

**Dissolving the Electoral College: America's Cry for Change**

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“There is no right to vote in the Constitution,” states Alex Keyssar, Professor, Harvard University, author of *The Right to Vote* (Deschamps, Farrell, & Singer, 2012). The Bill of Rights does not even mention voting (Keyssar, 2009, p. 259). Many people have looked for it, but it is not in there. So why all the fuss in America over the Electoral College process as opposed to the direct election of the President of the United States? Perhaps it is due to the fact that, since its inception, the Electoral College was never a permanent solution to the presidential election process, but rather a transitory compromise that has long since exhausted its efficacy in America.

To illustrate, it is necessary to go back to the very beginning. Article I of the U.S. Constitution covers the Legislative Branch, while Article II focuses specifically on the presidency. The framers of the Constitution of the United States selected a very complex and exclusive process of choosing the nation's president, which infringes upon political equivalence as well as majority rule (Edwards, 2004, p. 78). The framers had several viable considerations when traveling the road toward the Electoral College. One important consideration was preventing corruption in the selection of the president (Edwards, 2004, p. 80). In *Federalist No. 68*, Alexander Hamilton stated “Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption,” and that corruption would not be conceivable because of “transient existence” and “detached situation” of the electors (Hamilton, 1788; Edwards, 2004, p. 80). Another issue being considered was that a president may rely too heavily on the legislature rather than implement his own judgment if he were chosen by the legislature; in contrast, Hamilton was more concerned that the opposite would happen, and the legislature would be corrupted by the president so that the president could stay in office (Edwards, 2004, p. 80).

Hamilton was definitely in support of the Electoral College (Hamilton, 1788) along with John Jay (Jay, 1788), whereas James Madison was in support of the president being elected by the citizens (Madison, 1788). Many delegates were concerned about the vast distance and limited communication, believing that the average citizen would not know the candidates well enough, would vote only for candidates from their own states, and would possibly be led amiss by a few manipulative men (Edwards, 2004, p. 81). However, many who supported direct election of the president did not believe this to be the case (Edwards, 2004, p. 81). Madison believed that due to the vast land in America, the indirect system was proposed, but the citizens would still be the ones who chose the electors (Edwards, 2004, p. 81). Madison stated in *Federalist No. 39* that “The president is indirectly derived from the choice of the people” (Madison, 1788), while Hamilton stated that the president should only be dependent on the people and no one else (Hamilton, 1788; Edwards, 2004, p. 82). Some delegates were also worried that the president’s direct election would be too much power consolidated and too much influence for one person (Edwards, 2004, p. 84). There was considerable concern over the various populations amongst the states (Edwards, 2004, p. 84) as well as concern over protecting the interests of slaveholders (Edwards, 2004, p. 87). In addition, there was short-term political pressure to avoid additional conflict at the Constitutional Convention, the delegates were tired and ready to depart from Philadelphia, and there was not a pressing alarm about the Electoral College’s operation (Edwards, 2004, p. 87).

There is no age limit to be an elector; for example, in 1960 Thomas O’Connor was elected as president for the Massachusetts Electoral College when he was 93 years old (Edwards, 2004, p. 3). Surprisingly, there are actually no strict qualifications to be an elector. Essentially, you must not have rebelled against the government and you cannot hold a high office in politics

(U.S. Const. amend. XIV; Edwards, 2004, p. 3). Some people indicate that it doesn't depend on whether you are a larger donor or a bigger player in the party (Deschamps, Farrell, & Singer, 2012). However, historically it can be seen that electors are often large donors and many are extremely loyal to their political parties (Edwards, 2004, p. 4). The Electoral College, in essence, "is far from being the assembly of wise and learned elders by its creators; it is rather a state-by-state collection of party loyalists and donors" (Edwards, 2004, p. 4).

The roles of presidential electors have been in controversy since the first election (Edwards, 2004, p. 19). There are still disagreements about whether electors are to cast their votes as faithful agents of the people who have selected them or whether the presidential electors should come to their own decision with respect to casting their vote (Edwards, 2004, p. 19). As early as 1796, assuming elector faithfulness can be seen in John Adams' response to Samuel Miles not voting for his previous commitment to a Federalist candidate and voting for Thomas Jefferson instead when Adams stated that he chose Samuel Miles "to *act*, not *think*" (Zacharias, 2009, pp. 78-79). The resemblance of "independent statesmen faded" after the Twelfth Amendment passed in 1804 (Edwards, 2004, p. 19). The founding fathers intended the presidential electors to conduct their duties as free agents, but the process has evolved into political parties selecting electors with general behavior expectations who must run as part of pledged states (Edwards, 2004, pp. 19-20). Although efforts have been made to restrict electors, according to the Constitution presidential electors remain free to vote however they choose once elected; throughout history there have been faithless electors, which are presidential electors who have either broken pledges or cast their votes differently than others expected (Edwards, 2004, pp. 20-21), even though most presidential electors believe themselves committed to be supportive of the "presidential candidate on whose party ticket they were elected" (Edwards,

