If you consider having politicians descend upon your state a benefit, the winner-take-all feature is a big plus. In 1966, in fact, Delaware sued New York (which then had the most electoral votes) and other states in hopes of forcing them to abandon the winner-take-all policy. A dozen other states soon climbed on board. Although the suit, which was based on the novel theory that a provision of the Constitution can be unconstitutional, was summarily rejected by the Supreme Court, it revealed the



Certificate for electoral vote of the State of Louisiana dated 1876.

frustration that the small fry have always felt. In response, the small states cling to their three or four electoral votes the way an infant clings to its blanket. Since no one pays any attention to them anyway, they feel entitled to an extra vote or two.

Partisan considerations persist as well, this time on the Republican side. Today a group of Plains and Mountain states (Kansas, Nebraska, the Dakotas, Montana, Wyoming, Idaho, and Utah) can be thought of as a Solid West, reliably delivering most or all of their 32 electoral votes (as of 2000) to the Republican ticket, though their combined population is about equal to that of Michigan, which has only 18. As we have recently seen, those few extra votes can make a big difference if the election is close; and if the election isn't close, any electoral system will do.

It's impossible to say definitively whether the big-state or small-state advantage predominates, though that hasn't stopped generations of political scientists from trying. But these two opposing factors

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explain how the 1970s notion of “urban liberal bias” and the 1980s notion of a “Republican electoral lock” can both be correct: The former results from winner-take-all, while the latter results from disproportionality.

Through all the analysis, reform proposals keep coming. They generally fall into three classes: a straightforward nationwide popular vote; election by districts, with the Electoral College retained but each congressional district choosing its own elector (and, in most such schemes, the statewide winner getting a bonus of two); and proportional representation, with electoral votes determined by each candidate's percentage of the popular vote in a given state. Any of these would probably be better than what we have now, but each one has imperfections. Since every change would hurt someone, the chances of getting through all the hoops needed to pass a constitutional amendment—a two-thirds vote in each house of Congress plus approval by three-quarters of the states—look dim.

Direct popular election? First of all, there's the question of what to do if no candidate receives a majority. Would there be a runoff, which would make the campaign season last even longer and might encourage third parties? Would the top vote-getter always be the winner—a system that could elect a candidate opposed by a majority of citizens? Would we mystify voters by asking for second and third choices?

Moreover, a nationwide election—something that has never taken place in America—would require a nationwide electoral board, with all the rules, forms, and inspectors that go along with it. Would states be allowed to set different times for opening and closing their polls? Would

North Dakota be allowed to continue to have no form of voter registration, as it does now? Would a state seeking more influence

be allowed to lower its voting age below 18? Then there is the potential discussed above for stolen or suppressed votes. Combine all these problems with the inevitable effect of concentrating candidates' time, resources, and money on populous areas, and the case for a small state to support direct election looks mighty shaky.

Election by districts sounds appealing, but it would replace 51 separate races with about 480. Swing states would lose their all-or-nothing leverage, so candidates might concentrate on major population centers even more than they do now. (Under the present system, each new election gives a different group of swing states their moment in the spotlight, whereas with any other system, the big states would always get the bulk of the attention.) The effects of gerrymandering would be amplified, and third-party candidates would find it easier to win a single district than an entire state. Also, the small-state advantage would remain (and in fact be reinforced, since in

most cases—all the time for the three-vote minnows—they would continue to function as units) while the big-state advantage from winner-take-all would vanish. In fact, if the 1960 election had been contested by districts and the popular vote had been exactly the same (a questionable assumption, to be sure), Richard Nixon would have won.

Proportional division of electors would be even worse, combining all the disadvantages of a direct popular vote with none of the advantages. Under this method, if a state has 10 electoral votes and Candidate A wins 53.7 percent of the popular vote in that state, then Candidate A is credited with 5.37 electoral votes. In essence, proportional division amounts to a direct popular vote, except that the votes of small-state residents are given added weight. And that's the problem: By stripping the veil of illusion and ceremony and tradition from the Electoral College, this extra weighting makes the small-state advantage nakedly apparent, which infuriates one-person-one-



Counting electoral votes, U.S. Capitol, 4/14/1917.

