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**Electoral College Reform and the Two-Party System:  
Four Case Studies in Electoral College Reform**

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2010

Submitted in partial fulfillment of the requirements for the  
Bachelor of Arts degree with Honors in Political Science

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## Abstract

### Electoral College Reform and the Two-Party System: Four Case Studies in Electoral College Reform

Peter Finch Zanca

Since the ratification of the U.S. Constitution, the electoral college has become one of its most controversial provisions. Beginning in 1800, members of Congress have submitted hundreds of amendments to replace the electoral college – far and away more than any other topic. Despite all these attempts, the Twelfth Amendment represents the only successful reform. If electoral college reform has been such a popular idea over such a long period, why have reform movements so often ended in failure? This paper examines four major efforts at altering the electoral college: the Twelfth Amendment of 1804, the Lodge-Gossett Amendment of 1950, the Celler-Bayh Amendments of 1969 and 1970, and the National Popular Vote plan that began in 2006. While each of these reforms advocates a different substitute for the electoral college, the politics surrounding each movement demonstrate major similarities. Each movement gained momentum from potential crises in preceding presidential elections, and support for each proposal tended to develop along partisan lines. Even with the support of the majority party, however, factionalism within that party – either along regional or ideological lines – has been one of the major causes of failure among these proposed reforms.

## Introduction

The method of selecting the American President has been a controversial issue as long as the office has existed. During the Constitutional Convention of 1787, few problems vexed the delegates more than determining how the executive would be chosen. After the convention vacillated between legislative selection and direct popular election, the electoral college emerged as a product of compromise between the convention's feuding interests. Both on paper and in the minds of the Framers, the electoral college effectively reconciled the shortcomings of other methods of selection. Within two decades, however, the Framers' electoral innovation came under heavy scrutiny as the elections of 1796 and 1800 demonstrated the system's propensity for manipulation and controversy. Since those elections, the electoral college has become the subject of more constitutional amendment proposals than any other topic. Rarely has a session of Congress concluded without the introduction of at least one resolution for electoral college reform. While the number of such proposals is no less than 500, only one – the Twelfth Amendment – has successfully navigated the Constitution's amendment procedure. If reforming the electoral college has been such a popular idea, why have reform movements ended in failure almost uniformly?

Reformers' reasons for advocating change have been vast. Many critics have focused on the electoral college's potential to produce an "electoral misfire," in which a candidate wins the election without winning even a plurality of the national popular vote. Others have criticized the Constitution's contingency plan that sends the election to the House of Representatives when no candidate receives a majority of electoral votes. Additional debates have centered on who benefits from the electoral college system:

small states, large states, minority groups, etc. Furthermore, the unit-vote – or winner-take-all – system of allocating electoral votes has led to harsher criticism of the electoral system and campaign strategies. Perhaps the longest – though not always the most prevalent – crusade has been the effort to ban the electoral college in favor of a purer democratic approach, such as direct election.

Although some of these complaints are as old as the institution itself, electoral college reform has not enjoyed constant or consistent popularity throughout its history. On the contrary, movements for reform have only punctuated certain moments in American political history. These moments are typically marked by crises or perceived crises in presidential elections. Unsurprisingly, electoral controversies provide electoral reform movements with excellent momentum. Nevertheless, not every electoral crisis in American history has catalyzed the effort for electoral college reform. What appear to set these particular crises apart from others are two types of issues. Threats to the legitimacy of the election comprise the first type of issues. If there is any perception that the authenticity of the presidential election has been or could be compromised by backroom deals, extortion, or general corruption, a movement to reform or replace the electoral college can be sure to follow. The second type of problem, which is not exclusive of the first, consists of plans to undermine the two-party balance of presidential politics through the manipulation of the electoral college system. When a third party initiates a plan to manipulate the electoral college in order to elicit policy concessions from a major party, calls to reform the electoral system become louder, whether the plan is successful or not.

Many of the electoral crises that have presented these problems have provided fairly compelling reasons to reform the electoral system. Nevertheless, the Twelfth

Amendment remains as the only successful modification of the electoral college. While any number of reasons could explain the continuous failure of reform proposals, two particular conditions stand out as the most prominent among them. First, although electoral college reform may not seem to be a partisan issue on the surface, almost every movement for reform has played out along partisan lines. Despite being nominally non-partisan in most instances, nearly every reform effort has earned the support of one party and the opposition of the other. Second, even when a reform movement does enjoy the support of a major party, regional or ideological differences within that party create additional – and often insurmountable – obstacles towards passage.

This paper aims to analyze the politics of electoral college reform and consists of six parts. The first section depicts the process of creating the electoral college and the Framers' understanding of how the system would work. The next four sections represent four case studies of major electoral college reform movements. Each case study examines the origins of a reform effort and elicits the reasons for both its successes and its failures. The four cases examined are: the Twelfth Amendment of 1804, the Lodge-Gossett Amendment of 1950, the Celler-Bayh Amendments of 1969 and 1970, and the National Popular Vote plan that began in 2006. The final section provides concluding remarks.



## The Birth of the Electoral College

“This subject has greatly divided the House, and will also divide people out of doors.

It is in truth the most difficult of all on which we have had to decide.”

James Wilson, August 4, 1787<sup>1</sup>

Over the course of the Constitutional Convention of 1787, the designated form and function of the national executive changed and underwent modifications several times over. While some debates centered on the role and powers of the executive, others focused on the name, number, or length of term. One of the most contentious of these debates addressed the method of selection for the executive. Two primary options for selection – direct popular election and legislative selection – originally framed the debate, but both models had apparent weaknesses. The innovation of the electoral college seemed to provide a middle path that eliminated those weaknesses and offered a compromise for proponents of the two original models. As history has shown, however, the electoral college has not functioned entirely as its designers had intended.

The Framers of the Constitution arrived at the electoral college largely because they had reached an impasse in the debate between direct election and legislative appointment. The model for direct election was quite simple and would have allowed the people to elect the national executive at large. James Madison, Gouverneur Morris, and James Wilson were vocal supporters of such a system and emphasized the democratic appeal of direct election.<sup>2</sup> Nevertheless, the arguments against direct election were numerous and strong. The chief criticism was that it was most unwise to rely on the people to select the national executive from a group of candidates with whom they likely had little familiarity. Objecting on these grounds, George Mason offered his famous opinion on direct election: “It would be as unnatural to refer the choice of a proper

character for chief Magistrate to the people, as it would, to refer a trial of colours to a blind man.”<sup>3</sup>

Other objections to direct election underlined tensions that had manifested themselves elsewhere at the Convention. For instance, compared with any other method, direct election would have decreased the relative influence of the South due to its large, nonvoting slave population.<sup>4</sup> Slavery had already become a highly divisive issue at the Convention, resulting in the Three-Fifths Compromise between slave-holding states and non-slave-holding states. As a result, many delegates hesitated to stir up the heated questions surrounding representation and slavery that would arise from supporting a direct election system. In a similar fashion, direct election would give smaller states “an inferior role” in the selection process.<sup>5</sup> The delegates were equally familiar with the tensions between large and small states as well as the difficulties they could create in terms of progress. Understanding that a plan such as the Connecticut Compromise could not be readily adapted to a direct election system, delegates steered away from election by the people.

On the other hand, the alternative to direct election, legislative selection, was not without faults. While the delegates felt that legislators would likely be the people most capable of selecting the right person for the executive, they also recognized that legislative appointment would make that person dependent on the legislature to some extent. Further, they understood that legislative appointment meant that the executive could only serve one term “lest executive powers and patronage be used, in effect, to bribe legislators for their votes.”<sup>6</sup> As a result, they would have to jettison the executive’s eligibility for reelection that would have served as “a valuable incentive to good

performance in office.”<sup>7</sup> Nevertheless, without a better alternative, the delegates voted to adopt legislative selection several times over the course of the Convention. Even after this decision, however, problems continued to arise because there was little discussion, let alone agreement, among the delegates as to how the legislature would actually select the executive. On August 24, they began to examine proposals for legislative selection but could not find a satisfactory one.<sup>8</sup> As different methods of legislative selection were introduced to the Convention, delegates found that many of them threatened to reawaken the same tensions that direct election would have roused, particularly the tension between large states and small states. To avoid further disputes, Roger Sherman, the architect of the Connecticut Compromise, sent the problem of executive selection to the Committee on Postponed Matters on August 31 to be resolved.<sup>9</sup>

During June and July, however, James Wilson of Pennsylvania had floated a proposal that blended the two systems of direct election and legislative selection. Wilson first put forth his hybrid model of “intermediate electors” on June 2 “when he decided that support was lacking for his proposal of a direct popular vote.”<sup>10</sup> Wilson’s system would have divided each state into districts in which voters could choose electors who would thereafter meet to select the executive. (See Appendix A) Upon its first recommendation on June 2 and its reconsideration on July 17, Wilson’s proposal failed both times by a vote of two states to eight, but “the mood of the Convention had changed perceptibly two days later” when Oliver Ellsworth revised the proposal to allow state legislatures to choose the electors. Following the change, the proposal passed by a vote of six to three on July 19.<sup>11</sup> Nonetheless, the Convention decided to return to the Virginia Plan’s reliance on legislative selection after Georgia delegate William C. Houston

pointed out that bringing together electors from all of the states for the sole purpose of selecting the executive would be far too expensive and inconvenient.<sup>12</sup> Thus, when the issue of executive selection was sent to the Committee on Postponed Matters on August 31, the Convention had already considered an “intermediate elector” system briefly but had returned to the legislative selection system.

The Committee on Postponed Matters met from September 1 to September 7 to resolve several outstanding issues. The Committee consisted of eleven representatives – one from each state – including Gouverneur Morris, James Madison, John Dickinson, Rufus King, and Roger Sherman.<sup>13</sup> On September 4, the Committee presented its proposal for executive selection, an “intermediate elector” system that was fairly similar to the one that Wilson had put forth. (See Appendix B) Rather than split the states up into a certain number of districts, the Committee’s proposal combined the number of seats in the House of Representatives and the Senate to determine how many electors each state would receive. It also allowed each state’s legislature to decide how to appoint the electors and specified that in order to win the presidency a candidate had to receive a number of electoral votes equal to at least a majority of electors. If no candidate received a majority, the Senate would select the president from the top five vote-winners, with the runner-up winning the vice-presidency.