2004, p. 24). On the other hand, even if people think the elector office should be discontinued, the faithless elector problem is diminutive, and many believe the “benefits of eliminating the office do not justify the effort to pass a constitutional amendment” (Best, 1975, p. 190).

Election Day for voters across America was established by Congress in 1845 as the first Tuesday after the first Monday in November which accomplished a national uniform election date (Edwards, 2004, p. 7). The voters in the United States elect presidential electors by voting in the November election. Sometimes the ballots will indicate “Presidential electors for ....” However, many states do not include this wording, and often voters do not realize they are voting for presidential electors instead of voting directly for the president and vice president (Edwards, 2004, p. 8). Currently, the District of Columbia and 42 states utilize the presidential short ballot (Edwards, 2004, p. 8). The names of the electors along with the presidential candidates only appear on the ballots in eight states, which commonly require voting in a unit for one slate or another (Edwards, 2004, p. 8). However, South Carolina, Louisiana and Mississippi allow voters to choose electors from various slates and allow write-ins (Edwards, 2004, p. 8). Most states utilize the general ticket ballot which requires the voters to choose an entire slate of electors as a unit, which prevents the possibility of a split decision of electing some presidential electors from one slate and some electors from another slate (Edwards, 2004, p. 9). Historically there has been confusion amongst voters in marking ballots when voting for electors, which is why it is beneficial to utilize the short ballot since it reduces the chances of confusion (Edwards, 2004, p. 8).

Since 1934, the first Monday after the second Wednesday in December has been the Electoral College’s Election Day (Edwards, 2004, p. 11) and occurs every fourth year (Edwards, 2004, p. 10). This day was set once the presidential inauguration was moved to January 20<sup>th</sup>

(U.S. Const. amend. XX; Edwards, 2004, p. 11). The electors vote for a president and vice president by ballot, and at least one candidate is required to be from a different state (U.S. Const. amend. XII; Edwards, p. 12). The method by which electors vote varies by state. Some electors vote utilizing a signed ballot, some electors vote by oral announcement, and still other electors vote by an unsigned ballot along with a public announcement regarding how each elector voted (Dixon, 1950, p. 221-222; Edwards, 2004, p. 12). The electoral votes from all of the states are then counted by Congress by the president of the Senate “in the presence of the Senate and House of Representatives” (U.S. Const. amend. XII Edwards, 2004, p. 13). The counting of the electoral votes takes place on January 6<sup>th</sup> at 1:00 p.m. (Counting Electoral Votes in Congress, 1948). There are also guidelines for handling disputes with respect to electoral votes. The Electoral Count Act of 1887 was a law enacted by Congress to handle disputes in electoral votes (Edwards, 2004, p. 15).

Nearly one in ten presidents has taken the presidency at the White House without the popular vote (Deschamps, Farrell, & Singer, 2012). In other words, an electoral outcome can have a divided verdict, with more popular votes received by one candidate and more electoral votes received by another candidate (Longley & Peirce, 1996, p. 161). For example, in 1876 Samuel J. Tilden had 4,287,670 popular votes, and Rutherford B. Hayes had 4,035,924 popular votes (Longley & Peirce, 1996, p. 27). However, in a special commission, Congress decided to count the challenged electoral votes, and Hayes won with 185 electoral votes over Tilden’s 184 electoral votes, even though Tilden had 251,746 more popular votes (Longley & Peirce, 1996, pp. 27-28). Proponents of the Electoral College state it was the corrupt Electoral Commission, not the Electoral College, which denied Tilden the presidency (Hewson, 2002, p. 56). In 1888 President Grover Cleveland ran against Benjamin Harrison. Cleveland had 5,540,365 popular