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vote fundamentalists.

But from the small-state point of view, proportional division would dilute the already tiny influence that goes with controlling three or four votes in a single lump. Also, there is a significant element of the public that views anything involving decimals as un-American—except baseball statistics, of course. Yet restricting the division of electors to whole numbers would be far more confusing, with different mathematical rules and minimum requirements in each state and often arbitrary results (if your state has four votes and the popular margin is 55-45, how do you divide them?). Proportional division would be fine for student-council elections at MIT, but to most American voters, it would amount to a mystifying black box.

To be fair, much worse ideas have been proposed. In the mist beyond proportional representation lies the wreckage of dozens of too-clever schemes, such as one cooked up in 1970 by Sen. Thomas Eagleton and Sen. Robert Dole (each of whom would within a few years take a personal interest in presidential elections). According to *The New Republic*, this plan provided that “a President would be elected if he (1) won a plurality of the national vote and (2) won either pluralities in more than 50 percent of the states and the District of Columbia, or pluralities in states with 50 percent of the voters in the election. . . .” And it went on from there.

In reviewing the history of the Electoral

College, it quickly becomes clear how little anybody has to offer that is new. All the plausible reform ideas, and all the arguments for and against them, have been debated and rehashed for well over a century, in terms that have remained virtually unchanged. What has killed all the reform efforts has been the lack of a single alternative that all the reformers can agree on. As the politicians say, you can't beat somebody with nobody, and you can't beat

Americans are likely to do what they have always done about the Electoral College: nothing.

one plan with three.

Moreover, the present system at least has the benefit of familiarity. Any change would be attended with an element of uncertainty, and politicians don't like that. Opinions differ widely about who would gain or lose from electoral reform, but too many states and interest groups think they would lose and too few are sure that they would gain. After all, as we have seen, the original

Electoral College functioned nothing like what its designers had expected.

In the end, Americans are likely to do what they have always done about the Electoral College: nothing. Every reform or abolition scheme works to the disadvantage (or possible disadvantage) of some special interest, and when a good-government issue collides with special interests, you know who's going to win. Outside of academia and government, there is no obvious constituency for reform; since most people don't understand how the Electoral College works, most of them don't understand the case for changing it. The lack of exact numerical equality and other supposed biases have always bothered political scientists much more than the average citizen, who may endorse reform when questioned by a pollster but will hardly ever feel strongly about the issue.

So we're probably stuck with the Electoral College until the next close election, when reformers and abolitionists of various stripes will once again surge forth, only to end up annihilating each other. To break this pattern, someone will have to either find a novel and compelling set of arguments for reform and waste enormous amounts of political capital to pass a measure that arouses no public passion and has no clear-cut beneficiary, or else devise a new scheme that is simple enough to be grasped by the average citizen yet has never been advanced before. Good luck. ❖

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TRANSCRIPT OF VIRGINIA PLAN (1787)

http://www.ourdocuments.gov/print_friendly.php?flash=true&page=transcript&doc=7&title=Transcript+of+Virginia+Plan+%281787%29

State of the resolutions submitted to the consideration of the House by the honorable Mr. Randolph, as altered, amended, and agreed to, in a Committee of the whole House.

1. Resolved. that it is the opinion of this Committee that a national government ought to be established consisting of a Supreme Legislative, Judiciary, and Executive.

2. Resolved. that the national Legislature ought to consist of Two Branches.

3. Resolved. that the members of the first branch of the national Legislature ought to be elected by the People of the several States for the term of Three years. to receive fixed stipends, by which they may be compensated for the devotion of their time to public service to be paid out of the National Treasury. to be ineligible to any Office established by a particular State or under the authority of the United-States (except those peculiarly belonging to the functions of the first branch) during the term of service, and under the national government for the space of one year after it's expiration.