Upon the Convention’s reception of the proposal, Committee chairman Gouverneur Morris offered several reasons for the Committee’s decision to create an electoral system rather than formulate a method for legislative selection. The first two reasons were familiar to the delegates: legislative appointment would invite “the danger of intrigue and faction” as well as eliminate the intriguing option of reeligibility for

office.<sup>14</sup> Further, Morris argued that it would be improper for the Senate to impeach the executive if it were also its appointing body. More broadly, Morris noted that “no body had appeared to be satisfied” with legislative appointment, while some had been “anxious even for an immediate choice by the people.” He also restated the “indispensible necessity” of the executive’s independence from the legislature.<sup>15</sup> Morris’ comments in support of the Committee’s electoral system itself were fairly brief. The only real advantage he pointed out was that having each state’s electors meet to vote in its state capital eliminated “the great evil of cabal.”<sup>16</sup>

After due consideration of the proposal, the Convention voted to accept the Committee’s electoral system with only one major change. Many of the delegates felt that it was improper and dangerous to allow the Senate to choose the President in the event that no person received a majority of the electoral votes. For large-state delegates, selection by the Senate would allow the smaller states to dominate the process.<sup>17</sup> Other delegates, such as Hugh Williamson, feared that “referring the appointment to the Senate [would lay] a certain foundation for corruption and aristocracy.”<sup>18</sup> Williamson and Sherman came forward with a solution to the problem: let the contingent election be decided by the House, with each state receiving one vote.<sup>19</sup> With that compromise, the plan was accepted, and the electoral college was born. (See Appendix C)

To say that the electoral college is a product of compromise is by no means an exaggeration. As Max Farrand writes, “the compromise does not appear on the surface, but it was referred to in the course of the debates, and in later years it was thus explained by several members of the convention.”<sup>20</sup> On its most basic level, the electoral college was a compromise between those delegates who supported direct popular election and

those who supported legislative selection. For example, Morris, a strong advocate of direct election, received some support for the electoral college from Elbridge Gerry, a proponent of legislative appointment.<sup>21</sup> This compromise, however, did more than placate opposing sides of a debate; it shored up the weaknesses in each side's approach. In addressing the criticisms of popular election, the electoral college would not solely rely on the under-qualified and ill-informed masses to select the executive, nor would it invest too much power in the large states. With regard to the faults of legislative appointment, the Framers assumed that an electoral majority would be a rare event, and thus the electoral college would still provide the legislature – thought to be more capable of selecting an appropriate candidate – with a prominent role in the selection of the executive without sacrificing the executive's independence from the legislature as well as the ability to seek reelection.

An additional way to approach the compromise of the electoral college is to consider it an arrangement between the large states and the small states. In order to frame it this way, however, one must first understand how the Framers believed the system would work. “Not foreseeing the development of a two-party system,” most delegates were under the impression that a presidential candidate would seldom receive a majority of electoral votes because few candidates would be known well enough to earn votes in multiple states.<sup>22</sup> George Mason went so far as to suggest that “nineteen times in twenty” the electors would fail to produce a majority-winner.<sup>23</sup> As a result, the Framers believed that the ultimate decision would be made by the House of Representatives more often than not. With each state receiving one vote on the matter in the contingency plan, small states would be at an advantage when selecting the President from the top electoral

vote recipients. Thus, many have claimed that the Framers designed the electoral college to be a two-stage system wherein “the large states would nominate the candidates and the eventual election would be controlled by the small states” in the House.<sup>24</sup> This arrangement was by no means an unintended consequence of the compromise between advocates for direct election and legislative selection. In fact, James Madison later wrote that the electoral college was “the result of compromise between the larger and smaller states, giving to the latter the advantage of selecting a President from the candidates, in consideration of the former in selecting the candidates from the people.”<sup>25</sup>

Understanding the Framers’ intentions regarding the electoral college leads one to consider the following question: has the electoral college technically worked as the Framers originally designed it? Has the President been selected via the institutions that the Framers put it in place? If the answer is yes, then one must then ask why the system was revised under the Twelfth Amendment to the Constitution after just four elections. If the answer is no, then perhaps its failure to perform as it was intended helps to explain why the electoral college has been the subject of more proposed constitutional amendments than any other feature of the Constitution.<sup>26</sup> There is no precise count on the number of proposals, but estimates range “from no less than 500 to over 700.”<sup>27</sup> Most of these proposals have been pet projects of individual members of Congress that have gathered little support, but a few proposals have been the product of serious movements for electoral reform. Of course, the fact that only two of these proposals have resulted in amendments (the Twelfth and the Twenty-third) reveals just how difficult it is to alter the electoral college.

The following four sections of this paper examine four major attempts to alter the design or function of the electoral college. The first case focuses on the effort to revise the procedure for electing the President and Vice-President via the Twelfth Amendment in 1803 and 1804. The second case evaluates the Lodge-Gossett Amendment of 1950 aimed at creating a proportional allocation of electoral votes. The third case centers on Emmanuel Celler and Birch Bayh's proposal for direct election in 1969. The fourth case examines the efforts of National Popular Vote, Inc., whose mission is to create a national popular election without enacting a constitutional amendment.



## Notes

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- <sup>1</sup> Ralph Ketcham, *The Anti-Federalist Papers and the Constitutional Convention Debates* (New York: Signet, 2003), 167.
- <sup>2</sup> Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer* (New Haven: Yale University Press, 1996), 18.
- <sup>3</sup> Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2007* (Washington: CQ Press, 2008), 31.
- <sup>4</sup> Longley and Peirce, *The Electoral College Primer*, 18.
- <sup>5</sup> *Ibid.*, 18.
- <sup>6</sup> Milkis and Nelson, *The American Presidency*, 32.
- <sup>7</sup> *Ibid.*, 32.
- <sup>8</sup> *Ibid.*, 32.
- <sup>9</sup> *Ibid.*, 32.
- <sup>10</sup> Neal R. Peirce, *The People's President: The Electoral College in American History and the Direct-Vote Alternative*, (New York: Simon and Schuster, 1968), 43.
- <sup>11</sup> *Ibid.*, 43-44.
- <sup>12</sup> *Ibid.*, 44.
- <sup>13</sup> *Ibid.*, 44.
- <sup>14</sup> Ketcham, *Anti-Federalist Papers and the Constitutional Convention Debates*, 166.
- <sup>15</sup> *Ibid.*, 166.
- <sup>16</sup> *Ibid.*, 166.
- <sup>17</sup> Milkis and Nelson, *The American Presidency*, 33.
- <sup>18</sup> Ketcham, *Anti-Federalist Papers and the Constitutional Convention Debates*, 168.
- <sup>19</sup> Peirce, *The People's President*, 48.
- <sup>20</sup> Max Farrand, *The Framing of the Constitution of the United States* (New Haven: Yale University Press, 1913), 166.
- <sup>21</sup> Peirce, *The People's President*, 43.
- <sup>22</sup> Milkis and Nelson, *The American Presidency*, 33.
- <sup>23</sup> Ketcham, *Anti-Federalist Papers and the Constitutional Convention Debates*, 166.
- <sup>24</sup> Farrand, *Framing of the Constitution of the United States*, 167.
- <sup>25</sup> Jonathon Elliott, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Washington: Taylor & Maury, 1836), 495, 464.
- <sup>26</sup> Richard J. Ellis and Michael Nelson, *Debating the Presidency: Conflicting Perspectives on the American Executive* (Washington: CQ Press, 2006), 30.
- <sup>27</sup> Robert M. Hardaway, *The Electoral College and the Constitution: The Case for Preserving Federalism* (Westport, CT: Praeger, 1994), 141.

## The Twelfth Amendment

“Wise and virtuous as were the members of the Convention, experience has shown that the mode therein adopted cannot be carried into operation...”

Samuel L. Mitchill, May 1802<sup>1</sup>

As the Framers of the Constitution worked to craft an executive that had the proper powers, title, term, and so forth, they were able to rest easy in a mutual understanding that George Washington would almost certainly be the first man to hold the office and that he would do so prudently. In fact, the delegates’ assumption that Washington would become the first national executive as well as Washington’s presence at the Convention sometimes made discussions regarding the executive branch uncomfortable. Nonetheless, the presence of a national hero such as Washington likely informed many of their deliberations on how to craft the executive. For example, the delegates’ belief that a candidate would only occasionally be able to gather enough electoral votes to win an election outright was likely influenced by their understanding of Washington’s prominence in the United States. They believed that only rarely would a man of Washington’s immense popularity and widespread appeal be up for election, and thus most of the time presidential elections would have to be resolved within the House of Representatives.