votes, and Harrison had 5,445,269 popular votes (Longley & Peirce, 1996, p. 27). However, Cleveland only had 168 electoral votes, while Harrison had 233 electoral votes (Harrison won bigger states); therefore, Harrison won the presidency, even though Cleveland had 95,096 more popular votes (Longley & Peirce, 1996, p. 27). Proponents of the Electoral College admit that in this election the Electoral College did deny Cleveland the presidency (Hewson, 2002, p. 56). In 1824, John Quincy Adams won the presidency over Andrew Jackson, although in that election six states had electors chosen by their legislatures, so the complete popular vote is not known for the 1824 election. Proponents of the Electoral College state it was the House of Representatives, not the Electoral College, that decided on John Quincy Adams instead of Andrew Jackson (Hewson, 2002, p. 56). In the 1960 presidential election, due to Alabama's method of counting votes, Richard Nixon received 34,108,157 popular votes while John F. Kennedy received 34,049,976 popular votes (Longley & Peirce, 1996, p. 27). With 303 electoral votes, Kennedy won the presidency over Nixon's 219 electoral votes, even though Nixon had 48,181 more popular votes (Longley & Peirce, 1996, p. 27).

In the 2000 presidential election, Al Gore received 50,999,897 popular votes and George W. Bush had 50,456,002 (Federal Election Commission, 2001). Even though Al Gore had 543,895 more votes, George W. Bush won the presidency with 271 electoral votes as opposed to Al Gore's 266 electoral votes (Federal Election Commission, 2001). Proponents of the Electoral College indicate that it was the United States Supreme Court, not the Electoral College, which denied the presidency to Al Gore (Hewson, 2002, p. 56). The decision to award Governor George W. Bush 25 electoral votes in Florida instead of Al Gore still remains a controversy (Edwards, 2004, pp. 16-17). Florida's Secretary of State Katherine Harris implemented very restrictive election rules and practices (Deschamps, Farrell, & Singer, 2012). She ordered a

private contractor to purge the voting lists of convicted felons, and she instructed the contractor to cast a wide net (Deschamps, Farrell, & Singer, 2012). Florida disenfranchised thousands of public voters because their names resembled those of convicted felons (Deschamps, Farrell, & Singer, 2012). There were many scandals, mishaps, recounts and lawsuits (Deschamps, Farrell, & Singer, 2012). There are numerous issues including absentee ballot recounting, determining how to interpret punch card hanging chads and contesting the validity of butterfly ballots due to their poor design (Edwards, 2004, p. 16). The United States Supreme Court ultimately stepped in and overrode the Florida State Supreme Court's interpretation of Florida law stating that counting people's ballots may violate equal protection (Deschamps, Farrell, & Singer, 2012; Edwards, 2004, p. 16). Therefore, in essence, the Supreme Court Justices named the President of the United States, rather than the President of the United States naming Supreme Court Justices (Deschamps, Farrell, & Singer, 2012).

On a nationwide basis, the percentage of electoral votes a candidate receives rarely coincides with the candidate's popular vote percentage (Longley & Peirce, 1996, p. 128). There are three reasons for this: (1) the winner-take-all system; (2) the distortions created by the two electoral votes in existence in each state which correspond to each state's two senators; and (3) electoral votes are granted to each state in national apportionment, disregarding how many or how few citizens go out to vote (Longley & Peirce, 1996, p. 128). Historically, it can be seen that a misfire of the Electoral College is a danger, and "only sheer luck" in several instances has shielded America from the popular vote loser receiving an Electoral College victory (Longley & Peirce, 1996, pp. 128-129).

Judith Best defends the Electoral College by explaining that the electoral votes are based on population instead of how many people vote, which would allow voters in states with low-



turnouts to have an advantage over states with high-turnouts (Best, 1975, p. 128). With respect to the Electoral College causing interstate voting inequities, she gives the example that when Alaska had 300,000 in its population, it had three electoral votes, which works out to one for every 100,000 people (Best, 1975, pp. 28-29). However, on the other hand, when New York had a population of 18,000,000, it had forty-one electoral votes, which works out to one for every 440,000 people (Best, 1975, p. 29). This gives the advantage to the voters in the smaller state of Alaska rather than the advantage being given to voters in the larger state of New York (Best, 1975, p. 29). Some people do contend that the larger states have the voting power advantage (Best, 1975, p. 29) because each voter influences the number of electoral votes of their own state (Best, 1975, p. 30). For instance, with forty-one electoral votes, each voter in New York could influence forty-one electoral votes; whereas a voter living in the District of Columbia would have an influence on three electoral votes (Best, 1975, p. 30). This advantage opens the doors to special interest groups who can focus their efforts on the larger states with more electoral votes (Best, 1975, p. 30). Also, states with lowering populations can have a temporary advantage due to the decennial census (Best, 1975, p. 30).

