

The Breakfast Club

Constitutional Minute for 19 October 2024

Goodbye, Electoral College?

In my last Constitutional Minute, I warned that unless average citizens start defending the U.S. Constitution, we risk its eventual replacement. It is a near certainty any replacement of the Constitution will not preserve personal freedoms Americans have grown accustomed to over the last 200+ years. Conservative scholars have been defending the Constitution for a long time, but their treatises are mainly sequestered in academic journals, conservative websites (“preaching to the choir”) and books with limited sales. “We the people” established and ordained this wonderful document and we the people will either preserve it or watch it be replaced with something far worse.

You can’t effectively defend something you don’t know or understand. Poll after dismal poll reminds us that Americans know next to nothing about their Constitution and couldn’t explain its defining principles if their life depended on it. Even students who take my Constitution courses, whether on the U.S. or Virginia Constitution, quickly forget what they’ve learned; there are more pressing matters in our lives that pull us back to our daily routine, a routine that seldom includes time for deep study of our country’s founding documents.

But long before the Constitution itself is ever replaced, one of its unique features likely will be—I’m speaking of the Electoral College, the method by which we elect the President and Vice-President. You know, that “antiquated,” “racist,” “undemocratic,” “unfair,” puzzling institution that makes an appearance on the political scene every four years.

Many critiques you read today purporting to explain why it must be replaced reveal either gross misunderstanding of its original intent and function, or purposeful obfuscation of these truths.

What is the Electoral College?

The term “college” has several definitions, but it has pretty much lost its original definition, at least it is no longer in common use. Today, a college is an institution of higher learning; multiple colleges make up a university, right?

Noah Webster defines “college” as:

In a general sense, a collection, assemblage or society of men, invested with certain powers and rights, performing certain duties, or engaged in some common employment, or pursuit.

At its simplest, the Electoral College is an assemblage of men and women invested with the power to cast two ballots, one for a person to be President of the United States and one for someone else to be Vice-President. One of these individuals “shall not be an Inhabitant of the

same State with themselves,”¹ which is normally assured by having each of the individuals declare a different state their legal home of record.

The “assemblage” takes place in 50 separate state capitols and the District of Columbia on a day in December specified by Congress as “the first Monday after the second Wednesday” (in 2024: 16 December). The “assemblage,” begun at noon, may last an hour or less and then the assemblage disperses (barring any lawsuits that may require the Electors to retain their identification as such, they cease to be electors after submitting their ballots). The only constitutional requirement to be an Elector is that they cannot be a “Senator or Representative, or Person holding an Office of Trust or Profit under the United States.”² State law requires they be registered voters in their state and certified by the candidate or state party as “Electors for (the candidate of that party). State political parties normally require Electors to be party members and to sign a form pledging their vote to the party’s candidates should they (the Electors) win a majority of the popular vote in their state. Voters who bother to read their ballot carefully will note they are voting for “Electors for (candidates’ names)” and not directly for the candidates themselves.

“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress” (Emphasis added).

In 1788, In the first presidential election conducted under the new Constitution, five of the eleven state legislatures (45%)³ (Rhode Island and North Carolina had not yet ratified the Constitution) directly appointed their Electors, they did not involve their citizens in any way. Slowly but surely, state after state shifted responsibility for selecting Presidential Electors to their citizens through a popular vote. But it was not until 1868 that the last state (South Carolina) finally did so.

In the original Electoral College, Electors met in the state capitol on a designated day, discussed among themselves who would make a good President, and then each Elector nominated any two individuals in the nation to be President and Vice President so long as they both were natural-born citizens,⁴ 35 years of age or older and had been residents of the United States for at least 14 years.⁵

In the 1788-89 election, the 69 electors⁶ gave their votes to 13 different individuals. George Washington received the first vote from all 69 electors, the 69 second votes were spread over 12 other individuals, with John Adams gaining 34 of them, giving him the Vice-Presidency.⁷

But then an enormously consequential thing happened: political parties formed; first the Federalist Party formed around Washington and Adams and later the Democratic-Republicans were jointly formed by Thomas Jefferson and James Madison. Once political parties entered the political landscape, any thought that Electors would “vote independently” vanished. In those states that still directly appointed their Electors, the partisan composition of the state legislature suddenly took on a new importance. Some states (ex: Virginia) that had initially

allowed their citizens to select the state's Electors suddenly switched to legislative-appointed Electors, only to switch back later to citizen-selection.

Electors were not the only option considered at the Constitutional Convention. Selection by Congress and a popular vote were also considered, and rejected.