The elections of 1789 and 1792 certainly confirmed the Framers’ belief that Washington would easily become the first executive. In an election that was “thoroughly undemocratic” yet “a perfect expression of the popular will,” Washington won the first presidential election unanimously, collecting all sixty-nine of the electoral votes cast.<sup>2</sup> John Adams was the runner-up with thirty-four electoral votes and became the first Vice-President. After contemplating retirement, Washington ran for a second term in 1792 and

again won the election unanimously, this time gathering 137 electoral votes.<sup>3</sup> Adams again won the Vice-Presidency with seventy-seven votes. Through the first two elections, the electoral college had worked just as the Framers planned. United in their support for a larger-than-life public figure, the electors had cast their votes consistently and resoundingly for an appropriate candidate. Washington's retirement following his second term, however, inadvertently triggered dual legacies. Though he did not intend for his retirement after two terms to set a precedent for future presidents, Washington's decision to step down voluntarily was followed by every one of his successors until Franklin D. Roosevelt. Another legacy born of Washington's retirement was the opening up of partisanship in American politics. While Washington had always maintained that the presidency needed to remain nonpartisan and had denounced partisanship, it did not take long for the office to become engulfed in party politics.<sup>4</sup>

Viewing himself as "Washington's legitimate successor," Adams committed himself to running for the presidency in 1796 as soon as he learned of Washington's retirement.<sup>5</sup> Adams was certainly in the Federalist Party's camp, but he was by no means its leader, likely due to his rivalry with fellow Federalist Alexander Hamilton. In fact, he did not seem to garner much attention from the party until Washington announced his retirement, at which time "several influential Federalists, who had mostly ignored him for the past seven years, cozied up to him."<sup>6</sup> Meanwhile, Thomas Jefferson, who had retired from public life after Washington's first term, reentered the political realm by becoming the Democratic-Republicans' leading candidate for the presidency, signaling "a rekindling of his old partisan fervor."<sup>7</sup> Leading up to the election of 1796, neither Adams nor Jefferson (nor Federalist candidate Thomas Pinckney) did any campaigning for

themselves, as it did not conform to “the political traditions of early America.”<sup>8</sup> The newly forming party organizations of certain localities, however, did begin campaigning, using print media, especially pamphlets, and rallies.<sup>9</sup> This electioneering was the first of its kind on the national level and began a new era in American politics. The party organizations at this point were not particularly well formed or well disciplined. While campaigning may have affected the way electors cast their ballots, it is also highly likely that “personal, regional, and political loyalties also influenced the final decision.”<sup>10</sup>

Once the ballots had been counted, Adams had won a slim victory with seventy-one electoral votes, while Jefferson became his Vice-President with sixty-eight votes, despite being from the other party’s ticket. Examination of the distribution of the votes showed that “the election outcome laid bare once more the new nation’s sectional divisions,” suggesting that the election had largely been decided by regional interests that had become aligned with party interests.<sup>11</sup> Nevertheless, the election of 1796 represents an important event in American history, as both the first contested presidential election and the first partisan presidential election.

The election of 1796 is especially significant with regard to the electoral college. First, it demonstrated for the first time what the distribution of electoral votes would look like without the presence of a broadly appealing national figure like Washington on the ballot. In what may have come as a surprise to the Framers, John Adams was able to secure a 53.4% majority of electoral votes despite his mainly regional appeal. The election was decided outright and was not sent into the House of Representatives. Perhaps more significant, however, is that in just the third presidential election, there were already plans to take advantage of loopholes in the electoral system. It was hardly a

secret that Adams and Hamilton had an ongoing feud within the Federalist Party.

Hamilton had had little faith in Adams' ability as vice-president during Washington's time and was even more discouraged by the thought of Adams as president.<sup>12</sup> In an attempt to keep Adams out of office, Hamilton took steps to position Thomas Pinckney, whose inexperience might have allowed Hamilton to become "the power behind the throne," ahead of Adams in the electoral vote and, ideally, ahead of Jefferson.<sup>13</sup>

Hamilton focused his efforts on swaying South Carolina's electors to cast one of their votes for Pinckney and the other for someone other than Adams. His plan followed this logic: "if the Federalist electors from New England cast their second vote for Pinckney, as the Federalist caucus had urged, but if one or two Federalist electors from other sections withheld their second vote from Adams, Pinckney's total would surpass that of Adams."<sup>14</sup> At first Adams ignored the rumors of Hamilton's plotting, believing that Hamilton would not dare risk the possibility of Jefferson beating both Federalist candidates. By the end of the election, however, Adams was fully convinced – "certain that Pinckney would be 'smuggled in' to the presidency by Hamilton's intrigues."<sup>15</sup> But Federalists in New England had sniffed out Hamilton's plan and refused to cast their votes for Pinckney, thus assuring Adams the presidency while sacrificing the vice-presidency to Jefferson.

Federalist Robert Goodloe Harper of Maryland recognized soon thereafter that "the Adams and Jefferson victories rested less with the actions of Federalist electors and more with the constitutional requirement that electors cast two undifferentiated votes for President."<sup>16</sup> Implicitly, Harper was observing that the electoral college had not been designed to accommodate a party system. Federalists soon began to submit proposals to

amend the Constitution to force electors to differentiate their votes for the presidency and vice-presidency “so that in future contests they could be assured of winning both offices and shutting out the Republicans entirely.”<sup>17</sup> These Federalist attempts to alter the electoral college demonstrated that the earliest efforts to reform the system were motivated by partisan politics and a desire to put the opposing party at a disadvantage.

Moreover, the election of 1800 and the reform movement following it showed that such motives were not reserved for the Federalists alone. In the election of 1800, Jefferson challenged Adams’ bid for a second term in an election that proved to be even more chaotic than its predecessor. The Federalists put forth Adams and Charles Cotesworth Pinckney, and the Democratic-Republicans reproduced the 1796 ticket of Jefferson and Aaron Burr. While the Federalists did not designate a “clear-cut choice” for president, the Democratic-Republicans stipulated that Jefferson was their first choice over Burr.<sup>18</sup> Nevertheless, there was still no designated method by which electors could distinguish on their ballots which candidate was meant to win which office. With Rhode Island casting a single ballot for John Jay instead of Pinckney, the Federalists managed to have Adams receive one more vote than Pinckney.<sup>19</sup> Jefferson and the Democratic-Republicans, on the other hand, had simply assumed that one or two electors in Georgia or another Democratic-Republican state would “drop their votes for Burr, either on their own initiative or at the direction of a party leader” in order to break the electoral tie between their two candidates.<sup>20</sup> When this did not happen, Jefferson and Burr found themselves tied with seventy-three electoral votes, while Adams had sixty-five and Pinckney sixty-four.

Following the constitutional contingency plan for a tie, the election was sent to the House of Representatives, with each state receiving one vote to cast between Jefferson and Burr. The two men exchanged some correspondence prior to the House's official voting, in which Jefferson offered Burr a more powerful role as vice-president, and Burr responded positively, acknowledging "your [Jefferson's] administration."<sup>21</sup> Nevertheless, as the day of the House's consideration grew near, rumors began to leak about Burr's decision not to concede the election. Much to Jefferson's dismay, these rumors became reality when Burr "refused to take the honorable steps required to correct the results of the electoral college" and allowed his name to remain in contention.<sup>22</sup>

Without a concession by Burr, ample opportunities for intrigue and scheming presented themselves. Of course, on the Democratic-Republican end there was Burr, who attempted to use his unique position to his own political advantage and sneak his way into the presidency. The Federalists, however, had plans of their own. Early on there was some consideration of forcing a continued tie so that neither Jefferson nor Burr could assume office before Congress's adjournment and, as a result, a Federalist Senate president pro-tempore would become president when Adams' term ended on March 4.<sup>23</sup> There were others, such as Speaker of the House Theodore Sedgwick, who were more than happy to support Burr's election, viewing him as "the lesser of two evils."<sup>24</sup> To add to Burr's appeal, they believed that:

if Burr, with Federalist help, won the presidency, most southern Republicans would see him as a treacherous backstabber who had betrayed Jefferson. Under those circumstances President Burr, to forge a workable coalition, would have to find his allies from among Federalists...<sup>25</sup>

While the majority of Federalists began to line up behind Burr, one prominent Federalist remained stridently opposed to a Burr presidency. Alexander Hamilton,

though he was hardly an admirer of Thomas Jefferson, saw Aaron Burr as “the most unfit man in the U.S. for the office of President.”<sup>26</sup> He felt Burr to be an overly ambitious, morally bankrupt danger to the nation, someone who might singlehandedly destroy the Constitution. While he would have loved to “contribute to the disappointment and mortification of” Jefferson, Hamilton understood that Jefferson “was likely ‘to temporize’ and to acquiesce in the prevailing, mainly Federalist, governing arrangements.”<sup>27</sup> Nevertheless, this is not to say that Hamilton simply intended to hand his influence and support over to Jefferson without exercising some leverage. On the contrary, Hamilton led a group of Federalists, including Gouverneur Morris, Dwight Foster, and Lewis Morris, in a scheme to bargain with Jefferson. They offered “support for Jefferson in return for his pledge to meet their demands.”<sup>28</sup> Jefferson promptly rejected the deal, refusing to enter into partisan intrigue or bind himself to any such agreement.

As a result, Jefferson allowed the partisan tides of the House to determine his political fate. From February 11 to February 17, the House met to vote between Jefferson and Burr. On thirty-five straight ballots, neither candidate earned nine of the sixteen states’ votes. Prior to the decisive thirty-sixth ballot, certain important players in the Federalist Party surveyed their options and decided that, as Sedgwick put it, “the gig is up.”<sup>29</sup> Similar to what Hamilton had done with Jefferson, some Federalists had sought to discover what sort of deal they could strike with Burr only to be disappointed to find out that he would no more compliant than his opponent. Meanwhile, James Bayard, a Federalist and Delaware’s lone congressman, had gone through intermediaries in an attempt to strike a deal with Jefferson as well. Although he never received confirmation



from Jefferson himself, Bayard seemed to be under the impression that Jefferson had agreed to certain pro-Federalist terms.<sup>30</sup> As a result, Bayard – along with the delegation of South Carolina and the Federalists from Maryland and Vermont – abstained on the thirty-sixth ballot in the House. With their abstentions, Maryland and Vermont went to Jefferson while Delaware and South Carolina were counted as abstentions, breaking the deadlock and handing the election to Jefferson. Thus, after enduring a difficult test of partisan scheming and plotting, Thomas Jefferson was inaugurated on March 4, 1800.

Immediately after Jefferson's inauguration, discussions about amending the Constitution in order to repair the electoral college's flaws flared up once again, as they had after the election of 1796. Unlike the previous attempts, however, the most support for such an amendment now came from the Democratic-Republicans, and it became "very much a partisan issue."<sup>31</sup> On May 1, 1802, an amendment to separate presidential and vice-presidential votes passed the House forty-seven to ten but failed to reach a two-thirds majority in Senate, largely due to Federalist Gouverneur Morris. Morris, who had been one of the architects of the system at the Constitutional Convention, stated his opposition to the amendment as follows:

The Convention not only foresaw that a scene might take place similar to that of the last Presidential election... This, which is the greatest supposable evil of the present mode, was carefully examined [at the Convention], and it appeared that... a useful lesson would result from it for the future, to teach contending parties the importance of giving both votes to men fit for the first office.<sup>32</sup>

Despite what Morris claimed, however, no such discussion at the Convention was recorded. Instead, Morris may have been masking the Federalists' fear that an amendment to the current system would prevent them from gaining either the presidency or the vice-presidency in the next election.