4. Resolved. that the members of the second Branch of the national Legislature ought to be chosen by the individual Legislatures. to be of the age of thirty years at least. to hold their offices for a term sufficient to ensure their independency, namely seven years. to receive fixed stipends, by which they may be compensated for the devotion of their time to public service — to be paid out of the National Treasury to be ineligible to any office established by a particular State, or under the authority of the United States (except those peculiarly belonging to the functions of

the second branch) during the term of service, and under the national government, for the space of one year after it's expiration.

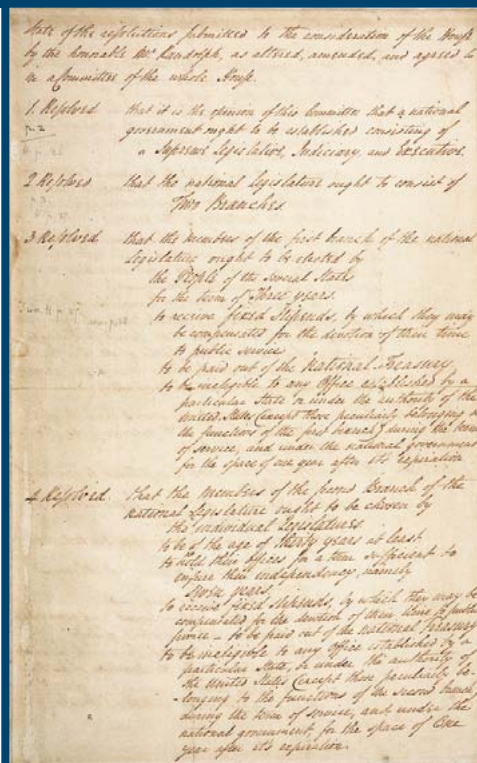
5. Resolved. that each branch ought to possess the right of originating acts.

6. Resolved. that the national Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation — and moreover to legislate in all cases to which the separate States are incompetent: or in which the harmony of the United States may be interrupted by the exercise of individual legislation. to negative all laws passed by the several States contravening, in the opinion of the national Legislature, the articles of union, or any treaties subsisting under the authority of the union.

7. Resolved. that the right of suffrage in the first branch of the national Legislature ought not to be according to the rule established in the articles of confederation: but according to some equitable ratio of representation — namely, in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

8. Resolved. that the right of suffrage in the second branch of the national Legislature ought to be according to the rule established for the first.

9. Resolved. that a national Executive be instituted to consist of a single person. to be chosen by the National



Virginia plan front page.

Legislature. for the term of seven years. with power to carry into execution the national Laws, to appoint to Offices in cases not otherwise provided for to be ineligible a second time, and to be removable on impeachment and conviction of mal practice or neglect of duty. to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service to be paid out of the national Treasury.

10. Resolved. that the national executive shall have a right to negative any legislative act: which shall not be afterwards passed unless by two third parts of each branch of the national Legislature.

11. Resolved. that a national Judiciary be established to consist of

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

TRANSCRIPT OF VIRGINIA PLAN (1787)

– CONTINUED –

One Supreme Tribunal. The Judges of which to be appointed by the second Branch of the National Legislature. to hold their offices during good behaviour to receive, punctually, at stated times, a fixed compensation for their services: in which no encrease or diminution shall be made so as to affect the persons actually in office at the time of such encrease or diminution.

12. Resolved. That the national Legislature be empowered to appoint inferior Tribunals.

13. Resolved. that the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue: impeachments of any national officers: and questions which involve the national peace and harmony.

14. Resolved. that provision ought to

be made for the admission of States, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national Legislature less than the whole.

15. Resolved. that provision ought to be made for the continuance of Congress and their authorities until a given day after the reform of the articles of Union shall be adopted; and for the completion of all their engagements.

16. Resolved. that a republican constitution, and its existing laws, ought to be guaranteed to each State by the United States.

17. Resolved. that provision ought to be made for the amendment of the articles of Union, whensoever it shall seem necessary.

