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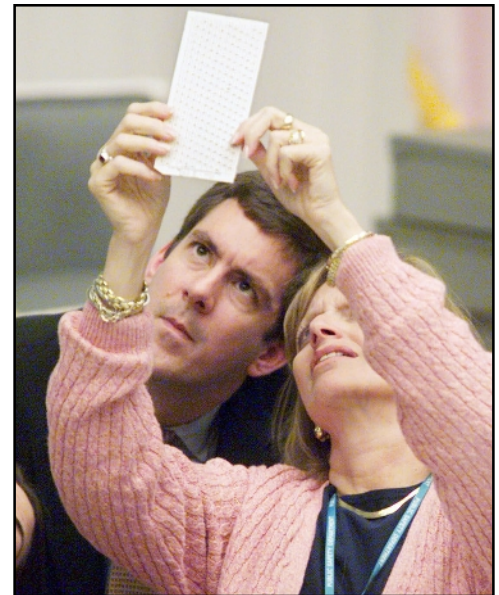
PUBLISHED BY CONGRESSIONAL QUARTERLY INC.

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JOURNALISTS AWARD FOR EXCELLENCE

## Electoral College

*Should it be abolished? Should it be changed?*

**T**he 2000 presidential race produced one of the closest popular-vote margins in U.S. history and left neither Republican George W. Bush nor Democrat Al Gore with an Electoral College majority on the day after the election. With Florida's 25 electoral votes holding the key to victory, Gore is pressing for a recount to try to overcome Bush's narrow margin in the state while also touting his 300,000-vote lead over Bush nationwide. The race and the recount have focused new attention on the Electoral College. Critics say the 212-year-old system for choosing the president is anachronistic and anti-democratic, but supporters say it forces candidates to build national coalitions and discourages third-party candidates. Despite calls for abolishing or reforming the system, observers say changes are unlikely.



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CQ

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Dec. 8, 2000  
 Volume 10, No. 42

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The CQ Researcher (ISSN 1056-2036) is printed on acid-free paper. Published weekly, except Jan. 7, June 30, July 7, July 21, Aug. 11, Aug. 18, Dec. 1 and Dec. 29, by Congressional Quarterly Inc. Annual subscription rate for libraries, businesses and government is \$444. Single issues are available for \$10 (subscribers) or \$20 (non-subscribers). Quantity discounts apply to orders over 10. Additional rates furnished upon request. Periodicals postage paid at Washington, D.C., and additional mailing offices. POSTMASTER: Send address changes to The CQ Researcher, 1414 22nd St., N.W., Washington, D.C. 20037.

Cover: Palm Beach County Election Supervisor Theresa LePore and Republican lawyer Kevin Murphy examine a presidential ballot during hand tabulation of votes on Nov. 18. (AP Pool Photo/Greg Lovett)

# Electoral College

BY KENNETH JOST AND  
GREGORY L. GIROUX

## THE ISSUES

When all the counting and recounting in Florida is over, Dawn Guzzetta may turn out to be the only voter from Palm Beach County that really counts.

Guzzetta is one of Florida's 25 Republican "electors." Barring a turnaround victory for Democrats Al Gore and Joseph I. Lieberman, Guzzetta and the other Republican electors will meet in Tallahassee later this month to cast the state's electoral votes for George W. Bush and Richard B. Cheney, pushing them over the needed 270-vote mark and locking up the election.

A lobbyist for the county's Republican sheriff and a longtime campaigner for the Bush family, Guzzetta was thrilled to be chosen as a GOP elector this summer — the only one from Palm Beach County.

"Never did I think it would become so important — not only to be one of 25 in Florida but to be from Palm Beach County, where it seems like it's all going to be decided," she says. "That's an extra bit of fun, as you can imagine."

Florida's 25 electoral votes emerged as the critical prize in the 2000 presidential race in the early morning hours of Nov. 8, as the popular-vote totals from the other 49 states and the District of Columbia left neither Bush nor Gore with a majority of the nation's 538 electoral votes. But the popular vote in Florida was close — so close that four weeks later both Bush and Gore are claiming victory.

The tortuously close vote in the contest to elect the nation's 43rd



AP Photo/Gary I. Rothstein

Supporters of Democrat Al Gore and his running mate Joseph Lieberman protest the use of the "butterfly ballot" in Florida's Palm Beach County on Nov. 9, following the Nov. 7 presidential election.

president is giving Americans a crash course in the little-understood mechanics of the 212-year-old Electoral College voting system. Americans accustomed to thinking that they were directly voting for president and vice president now know that they are really voting for a number of electors from their state equal to the size of the state's congressional delegation: two senators plus the number of representatives, which is determined by the state's population.

In addition, Americans are learning that the presidential election is not over the morning after Election Day but continues through myriad other steps, including formal certification of the states' popular votes; meetings of the states' electors in their respective state capitals in mid-December; and the formal counting of electoral votes by a joint session of Congress in early January, two weeks before inauguration on Jan. 20.

The Electoral College has been controversial throughout U.S. history. More than 700 proposals to change it have been introduced in Congress over the past 200 years. Critics — many who favor direct election — call the college anachronistic and anti-democratic.

"The Electoral College is an antiquated institution that has outlived its purpose," says Sen. Richard J. Durbin, D-Ill., who is sponsoring a constitutional amendment for direct election of the president.

Supporters, however, view the Electoral College as a bulwark of federalism and the two-party system. In any event, the supporters say, it works — most of the time without a hitch.

For her part, Guzzetta sees no reason to change. "It makes sense to me from the standpoint that it's the Constitution, it's history," she says.

"And I'm part of it, so I'm a believer."

Along with the rest of the country, Guzzetta has closely followed Gore's efforts to reverse Bush's apparent victory — first by asking for manual recounts of the votes in Palm Beach and three other Florida counties and then by filing an election challenge in state court in Tallahassee on Nov. 27. The suit came the morning after Florida Secretary of State Katherine Harris certified Bush as the popular-vote winner in the state by a razor-thin margin of 537 votes.

Whether Bush or Gore wins, the election will mark the third consecutive time and the 17th instance in history that a president takes office with less than a majority of the popular vote. (Bill Clinton won 43 percent of the vote in 1992 and 49 percent in 1996.) And if Bush wins, he will become the fourth president — and the first since 1888 — to win the White House despite trailing in the popular vote. (See chart, p. 993.)

Critics of the Electoral College say the potential mismatch between the popular vote and electoral vote underscores the Electoral College's fundamental flaw. "Most Americans don't think the Electoral College is as fair

## Allocating the States' Electoral Votes

Each state is allotted electoral votes equal to the number of members it has in Congress: two senators for each state plus the number of members of the House of Representatives, which is determined by the state's population. The District of Columbia — which has no voting representative in Congress — is allotted three electoral votes under the 23rd Amendment. Nationwide, there are 538 electoral votes.

**Electoral Votes Allotted to Each State**



Source: Congress A to Z, 1999

as a direct election would be,” says Robert Richie, director of the Center for Voting and Democracy, a Takoma Park, Md., group headed by former third-party presidential candidate John B. Anderson.

“Every other office in the United States is elected on the basis of the person who gets the most votes,” Neal R. Peirce, co-author of *The Electoral College Primer 2000*, remarked shortly after Election Day. “But the Electoral College, for reasons no one can ever explain to you logically, values some voters over other voters. The result of this election, if it holds, would mean that a quarter-million-vote surplus for Mr. Gore nationally is worth less than a thousand or two thousand in Florida. Why?”<sup>1</sup>

Opinion polls consistently find majority support for direct popular vote. In a Gallup Poll conducted the weekend after the election, 61 percent of those surveyed favored direct election compared with 35 percent for keeping the current system. (*See poll, p. 994.*)

Supporters of the Electoral College, however, maintain that the system forces a winning presidential candidate to build a national coalition from many states. “Elections, especially presidential elections, are designed not just to voice opinions,” says Judith Best, a professor at the State University of New York in Cortland and author of several books and articles defending the Electoral College. “The goal is a president who can govern.”

The longevity of the system stems in part from the belief among some lawmakers that it gives smaller states protection against domination by the more populous states. At the same time, though, some large-state lawmakers say their states gain added political leverage because of the winner-take-all rule, which awards all of a state’s electors to the popular-vote winner, no matter how narrow the margin. Maine and Nebraska are the only states to use a different system — the so-called district plan, which awards one electoral vote to the candidate who carries each congressional district and two to the statewide winner.

Some academic experts discount arguments that the system causes



candidates to give disproportionate attention either to small or large states. But one prominent critic says the system actually encourages candidates to favor both.

“The Electoral College is sick in the sense that it seems to overrepresent the smaller states, the larger states and in the last election the competitive states, at least in terms of the resources that were devoted to them,” says Stephen Wayne, a professor of American government at Georgetown University in Washington.

But a leading defender of the Electoral College says it has served the country well, just as the Framers of the Constitution intended when they designed it in 1787. “They got it right the first time,” says Robert Hardaway, a law professor at the University of Denver and author of *The Electoral College and the Constitution*. “If we’re going to abolish the Electoral College, we will have to abolish the U.S. Senate and basically start this Constitution from scratch. And I don’t think people understand at this point the various ramifications of that.”

Abolishing the Electoral College in favor of direct popular election would require amending the Constitution — a daunting task that would require approval by two-thirds majorities in both houses of Congress and ratification by three-fourths of the state legislatures. Some changes could be enacted by state or federal law, however — such as allocating electoral votes by congressional district or

according to the proportion of the popular vote each candidate receives in the state. Smaller states are viewed as likely to block any constitutional amendment, while public support for lesser changes is difficult to mobilize.

Still, the 2000 race has put the issue on the national agenda for the first time in two decades. As the debate — and vote counting — continue, here are some of the major questions being considered:



Republicans for George W. Bush and Richard Cheney answer Gore-Lieberman supporters at a rally at the Palm Beach County elections office on Nov. 9.

AP Photo/Gary I. Rothstein

most presidential elections would be decided in the House of Representatives has not come to pass,” Hardaway writes.<sup>2</sup>

Other scholars have noted that the Electoral College produces decisive majorities. “By amplifying, or exaggerating, the margin of victory in the popular vote, it produces decisive results, or, at least, results that appear to be decisive,” Walter Berns, a resident scholar at the American

Enterprise Institute (AEI), has noted. “By amplifying the popular [vote] margin of victory, the Electoral College also gives us a clear and immediately known winner with a legitimate claim for the office.”<sup>3</sup>

Others say that the Electoral College requires presidential candidates to garner broad coalitions. “It’s designed to produce political majorities, not simply arithmetic ones,” Best says.

Indeed, Electoral College backers noted that the waning days of the current presidential and vice-presidential candidates to states as diverse as Oregon,

New Mexico, Wisconsin, Maine and New Hampshire — none of them electoral powerhouses.

But Akhil Amar, a Yale University law professor and Electoral College opponent, responds that anyone who achieves 51 percent of the popular vote requires a broad cross-section of support.

Electoral College opponents say the present system, far from requiring a broad electoral mandate, actually limits the playing field of presi-

### **Should the Electoral College be retained?**

Perhaps the most popular defense of the Electoral College is that it has served the country well. Why, Electoral College supporters ask, should we change the system — and the U.S. Constitution — when it has usually produced a clear winner?

In every election since 1824, “the Electoral College has produced a winner, and the prediction of many observers of the earliest days that

## Could a ‘Faithless Elector’ . . .

**A**s all Americans well know, the 2000 presidential election has been unable (as this article goes to press) to elect a president. Still, it has been able to clear up several misconceptions about selecting the nation’s chief executive.

For one thing, voters now better understand that they don’t vote directly for presidential candidates but choose

“electors” who have pledged to back presidential candidates.

Voters also know now that the popular-vote winner in a state doesn’t win the state’s electoral votes. Rather, the candidate wins the state’s slate of electors, who cast their votes on the first Monday after the third Wednesday in December — Dec. 18 this year.

The Framers of the Constitution intended electors to be worldly, deeply learned individuals who could exercise independent judgment. In recent years, though, electors have more often than not been party stalwarts who almost invariably backed the party nominee.

Occasionally, however, renegade electors — known as “faithless electors” — vote for another candidate. Of the more than 21,000 electoral votes cast in American history, fewer than a dozen were cast against instructions. Those instances, however rare, have raised questions as to whether electors are rubber stamps for their pledged candidate or are free agents who are free under the Constitution to vote as they wish.

Faithless electors have been around since at least 1796, when a Pennsylvania voter criticized a Federalist elector who voted for Thomas Jefferson instead of John Adams, the Federalist candidate: “Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be president? No, I chuse him to act, not to think.”<sup>1</sup>

On Jan. 6, 1969, when Congress counted the electoral votes from the 1968 election won by Republican Richard M. Nixon, Sen. Edmund S. Muskie, D-Maine, and Rep.