After the failure of the 1802 proposal in the Senate, the Democratic-Republicans chose to wait until conditions in the Senate became more favorable. When the Eighth Congress gathered in October 1803, the Democratic-Republicans felt that conditions were opportune, especially considering that the election of 1804 was looming. By this point, however, party lines had become much more apparent. It became clear that the Federalists were opposed to the amendment because it would crush the “party’s hope that it could compel the Republicans to scatter enough of their second votes in the Presidential election of 1804 so that the Federalist candidate for President could at least be elected Vice President.”<sup>33</sup> Some party members, such as John Quincy Adams, even felt that the amendment was intentionally aimed at the Federalists, claiming that it was “intending to prevent a federal Vice President being chosen.”<sup>34</sup>

Adams was not necessarily mistaken. As discussion of the amendment heated up, politicians on both sides of the argument did very little – if anything – to hide the partisan nature of the debate. Federalist William Plumer gave a speech in which he outlined his opposition to the amendment based on the advantage it gave to the large states, but “the real issue lay not between large states and small states but between Federalist states and Republican states.”<sup>35</sup> Democratic-Republicans such as John Taylor were more explicit, declaring that it was never the intention of the Constitution to create a situation “by which a minor faction should acquire a power capable of defeating the majority in the election of President, or of electing a Vice President contrary to the will of the electing people.”<sup>36</sup> Democratic-Republican Pierce Butler – although he opposed the amendment – went so far as to name the opposition party itself: “If you do not alter the Constitution, the people called Federalists will send a Vice President into that chair; and this, in truth,

is the pivot upon which the whole turns.”<sup>37</sup> For perhaps the first time in American history, political parties were openly and actively discussed in congressional debates, allowing partisan politics to enter the governmental arena explicitly.

The amendment passed the Senate on December 2, 1803, by a 22 to 10 vote, “with almost all the Republicans in favor and the Federalists almost solid in opposition.”<sup>38</sup> After much debate, the amendment also passed in the House, although it required Speaker Nathaniel Bacon of the Democratic-Republicans to cast the deciding vote to give it a two-thirds majority on December 8. The ratification process was surprisingly fast, only taking six months to receive approval from three-fourths of the states. Noticeably, the three “most ardent Federalists states,” Massachusetts, Connecticut, and Delaware, rejected the amendment fairly quickly.<sup>39</sup>

In its final form, the Twelfth Amendment forced electors to differentiate their votes for president and vice-president, requiring a majority of electoral votes to win either office. Additionally, it revised the contingency plan of House election by decreasing the number of candidates considered in the House from five to three. (See Appendix D) While most of the Twelfth Amendment’s effects on electoral politics are fairly clear, the amendment has left additional legacies that are slightly more subtle. For one, the Twelfth Amendment “facilitated and, in effect, confirmed” the two-party system in America.<sup>40</sup> The congressional debates over the amendment brought party politics out into the open in Senate and House debates. Moreover, the least remarkable feature of the amendment – its reduction of contingency candidates from five to three – is perhaps an equally important acknowledgement of the two-party system. The reduction signified that, because of the party system, it was no longer considered likely or desirable that five

candidates would receive electoral votes. It essentially signified an abandonment of the system that the Framers had established, in which the large states would nominate candidates via the electoral college and the small states would select the president in the House. The Twelfth Amendment demonstrated that the parties now held the responsibility for nominating candidates.

Additionally, the Twelfth Amendment may have sealed the political fate of the Federalist Party. Had it not been for the amendment, the Federalists might have captured at least the vice-presidency once more.<sup>41</sup> As it turned out, they never won another national office and faded into obscurity over the next decade and a half. The Twelfth Amendment also had a lasting effect on the vice-presidency. Prior to distinguishing votes between president and vice-president, all candidates were seeking the highest office in the nation and, thus, had to be persons of high quality. With the passage of the amendment, the prestige of the office decreased substantially, and it became less of a stepping stone to the presidency. Some argue that it made the vice-presidency nothing more than a glorified sinecure.<sup>42</sup>

In terms of electoral college reform, however, the Twelfth Amendment and the movement to support it certainly lend credence to the central argument of this thesis that electoral reform efforts typically come in response to a major electoral crisis and are molded by the interests of political parties. Following the election of 1796 and the intrigues of Alexander Hamilton, the Federalists attempted unsuccessfully to resolve the weaknesses of the electoral system and prevent future success for the opposition party. Likewise, after the chaotic election of 1800, Democratic-Republicans worked to revise the electoral system in an endeavor that was unabashedly aimed at keeping Federalists

out of the executive branch. The product of their effort, the Twelfth Amendment, injected party politics into the national government in an unprecedented fashion.

## Notes

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- <sup>1</sup> Tadahisa Kuroda, *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787-1804* (Westport, CT: Greenwood, 1994), 140.
- <sup>2</sup> Paul F. Boller, Jr., *Presidential Campaigns: From George Washington to George W. Bush* (New York: Oxford University Press, 2004), 3-4.
- <sup>3</sup> *Ibid.*, 6.
- <sup>4</sup> John E. Ferling, *The First of Men: A Life of George Washington* (Knoxville: University of Tennessee Press, 1988), 469.
- <sup>5</sup> John E. Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (New York: Oxford University Press, 2004), 69.
- <sup>6</sup> *Ibid.*, 84.
- <sup>7</sup> *Ibid.*, 83.
- <sup>8</sup> *Ibid.*, 85.
- <sup>9</sup> Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2007* (Washington: CQ Press, 2008), 88.
- <sup>10</sup> Ferling, *Adams vs. Jefferson*, 94.
- <sup>11</sup> *Ibid.*, 95.
- <sup>12</sup> James Grant, *John Adams: Party of One* (New York: Farrar, Strauss and Giroux, 2005), 346, 374.
- <sup>13</sup> Ferling, *Adams vs. Jefferson*, 88.
- <sup>14</sup> *Ibid.*, 88.
- <sup>15</sup> *Ibid.*, 90.
- <sup>16</sup> Kuroda, *The Origins of the Twelfth Amendment*, 72.
- <sup>17</sup> *Ibid.*, 72.
- <sup>18</sup> Ferling, *Adams vs. Jefferson*, 132.
- <sup>19</sup> *Ibid.*, 164.
- <sup>20</sup> Edward J. Larson, *A Magnificent Catastrophe: The Tumultuous Election of 1800, America's First Presidential Campaign* (New York: Free Press, 2007), 117; Ferling, *Adams vs. Jefferson*, 161.
- <sup>21</sup> *Ibid.*, 178.
- <sup>22</sup> Milkis and Nelson, *The American Presidency*, 99.
- <sup>23</sup> Ferling, *Adams vs. Jefferson*, 178.
- <sup>24</sup> *Ibid.*, 179.
- <sup>25</sup> *Ibid.*, 180.
- <sup>26</sup> *Ibid.*, 180.
- <sup>27</sup> *Ibid.*, 180; Milkis and Nelson, *The American Presidency*, 100.
- <sup>28</sup> Ferling, *Adams vs. Jefferson*, 184.
- <sup>29</sup> *Ibid.*, 193.
- <sup>30</sup> *Ibid.*, 192.
- <sup>31</sup> Richard P. McCormick, *The Presidential Game: The Origins of American Presidential Politics* (New York: Oxford University Press, 1982), 82.
- <sup>32</sup> Neal R. Peirce. *The People's President: The Electoral College in American History and the Direct-Vote Alternative* (New York: Simon and Schuster, 1968), 72.
- <sup>33</sup> Peirce, *The People's President*, 73.
- <sup>34</sup> *Ibid.*, 73.
- <sup>35</sup> McCormick, *The Presidential Game*, 85.
- <sup>36</sup> *Ibid.*, 85.
- <sup>37</sup> Peirce, *The People's President*, 73.
- <sup>38</sup> Peirce, *The People's President*, 73.
- <sup>39</sup> Milkis and Nelson, *The American Presidency*, 107.
- <sup>40</sup> McCormick, *The Presidential Game*, 11.
- <sup>41</sup> *Ibid.*, 86.
- <sup>42</sup> *Ibid.*, 87.

### **The Lodge-Gossett Amendment**

“Finally, there are those who say that because the electoral college has been a part of the Constitution ever since its original adoption we should be most reluctant to abolish it. The answer to that is in the history books.”

Henry Cabot Lodge, Jr., July 1949<sup>1</sup>

The second reform movement examined in this paper culminated with the proposal of the Lodge-Gossett Amendment in 1950. Moving from the early nineteenth century to the mid-twentieth century may imply that the nearly century-and-a-half period between the Twelfth Amendment and the Lodge-Gossett Amendment was free of any electoral crises or calls for reform; this could not be further from the truth. On the contrary, there were numerous attempts to alter or abolish the electoral college from 1804 to 1950. With no exact count on proposed amendments, most experts estimate that the number of proposals during that time ranges somewhere between 500 and 700.<sup>2</sup> Much as with the Twelfth Amendment, several of the most prominent of these attempts came in response to major electoral crises.

The election of 1824 produced no electoral majority winner and thus was decided in the House of Representatives. The selection of John Quincy Adams over Andrew Jackson – who had won a plurality in both electoral and popular votes – lent plausibility to allegations that Adams had made a backroom deal with House Speaker Henry Clay to ensure victory.<sup>3</sup> After winning the 1828 election in a landslide, Jackson, who felt as if the electoral contingency plan had robbed him of the previous election, recommended “such an amendment of the Constitution as may remove all intermediate agency in the election of the President and Vice President.”<sup>4</sup> Senator Thomas Hart Benton of Missouri – with the support of Jackson – made such a reform a prime object of his concern over

the course of the next decade but failed to pass his proposals in both the Senate and the House.<sup>5</sup>

A half century later, the election of 1876 sparked similar controversy and tension. Although Democratic candidate Samuel J. Tilden outdistanced Republican Rutherford B. Hayes by approximately 250,000 popular votes, Hayes was named the winner of the electoral majority by a bipartisan Electoral Commission that had been specially appointed to consider the validity of electoral vote counts.<sup>6</sup> Democrats in both the House and the Senate roundly criticized and rejected the impartiality of the Electoral Commission's decision. The Compromise of 1877 helped to curb the risk of a continued crisis when Hayes promised southern Democrats the removal of military governance from the South in exchange for their acceptance of the Electoral Commission's result.<sup>7</sup> Nevertheless, the problematic nature of the 1876 election led Senator Oliver P. Morton of Indiana – a member of the Electoral Commission – to propose an amendment replacing the electoral college with a direct popular vote.<sup>8</sup> Despite Morton's belief that the amendment "was not a partisan measure," it never gained strong support from either party and failed in the Senate on multiple occasions.<sup>9</sup>

The failures of both Benton's and Morton's proposals help inform the reasons for considering the Lodge-Gossett Amendment in more detail. While Benton and Morton's amendments – like most that have been proposed – failed to achieve the necessary majorities to pass the Senate or House, the Lodge-Gossett Amendment did receive the two-thirds majority necessary to pass in the Senate. Before understanding what the Lodge-Gossett Amendment proposed and why it gained some measure of success, however, it is first necessary to understand the political context of its introduction. Like



the reform attempts of Benton and Morton, the Lodge-Gossett Amendment came in response to an electoral crisis – or rather, a potential electoral crisis.