18. Resolved. that the Legislative, Executive, and Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

19. Resolved. that the amendments which shall be offered to the confederation by the Convention, ought at a proper time or times, after the approbation of Congress to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the People to consider and decide thereon.

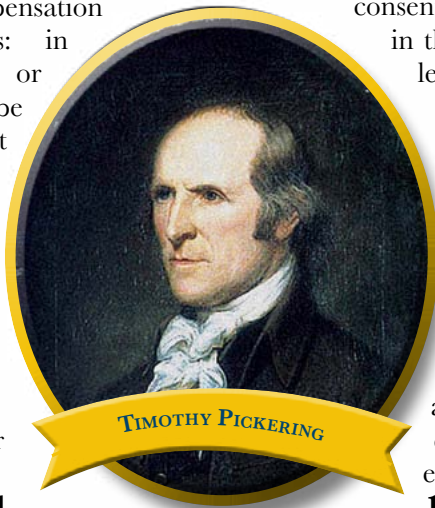
Received this sheet from the President of the United States, with the journals of the general Convention, March 19th, 1796.

Timothy Pickering
Secy of State

State of the Resolutions submitted by Mr. Randolph to the Consideration of the House, as altered, amended and agreed to in a committee of the whole House.

Received from the President of the U. States, March 19, 1796. by

Timothy Pickering
Secy of State ❖



THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

PLAN PRESENTED BY WILLIAM PATTERSON

http://avalon.law.yale.edu/18th_century/vatextc.asp

1. Resd that the articles of Confederation ought to be so revised, corrected & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.

2. Resd that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandises of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof; and the same from time to time, to alter & amend in such manner as they shall think proper: to pass Acts for the regulation of trade & commerce as well with foreign nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciaries of the State in which any offense contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the superior common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States.

3. Resd that whenever requisitions shall be necessary, instead of the rule

for making requisitions mentioned in the articles of Confederation, the United States in Congs be authorized to make such requisitions in proportion to the whole number of white & other free citizens & inhabitants of every age sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing

The federal Executive shall on any occasion take command of any troops.

description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Congs shall be exercised without the consent of at least States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

4. Resd that the U. States in Congs be authorized to elect a federal Executive to consist of persons, to continue in office for the term of years, to receive punctually at stated times a fixed compensation for their services, in

which no increase or diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for years thereafter; to be ineligible a second time, & removeable by Congs on application by a majority of the Executives of the several States; that the Executives (1) besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any (2) enterprise as General or in other capacity.

5. Resd that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour; to receive punctually at stated times a fixed compensation for their services in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution; that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high Seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

PLAN PRESENTED BY WILLIAM PATTERSON

— CONTINUED —

on any of the Acts for (3) regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their time (4) of service, or for thereafter.

6. Resd that all Acts of the U. States in Congs made by virtue & in pursuance of the powers hereby & by the articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the Individual States to the contrary notwithstanding; and that if any State, or any body of men in any State shall oppose or prevent ye carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts, or an observance of such Treaties.

7. Resd that provision be made

for the admission of new States into the Union.

8. Resd(5) the rule for naturalization ought to be the same in every State.

9. Rest a Citizen of one State committing an offense in another State of the Union, shall be deemed guilty of the same offense as if it had been committed by a Citizen of the State in which the offense was committed.(6)

(1) The transcript uses the word "executives" in the singular.

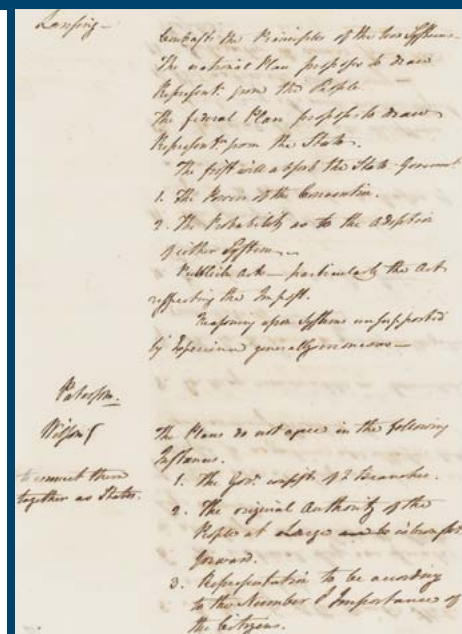
(2) The word "military" is here inserted in the transcript.