### Ties That Bind

*Twenty-nine states and the District of Columbia require presidential electors to vote for the candidate who carried the state. Michigan, North Carolina and Utah provide that a “faithless elector” — an elector who votes for some other candidate — is not counted and the remaining electors fill the vacancy. New Mexico, North Carolina, Oklahoma, South Carolina and Washington provide criminal penalties or fines for violations. But no “faithless elector” has ever been punished, and experts doubt whether it would be constitutionally permissible to do so.*

#### States That Bind Electors to the Popular-Vote Winner

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

*Sources: National Conference of State Legislatures, National Archives and Records Administration*

dential campaign activity to politically competitive “swing” states, such as Michigan and Pennsylvania. The two vote-rich states drew numerous campaign visits by the Bush and Gore campaigns because they were deemed too close to call for most of the campaign.

On the other hand, Texas and New York are more populous and have more electoral votes, but drew fewer candidate visits because they are not competitive politically — Texas is Bush’s home state and leans Repub-

lican, New York is heavily Democratic.

“Instead of having a national campaign, you have a targeted campaign in the most competitive states, from Pennsylvania across the Midwest and Florida,” says Georgetown’s Wayne. “So, in effect, the Electoral College was denying participation in the election to much of the country.”

Peirce and his co-author, Lawrence D. Longley of Lawrence University, concur: “Candidates have no incentive, under the Electoral

College, to waste campaign time or resources on a state or region already likely to go for — or against — them.”<sup>4</sup>

Other scholars say that a popular vote-electoral vote discrepancy could raise questions about the ability of a president to govern. In the immediate aftermath of the 2000 election, some political analysts said that the closeness of the race would give neither Bush nor Gore an electoral “mandate,” and that either man would find it difficult to govern.

## ... Change the Election Outcome?

James O'Hara, D-Mich., challenged — to no avail — a vote cast for independent candidate George C. Wallace by North Carolina ophthalmologist Lloyd Bailey, a Republican elector whose state Nixon carried. Bailey, a member of the ultraconservative John Birch Society, said that he had planned to vote for Nixon but didn't because he opposed some of Nixon's presidential appointments.<sup>2</sup>

Faithless electors could conceivably have changed the outcome of the 1976 race between Republican incumbent Gerald R. Ford and Democratic challenger Jimmy Carter. The race was so close — Carter won the electoral tally by 297-240 and the popular tally by 50-48 percent — that a shift of 9,246 votes in Ohio and Hawaii would have elected Ford president.

Bob Dole, who was Ford's vice-presidential running mate, candidly admitted the following year that Ford's campaign was preparing to sound out potential faithless electors if Ford had carried Ohio and brought the GOP ticket to within a few electoral votes of the 270 needed.

"We were shopping — not shopping, excuse me — looking around for electors," Dole told the Senate Judiciary Committee. "[I]t just seems to me that the temptation is there for [electors] in a very tight race to really negotiate quite a bunch."<sup>3</sup>

There was one faithless elector in 1976 — Mike Padden, a Republican elector from Washington state, who voted for Ronald Reagan instead of Ford because he felt Ford was not sufficiently opposed to abortion. The most recent faithless elector appeared in 1988, when West Virginia Democrat Margaret Leach voted for Democratic vice-presidential candidate Lloyd Bentsen for president instead of presidential candidate Michael S. Dukakis.<sup>4</sup>

As the 2000 presidential election inched toward a conclusion, neither presidential candidate had a majority of electoral votes, increasing the possibility that faithless electors could play a role. A victory by George W. Bush in Florida would give the Republican 271 electoral votes

to Democrat Al Gore's 267 electoral votes — just one vote more than the 270 needed to win.

Perhaps the most controversial move to attract renegade electors was initiated by Democratic strategist Bob Beckel, who sought to inform some GOP electors that they could vote for any candidate they wanted. But Gore said that he would not accept any renegades' votes.

Robert Lipkin, a law professor at Widener University in Chester, Pa., says that any Republican electors who vote for popular-vote winner Gore, which he said was unlikely, would be "both in line with the intent of the Framers and also out of line with it."

"They will be on the one hand voting out of a sense of conscience, which is what the Founding Fathers wanted them to do. But not to vote for the man who won the popular vote — that's what they didn't want them to do," Lipkin says.

Today, 29 states and the District of Columbia have laws binding electors to the popular-vote winners. But no faithless elector has ever been sanctioned, and many scholars say that those laws would not pass constitutional muster.

"Once electors are selected," says Glenn Reynolds, a law professor at the University of Tennessee, "states don't have the power to tell them how to act."

Indeed, Reynolds calls the term faithless elector a misnomer, arguing that "an elector who changes his or her mind is no more faithless than a member of Congress who campaigns on a platform of tax cuts and winds up voting for a tax increase."

<sup>1</sup> Quoted in Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer 2000* (1999), p. 24.

<sup>2</sup> *Congressional Quarterly Weekly Report*, Jan. 31, 1969, p. 184.

<sup>3</sup> Longley and Peirce, *op. cit.*, p. 78.

<sup>4</sup> *Congressional Quarterly's Guide to U.S. Elections*, 3rd ed. (2000), p. 351.

But AEI's Berns, testifying before the House Judiciary Constitution Subcommittee in 1997, noted that in 1888, the last time a popular-vote winner lost the presidency, "there was hardly a ripple of popular discontent, no complaints from the losing candidate, Grover Cleveland, that he had been cheated, no spate of editorials claiming that Benjamin Harrison was an illegitimate president."

Still, Berns added, the public probably would react differently today to a popular vote-electoral vote discrepancy because the "moral authority"

of the Electoral College has been undermined by repeated and unsuccessful attempts in Congress to replace the college by direct election.

Other Electoral College advocates liken the Electoral College to the World Series, in which the first team to win four games in a seven-game series wins, regardless of the run margins in each game. In the 1997 Series, for example, the Florida Marlins defeated the Cleveland Indians, four games to three, despite scoring fewer runs overall in the seven games.

Amar of Yale and Richie of the Center for Voting and Democracy say that, using the logic of Electoral College supporters, California and other big states should elect governors by electoral vote rather than by popular vote.

"If the Electoral College is so good, why don't we pick governors this way?" Amar asks.

Electoral College defenders also say that opponents have reached no consensus on what an alternative

*Continued on p. 985*

### Four Methods for Selecting the President, 1960-1996

Three major proposals have been made to revise the existing Electoral College system. The **proportional plan** would allocate a state's electoral votes on the basis of the proportion of the vote each candidate received. The **district plan** would award one electoral vote to the candidate who carried each congressional district and two votes to the candidate who carried the state as a whole. Under **direct election**, the candidate with the largest number of popular votes nationwide would be president. The district plan would have elected Richard M. Nixon in 1960 over John F. Kennedy, while the 1976 race between Gerald R. Ford and Jimmy Carter would have ended in an Electoral College tie. The proportional plan also would have thrown the 1960, 1968, 1992 and 1996 elections into the House of Representatives.

Current Electoral System vs. Three Proposals

Year	Candidates	Electoral College	Proportional plan	District plan	Direct election
1960	Nixon	219	266.1	278	49.5
	<b>Kennedy</b>	303	265.6	245	49.8
	Byrd	15	5.3	14	0.7
1964	Goldwater	52	213.6	72	38.5
	<b>Johnson</b>	486	320.0	466	61.0
	Others	0	3.9	0	0.5
1968	<b>Nixon</b>	301	231.5	289	43.2
	Humphrey	191	225.4	192	42.7
	Wallace	46	78.8	57	13.5
	Others	0	2.3	0	0.6
1972	<b>Nixon</b>	520	330.3	474	60.7
	McGovern	17	197.5	64	37.5
	Others	1	10.2	0	1.9
1976	Ford	240	258.0	269	48.0
	<b>Carter</b>	297	269.7	269	50.1
	Others	1	10.2	0	1.9
1980	<b>Reagan</b>	489	272.9	396	50.7
	Carter	49	220.9	142	41.0
	Anderson	0	35.3	0	6.6
	Others	0	8.9	0	1.7
1984	<b>Reagan</b>	525	317.6	468	58.8
	Mondale	13	216.6	70	40.6
	Others	0	3.8	0	0.6
1988	<b>Bush</b>	426	287.8	379	53.4
	Dukakis	111	244.7	159	45.6
	Others	1	5.5	0	1.0
1992	Bush	168	203.3	214	37.5
	<b>Clinton</b>	370	231.6	324	43.0
	Perot	0	101.8	0	18.9
	Others	0	1.3	0	0.6
1996	<b>Clinton</b>	379	262.0	345	49.2
	Dole	159	219.9	193	40.7
	Perot	0	48.8	0	8.4
	Others	0	7.3	0	1.7

Source: Stephen J. Wayne, The Road to the White House, 2000, June 2000



Continued from p. 983

voting system would look like. Michael Glennon, a law professor at the University of California-Davis, noted in his 1992 book about the Electoral College, “Just as Winston Churchill concluded about democracy, the Electoral College system is probably the worst possible method of choosing a president — except for all the others.”<sup>5</sup>

As the University of Denver’s Hardaway puts it, “the reformers have failed to achieve the one thing that the Constitutional Framers did achieve: a consensus.”<sup>6</sup>

### ***Should the president be elected by direct election?***

The most popular alternative to the Electoral College is to eliminate it entirely and simply let the popular-vote winner become president.

Proponents say that direct election preserves the principle of one person, one vote, while the Electoral College effectively disenfranchises millions of voters who vote for the losing presidential candidates in their respective states. For example, a candidate who loses a state with 500,000 votes does no better in the Electoral College arithmetic than another candidate who loses the same state with 400,000 votes. But under direct election, all the candidates’ votes would count toward their final popular-vote totals.

In this year’s election, the 4.5 million Californians who voted for Bush contributed to his overall popular-vote total. But their votes were

ultimately no help to Bush because Gore won more votes in California and thereby received all of the state’s electoral votes.

Moreover, proponents say direct election would eliminate the advantages the most populous and least populous states enjoy under the Electoral College. Longley and Peirce have noted that the most populous states benefit under the present system because of the winner-take-all format. The least populous

person’s vote in one state carries as much weight as another person’s vote in any other state.

But opponents fear that direct election would replicate on a national level the current vote-counting controversy in Florida. “And if we’re concerned about this [controversy] in Florida now, and how time-consuming that is, can you imagine under a popular-election scheme how many months it would take to do a revote in every single county and district in the entire United States?” Hardaway asks.

Even direct-election proponents recognize that danger. Georgetown University’s Wayne contends that direct election today would have produced what he calls “Florida times 50.” Direct election is “not feasible today,” he says, because of the problems like those with punch cards and ballot machines in Florida. Wayne supports wedding direct election with a national ballot (one that appears the same in every voting jurisdiction) and voting by computer.

Sen. Durbin acknowledges that a direct-election system would not necessarily make elections “cleaner or quicker.” But he said that selecting a president by a vote of the American people “is a much more convincing statement” than by a vote of the Electoral College, which Durbin calls a “subterfuge.”

Many direct-election proposals require a runoff election between the top two vote-getters if the leading candidate does not reach a certain threshold of the popular vote. The direct-election bill sponsored by Durbin would require the winning candidate to capture at least 40 percent of the popular vote.



Reuters/Rick Wilking

*Gov. George W. Bush tells the nation in a televised speech on Nov. 26 that he is “preparing to serve” as America’s next president after Florida’s secretary of state certified him as the winner of its crucial 25 electoral votes.*

states also benefit, they say, from having two at-large electoral votes — just as many as the other states. That leaves medium-sized states as the most disadvantaged under the present system.

Direct election would eliminate those biases by guaranteeing that one

In Wayne's view, a direct election would "probably invigorate" the party system. Richie of the Center for Voting and Democracy says it would prompt parties to focus on get-out-the-vote efforts everywhere, not just in select states that dominate the Electoral College calculus.

"Direct election gives each state an incentive to turn its voters out," Yale's Amar adds.

But opponents worry that direct election would lead to a proliferation of minor parties. They say that without the Electoral College, third parties would have a greater incentive to participate in the general election — and greater appeal to disaffected voters.