The election of 1948 is remembered as one of the most surprising in American history. The Democratic Party found itself seriously conflicted by the dueling natures of its two extreme wings: Southern segregationists, who opposed the party's adoption of a civil rights platform, and its left-wingers, who opposed the party's Cold War policies. After the Democratic National Convention of 1948, Southern Democrats formed the States' Rights, or "Dixiecrat," party with South Carolina governor Strom Thurmond as its presidential candidate. On the other extreme, former vice president Henry A. Wallace became the nominee of the newly formed Progressive party.<sup>10</sup> Despite these major fissures within the party, Democratic incumbent Harry S. Truman managed to win a second term, defeating Republican challenger Thomas E. Dewey and the two dissident Democrats.<sup>11</sup>

Although Truman won a solid electoral majority with a respectable popular plurality, the election of 1948 came very close to threatening the nature of the two-party system and the balance of power between major parties and splinter parties. While Truman outdistanced Dewey by over two million popular votes in total, there were several key states, such as California, Ohio, and Illinois, where Truman's margin of victory was only a few thousand votes.<sup>12</sup> Had any two of those states gone to Dewey, Truman would not have received an electoral majority, and the election would have been sent to the House for resolution. As the state delegations broke down, Republicans would have controlled twenty votes, Democrats would have had twenty-one plus the four Dixiecrat states, and three delegations would have been split evenly. Since twenty-five

states' votes were necessary to select the president in the House contingency plan, Thurmond and other States' Rights supporters had hoped to leverage their four southern states' votes for certain political concessions from the Democrats. For example, they almost surely would have demanded that Truman abandon his civil rights platform. Of course, Thurmond's plan relied on the assumption that Alabama, Louisiana, Mississippi, and South Carolina's House members would help to carry out the Dixiecrats' plan.<sup>13</sup> Nevertheless, the election of 1948 demonstrated the possibility that a splinter party could potentially possess the balance of power in a presidential election and try to force its policies on a president.<sup>14</sup>

The election of 1948 also demonstrated that splinter parties could have a major effect on the allocation of electoral votes and perhaps even alter the outcome of the election itself. Henry Wallace and the Progressive party – even without winning a single electoral vote – may have altered the course of the election by steering thousands of votes away from Truman, particularly in closely contested states such as New York, Michigan, and Maryland. If Truman had won those states' electoral votes, he would have more than made up for the loss of the Dixiecrat states. While the States' Rights party exposed the danger of a splinter party's control of votes in the House, the Progressive Party further showed that the electoral college “permits splinter parties in big states to occupy the balance of power” in electing the president.<sup>15</sup>

The possibility of controversy in the 1948 election helped add momentum to the reform efforts of Republican Senator Henry Cabot Lodge, Jr. of Massachusetts. On several occasions beginning in 1941, Lodge introduced proposals for a new electoral system. In 1944 and 1948, his proposals in the Senate and their companion House

measures were reported favorably by their respective committees, but no floor action was taken on any of the proposals.<sup>16</sup> It was not until the implications of the 1948 election became clear that Lodge's proposal moved from the Senate Judiciary Committee to the Senate floor. By that time, Lodge had partnered with Representative Ed Gossett, a Democrat from Texas, to sponsor the joint resolution.

The amendment that Lodge and Gossett proposed was designed to alter the electoral college by essentially banning the unit rule, also known as the "winner-take-all" allocation of electoral votes. Instead of allowing each state to determine how to allocate its votes, the Lodge-Gossett Amendment required each state to distribute its electoral votes in the same proportion as the state's popular vote. The winner of the election would be the candidate with the highest number of electoral votes, regardless of whether the number was a majority or plurality. (See Appendix E) This proposal, known as the proportional plan, was not the first of its kind. It had first been introduced in 1848, then became a fairly popular concept several decades later, and was introduced in Congress on twenty separate occasions from 1875 to 1889. None of these proposals, however, made it to the floor of either the House or the Senate, largely because the plan's opponents perceived it to be a major encroachment on states' rights.<sup>17</sup> In the 1920s and 1930s, Representative Clarence F. Lea of California and Senator George W. Norris of Nebraska worked to push the proportional plan through the House and Senate Judiciary Committees, but neither one was successful in bringing the proposal to the floor.<sup>18</sup>

In February 1949, the House Judiciary Committee began its consideration of Lodge and Gossett's proposal for a proportional system. In his statement before the Committee, Gossett outlined what he believed to be the weaknesses and failures of the

electoral college. Gossett especially focused on the “irresponsible control and domination [of results] by small organized minority groups within the large pivotal states.”<sup>19</sup> He claimed that voting blocs – such as organized labor, African Americans, and Jews – put pressure on political parties in swing states to alter their platforms in order to win their votes. Gossett believed that the amendment “would remove the overpowering incentive... to coddle and corrupt organized minority groups in the pivotal states... because their votes would not mean a balance of power and the election of a President.”<sup>20</sup> Gossett also affirmed that the amendment was designed to strengthen the two-party system, as opposed to inviting splinter groups such as the Progressives to play a greater role in deciding the president: “Nothing could be more nonpartisan than the proposed amendment... It would give our two great major parties new life and vigor. It would free them of the leeches and parasites that now cling to the backs of each.”<sup>21</sup> Gossett suggested that the amendment would curb the power of minority groups, largely diminish sectionalism, mitigate electoral fraud, and ensure a greater sense of democracy.

As the House Judiciary Committee concluded its consideration of the Lodge-Gossett Amendment and reported on it favorably, the Senate Judiciary Committee began its consideration of the amendment in late February 1949. Lodge’s presentation of the proposal was similar to Gossett’s with the exception of the emphasis on minority groups. Lodge tended to focus more on the democratizing effects of the amendment and the danger of electing a minority president through the electoral college. Like Gossett, he claimed that the amendment would strengthen the two-party system:

Indeed, this amendment should greatly reduce the present weight of splinter parties and special pressure groups, for it deprives them of the bargaining power they now possess by virtue of their ability so often to swing all the electoral votes

of key states to one or the other major candidate – as witness the 1948 elections in New York [by the Progressive party].<sup>22</sup>

Going further, Lodge often argued that the proportional system would even encourage political competition in one-party areas, such as the solidly Democratic South. After the 1948 election nearly went to the House for resolution, Lodge claimed that one of his amendment's greatest benefits was that it would end the House contingency plan. With the passage of the Lodge-Gossett Amendment, the winner of the election would be the recipient of any plurality of electoral votes, no matter what percentage. In case of a tie, the election would go to the winner of the most popular votes. As a result, splinter parties, such as the States' Rights party, could no longer inject "turmoil, unrest, intrigue and possible frustration of the popular will" into the election of the president through the House contingency procedure.<sup>23</sup>

After nearly two and a half months of consideration, the Senate Judiciary Committee reported favorably on the Lodge-Gossett Amendment in May 1949. On January 25, 1950, Lodge brought the proposal to the floor of the Senate and encountered immediate opposition from two fellow Republicans, Senator Homer Ferguson of Michigan and Senator Robert A. Taft of Ohio. Ferguson almost immediately attacked the amendment on the basis that the states would be "required to surrender their sovereignty over the disposition of their own electoral votes."<sup>24</sup> Arguing against Lodge's point about splinter groups, Ferguson claimed that a proportional system would do more to encourage minor parties by providing them with "a score card to their progress."<sup>25</sup> As a result, smaller political parties would remain focused on their goal of splintering the two major parties. Other Republicans suggested that a proportional electoral system would foster a broader multiparty political system, similar to those in European nations that employed

proportional representation in parliamentary elections. Lodge rejected these arguments, claiming that the new electoral system would bear no resemblance to proportional representation because the election produced only one official: “Even the cleverest surgeon cannot divide one man up – proportionally or otherwise – and expect him to live.”<sup>26</sup>

Senator Taft presented a line of argument more in the partisan spirit of the earlier debate over the Twelfth Amendment. Although Lodge and Gossett claimed that the amendment was nonpartisan – or at the very least bipartisan – in nature, Taft could only approach the amendment in terms of its partisan implications. In a letter to a fellow Republican in March 1949, Taft had explained his opposition to the amendment: “the Republicans would receive a smaller proportion of the electoral vote in the southern States than the Democrats would receive in the northern States. We would have been worse off in every election.”<sup>27</sup> When the proposal reached the Senate floor, Taft remained deeply concerned that the proportional system “would give a tremendously disproportionate weight to one-party states.”<sup>28</sup> Taft was one of several conservative Republicans who feared the concentration of Democrats in the South.