Jamin Raskin, Professor of Constitutional Law at American University, indicates that the Electoral College marginalizes two-thirds to three-quarters of America in which most of the residents live in red states or blue states (Deschamps, Farrell, & Singer, 2012). Consider that America's four largest states are California (safe state), Texas (safe state), New York (safe state) and Florida (Deschamps, Farrell, & Singer, 2012). While Florida is sometimes a swing state, California is a blue state, Texas is a red state, and New York is a blue state (Deschamps, Farrell, & Singer, 2012). Realistically, no campaigning is required in three of our four largest states, which leaves much of the majority of America having no real role in the presidential election

(Deschamps, Farrell, & Singer, 2012). Presidential candidates who are serious candidates will invest a vast amount of time campaigning in the largest states in America due to the distortions of the Electoral College (Longley & Peirce, 1996, p. 156). For example, in the 2012 general election, Ohio, Florida, Virginia and Iowa were the four states that contained two-thirds of the campaign events (“Agreement among the states to elect the presidency by national popular vote,” 2016). This is an example of the current electoral system’s shortcomings due to the statutes that award a candidate all of the electoral votes within each state when that candidate receives the most popular votes statewide (“Agreement among the states to elect the presidency by national popular vote,” 2016). The method of winner-take-all has been adopted by most of the states in America; since 1832, only Michigan, Maine and Nebraska have reverted back to the system used in the early years which consisted of the electoral votes being divided by district (Edwards, 2004, pp. 9-10).

It can be easily seen that there is not a straightforward process provided by the Electoral College to select the nation’s president (Edwards, 2004, p. 31). There must be political equity in a democratic nation. The leading democratic theorist, Robert Dahl, states that all members “must have an equal and effective opportunity to vote, and all votes must be counted as equal” (Edwards, 2004, p. 31). However, Max S. Powers points out with respect to majority rule and popular sovereignty, there needs to be only two candidates, and he explains that “direct election provides no workable means for selecting a president from among more than two candidates” (Best, 1975, p. 107). Many people are actually supporters of the Electoral College because its design supports a two-party system (Hewson, 2002, p. 57)

There are also contingent elections which can occur with the Electoral College; when the candidates do not receive enough Electoral College votes to obtain the simple majority, then the

president is chosen by the House of Representatives and the vice president is chosen by the Senate in a contingent election (U.S. Const. amend. XII; Edwards, 2004, p. 55). In counter to this, there has not been a house election since the 1800s because “the unit system converts popular pluralities into electoral minorities, thus magnifying the margin of victory” (Best, 1975, p. 56). In a contingency vote, the winner of the presidency is chosen by the House from amongst the top three candidates with the most votes (Hewson, 2002, p. 50). Each state, no matter how many representatives it has, is allowed one vote, and to win a candidate must receive at least 26 votes (Hewson, 2002, p. 50). This could be a difficult predicament for those voting, and many may vote based on party lines and not consider strengths of a third-party/independent candidate, or the representative could be influenced by the result of the national popular result or decide to vote for the candidate with the most popular votes within their own state (Longley & Peirce, 1996, pp. 162-163). If the Senate votes on a vice president, then each senator gets a vote, and the winner of the vice-presidency must receive at least 51 votes (Hewson, 2002, p. 51).

The Electoral College is what gives each state a say in voting (Deschamps, Farrell, & Singer, 2012). However, we now have 13,000 separate electoral districts that have their own rules about training poll workers, designing ballots, voting and recounting. This adds up to a multitude of inconsistencies with voter registration processes, deadlines, rules and regulations (Deschamps, Farrell, & Singer, 2012).

The framers had many motivations leading up to creating the Electoral College; however, many of those are irrelevant today (Edwards, 2004, p. 89). Geographic distance is no longer an issue due to modern travel capabilities. Communication is no longer an issue since radio, television, internet and many other avenues of current communication have become available. Therefore, much access to information about candidates is available to the voters (Edwards,

2004, p. 89). There is not an option for legislative election, it is extremely unlikely that a directly-elected president would be too powerful, and slavery is no longer an issue to defend (Edwards, 2004, p. 89). With respect to protecting the interests of smaller, less-populated states, no one would agree to elect the president by utilizing one vote for each state through the House of Representatives (Edwards, 2004, p. 89). “Neither side is comfortable with this because there are no guidelines for how representatives should vote” (Hewson, 2002, p. 58). The gridlock at the Convention was the motivation for creating the Electoral College. It was essentially a compromise with respect to seeking a consensus amongst several states. “The electoral college was the end result of a process of elimination” (Edwards, 2004, p. 90).