"Very soon," Hardaway writes, "the lure of getting a piece of the national popular tally would be too great for a multitude of minor and extreme parties to resist the incentive to compromise, to give and take, to come to terms with major parties."<sup>7</sup>

Another prominent argument in favor of direct election is that it eliminates the "faithless elector" problem — the possibility, however rare, that some renegade electors might vote for candidates to whom they did not originally pledge. In a close race, Electoral College opponents fear, the election could be decided not on Election Day but between then and mid-December, when electors cast their votes in their respective state capitals. Because the electors can vote for whomever they wish, some may be swayed by politicized deals or ideological views to abandon the candidate they pledged to vote for.

But Electoral College defenders note that such defections have been very rare and never jeopardized the outcome. (See sidebar, p. 982.)

Advocates of abolishing the college say that it is undemocratic to elect a president who receives fewer popular votes than another candidate who wins more electoral votes.

But, Hardaway argues that in Great Britain and other parliamentary democracies, "it is not uncommon for the country's leader to be chosen by party members receiving a minority

are made by public officials, not the general public.

### ***Should the Electoral College be retained but modified?***

A constitutional amendment abolishing the Electoral College is viewed as highly unlikely to win enactment, but many Electoral College advocates and detractors alike agree on the desirability of some lesser changes.

Proposed statutory changes include altering the way electoral votes are allocated. Forty-eight states and the District of Columbia adhere to the "winner-take-all" format, which gives the winner of a state's popular vote all of the electoral votes, regardless of the closeness of the vote.

Jennie Drage, an analyst with the National Conference of State Legislatures, says it is "quite likely" that state legislatures will consider changing their winner-take-all allocation plans to the district system used by Maine and Nebraska. Supporters of the district plan say it more closely approximates

each candidate's degree of support in a state.

Shortly after the Nov. 7 election, legislators in several states announced plans to introduce bills to change their state's electoral vote allocation method from winner-take-all to district. State Rep. Bill Mitchell, R-Ill., whose state went for Gore but has several solidly Republican congressional districts, introduced a district plan bill nine days after the election.

Another proposal is to award electoral votes in proportion to candidates' share of the statewide popular

*Continued on p. 988*



*Vice President Al Gore addresses the nation on television on Nov. 27, saying he will contest the decision by Florida's secretary of state to certify Florida's electoral votes for Gov. Bush.*

Newsmakers

of popular votes in the national election."<sup>8</sup>

Direct-election proponents also emphasize polls showing public support for abolishing the Electoral College. But critics of direct election question the validity of surveys that ask "loaded" questions such as, "Do you think the presidential candidate who gets the most popular votes should be elected?" Moreover, they say, most Americans likely are not even aware of the Electoral College or its complexity, or that the Founding Fathers envisioned a representative democracy in which decisions

# Pressure Grows for Election Reform

Americans may not agree about who won the presidential election or whether the Electoral College should be abolished. But the close-up look at counting the votes in Florida has created a broad consensus that election procedures need an overhaul.

"This is a tremendous opportunity to look at this process and try to find some ways to administer elections more accurately and more efficiently," says Gary McIntosh, director of elections in Washington state and president of the National Association of State Election Directors.

"You can't be a first-world power using Third World technology on something as important as elections," says William Lash, a law professor at George Mason University in Fairfax, Va.

Following the election, leading senators in both parties introduced bills to study how to improve election procedures and help state and local governments pay for changes.

"We're the most successful democracy in the history of the world, and yet we can't figure out how to make voting a positive experience for everyone," says Sen. Charles E. Schumer, D-N.Y. His bill calls for a \$10 million study of voting procedures by the Federal Election Commission and \$250 million in matching federal grants to carry out the FEC's recommendations.

"We can do much, much better on how we vote on federal elections," says Sen. Arlen Specter, R-Pa. His bill calls for a bipartisan, five-member commission appointed by congressional leaders and the president to study the issues and recommend changes.

The messy count in Florida has given Americans a crash course in voting procedures and technology — from the confusing "butterfly ballot" used in Palm Beach County to the obsolescent punch-card systems used in most of the state and much of the nation. Election law experts — as well as rank-and-file voters — have urged changes ranging from a uniform national ballot to voting on the Internet.

Among all the proposals, one that seems to command the widest agreement is phasing out punch cards. The technology — introduced in the 1960s — performs unevenly, experts say. "There are ballots that a human would treat as marked, but the machine doesn't treat as marked," says Richard Briffault, an expert on election law

at Columbia University in New York City.

In Florida, counties using punch-card systems reported that about 4 percent of the 6 million ballots cast (240,000 ballots) were voided — almost triple the 1.4 percent rate in counties using optical-scanning systems. The nationally televised spectacle of election workers looking for incompletely detached "chads" on punch cards may spell the doom of the technology.

"I don't think you're going to hear the word chad in the federal lexicon after this election is over," Lash says.

Other proposals are more controversial. A uniform national ballot would collide with the tradition of state administration of elections. And Internet voting — either at a polling place or from a remote location such as voters' homes — poses a host of vexing privacy and security issues. On the other hand, computer touch-screen voting at polling places is widely applauded as convenient and reliable.

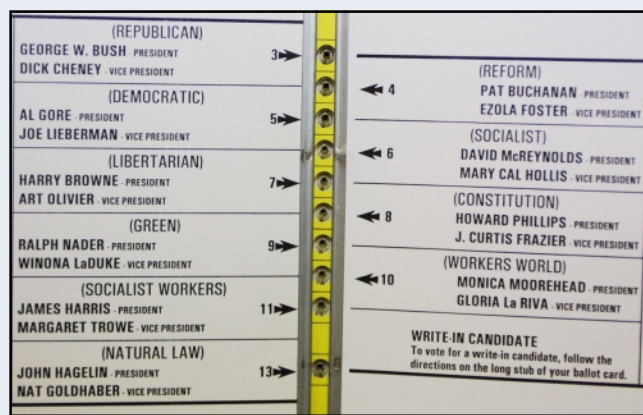
Election officials have been aware of problems in voting and counting procedures for years, says McIntosh. "Many of the systems that we use today are archaic," he says. "They're used because they're easy to program and easy to set up. There's not much of an incentive for change."

With little public attention except at election time, there is also little pressure to devote more resources to voting procedures. "Election administration is given the back of the hand," Briffault says.

The Florida recount also has brought calls to make election offices nonpartisan. In most states — including Florida — election offices typically are under the secretary of state, a position usually filled in partisan elections. Florida Secretary of State Katherine Harris, a Republican, made pivotal decisions favorable to Texas Gov. George W. Bush after having served as a co-chair for Bush's state campaign.

Briffault says efforts to change procedures should be bipartisan and non-controversial. "No party is really advantaging from this situation," he says.

McIntosh worries that the public may lose interest in the issue after the election is over, but Lash thinks pressure for change will prove to be more long-lasting. "The public is going to demand that Congress give this a hard look and make sure that funding is available to poorer states and counties that can't afford to do it," Lash says.



AP Photo/Gary I. Rothstein

*Some voters in Palm Beach County complained they voted for Reform Party candidate Pat Buchanan instead of Al Gore because the "butterfly ballot" was confusing.*



*Continued from p. 986*

vote, though that has received less attention than the district plan.

“The problem is not so much the Electoral College as the winner-take-all method of voting,” Wayne says. “If you can change to proportional voting or district voting, that would be better.”

But Democrats probably would oppose the district plan because it would appear to favor Republicans in close elections. The most heavily Democratic and minority districts in the country give Democratic presidential candidates more than 85 percent of the vote, whereas the most heavily Republican districts give GOP candidates much smaller winning percentages.

Either the district or the proportional-vote plan would have changed the results in some recent presidential elections. The district plan, for example, would have given the 1960 election to Richard M. Nixon over John F. Kennedy and would have resulted in a 269-269 electoral vote tie in 1976 between Jimmy Carter and Gerald R. Ford. The proportional vote plan would have thrown four recent elections into the House of Representatives: the 1960 contest; the three-way race in 1968 between Nixon, Hubert H. Humphrey and George Wallace; and Clinton’s races against George Bush in 1992 and Bob Dole in 1996. (*See chart, p. 984.*)

When the 2000 presidential election results are classified by congressional district, political observers expect that they will show Bush would have won under the district plan.

Opponents of the district plan worry that allotting electoral votes by congressional district would exacerbate political gerrymandering — when state legislators redraw congressional districts to maximize their political advantage.

“Most district lines are not shaped coherently, they are shaped politi-

cally,” says Richie of the Center for Voting and Democracy, adding that candidates “shouldn’t be punished for having more support in some areas than others.”

Richie supports a method of voting called “instant runoff voting,” which would let voters rank their preference of candidates. If no candidate received a majority of votes, the votes of any third-party candidates would be redistributed between the top two candidates. Richie said that instant runoff voting is more efficient because it simulates a runoff on Election Day and saves taxpayers the cost of holding another election on a different date.

Another proposed change would eliminate the actual position of “elector” and award electoral votes automatically on the basis of a state’s vote — thus eliminating the “faithless elector” problem. “We don’t need them any more,” Professor Best says. Unlike other specific changes, however, that one would require a constitutional amendment, she says. ■

## BACKGROUND

### An ‘Excellent’ System

The Framers of the Constitution struggled to devise the method of electing the president of the new government they were creating in the summer of 1787. The hybrid system — only later called the “Electoral College” — represented a victory for supporters of a strong chief executive, a compromise between large and small states and a partial bow to advocates of a role for popular opinion in the process.<sup>9</sup>

Despite the difficulties, the Framers pronounced themselves satisfied with

the result. The system, Alexander Hamilton wrote in *The Federalist Papers* No. 68, was “if . . . not perfect . . . at least excellent.”<sup>10</sup>

In historical hindsight, many critics have viewed the system as congenitally flawed; and, in fact, the system was significantly changed after the new government’s fourth presidential election in 1800. As modified, however, the system has survived for another two centuries.

Delegates to the Constitutional Convention considered a variety of ways to choose the president, ranging from direct popular election to selection by Congress. The few supporters of direct popular election — including the influential Virginian James Madison — could not overcome the fears of “mob rule” among the majority of delegates. Instead, the convention voted four times to let Congress elect the president. But that idea engendered continuing opposition from delegates who feared the chief executive would thereby be subservient to the legislative branch.

Early in the convention, James Wilson of Pennsylvania suggested indirect election by electors chosen from the states. Over the summer, the idea gained support as a second-best option. But the issue remained unsettled and was referred, along with many others, on Aug. 31 to an 11-member “Committee on Postponed Matters.” Within the committee, John Dickinson, who had served as chief executive of both Delaware and Pennsylvania, argued at a critical point that a powerful chief executive would be accepted only if the people were somehow involved in the selection. His stance prompted Madison to take out pen and paper and sketch what emerged — with one slight change — as the convention’s final choice.

Madison’s solution gave something to all sides, as journalist Fred Barbash

*Continued on p. 990*



# Chronology

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## *Before 1800*

***U.S. Constitution establishes the Electoral College system for electing the president.***

### **1787**

Constitution provides for president to be elected by “electors” appointed by states; each state free to determine method of choosing electors; plan calls for second-place finisher to become vice president and for House of Representatives to elect president if no candidate has majority.

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***1800s*** ***Electoral College is tested in three contentious elections but survives with one significant modification; states gradually move to popular election of presidential electors.***

### **1800-1801**

Presidential election is thrown into House, which takes 36 ballots to pick Thomas Jefferson over Aaron Burr.

### **1804**

The 12th Amendment provides for separate election of vice president.

### **1824-25**

John Quincy Adams trails in popular vote and electoral vote to Andrew Jackson but is elected president after one House ballot.

### **1830s**

Most states adopt popular election of presidential electors; by 1860, only South Carolina lets state legislature choose.

### **1845**

Congress adopts uniform national

Election Day: first Tuesday after first Monday in November.

### **1876-77**

Rutherford B. Hayes is elected president with one-vote Electoral College majority, 185-184, after 15-member commission splits along party lines in awarding him disputed votes from three Southern states.

### **1887**

Electoral Vote Count Act specifies state legislatures’ authority to adopt procedures for choosing electors.

### **1892**

Michigan law awarding electoral votes by congressional district upheld by U.S. Supreme Court; in November election state gives nine votes to Republican Benjamin Harrison and five to Democrat Grover Cleveland. Law is repealed before next presidential election.

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## *1900s-Present*

***Electoral College issue surfaces periodically, but no constitutional amendment emerges from Congress.***

### **1950**

Senate approves “proportional vote” plan to divide state electors on basis of popular vote; House kills measure.

### **1960**

John F. Kennedy wins Electoral College majority over Richard M. Nixon, 303-219; popular-vote margin is closest in 20th century. Fourteen unpledged electors and one “faithless” Republican elector vote for Sen. Harry F. Byrd, D-Va.