Before the Lodge-Gossett Amendment came to a final vote, the Senate decided to address the risk of a minor party winning the presidency. In an effort to protect the two major parties, an amendment was made to the proposal stipulating that any candidate had to receive at least a forty-percent plurality of electoral votes in order to win the election. If no candidate won such a plurality, a joint session of the House and Senate would elect the president from the top two electoral vote recipients, with each representative and senator casting one vote. With that change, the Lodge-Gossett Amendment came to a

vote on February 1, and the results seemed to indicate that several Republicans agreed with Lodge that their party was up to the challenge of winning votes in the Democratic South. Supported solidly by Democrats and liberal and moderate Republicans, the amendment passed the Senate by a vote of sixty-four to twenty-seven, three votes over the required two-thirds majority. It was the first time in over a century that the Senate had approved a constitutional amendment reforming the electoral college.<sup>29</sup>

As the amendment subsequently awaited consideration from the House Rules Committee, however, the effort lost a great deal of momentum, and both parties' support for the proposal shrank quickly. Most Republicans united behind partisan arguments similar to those made by Taft, "apparently sharing Taft's fear of increased electoral power [for] the Democratic South."<sup>30</sup> A study of the Lodge-Gossett plan conducted by political scientist Ruth C. Silva buttressed these Republican fears. In "The Lodge-Gossett Resolution: A Critical Analysis," Silva concluded that "the Lodge formula would reduce the possibility of a Republican's reaching the Presidency even with a popular plurality, but would enable a Democrat to salvage victory from popular defeat."<sup>31</sup>

Nevertheless, the most significant bloc of opposition to the Lodge-Gossett Amendment in the House came from the Democrats. While Republican Homer Ferguson had suggested in the Senate that the amendment would strengthen third parties, the argument spread across the aisle in the House to Democrats. Representative Wright Patman of Texas, a Democrat, made arguments strikingly similar to Ferguson's. Patman wrote that a proportional system "would greatly stimulate and encourage the formulation, merger, and development of *minority parties*" as well as legitimize splinter parties such as the Dixiecrats: "Why is it that neither the extreme right – the fascist groups – nor the

extreme left – the communist group – has offered any objection to this amendment? Can it be that they see it as an opening through which they can slip into our Government and undermine its democratic nature?”<sup>32</sup>

More importantly, Democrats’ fears about which voting groups would be disadvantaged by the amendment became more potent and led many into opposition. As scholars began to assert that the Lodge-Gossett plan would marginalize minority groups in urban areas, many northern Democrats became convinced that the proportional system would diminish the voting blocs that they had come to rely on.<sup>33</sup> Helping to confirm these fears, Clarence Mitchell, the Washington director of the NAACP, spoke against the amendment, claiming that “the Negro vote and the vote of any other minority... will no longer be important.” As such, he claimed the Lodge-Gossett plan was “antiurban, antinorthern, and antiliberal.”<sup>34</sup> Northern Democrats began to fear that passage of the amendment might spell the end of the party’s civil rights agenda and thus opposed even voting on the measure in the House.

As a result, the House Rules Committee – dominated by northerners – voted on March 9 not to send Gossett’s resolution to the floor.<sup>35</sup> Gossett spent the next several months trying to revive the amendment but encountered another major setback when the Americans for Democratic Action went on record against the proposal in April.<sup>36</sup> In a desperate attempt to circumvent the Rules Committee, Gossett moved on July 17 to suspend the rules and bring the resolution to the floor for forty minutes of debate and a vote.<sup>37</sup> In his opening speech, Gossett did very little to help his case with northern Democrats. As he had in his former speeches on the amendment, Gossett focused his comments on groups such as organized labor, African Americans, Jews, and other ethnic



groups, going so far as to suggest that such groups corrupt political parties and antagonize the nation.<sup>38</sup>

Representative Clifford P. Case of New Jersey, a liberal Republican, jumped to the defense of minorities, arguing that the amendment would mean the “destruction of any chance for a program of civil rights on a Federal level, with impairment of the rights of minorities generally.” Nonetheless, Case’s primary argument was partisan in nature as he went on to predict that the weight that the proposal gave to one-party regions would “reduce the Republican party to impotence” by allowing the Democrats to ride the solidly Democratic South to victory.<sup>39</sup> House Minority Leader Joseph W. Martin, Jr., of Massachusetts seconded these partisan concerns, declaring that the Lodge-Gossett plan would “make it impossible for the election of a Republican President for a good many years.”<sup>40</sup> These arguments largely echoed the countless reports and articles in the preceding months or years that had predicted the end of not only the Republican Party, but also the two-party system in general.<sup>41</sup> Between the Republicans’ fear that the Lodge-Gossett plan would ruin their party and the northern Democrats’ belief that the plan would destroy any chances of success for their civil rights platform, the Lodge-Gossett Amendment failed in the House by a vote of 134 to 210.<sup>42</sup> Although the Lodge-Gossett plan was briefly reconsidered in subsequent sessions of Congress, the proposal never again reached the floor of either house.

If the movement to establish the Twelfth Amendment helped to facilitate and confirm the two-party system in America, then the effort to defeat the Lodge-Gossett plan could similarly be looked upon as a defense of that system. Furthermore, the efforts supporting and opposing the Lodge-Gossett Amendment bear striking similarities to

those of the Twelfth Amendment. For one, both reform attempts came, to some degree, in response to controversial elections in which the nation faced an electoral crisis – or in the case of the 1948 election, a potential electoral crisis. More significantly, however, both efforts were highly influenced by partisan interests.

While the Democratic-Republicans' push for the Twelfth Amendment overcame Federalist opposition, the promoters of the Lodge-Gossett Amendment were not able to defeat their opponents. While party lines were fairly well established for the consideration of the Twelfth Amendment, the vote for the Lodge-Gossett Amendment in the House reflected that Democratic Party was compromised by a lack of party unity. Divided by competing interests and without a party line vote, the Democrats were unable to surmount the mainly Republican opposition. Additionally, the failure of the Lodge-Gossett Amendment demonstrated the two parties' entrenched political opposition to electoral college reform. Both Democrats and Republicans have complaints about the operation of the electoral college, but both "are mutually critical of any change that might cut into their gradually established control over the electoral vote."<sup>43</sup> Thus, party politics and a commitment to the status quo of a two-party system led to the defeat of the Lodge-Gossett Amendment.

## Notes

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- <sup>1</sup> Henry Cabot Lodge, Jr., "Lodges Argues for his Plan," *Presidential Election Reforms*, Ed. Walter M. Daniels (New York: H.W. Wilson, 1953), 137.
- <sup>2</sup> Robert M. Hardaway, *The Electoral College and the Constitution: The Case for Preserving Federalism* (Westport, CT: Praeger, 1994), 141; Neal R. Peirce, *The People's President: The Electoral College in American History and the Direct Vote Alternative* (New York: Simon and Schuster, 1968), 151; Robert A. Dahl, *How Democratic is the American Constitution?* (New Haven: Yale University Press, 2003), 87.
- <sup>3</sup> Congressional Quarterly, *Presidential Elections Since 1789* (Washington D.C.: CQ Inc., 1983), 83.
- <sup>4</sup> Andrew Jackson, "First Annual Message to Congress (1829)," *Historic Documents on the Presidency 1776-1989*, Ed. Michael Nelson (Washington, D.C.: Congressional Quarterly, 1989), 71-77.
- <sup>5</sup> Joseph E. Kallenbach, "Presidential Election Reform," *Direct Election of the President*, Ed. Julia E. Johnson (New York: H.W. Wilson, 1949), 131.
- <sup>6</sup> Norman J. Ornstein, "Three Disputed Elections," *After the People Vote: A Guide to the Electoral College*, Ed. Walter Berns (Washington D.C.: AEI Press, 1992), 42.
- <sup>7</sup> *Ibid.*, 43.
- <sup>8</sup> Kallenbach, "Presidential Election Reform," 131; Oliver P. Morton, "The American Constitution," *The North American Review* 124 (May-June 1877), 341-346; Morton, "The American Constitution II," *The North American Review* 125 (July-August 1877), 68-78.
- <sup>9</sup> William Dudley Foulke, *The Life of Oliver P. Morton: Including His Important Speeches, Vol. II* (Indianapolis: Bowen-Merrill, 1899), 272-273.
- <sup>10</sup> Peirce, *The People's President*, 96-97.
- <sup>11</sup> Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2007* (Washington: CQ Press, 2008), 300-303.
- <sup>12</sup> Peirce, *The People's President*, 98.
- <sup>13</sup> Lawrence D. Longley and Neal R. Peirce, *The Electoral College Primer* (New Haven: Yale University Press, 1996), 42.
- <sup>14</sup> Peirce, *The People's President*, 99.
- <sup>15</sup> *Ibid.*, 100.
- <sup>16</sup> Wallace S. Sayre and Judith H. Parris, *Voting for President: The Electoral College and the American Political System* (Washington D.C.: The Brookings Institution, 1970), 33.
- <sup>17</sup> Neal R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative, Revised Edition* (New Haven: Yale University Press, 1981), 144-146.
- <sup>18</sup> *Ibid.*, 146.
- <sup>19</sup> Edward Gossett, "Statement February 9, 1949, before the House Committee of the Judiciary," *Direct Election of the President*, Ed. Julia E. Johnson (New York: H.W. Wilson, 1949), 157.
- <sup>20</sup> *Ibid.*, 167.
- <sup>21</sup> *Ibid.*, 166.
- <sup>22</sup> Henry Cabot Lodge, Jr., "Should the United States Abolish the Electoral College? Yes!" *The Rotarian*, July 1949, 52.
- <sup>23</sup> Peirce and Longley, *The People's President*, 147.
- <sup>24</sup> *Ibid.*, 147.
- <sup>25</sup> *Ibid.*, 148.
- <sup>26</sup> *Ibid.*, 148.
- <sup>27</sup> Robert A. Taft, "Letter to Rentfro B. Creager," *The Papers of Robert A. Taft*, Ed. Clarence E. Wunderlin, Jr. (Kent, OH: Kent State University Press, 2006), 50.
- <sup>28</sup> Peirce and Longley, *The People's President*, 147.
- <sup>29</sup> *Ibid.*, 148-149.
- <sup>30</sup> Peirce and Longley, *The People's President*, 149.
- <sup>31</sup> Ruth C. Silva, "The Lodge-Gossett Resolution: A Critical Analysis," *The American Political Science Review* (March 1950), 93-94.
- <sup>32</sup> Wright Patman, "Should the United States Abolish the Electoral College? No!" *The Rotarian*, July 1949, 25.

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<sup>33</sup> Walter Lippman, "Proposed Change Should Be Rejected," *Today and Tomorrow* (syndicated column), March 9, 1950; Lucius Wilmerding, Jr., "Reform of the Electoral System," *Political Science Quarterly* 64 (March 1949), 7-8.