(3) The word "the" is here inserted in the transcript.

(4) The word "term" is substituted in the transcript for "time."

(5) The word "that" is here inserted in the transcript.

(6) This copy of Mr. Patterson's propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearley a Colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct is shewn by the ensuing speech of Mr. Wilson [June 16] in which he refers to the mode of removing the Executive by impeachment & conviction as a feature



William Paterson. Notes for Speeches in Convention.

in the Virga plan forming one of its contrasts to that of Mr. Patterson, which proposed a removal on the application of a majority of the Executives of the States. In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment does not appear. ❖

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

THE FEDERALIST No. 68 THE MODE OF ELECTING THE PRESIDENT

<http://constitution.org/fed/federa68.htm>

Independent Journal
Wednesday, March 12, 1788
[Alexander Hamilton]

To the People of the State of New York:

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded.¹ I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.¹

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of several, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of one who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

THE FEDERALIST No. 68 THE MODE OF ELECTING THE PRESIDENT — CONTINUED —

by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says:

"For forms of government let fools contest --
That which is best administered is best," --

yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

The Vice-President is to be chosen in the same manner with the President; with this difference, that the Senate is to do, in respect to the former, what is to be done by the House of Representatives, in respect to the latter.

The appointment of an extraordinary person, as Vice-President, has been objected to as superfluous, if not mischievous. It has been alleged, that it would have been preferable to have authorized the Senate to elect out of their own body an officer answering that description. But two considerations seem to

justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the senator of any State from his seat as senator, to place him in that of President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote. The other consideration is, that as the Vice-President may occasionally become a substitute for the President, in the supreme executive magistracy, all the reasons which recommend the

The process of election affords a moral certainty.

mode of election prescribed for the one, apply with great if not with equal force to the manner of appointing the other. It is remarkable that in this, as in most other instances, the objection which is made would lie against the constitution of this State. We have a Lieutenant-Governor, chosen by the people at large, who presides in the Senate, and is the constitutional substitute for the Governor, in casualties similar to those which would authorize the Vice-President to exercise the authorities and discharge the duties of the President.

PUBLIUS

1. Vide Federal Farmer. ❖

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

LYDIA SAAD, AMERICANS CALL FOR TERM LIMITS, END TO ELECTORAL COLLEGE, GALLUP.COM.

<http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>

January 18, 2013

Americans Call for Term Limits, End to Electoral College
Virtually no partisan disagreement on these long-discussed constitutional reforms

by Lydia Saad

PRINCETON, NJ -- Even after the 2012 election in which Americans re-elected most of the sitting members of the U.S. House and Senate -- as is typical in national elections -- three-quarters of Americans say that, given the opportunity,

These findings, from Gallup Daily tracking conducted Jan. 8-9, are similar to those from 1994 to 1996 Gallup polls, in which between two-thirds and three-quarters of Americans said they would vote for a constitutional amendment to limit the number of terms that members of Congress and the U.S. Senate can serve.

More Than Six in 10 Would Abolish Electoral College

Americans are nearly as open to major electoral reform when it comes to doing away with the Electoral College.

Sixty-three percent would abolish this unique, but sometimes controversial, mechanism for electing presidents that was devised by the framers of the Constitution. While constitutional and statutory revisions have been made to the Electoral College since the nation's founding, numerous efforts to abolish it over the last 200+ years have met with little success.

There is even less partisan variation in support for this proposal than there is for term limits, with between 61% and 66% of all major party groups saying they would vote to do away with the Electoral College if they could. Similarly, between 60% and 69% of all major age groups take this position.