### **1968**

Nixon wins Electoral College majority over Democrat Hubert H. Humphrey and third-party candidate George Wallace (301-191-46); Nixon and Humphrey had both vowed not to negotiate with Wallace if election thrown into House.

### **1969**

House approves constitutional amendment to shift to direct popular election of president; measure dies after Senate filibuster in 1970. Maine, in 1969, replaces winner-take-all with district-by-district system.

### **1980-1988**

Electoral College issue fades as Republican candidates win three successive elections with decisive popular votes and electoral majorities. One Democratic elector in 1988 votes for vice-presidential nominee Lloyd Bentsen to protest system.

### **1992**

Strong third-party bid by H. Ross Perot stirs fears of throwing election to House, but Bill Clinton wins Electoral College majority as Perot fails to carry any state. Nebraska adopts district voting for electors.

### **2000**

Democratic Vice President Al Gore edges Republican Gov. George W. Bush of Texas in popular vote, but Electoral College outcome turns on close count in Florida; Gore and Bush vie in courts over recount.

### **2001**

New Congress convenes, Jan. 3; meets Jan. 6 to count electoral votes for president and vice president; inauguration, Jan. 20.

## Why the Framers Created the Electoral College

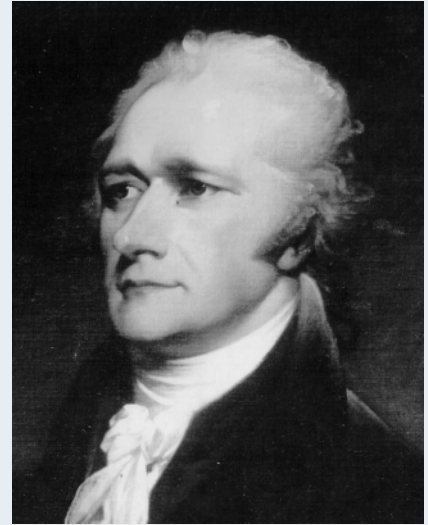
Alexander Hamilton explained the Framers' reasons for creating the Electoral College to elect the president in *The Federalist No. 68*, one of the celebrated essays that James Madison, John Jay and Hamilton wrote in 1788 urging ratification of the Constitution:

"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 pre-established 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. . . .

"It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. . . . [A]s 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 are all to be convened at one time, in one place."



Alexander Hamilton

Continued from p. 988

explained in *The Founding*, his bicentennial reconstruction of the convention's proceedings. The decision to allot electoral votes based on the number of senators and representatives from each state favored large-population states like New York and Pennsylvania and the South, where slaves were counted under the infamous three-fifths formula — each slave was counted as three-fifths of a person — for determining congressional apportionment.

But Madison accommodated small states, such as New Jersey and Connecticut, by providing that if no candidate received a majority of the electors' votes, the Senate — with equal representation among the 13 states — would choose the president from among the five candidates with the highest number of votes.

The plan sought to prevent the presidential electors from becoming another power-hungry branch of government by requiring them to meet only in their respective state capitals rather than as a single body.

The plan also envisioned the electors typically serving as a nominating body, with the final choice often likely to devolve on Congress. Indeed, it reinforced that possibility by providing that each elector would cast two votes for president — with the second-finishing candidate becoming vice president.

The convention approved the plan with one minor change: The House rather than the Senate would choose the president if no candidate received an electoral vote majority. Each state would still have an equal voice — one vote each. The final plan did not spell out, however, how each congressional delegation would arrive at its single vote. And it gave the Senate the job of electing the vice president if no candidate received a majority.

The Framers expected the electors — as Hamilton explained in *The Federalist No. 68* — to be "men . . . most capable of acting under circumstances favorable to deliberation." The anticipated deliberation never happened. George Washington was elected president twice unanimously in 1789 and 1792.

By then, political parties had begun to form. The Federalist John Adams was narrowly chosen as vice president for a second term in 1793. Then in 1796 Adams barely defeated the anti-Federalists' leader, Thomas Jefferson, for the presidency, 71-68. Though political adversaries, Adams and Jefferson served as president and vice president together for four years.

### Electoral Contention

The Electoral College system was sorely tested in three contentious elections in the 19th century: Two were thrown into the House of Representatives (1800, 1824), and a third was decided by a commission specially created by Congress (1876). In three races — 1824, 1876 and the 1888 contest between Grover Cleveland and Benjamin Harrison — a candidate became president with an Electoral College majority after placing second in the popular vote. De-

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spite the controversies, reform efforts failed to advance, although the system evolved to give voters the decisive role in determining how the states' electoral votes were to be cast.

The election of 1800 marked the new republic's first change of power from one party to another, but the Electoral College system confounded the decision-making process. Adams ran for re-election on a Federalist ticket with Charles Pinckney for vice president; Jefferson was the anti-Federalist (Republican) candidate for president with Aaron Burr — a New Yorker credited with winning his state for the party — for vice president.

Jefferson and Burr led in electoral votes, but with no differentiated votes for president and vice president, none of the candidates had a majority. The contest went to the House, which elected Jefferson on the 36th ballot after the Federalist Hamilton threw his support to Jefferson over the mercurial Burr.

The election demonstrated the impracticality of having electors cast two undifferentiated votes for president. The House in 1802 approved a proposal to separate the presidential and vice-presidential elections, but it fell one vote short of the necessary two-thirds majority in the Senate. The next Congress, with a solid Republican majority, approved the amendment in December 1803 over Federalists' opposition. States quickly ratified the 12th Amendment in time for the 1804 election. Besides changing the vice presidential election, the amendment also reduced to three the number of candidates for the House to consider in the event of no electoral vote majority.

The House again elected the president in 1824 after a four-way race left no candidate with an electoral vote majority. Andrew Jackson led John Quincy Adams, 99-84, with former Treasury Secretary William Crawford and Sen. Henry Clay trailing with 41

and 37 votes, respectively. In the House, Clay threw his support to Adams, who was elected on the first ballot. Jackson and his supporters, already angry at the defeat in the face of his popular vote and electoral vote margins, raised charges of political corruption when Adams then named Clay as secretary of State.

By the 1830s, the Electoral College had evolved into something like the present system. By 1824, a substantial majority of states — 18 of 24 — chose presidential electors by popular vote. By 1860, only South Carolina still gave the power to the legislature. The idea of electors' exercising independent judgment had long since disappeared: Electors were chosen on the basis of party loyalty. States had also uniformly shifted to winner-take-all systems. And in 1845 Congress established a uniform national election day: the first Tuesday after the first Monday in November.

The Electoral College's gravest test came in the 1876 contest between Democrat Samuel J. Tilden and Republican Rutherford B. Hayes. Tilden led the popular-vote count and initially appeared to have a comfortable electoral vote majority. But Republicans raised accusations of voting irregularities to challenge the results in Florida, Louisiana and South Carolina.

Presented with rival electoral slates from the three states, Congress created a bipartisan, 15-member commission to resolve the dispute. Supreme Court Justice Joseph Bradley, a reputedly independent Republican, voted with the seven other Republicans on the panel to certify the GOP slates and give Hayes a 185-184 victory. Hayes squelched potential opposition from Southern Democrats by agreeing to withdraw federal troops from the South once in office — effectively ending Reconstruction.

Throughout the 19th century, more than 200 proposals to revise the Elec-

toral College were introduced in Congress. Two proposals recurred: one to require states to allot electors by congressional district, another to award electors proportionately according to the state's popular vote. Both ideas failed because states saw the winner-take-all system as enhancing their political power.

## A Workable System?

Critics of the Electoral College continued to offer proposals for change during the 20th century. Twice, they got as far as winning approval for an amendment from one chamber of Congress — but never further. Public opinion appeared to back direct election of the president. But the system uniformly produced electoral vote majorities for popular-vote winners, reducing any pressure for change.

The critics' arguments centered on two purportedly dangerous scenarios: the possibility of either throwing the election to the House or installing a second-place finisher in the White House. Neither fear materialized. Third-party candidates won electoral votes in 1912, 1924, 1948 and 1968, but never enough to create a deadlock.

The closest race was in 1968, when former Alabama Gov. George C. Wallace, running on a states'-rights platform, carried five Southern states for 46 electoral votes. Republican Richard M. Nixon nonetheless gained an electoral majority, 301-191, over Democrat Hubert H. Humphrey. Nixon and Humphrey both maintained that they would not have negotiated with Wallace for support. For his part, Wallace later told journalist Peirce that he would have tried to instruct his electors to go for Nixon rather than let the contest go to the House.<sup>11</sup>

# ELECTORAL COLLEGE

As for the popular-vote issue, the first-place finisher won an Electoral College majority in every election from 1892 until this year's race — even in close contests. Democrat Kennedy had a narrow 118,000-vote margin over Nixon in 1960 but a comfortable 303-219 electoral majority; Nixon won the 1968 electoral count while finishing fewer than 500,000 votes ahead of Humphrey.

Of the various reform proposals offered by critics, only two won approval by one or the other chamber of Congress. In 1950, the Senate approved, 64-27, a “proportional vote” plan to divide each state's electoral votes according to the candidates' popular vote. Supporters — Democrats and moderate and liberal Republicans — argued the plan would more accurately reflect the popular vote. Opponents warned that it would encourage creation of third parties. After Senate

passage, the House killed the measure, 134-210. Republicans came to fear the plan would strengthen the power of the then solidly Democratic South, while liberal Democrats worried it would weaken the influence of big-city states.<sup>12</sup>

With the three-way 1968 contest fresh in mind, opponents of the Electoral College achieved their greatest success in 1969, when the House voted 338-70 to scrap the system altogether in favor of direct popular election of the president, with a runoff if no candidate received more

than 40 percent of the vote. The lawmakers' lopsided vote followed a closer 162-246 vote to substitute a different reform plan: mandatory district-by-district allocation of electoral votes.

A year after House passage, however, the direct-vote measure died in the Senate, victim of a filibuster by Southern and small-state sena-

were surprised by defections from a dozen Northern liberals — including nine Democrats and three Republicans, most from big states. Bayh said lobbying by Jewish and civil rights groups — which saw the Electoral College as helping liberals carry big-city states — combined with the lack of public interest in the issue to kill the amendment.<sup>14</sup>

The issue faded even further through the 1980s as Republicans Ronald Reagan and George Bush reached the White House with decisive electoral vote victories. But a seemingly strong third-party bid by political maverick H. Ross Perot in 1992 renewed concern about an Electoral College deadlock. Perot's support dropped, however, after he withdrew from and then returned to the race. He managed to win 18.9 percent of the popular vote — the highest third-party total since 1912 — but ended with no electoral votes since he did not carry any state.



AP Photo/Charles Rex Arbogast

*Judge Charles Burton, chairman of the Palm Beach County vote-canvassing board, examines a ballot with Democratic lawyer Mark White, left, and Republican lawyer John Bolton on Nov. 26. County officials halted their recount after Florida's secretary of state rejected a request for more time for the manual recount.*

tors. Supporters — led by Sen. Birch Bayh, D-Ind. — failed twice to cut off debate in 1970, first falling six votes short of the three-fifths majority needed, and then five votes short.<sup>13</sup>

Bayh pushed the direct-vote plan throughout the 1970s and succeeded in getting the proposal to the Senate floor again in 1979. But the 51-48 vote in favor of the amendment fell 15 short of the two-thirds majority needed. A majority of Republicans and Southern Democrats opposed the plan, as expected. But supporters

## Electoral Cliffhanger

Al Gore and George W. Bush wrapped up their parties' nominations for the presidency early in the 2000 campaign and swapped leads in public-opinion polls at the end of the parties' respective national conventions. Political observers of all persuasions were forecasting one of the closest presidential contests in history. Then, as Election Day neared,

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## Americans Have Elected 17 'Minority' Presidents

George W. Bush or Al Gore will be the 17th U.S. president to be elected with a minority percentage of the popular vote. Three presidents actually trailed their opponents in the popular vote: John Quincy Adams was elected by the House in 1825 after placing second in a four-way race; Rutherford B. Hayes was elected in 1856 after a special commission awarded him disputed electoral votes from three Southern states; and Benjamin Harrison won an electoral-vote majority in 1888 even though Grover Cleveland led the popular vote.