<sup>34</sup> Hardaway, *The Electoral College and the Constitution*, 146.

<sup>35</sup> "Rules Committee Blocks Clearance On Bill To Kill Electoral College," *Associated Press*, March 10, 1950.

<sup>36</sup> Peirce and Longley, *The People's President*, 148.

<sup>37</sup> *Ibid.*, 149.

<sup>38</sup> *Ibid.*, 149.

<sup>39</sup> *Ibid.*, 149.

<sup>40</sup> *Ibid.*, 150.

<sup>41</sup> Edward B. Simmons, "Lodge Plan Virtually Bars Election of GOP President," *Standard-Times*, January 19, 1949; Basil Brewer, "Republican Opposition Views," *Standard-Times*, March 9, 1949; Ruth C. Silva, "The Lodge-Gossett Resolution: A Critical Analysis," *The American Political Science Review* (March 1950); Walter Lippman, "Proposed Change Should Be Rejected," *Today and Tomorrow* (syndicated column), March 9, 1950.

<sup>42</sup> Peirce and Longley, *The People's President*, 150.

<sup>43</sup> Felix Morley, "Democracy and the Electoral College," *5 Modern Age* (1961), 382.

### **The Celler Amendment and the Bayh Amendment**

“In the face of such a demonstration of popular support from wary and politically hard-nosed Congressman, how could the Senate stand in the way? Or, at least, that was the warm flush of early reasoning.”

*New York Times*, September 21, 1969<sup>1</sup>

In the two decades following the failure of the Lodge-Gossett Amendment in 1950, electoral college reform did not disappear from the public agenda. On the contrary, the debate remained active – though sporadic – through the 1970s. The terms of the debate, however, began to shift once it became clear that the proportional system proposed in the Lodge-Gossett Amendment was not politically viable. In the mid-1950s, Democratic senators Estes Kefauver of Tennessee and Price Daniel of Texas attempted to move a Lodge-Gossett type of amendment through the Senate. Employing many of the same arguments made in 1950, fellow Democrats Paul H. Douglas of Illinois and John F. Kennedy of Massachusetts spearheaded the opposition to the amendment and helped prevent the proposal from gaining a necessary two-thirds majority in 1956.<sup>2</sup> Meanwhile, Senator Karl E. Mundt of South Dakota and Representative Frederic R. Coudert, Jr. of New York, both Republicans, proposed an amendment for the district plan, wherein each congressional district would choose one elector for itself and each state would choose two electors at-large. While the Mundt-Coudert plan enjoyed strong support from conservative Republicans and southern Democrats because it allegedly gave an advantage to rural areas, it too failed to gain the necessary two-thirds majority in 1956 and eventually faded from the forefront of the reform movement.<sup>3</sup>

After the failed reform attempts of 1956, interest in electoral college reform nearly came to a standstill until the exceptionally close 1960 presidential election,

marked by controversy and allegations of voter fraud, reawakened doubts about the electoral college. In both 1961 and 1963, Kefauver chaired Senate subcommittee hearings about the possibility of reform, in which both the proportional and district plans were considered. The automatic system, in which the electors themselves would be abolished and each state would directly cast its electoral votes to the winner of its plurality using the “winner-take-all” unit-vote system, gained some recognition in these hearings, particularly because it had been a project of Kennedy. Nevertheless, neither subcommittee took further action on any proposal, as there was lack of agreement on how reform would best be achieved.<sup>4</sup>

In 1965 and 1966, President Lyndon B. Johnson attempted to add momentum to the reform effort as he offered his endorsement to the automatic plan, hoping to eliminate “the ever-present possibility that electors may substitute their will for that of the people.”<sup>5</sup> Leaving the unit-vote system intact, however, the automatic plan was considered an extremely modest reform proposal. Democratic Senator Birch Bayh of Indiana, who had replaced Kefauver as chairman of the Senate Judiciary Committee’s Constitutional Amendments Subcommittee, became the primary sponsor of Johnson’s plan along with Democratic Representative Emanuel Celler of New York, chairman of the House Judiciary Committee.<sup>6</sup> The Johnson Administration’s proposal gained little support, primarily because other advocates of reform saw the measure as merely solidifying “the most undesirable element of the existing system – the ‘winner-take-all’ system.”<sup>7</sup> While this proposal would stymie “faithless electors” and unpledged electors, the automatic plan would fail to remedy any other problems within the existing system.<sup>8</sup>

The Johnson Administration's plan was issued the death knell on May 18, 1966, when Birch Bayh announced that he was abandoning the automatic plan and instead supporting direct popular election of the president.<sup>9</sup> Bayh's decision came as a shock to many because of his sponsorship of Johnson's proposal and because of his close association with Senators Edward M. Kennedy and Robert F. Kennedy, both of whom had reservations about the direct vote.<sup>10</sup> Bayh explained, however, his change of mind came "after a great deal of soul-searching" wherein he decided that attempting to make direct election a reality would be better than "to rectify and legalize the status quo." When Justice Department officials asked him why he would align himself with direct election, which had not received much support when the Senate had last examined it in 1956, Bayh's response was that many things had changed in the past decade to make direct election a more viable option: "a lot of history has been made since 1956, and a lot of freedoms given to our people since 1956 [by the Civil Rights Act of 1957, 1960 and 1964 and the Voting Rights Act of 1965]... Today, for the first time in our history, we have achieved the goal of universal suffrage regardless of race, religion or station in life..."<sup>11</sup>

Birch Bayh's support of direct popular election, while a major step forward for the direct vote movement, came after two decades of widespread denial of the political viability of direct election. Ed Gossett, when presenting the Lodge-Gossett plan to the House Judiciary Committee in 1949, acknowledged the direct vote as an option but feared that "a direct-vote method raises all of the issues between the large states and the small states... [and] would destroy state sovereignty in the matter of national elections." He concluded that "such an amendment could never be ratified."<sup>12</sup> Likewise, Henry

Cabot Lodge argued that direct popular election would “make national campaigns a matter of complete national control; it would obliterate state lines altogether in presidential elections.”<sup>13</sup> These comments reflected two widely held views about direct election: it would revoke the protection of small states against large states with respect to presidential elections, and it “would necessitate a uniform national suffrage and election law as well.”<sup>14</sup> Most politicians viewed such an attack on the status quo between large and small states – as well as the encroachment on state sovereignty – as impossible waters to navigate.

Nevertheless, Bayh’s announced support of the direct vote was just one of several developments in 1966 and 1967 that made the direct popular election a more fertile option in electoral reform discussions. In January 1966, the U.S. Chamber of Commerce announced that in a policy referendum, its members had voted overwhelmingly to support either a nationwide popular vote or a district system to replace the electoral college. On May 18, the same day of Bayh’s announcement, Gallup released a poll in which citizens were asked, “Would you approve or disapprove of an amendment to the Constitution which would do away with the electoral college and base the election of a President on the total popular vote cast throughout the nation?” Sixty-three percent of respondents said they would approve, while twenty-percent disapproved and seventeen-percent had no opinion.<sup>15</sup> Furthermore, that same year, Democratic senator Quentin N. Burdick announced that he had conducted a poll of 8,000 state legislators, and fifty-eight percent of his 2,500 respondents said they supported abolishing the electoral college in favor of direct election. Twenty-one percent favored a proportional plan, ten-percent favored a district plan, and only nine-percent preferred the existing system.<sup>16</sup>



Perhaps more influential than any of these developments, however, were the recommendations of a special electoral college commission of the American Bar Association. In its report, the commission referred to the existing electoral college method as “archaic, undemocratic, complex, ambiguous, indirect and dangerous,” and recommended that it be discarded. In its place, the commission advised that “the President and Vice President be elected as a team by popular vote of the people... [requiring] at least 40 percent of the vote to be elected.” If no candidate reached the 40-percent mark, a national runoff election would be held. In February 1967, the ABA House of Delegates approved the commission’s recommendation by a 171-57 vote.<sup>17</sup> With the endorsement of the U.S. Chamber of Commerce, the American Bar Association, and Senator Bayh, “the direct vote plan was thus provided with an undergirding it had never before enjoyed.”<sup>18</sup> Nevertheless, the support was not enough to influence Bayh’s Constitutional Amendment Subcommittee to recommend any action on the proposal after hearings on electoral college reform in 1967.<sup>19</sup>

It was not until another potential electoral crisis – one strikingly similar to that of 1948 – that electoral reform once again gained enough momentum to move past the committee or subcommittee level and onto the Senate or House floor. Much like the presidential election of 1948, the 1968 election featured a bitterly divided Democratic Party. Like Harry S. Truman, Vice President Hubert H. Humphrey represented a party split into three groups: Johnson’s supporters, an antiwar wing that was unhappy with Humphrey’s nomination, and a conservative wing in the South that had not come to terms with the party’s civil rights agenda.<sup>20</sup> Also in the spirit of the 1948 election, a major

third-party candidate entered the race, running on a conservative, Southern-oriented platform.

Alabama governor George C. Wallace, the American Independent Party candidate, was “in a sense... simply a Dixiecrat – a direct descendant of the brand of anti-civil rights, southern politics that had propelled Strom Thurmond into the 1948 election.”<sup>21</sup> Nevertheless, unlike Thurmond – who, ironically, threw his support behind Republican nominee Richard M. Nixon – Wallace did not run a strictly Southern campaign. He saw to it that he had enough supporters to ensure that he was placed on the ballot in all fifty states, “an organizational miracle in modern-day politics.”<sup>22</sup> While Wallace claimed to be running a national campaign with the purpose of winning the presidency outright, many believed that his actual goal was “to win the balance of power in the Electoral College, thus depriving either major party of the majority required for election.”<sup>23</sup> To control the outcome of the election in such an event, Wallace “obtained written affidavits from all of his electors in which they promised to vote for Wallace ‘or whomsoever he may direct’ in the Electoral College.”<sup>24</sup> With the balance of power and control over his own electors, Wallace could then play powerbroker and force concessions from either Humphrey or Nixon in exchange for enough of Wallace’s electors to win the electoral majority. Therefore, just as in 1948, the possibility that a third-party candidate could win electoral votes and manipulate the electoral college system threatened to compromise the integrity of the American presidency.