The other consequential change was the legislature declaring all their electoral votes would be awarded to the winner of a state-wide popular vote, i.e. the "winner-take-all" concept. Maryland and Pennsylvania incorporated something similar in 1789; Virginia did so in 1799 in time for the election of 1800.

These two changes destroyed the Electoral College's original intent. Until "pledged electors" and "winner-take-all" are reversed in a return to truly independent electors, we will never have an Electoral College that operates as originally intended.

Complaints About the Electoral College.

You'll find lots of websites and books touting "problems" with the Electoral College system. What I find disturbing is when the authors of these posts display a gross ignorance of the EC and its history. For instance, I searched for "Problems with the electoral college" on Google and the third return was from the Berkeley School in California where the two, probably student, authors, in an article entitled, [*'The Flaws of the Electoral College System'*](#), came up with the startling revelation that "Electoral Votes can override the popular vote, basically rendering citizens' votes useless." Can everyone see how this claim is fatally flawed? How would you refute it? If I were these students' parent I would ask for a refund of the tuition I had paid and take them elsewhere.

A post by Mara Liasson of NPR entitled: [*"A Growing Number Of Critics Raise Alarms About The Electoral College"*](#), states that: "It's hard to make an intellectual argument in favor of the Electoral College. Most people feel that the person who gets the most votes should become president." Well, thanks Mara, for that keen insight: the candidate who gets the most Electoral votes, as long he gets a majority of them, does indeed become president. Liasson probably needs help coming up with an intellectual argument in favor of the Electoral College due to her blatant partisan bias. She, like the students, has no understanding of why the EC works as it does. They all believe the national popular vote should elect the president.

Today you hear all sorts of complaints designed to "illuminate" the Electoral College in the worst possible light. I'll start with dome from FairVote.com"

- The EC method results in "[g]rossly unequal distribution of campaign resources."

Apparently, these people expect candidates to spend precious funding equally across the country and think they will if a national popular vote were in place. Savvy candidates now spend the majority of funding today in the seven swing states, as they should, where it can actually make a difference. Swing state media outlets receive those big bucks, other markets, like New York and LA, do not. In a national popular vote, the same phenomenon will occur, only shifted:

the major metropolitan areas with their dense concentrations of voters will see the majority of the spending. In other words, Democrat-controlled media outlets will benefit after a NPV is installed.

- The EC method produces “[u]nequal voting power depending on where you live. For instance, each individual vote in Wyoming counts nearly four times as much in the Electoral College as each individual vote in Texas.”

Democrats seem to enjoy using arithmetical “slight-of-hand” to prove their points. Measuring the number of electoral votes produced per popular vote is the most specious, non-serious complaint I’ve ever heard about the EC. That some states get more electoral votes than others is simply a result of some states having greater representation in Congress than others. The complaint ignores the fact that each of the 51 elections that take place on presidential election day is a separate event in which each vote counts as one. A set of electors winning a majority of the votes signals the state legislature to invite that slate of electors to come to the state capitol and cast their ballots. The complaint implies that each popular vote for a slate of electors somehow produces a fractional electoral vote. Here’s an example: in 2020, each of the 193,559 votes in Wyoming for Donald Trump’s set of three electors, meant each popular vote produced 1.54 -5 electoral votes (or 0.0000154 of an electoral vote). Stated differently, each electoral vote represented the votes of 64,519 voters. Meanwhile, each of the 5,890,347 popular votes for the Trump slate of 38 electors in Texas produced 6.45 -6 of an electoral vote (or 0.00000645 of an electoral vote). Stated differently, each electoral vote represented the votes of 155,009 voters. From this the complainers conclude that a popular vote in Wyoming is “worth” considerably more than a popular vote in Texas. The votes in Wyoming and Texas are not “equal,” thus violating the “one-man-one-vote” principle.

This absurdity ignores the fact that, in a very real sense, each of the 51 separate elections on election day is an isolated event. The popular votes that take place in each state are not “producing” electoral votes, per se, they are simply communicating to the state legislature *which set of electors* to call; the number of electoral votes “produced” has already been determined and will be the same no matter how many citizens vote. Mathematically comparing the popular votes in one state to those in another state is ridiculous and purposely misleading.

These people don’t have an argument with the Electoral College, they have an argument with the 1787 Convention delegates who came up with the representation plan for Congress.

- “The Electoral College favors the smaller states with disproportionate voting power.”

If some states have “disproportionate voting power” in the EC, they have disproportionate voting power” in Congress as well.