### Percentages of popular vote received in elections that elected a "minority" president (shown in boldface)

Year/ Candidate	Percent of popular vote	Year/ Candidate	Percent of popular vote	Year/ Candidate	Percent of popular vote
<b>1824</b>		<b>1880</b>		<b>1916</b>	
Jackson	41.34	<b>Garfield</b>	<b>48.27</b>	<b>Wilson</b>	<b>49.24</b>
<b>Adams</b>	<b>30.92</b>	Hancock	48.25	Hughes	46.11
Clay	12.99	Weaver	3.32	Benson	3.18
Crawford	11.17	Others	0.15	Others	1.46
<b>1844</b>		<b>1884</b>		<b>1948</b>	
<b>Polk</b>	<b>49.54</b>	<b>Cleveland</b>	<b>48.50</b>	<b>Truman</b>	<b>49.52</b>
Clay	48.08	Blaine	48.25	Dewey	45.12
Birney	2.30	Butler	1.74	Thurmond	2.40
<b>1848</b>		St. John	1.47	H. Wallace	2.38
<b>Taylor</b>	<b>47.28</b>	<b>1888</b>		<b>1960</b>	
Cass	42.49	Cleveland	48.62	<b>Kennedy</b>	<b>49.72</b>
Van Buren	10.12	<b>Harrison</b>	<b>47.82</b>	Nixon	49.55
<b>1856</b>		Fisk	2.19	Others	0.72
<b>Buchanan</b>	<b>45.28</b>	Streeter	1.29	<b>1968</b>	
Fremont	33.11	<b>1892</b>		<b>Nixon</b>	<b>43.42</b>
Fillmore	21.53	<b>Cleveland</b>	<b>46.05</b>	Humphrey	42.72
<b>1860</b>		Harrison	42.96	G. Wallace	13.53
<b>Lincoln</b>	<b>39.82</b>	Weaver	8.50	Others	0.33
Douglas	29.46	Others	2.25	<b>1992</b>	
Breckinridge	18.09	<b>1912</b>		<b>Clinton</b>	<b>43.01</b>
Bell	12.61	<b>Wilson</b>	<b>41.84</b>	Bush	37.45
<b>1876</b>		T. Roosevelt	27.39	Perot	18.91
Tilden	50.97	Taft	23.18	Others	0.64
<b>Hayes</b>	<b>47.95</b>	Debs	5.99	<b>2000</b>	
Cooper	0.97			Bush	48.56
				<b>Gore</b>	<b>48.77</b>
				Nader	2.67
				Others	0.00

Source: Michael Nelson, ed., Guide to the Presidency, 1996, Congressional Quarterly

## Public Would Abolish Electoral College

Nearly two out of three Americans favor abolishing the Electoral College and electing the president by direct popular vote. Similar majorities have backed the idea in surveys since 1966. People with higher education levels are less likely to favor changing the system.

### Which would you prefer:

- To amend the Constitution so the candidate who receives the most total votes nationwide wins the election?
- To keep the current system, in which the candidate who wins the most votes in the Electoral College wins the election?

### Respondents' Education Level

	Total	Post-graduate	College Graduate	Some College	High school or less
<b>Amend the Constitution</b>	61%	48	52	63	65
<b>Keep the Current system</b>	35%	46	44	34	30

Source: Poll taken by Gallup Organization, Nov. 11-12, 2000

Continued from p. 992

experts and strategists were openly speculating that one candidate might win the popular-vote contest only to lose the presidency on electoral votes.

In the most common scenario, observers speculated that Bush — who led in the polls in the week before the election — could lead the popular vote while Gore won an Electoral College majority by capturing most of the country's biggest states, including California and New York, where he held commanding leads. Less frequently, observers speculated that Gore might win the popular-vote tally while Bush claimed the electoral vote by sweeping the Sun Belt and Mountain states, including the third and fourth biggest prizes: Texas and Florida.

The possibility of a disparity between the popular vote and the electoral vote worried some political observers. "This has been a constitu-

tional crisis waiting to happen," Jeff Manza, a sociology professor and political analyst at Northwestern University in Chicago, remarked two weeks before the election. "The new president's mandate would be lost or muddled," James Thurber, director of the Center for Presidential and Congressional Studies at American University, warned.<sup>15</sup>

The fears prompted Sen. Durbin to renew his sponsorship of a constitutional amendment to abolish the Electoral College. "Our current system disenfranchises millions of voters who happen to vote for the losing presidential candidate in their state," Durbin said.

Other experts and observers, however, were untroubled. "Only simple-minded majoritarianism holds that the 'nation's will' would be 'frustrated' and democracy 'subverted' . . . were an electoral vote majority to go to a candidate who comes in a close

second in the popular-vote count," columnist George F. Will wrote days before the election. "It's not very probable," political scientist Best remarked, "and, anyway, it isn't the disaster that the fearmongers would make it seem."<sup>16</sup>

In any event, the prevailing wisdom before the election held the possibility of a popular vote-electoral vote mismatch to be slim at most. A Washington Post reporter termed the speculation "fun but not frightening."<sup>17</sup>

Gore and Bush, however, apparently never directly addressed the issue of revising the Electoral College during the 2000 campaign. In fact, neither was on record on the question. Interestingly, though, both candidates' fathers had supported abolishing the Electoral College while serving in Congress. Bush's father voted for the popular-election constitutional amendment while serving in the House in 1969. Gore's father — the late Sen. Albert Gore Sr., D-Tenn. — voted the next year with opponents of the Electoral College in an unsuccessful effort to end the filibuster that blocked a vote on the amendment in the Senate.

On the eve of the election, officials in both campaigns were predicting complete victories for their candidates. Karl Rove, Bush's chief strategist, was forecasting a six- or seven-point margin in the popular vote and "a substantial margin" of around 320 electoral votes. Gore campaign Chairman William Daley predicted a two-and-a-half to three-point margin and 290 electoral votes.<sup>18</sup>

The actual election results confounded the experts: Gore held a popular-vote lead of about 200,000 votes the day after the election, while the electoral vote outcome hung on the close contest in Florida. On Nov. 8, as Florida began a mandatory recount under state law, Gore acknowledged that his popular-vote victory was not determinative.

“Despite the fact that Joe Lieberman and I won the popular vote,” Gore said, “under our Constitution, it is the winner of the Electoral College who will be the next president.”

For his part, Bush expressed confidence in an ultimate victory. “It’s going to be resolved quickly,” he said of the Florida recount. Then, with running mate Cheney at his side, Bush declared: “I’m confident that the secretary and I will be president-elect and vice president-elect.” ■

## CURRENT SITUATION

### Recounts and Contests

Nearly three weeks after 6 million Floridians cast their ballots in the presidential election, the state’s three-member canvassing board announced the “certified” results in a nationally televised, early Sunday evening session on Nov. 26. The count gave Bush a 537-vote victory over Gore: 2,912,790 to 2,912,253.

“Accordingly, on behalf of the State Elections Canvassing Commission and in accordance with the laws of the State of Florida,” Secretary of State Harris concluded, “I hereby declare Gov. George W. Bush the winner of Florida’s 25 electoral votes for the president of the United States.”

Harris’ announcement of a normally routine post-election procedure followed an extraordinary political and legal drama that included contentious and excruciatingly tedious manual recounts of votes in several of Florida’s 67 counties and lawsuits that traversed

state and federal courts up to the U.S. Supreme Court. And far from concluding the election, the announcement only set the stage for an unprecedented election contest by Gore in Florida courts challenging the officially certified results as inaccurate.

#### *Election Night Miscues*

The drama began at 8 p.m., Eastern time, on Election Night, Nov. 7, when the television networks all projected Gore to be the winner in Florida — only to withdraw the projection two hours later, then declare Bush the winner four hours after that.

requiring an automatic recount whenever the margin in a race is less than one-half of 1 percent of the votes cast. Over the next four days, most counties in the state completed machine recounts — and Bush’s margin fell to 327 votes. Meanwhile, the Gore campaign had asked for hand recounts in four heavily Democratic counties: Volusia, along the central East Coast, and Broward, Palm Beach and Dade in South Florida.

The Gore request came against the backdrop of a controversy over the purportedly confusing presidential ballot used in Palm Beach County. The so-



AFP Photo/Peter Muhly

*Florida Secretary of State Katherine Harris announces the certification of Florida’s presidential ballots on Nov. 26, giving 2,912,790 votes to Republican George W. Bush and 2,912,253 to Al Gore — a 537-vote margin.*

With Florida listed in the Bush column, Gore called the Texas governor to concede but retracted the concession in a second call after an aide convinced him that the outcome was not yet known. Around 4 a.m., the networks changed their minds again and pronounced the race too close to call.

The unofficial Bush lead of 1,784 votes in Florida triggered a state law

requiring an automatic recount whenever the margin in a race is less than one-half of 1 percent of the votes cast. Over the next four days, most counties in the state completed machine recounts — and Bush’s margin fell to 327 votes. Meanwhile, the Gore campaign had asked for hand recounts in four heavily Democratic counties: Volusia, along the central East Coast, and Broward, Palm Beach and Dade in South Florida. The Gore request came against the backdrop of a controversy over the purportedly confusing presidential ballot used in Palm Beach County. The so-called butterfly ballot — designed by a Democratic election official Theresa LePore — listed the 10 presidential and vice-presidential tickets in two, side-by-side columns rather than a single vertical column. The perforated boxes on the punch card, however, were arranged in a single column. As a result, even though the Gore-Lieberman ticket appeared immediately below the Bush-Cheney slate in the left column, the Gore box was

third on the punch card — immediately below the box for Reform Party candidates Pat Buchanan and Ezola Foster.

Gore campaign officials said that many voters found the ballot confusing. They claimed that the confusion was the only explanation for Buchanan’s disproportionately high showing of some 3,400 votes in the county and the large number of

ballots discarded with two boxes punched out — for Gore and Buchanan.

Lawyers representing some county voters filed a state court suit, claiming the design violated state law requiring that ballots for electronic or electromechanical voting systems list candidates “as far as practicable in the order of arrangement provided for paper ballots.” As a remedy, they asked for a new vote in the county.

The major legal dispute, though, turned on the deadline for counties to submit election returns to Harris’ office. In one longstanding section, Florida law provided that any returns not submitted by 5 p.m. of the seventh day after the election “shall be ignored.”

Another section added in 1989, however, provided that returns received after the deadline “may be ignored.” With manual recounts incomplete in the three South Florida counties, the apparent conflict between the two sections left unclear whether the amended totals could be included in the final returns. Harris said she would enforce the deadline and ignore late-filed recounts — triggering accusations of partisanship from the Gore campaign and a suit by the Volusia County election board, later joined by the Palm Beach board, seeking to force her to accept the recounts when finished.

Leon County Circuit Judge Terry Lewis gave the Gore campaign an initial boost on Nov. 14 by ruling that Harris had to exercise discretion in determining whether to accept or

reject late-filed returns. The next day, Harris reaffirmed her original position, saying the discretion for late filings was intended only in cases of mechanical breakdowns or natural disasters.

After a second round of arguments — this time by lawyers for Gore and the Florida Democratic Party — Lewis ruled on Nov. 17 that Harris had adequately complied with his previous order and upheld her decision to reject the recounts.

The ruling seemed to be a fatal setback for Gore, but the Florida

decision requiring Harris to include the late-filed returns before certifying the results.

“An accurate vote count is one of the essential foundations of our democracy,” the court declared. The right to vote, the justices said, took precedence over what they called “a hypertechnical reliance” upon the seven-day deadline provision. With no other deadline set in the law, the court itself created one. It said Harris must include any returns submitted by 5 p.m., Sunday, Nov. 26 — or by 9 a.m., Monday, Nov. 27, if her office was not open on Sunday.

### **Chad Fever**

The state high court ruling touched off a frenzy of activity as the Thanksgiving holiday weekend approached. Election workers in Broward, Dade and Palm Beach counties worked in round-the-clock shifts, peering at punch-card ballots to try to discern voters’ intentions from chads that were either partially detached (“hanging”) or indented (“dimpled” or “pregnant”). Bush’s lawyers insisted the process

was inherently subjective. But Democrats defended the procedure, saying that it complied with Florida law — and with a Texas statute that Bush himself had signed.

By Saturday evening, Broward had finished the task. The new count found 1,146 additional votes for Gore and 579 for Bush — a net gain of 567 for Gore. In Palm Beach, officials were still working as the 5 p.m. Sunday deadline approached. Harris refused an extension and then disal-

*Continued on p. 998*



AP Pool Photo/Mark Foley

*Leon County Circuit Judge Terry Lewis gave Al Gore an initial boost on Nov. 14 by ruling that Secretary of State Harris had to exercise discretion in determining whether to accept or reject late-filed returns.*

Supreme Court promptly stepped in by agreeing to hear the case and barring Harris from certifying election results in the meantime. The seven justices — six of them appointed by Democratic governors and a seventh jointly appointed in 1998 by outgoing Democrat Lawton Chiles and then Gov.-elect Jeb Bush — heard more than two hours of arguments from a battery of lawyers in a nationally televised court session on Nov. 20. Late the next evening, the court issued a unanimous, 42-page



# Countdown in Florida

## **Nov. 7, 2000**

Election in Florida too close to call; Gov. George W. Bush has unofficial 1,784-vote lead.