Our nation needs to put an end to the Electoral College because it is obsolete. “The Electoral College is a distorted counting device” (Longley & Peirce, 1996, p. 155). The people of the United States want each of their votes to count. Abolishing the Electoral College has had more bills in Congress than any other subject matter (Deschamps, Farrell, & Singer, 2012). America should implement the process of direct election for the office of president. Obviously, this will be a challenging process to initiate, and will require the complicated task of amending the Constitution (Edwards, 2004, p. 157).

Besides amending the U.S. Constitution, there are many more changes that need to be made in order to effectively give Americans the process of directly electing the president. Currently, America does not have a system of universal voter registration, which is something most industrialized democracies have in place (Deschamps, Farrell, & Singer, 2012). This is an automatic process wherein the government ensures that each eligible voter is permanently on the rolls. Currently there are 50 million people in America who are eligible to vote but are not registered to vote (Deschamps, Farrell, & Singer, 2012). With today’s technology, America can

modernize and reform the system to implement universal voter registration when one considers the number of Americans who already have their information in government agencies such as the Department of Motor Vehicles, Internal Revenue Service, United States Army, Social Security, Department of Welfare, public schools and many others (Deschamps, Farrell, & Singer, 2012). This is one important step that America should take when eliminating the Electoral College to rely solely on the popular vote.

We now have electronic touch screen voting machines which enable more accuracy and efficiency in comparison with paper voting and punch cards, in addition to the fact that there is much inconsistency and confusion with the style and layout of paper ballots (Deschamps, Farrell, & Singer, 2012). With electronic machines there is much less ambiguity and lost votes are minimized (Deschamps, Farrell, & Singer, 2012). Most voting machines in America still have some type of paper method to double check the machines to ensure accurate recording, which minimizes security risks. However, there is still no federal standardization (Deschamps, Farrell, & Singer, 2012). When eliminating the Electoral College, standardization would be very beneficial with the electronic voting machines utilized throughout the states.

Jamin Raskin, Professor of Constitutional Law at American University, believes the National Popular Vote Legislation, which is a reform of the Electoral College, is a very promising path to break away from the Electoral College (Deschamps, Farrell, & Singer, 2012). Mr. Raskin indicates it would be a bridge to arrive at a direct election of the president, eventually utilizing the popular vote for election purposes (Deschamps, Farrell, & Singer, 2012). Once the National Popular Vote Legislation is accomplished, the national popular vote will determine who will get all of the electoral votes from the participating states. Currently 11 states have enacted this into law, totaling 165 electoral votes (“Agreement among the states to elect the presidency

by national popular vote,” 2016). However, the legislation still needs to be enacted by states which have at least 105 more electoral votes, because this legislation will only take place when the electors available of the participating states reaches 270, which is the number to meet the presidency (“Agreement among the states to elect the presidency by national popular vote,” 2016). This will eliminate the multitude of red and blue states, 48 of the 50 states which currently award electoral votes to the winner of each state’s popular vote (Deschamps, Farrell, & Singer, 2012).

The United States is a democracy, and America’s self-image is based upon the right to vote being so extensively disbursed amongst its citizens that the nation has nearly achieved universal suffrage, or the right of all adult citizens to vote (Keyssar, 2000, pp. XIX-XX). The citizens of America need to know that each vote counts. They are losing interest at the polls and the number of voters are declining (Keyssar, 2000, p. XIX). American citizens realize that their votes are not equally counted when a presidential candidate can win an election through the Electoral College even if that candidate did not receive the highest total of popular votes (Keyssar, 2000, p. 260).

As can be seen for over two centuries, the Constitution of the United States failed to guarantee American citizens the right to vote for the President of the United States, the highest office in America (Keyssar, 2009, p. 20). This has been a problem from the very beginning (Keyssar, 2009, p. 20). Instead, the alternative mechanism in place has been the Electoral College, with the process of choosing electors to be determined by each state (Keyssar, 2009, p. 20). To reiterate, since its inception, the Electoral College was never a permanent solution to the presidential election process; on the contrary, it has been a temporary compromise that has substantially outlived its effectiveness in America. History holds a superfluity of incidences and

situations that justify and validate amending the Constitution to enable the direct election of the President of the United States. Remember, the government of the United States is “of the people, by the people, and for the people” (Keyssar, 2000, p. XX). Come on America! Let’s make our votes count!

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