- The “House of Representatives can choose the president.”

They say that like it’s a bad thing. Yes, the House of Representatives can choose the president, and that’s by design. When there is a tie or lack of a majority in the electoral College, the

Framers didn't want such a high office to go to a plurality winner, so they devised the Contingent Election where the House elects the president, and the Senate elects the vice-president. Understandably, the framers specified that in the Contingent Election for president the representatives must vote by state, which means that a state delegation like Minnesota with 4 Republicans and 4 Democrats, would have to first agree, as a delegation, on one of the three candidates who advance from the general election. If they cannot agree, they must abstain or submit a null vote. This makes it doubly clear that the Framers saw the states as the ultimate electors of the President.

A true national popular vote will encourage many more political parties to form, many of them with a tight policy focus like the Green Party. There will be many more candidates in the presidential election, and this will reduce the chance that any one of them will win a majority of the popular vote.

Abraham Lincoln would not have become President in 1860 had there been only a national popular vote. There were four candidates for President and Lincoln only won 40% of the popular vote tally while winning a comfortable margin in the Electoral College. No Abraham Lincoln = no Emancipation Proclamation; no Emancipation Proclamation = no 13th Amendment.

The contingent election will be a frequent occurrence after a NPV is installed and the states in Congress, not the people, will end up electing many, if not most of the presidents.

- The "Presidency can be won without a majority of the popular vote." Because the involvement of the people was not mandated in the constitution, or even anticipated by some at the convention, there is no hint of a national popular vote in the document, and until 1868, no truly national popular vote could even be calculated. But the bare fact of the matter is that a "national popular vote is a constitutional fiction," a contrived event, a simple exercise in basic math and, in the end, terribly misleading when it produces a "result" different from that of the Electoral College. The people, as a whole, are simply not voting for the President, they are signaling to their state how the state's electoral votes should be awarded. That's it, that is their role, simply put.

The Left likes to complain that the EC is "*undemocratic*," implying that it is undemocratic to go against the will of the people. Against the will of which people? The "will of the people" of each state is expressed in every presidential election. In 2016, the "will of the people of Arizona" was that electors for Donald Trump should represent the state of Arizona in the Electoral College; the "will of the people" of California was that electors for Hillary Clinton should represent their state. That's as far as the "will of the people" goes in a presidential election. There are 51 separate elections for President on election day and every one of them is focused on which presidential electors should represent the state. The "will of the people" makes that selection in each state.

One final point I try to make when answering questions about the Electoral College is this: The President's constitutional title is "President of the United States of America," not President of

the By No Means United People of America.” He is the President of the union of States. not the President of a disparate people. Imagine how a popularly elected President is going to represent the diverse interests of 330 million different people. He has enough of a task representing the interests of 50 different states, 27 of them Red, 13 Blue and 10 “confused about their identity.” The 50 states have far more in common with each other state than do the 330 million people.

If we give the election of the president to the people nationally, the people will quickly realize the limited powers the President has to solve “their” problems. They will soon clamor for a constitutional amendment that increases those powers and we will start down the road towards monarchy.

We all need to become more adept at answering the charges of the Left regarding our “unfair” Electoral College. As I’ve mentioned before, answering these types of questions on Quora.com has enabled me to answer them better in conversation and essays. You can do the same.

For further reading:

[Enlightened Democracy, The Case for the Electoral College, by Tara Ross, 2004.](#)

[The Electoral College Primer, by Lawrence D. Longley & Neal R. Pierce, 1997.](#)

[The Evolution and Destruction of the Original Electoral College, by Gary & Carolyn Adler, 2011’](#)

[Securing Democracy, Why We Have an Electoral College, Gary L, Gregg II, ed., 2001.](#)

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¹ Article II, Section 1, Clause 4.

² Article II, Section 1, Clause 3.

³ South Carolina, New York, New Jersey, Georgia and Connecticut. Virginia, Delaware, Maryland, and Pennsylvania each allowed citizens in each district to select an Elector. The Massachusetts directly appointed two of their Electors representing their Senate delegation, the remaining eight Electors were appointed by the Legislature from a list nominated by the people. The citizens of New Hampshire chose their five Electors in a statewide vote.

⁴The Natural Born Citizen issue will have to be the subject of a separate essay.

⁵ Article II, Section 1, Clause 6.

⁶ Rhode Island and North Carolina had not yet joined the union and New York failed to designate its electors by the deadline.

⁷This process was changed by the 12th Amendment after the 1800 election.