## **Nov. 8-11**

Florida counties complete machine recount required by law; Bush lead falls to 327 votes.

## **Nov. 11-14**

Broward, Dade, Palm Beach and Volusia counties undertake manual recounts requested by Gore; federal court rejects Bush bid to block hand counts (Nov. 13); Volusia finishes recount (Nov. 14).

## **Nov. 13**

Florida Secretary of State Kathleen Harris says she will enforce state law deadline of Nov. 14 for counties to submit returns and will not include manual recounts; election boards in Volusia and Palm Beach counties ask state court judge to overturn deadline.

## **Nov. 14-16**

Judge Terry Lewis says Harris must justify her position on deadline; Harris reaffirms her decision the next day; Lewis hears new round of arguments Nov. 16.

## **Nov. 15**

Gore asks Bush to agree to hand recount in three counties or to statewide recount; Bush rejects offer and declines to meet with Gore.

## **Nov. 17**

Lewis upholds Harris' decision to disregard manual recounts, but Florida Supreme Court bars

certification of state results pending oral arguments on Nov. 20; federal appeals court rejects Bush suit over manual recounts.

## **Nov. 18**

Bush lead grows to 930 votes with absentee ballots; Bush campaign criticizes Democrats for challenging absentee votes from military.

## **Nov. 21**

Florida Supreme Court rules manual recounts must be included in presidential race if submitted to Harris by 5 p.m. Nov. 26.

## **Nov. 22-26**

Manual recounts: Broward finishes, Nov. 25; Palm Beach falls just short of completion, Nov. 26; Miami-Dade stops recount Nov. 22, pleading too little time. Gore suit to force Miami-Dade to resume counting is rejected by Florida Supreme Court, Nov. 23.

## **Nov. 24**

U.S. Supreme Court agrees to hear Bush appeal of Florida Supreme Court decision allowing extended deadline for certifying presidential race.

## **Nov. 26**

Harris announces that state elections canvassing board certifies Bush as winner by 537-vote margin; Bush says he and Cheney are "honored and humbled" to have won Florida's electoral votes.

## **Nov. 27**

Gore sues in Tallahassee Circuit Court, claiming the number of legal votes "improperly rejected" and illegal votes counted in

Nassau, Palm Beach and Miami-Dade counties is enough to change outcome.

## **Dec. 1**

U.S. Supreme Court hears Bush appeal of deadline extension.

## **Dec. 2-3**

Judge N. Sanders Sauls takes Gore suit under advisement after hearing 26 hours of testimony and arguments.

## **Dec. 4**

U.S. Supreme Court sets aside Florida Supreme Court decision extending certification deadline, sends case back for further proceedings. Judge Sauls rejects Gore request to include manual recount totals and conduct further recounts; Gore asks Florida Supreme Court for immediate appeal.

## **Dec. 6**

Trial scheduled in suit challenging absentee ballots in Seminole County because Republican Party officials changed voter applications.

## **Dec. 12**

Time set by federal law for states to designate presidential electors.

## **Dec. 18**

Presidential electors to meet in state capitals.

## **Jan. 5, 2001**

Congress to meet to count electoral votes.

## **Jan. 20, 2001**

Inauguration of president and vice president.

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lowed the results of the nearly complete recount, which gave Gore a net gain of 215 votes.

As for Miami-Dade — with the biggest cache of unchecked ballots — the election board began a recount but then reversed itself and stopped counting on Wednesday, Nov. 22, concluding that the task could not be completed by the Nov. 26 deadline.

Meanwhile, Bush had taken the deadline extension issue to the U.S. Supreme Court. His lawyers contended that the state high court had violated federal law and the U.S. Constitution by changing the election rules after the balloting. Defying virtually unanimous predictions from legal experts, the Supreme Court agreed on Nov. 24 to hear the case and scheduled oral arguments for Dec. 1.

As the Thanksgiving weekend came to a close, Gore supporters acknowledged that the recounts were not going to yield enough votes to reverse Bush's apparent lead. Even before the official certification, Gore himself signaled his intention to file an election challenge in a lunchtime interview with *The New York Times* that was posted on the newspaper's Web site by mid-afternoon.<sup>19</sup>

Bush, however, was undeterred. Two hours after Harris' announcement, the Texas governor stood in the Texas state capitol to claim victory and to urge Gore to drop plans to contest the election further. "Now that the votes are counted," Bush said, "it is time for the votes to count."

## Uphill Battle

Gore's legal team countered the next day, Nov. 27, by filing a formal election contest in Leon County Circuit Court in Tallahassee. James Baker III, the head of Bush's legal team and a former secretary of State under Bush's father, quickly pointed out that the contest was the first such suit ever filed by a presidential candidate.

Florida election law gives judges leeway in dealing with election contests, legal experts in the state say. But Gore's

- Miami-Dade "had no authority" to stop its manual recount after finding some errors in a sample of precincts.
- Secretary of State Harris violated state law by disregarding Palm Beach County's partial recount.
- Palm Beach County applied "incorrect legal standards" in failing to count ballots with "partially perforated or indented chads."
- Nassau County was wrong to submit its original tally after a machine recount showed a smaller vote total — a total that gave Gore a net gain over the original count.

Bush's legal team discounted all of Gore's allegations and, equally importantly, opposed Gore's plea for Judge N. Sanders Sauls to immediately start a recount of the disputed ballots. Instead, Sauls set a hearing for Saturday, Dec. 2. Meanwhile, the Bush campaign went on the offensive itself, filing suits in five counties seeking to reinstate absentee ballots that had been invalidated by local election boards for failing to comply with legal requirements.

At the Supreme Court, the justices appeared divided during an extended, 90-minute argument Dec. 1 in Bush's appeal of the Florida Supreme Court decision extending the certification deadline. Three days later, though, the court issued a unanimous decision that dealt Gore a setback. The justices set aside the Florida high court's decision, saying there was "considerable uncertainty" about the basis for the ruling.



Leon County Circuit Judge N. Sanders Sauls watches Tom Spencer, a Republican election observer, show how ballots were examined. On Dec. 4, Sauls dismissed Al Gore's suit challenging the popular vote in Florida.

AFP Photo/Tim Sloan

lawyers faced an uphill battle, nonetheless, because of the limited time available before the time prescribed under federal law for a state to designate electors — Dec. 12. And even as the suit proceeded, Florida Republicans were considering a special legislative session that could circumvent the courts by having the GOP-controlled legislature designate the state's electors.

Gore's complaint claimed that the certified vote totals giving Bush the victory were "wrong" because of four legal errors during the recount:

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Legally, the unsigned ruling was murky, though it indicated sympathy for Bush's position. In any event, the ruling erased the Florida high court's decision for the moment, restored Bush's 930-vote margin, and denied Gore the kind of legal and public relations victory needed to press his bid for a recount.

Only a few hours later, Judge Sauls dealt Gore a more decisive — and potentially fatal — setback by rejecting the vice president's plea for further manual recounts. Sauls said Gore had produced “no credible statistical evidence and no other competent, substantial evidence to establish by a preponderance a reasonable probability that the results of the statewide election in the state of Florida would have been different from the results which have been certified by the state elections canvassing commission.”

Gore's lead lawyer, David Boies, said he would file an immediate appeal with the state's high court. Bush's lawyers were ecstatic: “This was as complete a victory as I've ever gotten,” attorney Philip Beck said.

Meanwhile, Democratic voters in two Florida counties — Seminole and Martin — were seeking to invalidate hundreds or even thousands of absentee ballots because local election officials allowed Republican Party workers to add or correct information on voter applications in violation of state law. Election officials insisted the changes were straightforward administrative actions that did not violate state law. Gore did not join the suits.

## Impasse in Congress

Congress usually is dormant between November of an election

year until it convenes the following January. But the drama that unfolded in the weeks following the razor-thin presidential election elicited plenty of comments from lawmakers about the Electoral College.

Several joint resolutions to abolish the college and institute direct elections were introduced in the last days of the 106th Congress, and several more are expected to be introduced when the 107th Congress convenes in January. In addition to the proposal by Sen. Durbin, House bills were introduced by Reps. Jim Leach, R-Iowa, and Ray LaHood, R-Ill. All three measures would require the winner to capture 40 percent of the popular vote to avoid a runoff with the runner-up.

But perhaps the biggest splash in opposition to the Electoral College has come not from those legislators but from someone who has yet to take office — first lady Hillary Rodham Clinton, who garnered ample media attention by calling for abolition of the Electoral College just two days after winning election as a Democratic senator from New York.

“I believe strongly that, in a democracy, we should respect the will of the people,” Clinton said. “And to me, that means it's time to do away with the Electoral College.”

Among political scientists, both critics and supporters of the Electoral College said that is highly unlikely that Congress will enact a constitutional amendment abolishing it.

“I don't expect it to happen,” says Yale's Amar. He notes that Wyoming and other sparsely populated states, which benefit under the Electoral College, have as much clout in the Senate as heavily populated states like California.

Moreover, not only must a constitutional amendment receive a two-thirds majority vote in both the House and Senate, but 38 of the 50 states

would have to ratify it. Analysts say that the small-state legislatures would never sign on to that.

Another obstacle for reformers is the Republican-controlled Congress, which presumably would be loath to eliminate a voting scheme that favored the presidential candidate of their party, Bush, who lost the popular vote to Gore.

“Whichever side wins with the Electoral College is going to have a stake in its legitimacy,” says George Mason University political scientist James Pfiffner.

Moreover, several congressional leaders hail from sparsely populated states that traditionally have enjoyed an Electoral College advantage.

“I happen to think [the Electoral College] may help the smaller states,” said Senate Minority Leader Tom Daschle, D-S.D., whose state has the minimum of three electoral votes. “South Dakota isn't the biggest state in the country, and we're going to look at those three electoral votes with some degree of concern if we lose it.”<sup>20</sup>

But small-state opposition to the Electoral College is not monolithic. Daschle's home-state colleague, Democrat Tim Johnson, has signed on as a cosponsor of Durbin's bill abolishing the Electoral College.

Perhaps the most prominent defender of the Electoral College is Sen. Orrin G. Hatch, R-Utah, chairman of the Senate Judiciary Committee, which will consider any proposed constitutional amendments affecting the college.

“I'll die before I'll let that constitutional amendment pass,” Hatch said. “It will be over my dead body.”<sup>21</sup>

Durbin acknowledges that supporters of direct election have several daunting obstacles to surmount. Nonetheless, he says, “the unfortunate mess of Nov. 7 gives us the perfect platform to raise this issue.” ■

# OUTLOOK

## Electoral Deadlock

Bill Clinton ends eight years as the 42nd president of the United States immediately after noon on Jan. 20, 2001. That much is certain. Four weeks after the Nov. 7 election, however, the two major party candidates to succeed him were both still claiming victory and fighting for the office in multipronged legal, political and public relations battles.

The outlook for the Electoral College, though, seems clearer. Supporters and opponents agree the prospects for abolishing the Electoral College or even significantly modifying it are slight. "There is no chance of it happening in our lifetime," says Louis Michael Seidman, a constitutional law professor at Georgetown University who favors direct election.

The fierce legal battle for Florida's 25 electoral votes — and the presi-

dency — has inevitably evoked comparisons to the Electoral College's darkest moment: the Tilden-Hayes race of 1876, decided by an ostensibly bipartisan commission that divided strictly along partisan lines. For the most part, though, politicians, advocates and observers were insisting that the recount battle did not amount to a constitutional crisis. "Our Constitution can handle a lot," Jonathan Turley, a law professor at George Washington University in Washington, remarked.<sup>22</sup>

Experts are divided on the question whether the Electoral College system has exacerbated the difficulties of the Florida recount. Supporters of direct election say the fight for Florida's electoral votes would have been less important — and therefore perhaps not fought at all — if the race simply went to the popular-vote winner. Supporters of the Electoral College counter that direct election would actually increase the risk of nasty vote recounts anywhere in the country as well as the danger of partisan manipulation of voting procedures by dominant parties in each state.

On that score, the recount battle is producing a wide consensus on the need to improve voting and tabulation procedures. "Our electoral process probably wasn't up to this in parts of Florida," House Democratic leader Richard Gephardt of Missouri said.<sup>23</sup> Two GOP lawmakers — Iowa's Leach and Peter A. DeFazio of Oregon — are sponsoring a House bill to create an election reform commission. DeFazio says the commission should have "a very, very broad mandate" to study everything from constitutional issues to voting registration, ballot access, and voting technology, including Internet voting.