Gallup has asked Americans about the Electoral College in a number of ways over the years, and regardless of the precise phrasing, large majorities have always supported doing away with it. That includes 80% support in 1968 and 67% in 1980 with wording similar to what is used today.

Compared with today, support for abolishing it was slightly lower from 2000 through 2011, ranging from 59% to 62%, when using a question that asked Americans if they would rather amend the Constitution so the candidate who wins the most votes nationally wins the election, or keep the current system in which the winner is decided in the Electoral College.

American's Support for Established Term Limits for Federal Lawmakers

Suppose that on Election Day you could vote on key issues as well as candidates. Would you vote for or against a law that would limit the number of terms which members of Congress and the U.S. Senate can serve?

	Would vote "for" term limits	Would vote "against" term limits	No opinion
	%	%	%
National adults	75	21	5
Republicans	82	15	3
Independents	79	17	4
Democrats	65	29	5
18 to 29 years	74	22	4
30 to 49 years	73	22	5
50 to 64 years	77	19	4
65 and older	74	21	5

Jan. 8-9, 2013 GALLUP©

they would vote "for" term limits for members of both houses of Congress.

Republicans and independents are slightly more likely than Democrats to favor term limits; nevertheless, the vast majority of all party groups agree on the issue. Further, Gallup finds no generational differences in support for the proposal.

THE ELECTORAL COLLEGE: HOW IT GOT THAT WAY AND WHY WE'RE STUCK WITH IT

LYDIA SAAD, AMERICANS CALL FOR TERM LIMITS,
END TO ELECTORAL COLLEGE, GALLUP.COM

— CONTINUED —

Gallup trends show that Republicans were far less supportive than Democrats of abolishing the Electoral College in late 2000, when Republican presidential candidate George W. Bush had lost the popular vote, but was fighting a legal battle to win Florida and therefore the Electoral College. Since then, however, Republicans have gradually become less protective of the Electoral College, to the point that by 2011, a solid majority of Republicans were in favor of abolishing it.

interviews conducted as part of the Gallup Daily tracking survey Jan. 8-9, 2013, with a random sample of 1,013 adults, aged 18 and older, living in all 50 U.S. states and the District of Columbia.

For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is ± 4 percentage points.

Interviews are conducted with respondents on landline telephones and cellular phones, with interviews conducted in Spanish for respondents who are primarily Spanish-speaking. Each sample includes a minimum quota of 500 cellphone respondents and 500 landline respondents per 1,000 national adults, with additional minimum quotas by region. Landline telephone numbers are chosen at random among listed telephone numbers. Cellphone numbers are selected using random-digit-dial methods. Landline respondents are chosen at random within each household on the basis of which member had the most recent birthday.

Samples are weighted by gender, age, race, Hispanic ethnicity, education, region, adults in the household, population density, and phone status (cellphone only/landline only/both, cellphone mostly, and having an unlisted landline number). Demographic weighting targets are based on the March 2012 Current Population Survey figures for the aged 18 and older non-institutionalized population living in U.S. telephone households. All reported

margins of sampling error include the computed design effects for weighting.

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

View methodology, full question results, and trend data.

For more details on Gallup's polling methodology, visit www.gallup.com.

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American's Support for Doing Away with U.S. Electoral College

Would you vote for or against a law that would do away with the Electoral College and base the election of the president on the total vote cast throughout the nation?

	Would vote "for" doing away with Electoral college	Would vote "against" doing away with Electoral college	No opinion
	%	%	%
National adults	63	29	8
Republicans	61	30	9
Independents	63	29	8
Democrats	66	30	4
18 to 29 years	69	28	4
30 to 49 years	62	27	11
50 to 64 years	64	28	8
65 and older	60	32	8

Jan. 8-9, 2013 GALLUP©

Bottom Line

Large majorities of Americans are in favor of establishing term limits for members of the U.S. House and Senate, and doing away with the Electoral College. Despite sharp polarization of the parties on many issues in 21st century politics, Republicans and Democrats broadly agree on both longstanding election reform proposals.

Survey Methods

Results for this Gallup poll are based on telephone