The uncertainty over the outcome in Florida also highlighted the pitfalls of the Electoral College system's existing procedures for resolving deadlocks. Most observers seemed apprehensive at best about the possibility of throwing the election into the House of Representatives, having Congress decide on the validity of electoral votes, or allowing the Florida legislature to select the state's presidential electors. "Ticking time bombs," Yale law Professor Amar called those options.

Some supporters of the Electoral College say they do favor some changes in the system — such as shifting to district-by-district awarding of electoral votes or making the electoral votes automatic to eliminate the problem "faithless electors." But they warn that broader changes would lead to unforeseeable consequences. "If we change this, everything will change," Best says.

"No one is sufficiently foresighted to forecast the effects that abolition of the Electoral College would have on the political system," says law Professor Glennon. "It would have effects on campaign finance, on separation of powers, on federalism, on state parties, and, most importantly

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### About the Authors

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**Gregory L. Giroux** is a political reporter at Congressional Quarterly. He was CQ's lead reporter covering the House elections in 2000 and a principal writer of the 1998 edition of *Politics in America*, Congressional Quarterly's biennial almanac. Giroux has appeared on C-SPAN, Fox News and National Public Radio to discuss reform of the presidential-election process and other political topics. He has a Bachelor of Arts degree in economics from the College of William and Mary.



# At Issue:

## *Should the Electoral College be abolished?*

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WRITTEN FOR THE CQ RESEARCHER, DECEMBER 2000

**t**he Electoral College was designed to provide a method of presidential selection for a form of government that combined a fragile federal union with republican principles at a time of considerable rivalry and distrust among the states, no national communications system, very limited suffrage and memories of abuses of executive powers. A dual compromise between large and small states and nationalists and federalists, the Electoral College plan was conceived to insure that the most qualified person, not necessarily the most popular, would be selected by electors, representing their states but rendering an independent judgment.

However, the development of the party system, which led to the direct election of slates of partisan electors, permanently upset the original plan and created a party-based, plurality-rule system in which electoral votes were allocated by states on a winner-take-all basis. The major consequences of such an allocation were to disenfranchise partisan minorities, thereby discouraging their participation in states with a dominant party; to increase disproportionately the clout of the largest states and tangentially, cohesive voting groups within them; to create incentives for major-party candidates to focus on the most competitive states in order of size; and to preclude third-party and independent candidates from having any reasonable chance to win. Add to these biases the potential for a discrepancy between the electoral and popular vote, as occurred in 1824, 1876, 1888 and 2000.

The Electoral College stands in the way of a democratic presidential election. In a democracy, all votes are equal, but in the Electoral College all voters are not equally represented. In a democracy, the plurality rules; in the Electoral College it may not. In a democracy, the larger the turnout the greater the mandate, and the more likely elected officials will be responsive to a broader cross-section of their constituency. Not only does the Electoral College lack turnout incentives for the less competitive states, but it clouds the president's electoral constituency and makes its conversion into a governing coalition that much more difficult.

Instituting a direct popular vote would reconcile democratic practices with democratic theory. It would enhance the winner's legitimacy and probably increase the victor's popular vote, thereby providing a greater mandate than currently exists when less than one-quarter of the voting-age population votes for the winner. But there is one important caveat to direct election: We must also have a national system of voting and tabulating the results.

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WRITTEN FOR THE CQ RESEARCHER, NOVEMBER 2000

**i** support the electoral vote system because it produces the right winner, and the right winner is the candidate who can govern this vast country because he has built a broad cross-national federal coalition, because he can win the popular vote in enough states.

We are a nation of states. The Constitution itself was ratified state by state. The federal principle is the fulcrum for the whole national government: every branch of our government is based on the federal principle.

We are not simply autonomous individuals scattered randomly across the country. We are members of small political communities: the states. As such, we must obey the same state laws; we share the same local economy, climate, roads, parks, and schools.

The federal principle makes presidents sensitive to state and local issues. And it supports the separation of powers because both the president and Congress have the same base. If the president had a plebiscitary base, he could claim to be the only authentic voice of the people, and the balance of power would tilt dangerously to him and against Congress.

The right winner of the World Series is the team that wins the most games, not the team that scored the most runs over all. The win-games principle is the best test of the two teams' abilities. In presidential elections, the win-states principle is the best test of the candidates' abilities to govern. It penalizes sectional and regional candidates, single-issue and ideological candidates. It rewards candidates whose votes are properly distributed; it is designed to achieve majority rule with minority consent.

Why would minorities consent to majority rule? Only if they can see that on some occasions and on some issues they can be part of the majority. It would be foolish to consent to a game you never can win. Under the win-states principle, minorities of all kinds can be part of statewide majority coalitions and have influence because they can be the swing vote in a state, or even in a battleground state.

If we abandon this system, groups like farmers, who are only 2 percent of the population, or blacks, who are 12 percent, won't have much influence. And the federally based election can make small states a key part of the winning coalition. The electoral vote system produces the right winner because it rewards candidates who build political majorities, candidates who can govern.

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perhaps, on the two-party system. For this prudential reason, I oppose exchanging one set of problems that we know for another set that we don't know."

For their part, opponents of the Electoral College concede that efforts to change or abolish the system face long odds but insist the 2000 presidential race proves the need for change. "It probably won't happen, but we're going to have to generate a debate on it," Georgetown's Wayne says. "It's going to take time, but to me no purpose is served by the person with the most votes not winning."

"There have been a few glitches, but there would have been glitches with any system," Glennon responds. "As James Madison said, there was no system they looked at that had no flaws. They picked the least imperfect system." ■

## Notes

<sup>1</sup> Quoted in *The New York Times*, Nov. 9, 2000, p. B8.

<sup>2</sup> Robert M. Hardaway, *The Electoral College and the Constitution: The Case for Preserving Federalism* (1994), pp. 3-4.

<sup>3</sup> Walter Berns, "Let's Hear It for the Electoral College," *The Wall Street Journal*, Dec. 2, 1992, p. A11.

<sup>4</sup> Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer 2000* (1999), pp. 165-66.

<sup>5</sup> Michael Glennon, *When No Majority Rules: The Electoral College and Presidential Succession* (1992), p. 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> Hardaway, *op. cit.*, p. 19.

<sup>8</sup> *Ibid.*, p. 9.

<sup>9</sup> For background, see Fred Barbash, *The Founding: A Dramatic Account of the Writing of the Constitution* (1987), pp. 175-183; Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer 2000*, pp. 17-22. See also *Congressional*

## FOR MORE INFORMATION

**Cato Institute**, 1000 Massachusetts Ave., N.W., Washington, D.C. 20001-5403; (202) 842-0200; [www.cato.org](http://www.cato.org). The libertarian think tank supports retention of the Electoral College.

**Center for Voting and Democracy**, P.O. Box 60037, Washington, D.C. 20039; (202) 828-3062; [www.igc.org/cvd](http://www.igc.org/cvd). The nonpartisan organization studies how voting systems affect participation, representation and governance.

**Committee for the Study of the American Electorate**, 421 New Jersey Ave., S.E., Washington, D.C. 20003; (202) 546-3221; [www.gspm.org/csae](http://www.gspm.org/csae). The committee's director, longtime elections expert Curtis Gans, supports revising the Electoral College system.

**League of Women Voters of the United States**, 1730 M St., N.W., Suite 1000, Washington, D.C. 20036; (202) 429-1965; [www.lwv.org](http://www.lwv.org). The league has long advocated abolition of the Electoral College and direct popular election of the president.

**National Association of State Election Directors**, c/o Council of State Governments, 444 N. Capitol St., Suite 401, Washington, D.C. 20001; 202-624-5460; [www.nased.org](http://www.nased.org). The organization represents the officials responsible for the nuts and bolts of state elections.

**National Association of Secretaries of State**, Hall of States, 444 N. Capitol St., N.W., Washington, D.C. 20001; (202) 624-3525; [www.nass.org](http://www.nass.org). The organization represents state secretaries of state, whose offices typically include state election divisions.

**Office of Federal Register, National Archives and Records Administration**, 800 N. Capitol St., Suite 700, Washington, D.C. 20408; (202) 523-5230; [www.nara.gov/fedreg/elctcoll/](http://www.nara.gov/fedreg/elctcoll/). The office coordinates the functions of the Electoral College and maintains a Web site with general background information and detailed popular and electoral vote totals for presidential elections from 1789 to the present.

*Quarterly's Guide to the Presidency* (2d. ed.), 1996, pp. 185-186; *Congressional Quarterly's Guide to Congress* (5th ed., 2000), pp. 378-380.

<sup>10</sup> *The Federalist* No. 68.

<sup>11</sup> Neil R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative* (rev. ed., 1981), p. 75.

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<sup>13</sup> 1969 *CQ Almanac*, pp. 895-901; 1970 *CQ Almanac*, pp. 840-845.

<sup>14</sup> 1979 *CQ Almanac*, pp. 551-553.

<sup>15</sup> Manza was quoted in the *Los Angeles Times*, Oct. 26, 2000, p. A17; Thurber in *USA Today*, Oct. 31, 2000, p.1A. See also *The New York Times*, Nov. 3, 2000, p. A26.

<sup>16</sup> *The Washington Post*, Nov. 2, 2000, p. A29 (Will column); *The (Newark) Star-Ledger*, Nov. 2, 2000, p. 1 (Best quote).

<sup>17</sup> David Von Drehle, *The Washington Post*, Nov. 2, 2000, p. A19.

<sup>18</sup> See *The New York Times*, Nov. 6, 2000, p. A19.

<sup>19</sup> See *The New York Times*, Nov. 29, 2000, p. A17.

<sup>20</sup> *The Associated Press*, Nov. 9, 2000.

<sup>21</sup> Quoted in Jim Woolf and Dan Harrie, "Utahns Voice Pros, Cons of Electoral Setup," *The Salt Lake Tribune*, Nov. 12, 2000, p. A1.

<sup>22</sup> CNN, "Larry King Live," Nov. 17, 2000.

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### **Books**

**Barbash, Fred, *The Founding: A Dramatic Account of the Writing of the Constitution*, Linden Press/Simon & Schuster, 1987.**

The book — written to coincide with the Bicentennial of the writing of the Constitution — includes a succinct account of the Constitutional Convention's deliberations that produced the Electoral College system. Barbash has served variously as Supreme Court reporter and deputy national editor for *The Washington Post*.

**Berns, Walter (ed.), *After the People Vote: A Guide to the Electoral College*, AEI Press, 1992.**

The book includes separate sections detailing the operation and evolution of the Electoral College and a third section of reference materials. Berns is a resident scholar at the American Enterprise Institute.

**Best, Judith, *The Choice of the People: Debating the Electoral College*, Rowman and Littlefield, 1996.**

Best, a professor of political science at the State University of New York at Cortland, provides an accessible defense of the Electoral College along with a variety of reference sources and opposing views on the issue. The book includes a two-page select bibliography. The book updates in a different format her earlier title, *The Case Against Direct Election of the President: A Defense of the Electoral College* (Cornell University Press, 1975).

**Glennon, Michael J., *When No Majority Rules: The Electoral College and Presidential Succession*, CQ Press, 1992.**

Glennon, a law professor at the University of California at Davis, examines the law and procedure regarding "faithless electors" and House election of the president in the event of an Electoral College deadlock. Three Supreme Court decisions on Electoral College issues are included in appendixes; the book also contains chapter notes and a four-page bibliography.

**Hardaway, Robert M., *The Electoral College and the Constitution: The Case for Preserving Federalism*, Praeger, 1994.**

Hardaway, a professor at the University of Denver College of Law, traces the origins and development of the Electoral College while strongly defending the system. The book includes chapter notes and a six-page bibliography.

**Longley, Lawrence D., and Neal R. Peirce, *Electoral College Primer 2000*, Yale University Press, 1999.**

The book summarizes the history and current status of the Electoral College along with a closing chapter that even-

handedly lists the advantages and disadvantages of the system. The book includes appendixes, source notes and a 14-page bibliography. Longley is a professor of political science at Lawrence University; Peirce is a reporter and syndicated columnist in Washington specializing in state and local government. They are also co-authors of the longer work, *The People's President* (see below).

**Nelson, Michael (ed.), *Guide to the Presidency* (2d. ed.), CQ Press, 1996.**

The comprehensive, two-volume guide includes extensive information about the origins and development of the Electoral College. Nelson is a professor of political science at Rhodes College; the major chapter on the Electoral College is by Charles C. Euchner of Holy Cross College and John Anthony Maltese of the University of Georgia.

**Peirce, Neal R., and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative* (rev. ed.), Yale University Press, 1981.**

Journalist Peirce and political scientist Longley wrote their first, comprehensive examination of the Electoral College in 1968 and published a revised edition in 1981. In contrast to their shorter work — *The Electoral College Primer* (see above) — the authors make clear their support for abolishing the Electoral College in favor of direct popular election of the president. The book includes detailed appendixes, source notes and a seven-page bibliography.

**Wayne, Stephen J., *The Road to the White House 2000: The Politics of Presidential Elections*, St. Martin's/Bedford Press, 2000.**

Wayne, head of the American government program at Georgetown University, provides an up-to-date overview of the presidential election process from party primaries and conventions through the Electoral College. Each chapter includes source notes, suggested readings and relevant Web sites. In his newer book, *Is This Any Way to Run a Democratic Election* (Houghton-Mifflin, 2001), Wayne pointedly analyzes a variety of issues surrounding the presidential-selection process, including revision or abolition of the Electoral College.

### **Reports and Studies**

**U.S. House of Representatives, Subcommittee on the Constitution, Committee on the Judiciary, "Proposals for Electoral College Reform," Sept. 4, 1997.**

The most recent congressional hearing on Electoral College reform included testimony from five witnesses representing all sides of the issue.

# The Next Step

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## **Florida Election**

**Glaberson, William, "Counting the Vote: Contesting an Election: Certification Challenge Would Transform Case," *The New York Times*, Nov. 25, 2000, p. A14.**

Florida Supreme Court justices showed in their comments during the oral arguments that they felt it was critical to resolve all legal issues before the Dec. 12 deadline. Most legal experts say it is unthinkable that a state court would be permitted to change election results later if the results would undo the selection of a president.

**Milbank, Dana, "Tossed Absentee Ballots Have Panhandle Area Up in Arms," *The Washington Post*, Nov. 22, 2000, p. A17.**

Nearly 40 percent of 3,733 overseas absentee ballots counted were disqualified creating an uproar that still resonates here in this heavily Republican corner of the Florida Panhandle, home to the sprawling Eglin Air Force Base, Pensacola Naval Air Station and other installations.

**Perez-Pena, Richard, "Counting the Vote: The Overseas Ballots: Floridians Abroad Are Counted, or Not, as Counties Interpret 'Rules' Differently," *The New York Times*, Nov. 18, 2000, p. A11.**

Counties applied vastly different standards in deciding whether to throw out ballots. A few county officials openly defied the Florida secretary of state's instructions to accept otherwise-valid ballots from overseas that were postmarked after Election Day. Others freely admitted that they did not understand those instructions. And officials in several counties said they feared that the count was being botched, and that another round of delays and court challenges was likely.

**Slevin, Peter, and Edward Walsh, "Florida Supreme Court Puts a Hold On Certification of Election Results," *The Washington Post*, Nov. 18, 2000, p. A1.**

The Florida Supreme Court intervened dramatically in the nation's tangled presidential election, ordering Florida Secretary of State Katherine Harris to withhold certifying the results until the court rules on Vice President Gore's legal challenges to her authority and the validity of the Florida vote count.

**Van Natta, Don Jr., "Counting the Vote: Palm Beach County: Florida Judge Says He Can't Order Revote," *The New York Times*, Nov. 21, 2000, p. A22.**

Florida State Judge Jorge LaBarga says he lacks legal authority to order a second presidential election in Palm Beach County, even if he were to determine that county's "butterfly" ballot design confused voters enough to make difference in election. He notes the Constitution states clearly that presidential election must be held on same day throughout the United States.

## **History of Electoral College**

**"How the Electoral College Works," *The Washington Post*, Nov. 6, 2000, p. A33.**

It is possible for the candidate who wins the popular vote to lose the election. This has happened three times, including 1824, when the House decided the election because no candidate won a majority of electoral votes.

**Kamen, Al, "The Federal Page in the Loop: Flunking Electoral College," *The Washington Post*, Nov. 1, 2000, p. A31.**

With the election as tight as it now appears, there is at least a possibility that the Electoral College will deadlock 269 to 269 when it votes on Dec. 18. If it does, the newly elected House of Representatives — not the current one — would officially count the Nov. 7 ballots after being sworn in on Jan. 6, and find that, under the 12th Amendment, it must choose the next president.

**Page, Susan, "In history, 3 popular-vote losers have won presidency," *USA Today*, Nov. 6, 2000, p. A15.**

At first, most states had state legislatures appoint electors, but over time all states changed to a popular vote. Each state gets a number of electors equal to its congressional delegation of senators and representatives.

**Stout, David, "The 2000 Campaign: The Electoral College: How Winner of the Popular Vote Could Lose After All," *The New York Times*, Nov. 3, 2000, p. A26.**

The Founders created the Electoral College because they thought direct, nationwide elections impractical in a land of loosely knit former colonies whose people did not know or trust each other that much and could barely communicate with one another. The Electoral College has been crucial in three elections.

**Von Drehle, David, "Campaign Diary Is 1888 Casting a Very Long Shadow? Split Decision Decided by Electoral College 112 Years Ago Could Be an Omen or It Could Be Unique in U.S. Elections," *The Washington Post*, Nov. 2, 2000, p. A19.**

Typically, the Electoral College makes close elections look less tight, rather than more so. In 1960, for example, John F. Kennedy edged Richard M. Nixon by a tiny popular-vote margin, but the electoral vote spread sounded much bigger: 303 to 219.

**White, Ben, "Electoral College: Whazzup? *The Washington Post*, Nov. 2, 2000, p. C13.**

Why do we bother with this Electoral College business at all? The people who created the U.S. Constitution and government two centuries ago considered a number of ways to pick a president. They thought about letting Congress decide. Or the state legislatures.

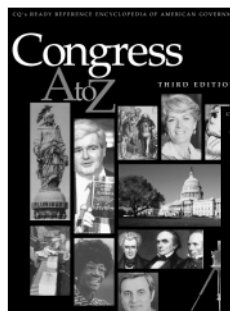
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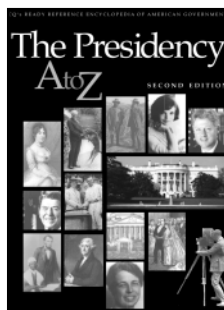
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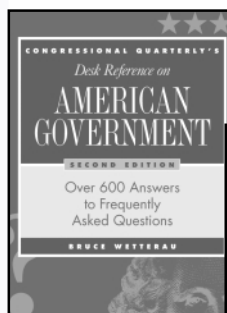


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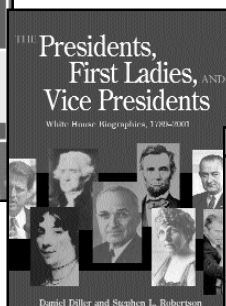


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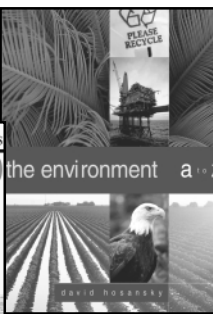
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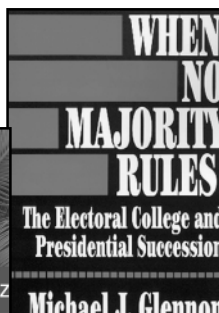
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## **Proposed Reforms**

**Amar, Akhil Reed, “The Electoral College, Unfair From Day One,” *The New York Times*, Nov. 9, 2000, p. A23.**

A Yale Law School professor finds the Electoral College a hopelessly outdated system that must be abolished since direct election would resonate better with American value of one person, one vote. Amar says the Electoral College was designed to help Southern white males, which it has apparently done in the current election.

**Dewar, Helen, and Matthew Vita, “Congress Debates Election Reform Members’ Proposals Range From Modest Changes to Abolition of Electoral College,” *The Washington Post*, Nov. 17, 2000, p. A20.**

The confused and protracted conclusion of the presidential election is stimulating broad debate in Congress about major reforms to the election laws, with lawmakers dusting off proposals to abolish the Electoral College and producing a range of new plans to overhaul the way in which Americans vote for their president.

**McDougall, Walter A., “The Slippery Statistics of the Popular Vote,” *The New York Times*, Nov. 16, 2000, p. A35.**

A history professor at the University of Pennsylvania argues against abolition of the Electoral College. He says that a national popular vote can be as indecipherable, not to mention inaccurate and dishonest, as an Electoral College result and that abolishing the institution in favor of a national referendum could make every vote cast or disqualified everywhere as potentially decisive as those in Palm Beach County.

**Page, Clarence, A Capitol Bind: How to Solve the Electoral College Mess,” *Chicago Tribune*, Nov. 15, 2000, p. A21.**

Despite the current upward spike in public outrage at the Electoral College, an amendment to do away with it faces an uphill fight. The Electoral College has been assailed more often than any other item in the Constitution. More than a hundred attempts have been made to change it.

## **Voting Technology**

**Drew, Christopher, and Ford Fessenden, “Counting the Vote: The Mechanism: Alas, Vote-Count Machines Are Only Human,” *The New York Times*, Nov. 17, 2000, p. A1.**

Manufacturers who sell the voting systems that tallied votes in Florida say machines can be, in ideal conditions, 99.99 percent accurate; that a tiny error rate alone could have misread 345 votes—more than Gov George W Bush’s current winning margin. Another manufacturer says that, under realistic conditions, machines’ error rate can be even 1 percent or more — a potential misreading of 34,500 votes

in Florida. A 1975 study for the Federal Election Commission found only 99.5 percent of ballots read accurately when card readers were used in Los Angeles County election; errors usually consist of choices that are not read correctly; industry officials agree that ultimately the most precise way to count ballots is by hand.

**Dugger, Ronnie, “Democracy Under Stress: Have butterfly ballots and chads undermined the credibility of how we elect our leaders?” *Los Angeles Times*, Nov. 19, 2000, p. A1.**

The vote-counting systems in Florida are not precision machinery, such as adding machines. They are computers, which are machines that obey orders. The antique Vote-O-Matic punch-card voting systems in use in Broward and Palm Beach counties, where the canvassing boards are recounting ballots, have been associated for 25 years with inaccuracies caused by slipping card feeds and “hanging chads,” which are tiny scraps of punched-out vote holes that do not fully detach from the vote card.

**Kaiser, Rob, and John Van, “IIT to Examine Technology of Voting Process and Ways to Improve It,” *Chicago Tribune*, Nov. 27, 2000, p. A2.**

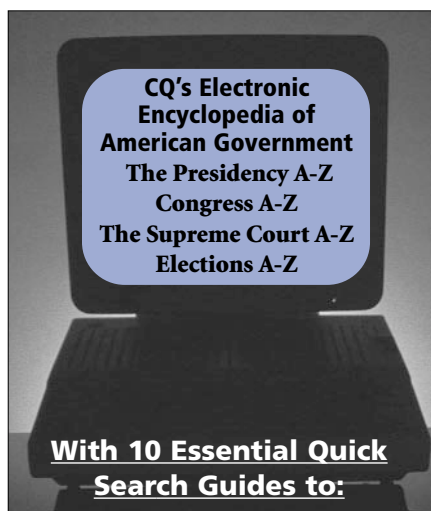
There’s got to be a better way to hold elections than the routine that led the nation into the extended mess in Florida, and educators at the Illinois Institute of Technology intend to find it. IIT students will explore existing technology and issue a report about how American elections could be improved so that few ballots would be spoiled, and voters could exercise their franchise with a minimum of confusion.

**Mintz, John, “It’s Not as Easy as 1-2-3; Problems Exist With Both Hand, Machine Counts,” *The Washington Post*, Nov. 19, 2000, p. A1.**

The type of voting machine used in Palm Beach County and numerous other Florida counties — employing the punch-card ballot system — is an antiquated contraption that has been denounced by many computing experts since its invention in the 1960s. The federal government has called for the elimination of punch-card machines since 1988, saying they cause many people to cast invalid votes or vote for the wrong candidate.

**Will, George F., “Is This Any Way to Vote? *The Washington Post*, Nov. 19, 2000, p. B7.**

Surely a national computerized service could help states scrub voting rolls. Exemplary prosecutions should communicate society’s indignation about vote fraud. A nation dependent upon computers, ATMs and other electronic devices for trillions of accurate transactions can devise Election Day polling-place technologies more sophisticated than those that involve paper being punched or marked by pencils — sophisticated, yet simple enough that even a Palm Beach County voter can master them.



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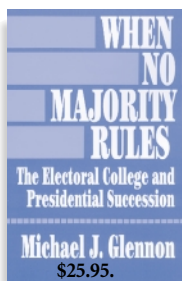
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