When the election results came in, Nixon had won a clear majority in the electoral college, thus avoiding the threat of Wallace’s exploiting the system. Nevertheless, many expressed the sense of having dodged a bullet. Had Wallace won a few more southern

and border states or had Humphrey won a few thousand more votes from Nixon in the North, Nixon would not have reached a majority, and Wallace would have been able to try to “wring policy concessions” from one of the major-party candidates. After surviving a potential electoral crisis, the near success of Wallace’s strategy provided a “dramatic impetus” for electoral reform.<sup>25</sup> Wasting no time, Senator Bayh called a press conference on November 8 to announce that he would continue to fight for the direct vote plan. Meanwhile, Celler, still chairman of the House Judiciary Committee, promised to move swiftly toward early hearings on electoral reform.<sup>26</sup> Once again, an electoral crisis allowing for the potential manipulation of the electoral system had catalyzed a reform movement.

Celler held true to his word, and in February 1969, the House Judiciary Committee met to consider various proposals for electoral reform. The fact that Celler began the hearings within the committee as a whole, as opposed to a subcommittee, paid major dividends, as it allowed all thirty-five committee members – many of whom had not yet formulated an opinion on the matter – to be swayed by the strong testimonies in support of direct election.<sup>27</sup> Among those who spoke in favor were ABA president William T. Gossett, AFL-CIO president George Meany, and U.S. Chamber of Commerce representative Charles F. Hood.<sup>28</sup> While other organizations, such as the National Cotton Council, the American Farm Bureau Federation, and the U.S. Attorney’s Office, sent representatives to support either the district plan or the proportional plan, the combined prestige of the ABA, AFL-CIO, and U.S. Chamber of Commerce played a major role in the committee’s decision.<sup>29</sup>

On April 29, the committee issued a resounding vote of 29 to 6 in favor of reporting a bill that would provide for direct popular election. In its final report, the committee made a special note that it found ABA president Gossett's statement "persuasive," an understatement considering the committee's adoption of what was essentially the same amendment that the ABA had recommended in 1967.<sup>30</sup> House Joint Resolution 681, which came to be known as the Celler Amendment due to Celler's sponsorship, called for the abolition of the electoral college and its replacement by a direct popular vote, wherein the winning candidate must receive at least forty percent of the total vote count. If no candidate received forty-percent, a national runoff would be held between the top two vote recipients. (See Appendix F)

When the Celler Amendment reached the House floor for discussion in September 1969, it was the first time since 1956 that an electoral reform amendment had made it beyond the committee level and the first time ever for a direct vote plan.<sup>31</sup> While direct election had become the favorite mode of reform for the Judiciary Committee, it was unclear how the House as a whole would react, especially considering that several representatives were partial to either the district plan or proportional plan instead. In a wise decision, Celler requested that the Rules Committee allow the resolution to be open for amendments. Thus, other representatives could attempt to amend the proposal into another system; Celler and others hoped that when such attempts failed, those representatives would feel that any reform was better than none and would then vote in favor of direct election.<sup>32</sup> Celler's strategy played out according to plan: three major amendments were proposed – one for a district plan, one for an automatic plan, and one for a proportional plan – and all three failed to attain a simple majority.<sup>33</sup>

Opponents of direct election posited three major arguments against the Celler Amendment. Democrat William Clay of Missouri voiced concern about the proliferation of parties, alleging that a popular vote would “promote factionalism and sectional movements.” Republican Wiley Mayne of Iowa suggested that direct election “would inevitably result in the central government assuming power to regulate election procedures and voter qualifications at every level.” A third complaint was that direct election would deprive small states of the slight advantage of the two additional electoral votes accorded each state.<sup>34</sup> Most of these objections were lodged from conservative Midwestern Republicans and Southern Democrats who still preferred the district plan of Karl Mundt and Frederic Coudert.

On the day of the proposal’s final vote, three such representatives – Richard Poff of Virginia, John Dowdy of Texas, and David Dennis of Indiana – made a last ditch effort to defeat the amendment by moving to recommit it to the Judiciary Committee “with instructions to substitute a district plan for the direct vote plan.”<sup>35</sup> When the recommittal motion failed by a 162-246 roll call vote, Celler could breathe a sigh of relief but still had to wonder if he would be able to gather the 272 votes necessary to win a two-thirds majority.<sup>36</sup> When the final vote was totaled on September 18, the amendment won eight-three percent of the House’s support, with a 338-70 vote in favor of direct election: Celler’s strategy had worked. Several representatives – particularly less conservative Republicans such as Poff – took the stance that passing the direct vote plan was better than doing nothing at all.<sup>37</sup> The roll call shows that nearly all of the opposition came from either Republicans scattered across the Midwest or Democrats concentrated in the South.<sup>38</sup>

With such solid support in the House, it seemed that the Celler Amendment was virtually destined to become law. That belief was given additional weight when on September 24 – less than week later – Gallup announced a poll finding that eighty-one percent of Americans supported direct election. Furthermore, on September 30, President Nixon – who had offered only lukewarm support to the electoral reform effort earlier in the year – issued a statement:

The House of Representatives has overwhelmingly supported the direct election approach. It is clear that unless the Senate follows the lead of the House, all opportunity for reform will be lost this year and possibly for years to come. Accordingly, because the ultimate goal of electoral reform must prevail over differences as to how best to achieve that goal, I endorse the direct election approach and urge the Senate also to adopt it.<sup>39</sup>

On October 7, the *New York Times* added another reason for enthusiasm when it published the results of a survey of state legislative leaders and governors concerning the prospects of the direct vote constitutional amendment. The survey showed that the amendment would stand a good chance of ratification if the Senate gave its seal of approval.<sup>40</sup>

In the Senate, however, Birch Bayh was having much greater difficulty than his counterpart in the House. Bayh assembled the Senate Judiciary Committee's Constitutional Amendment Subcommittee to consider electoral reform shortly after Congress convened in 1969. The fact that Bayh's efforts began on the subcommittee level, however, made his path longer and more difficult than Celler's. Additionally, Bayh's subcommittee did not enjoy the prestigious testimony of representatives of the ABA, AFL-CIO, or U.S. Chamber of Commerce. Further, it seemed that many of Bayh's fellow subcommittee members – including southerners such as Sam J. Ervin, Jr., of North Carolina, Strom Thurmond of South Carolina, and Judiciary Committee Chairman James

O. Eastland of Mississippi – were already predisposed to the district plan. Thus, when it came time to choose which proposal to recommend to the full Committee, the subcommittee “proceeded to junk the direct vote bill... replacing it, by a 6-to-5 vote, with a district plan” based directly on a proposal authored by Karl Mundt.<sup>41</sup> As a result, Bayh and his fellow direct election supporters would now have to convince the parent committee, chaired by direct vote opponent Eastland, to override the recommendation of the subcommittee. Eastland himself dealt a harsher blow on November 3 when he announced – despite the Celler Amendment’s victory in the House and Nixon’s endorsement of the measure – that the Judiciary Committee’s consideration of electoral reform would be postponed indefinitely while the committee focused on the disputed nomination of Clement Haynsworth to the United States Supreme Court.<sup>42</sup>

After Haynsworth failed to be confirmed in November, the Judiciary Committee’s focus remained on Supreme Court nominees well into 1970, as Nixon nominated G. Harrold Carswell in mid-January and Harry Blackmun in April. Electoral reform had obviously lost the momentum of its victories in late 1969, and it seemed as if the Senate might never consider direct election. To make matters more difficult, Strom Thurmond, with the support of Eastland and Roman L. Hruska of Nebraska, threatened to filibuster the topic if it ever came before the full committee.<sup>43</sup> Nevertheless, Bayh made “an adroit parliamentary move” on February 3 to keep electoral reform on the Judiciary Committee’s agenda. He countered Thurmond’s filibuster threat with one of his own: Bayh would filibuster Carswell’s nomination, which both Thurmond and Eastland supported, unless the committee agreed to discuss electoral college reform.<sup>44</sup> Bayh’s

tactic worked: Thurmond backed down, and the Judiciary Committee agreed to vote on electoral reform by April 24.

As the committee began its hearings, Eastland made sure to stack several witnesses hostile to direct election early in the proceedings, hoping to deliver a knockout punch to the direct vote. His plan backfired, however, when Bayh was able to bring in supporters of direct election, such as ABA president Gossett, in the closing days of the hearings and finish the testimony on a strong note.<sup>45</sup> When the committee moved to vote on which proposal to report to the Senate floor, the committee rejected an automatic plan, then a district plan, and then a proportional plan. With those options gone, the only mode of reform remaining was the direct vote proposed in Bayh's Senate Joint Resolution 1. It would appear that Bayh and other supporters of the direct vote in the Senate had employed the same tactic that Celler had in the House. They had invited all other reform plans to be voted on, leaving Senators with a simple choice after they were defeated: direct vote or nothing. With a vote of 11 to 6, the committee ordered the Bayh Amendment to be reported to the Senate floor.<sup>46</sup>

The Bayh Amendment was virtually identical to the Celler Amendment, with the only difference between the two proposals being their dates of enactment. (See Appendix G) Unlike the Celler Amendment, however, the Bayh Amendment did not flow naturally from its committee stage to discussion on the floor. Rather, it took nearly four months for the Judiciary Committee to report the proposal to the Senate floor. As a result, the Bayh Amendment did not open for debate until September 1970, almost a full year after the Celler Amendment's victory in the House. With the proposal finally reaching the floor, several organizations supporting direct election tried to gather some momentum for



the measure. In an uncharacteristically coordinated effort, the leaders of the ABA, AFL-CIO, U.S. Chamber of Commerce, League of Women Voters, and United Auto Workers endorsed the Bayh Amendment and made a formal request to meet with Nixon to urge his active support of the proposal. Nixon's decision not to meet with the leaders of these national groups mirrored his weak support for the Senate proposal: "Unfortunately, the Senate has not completed action. Time is running out. But it is still possible to pass the measure and to amend the Constitution in time for the 1972 election."<sup>47</sup> Nixon's feeble scolding of the Senate led many to infer that his administration had abandoned the cause of electoral reform.

With its major organizational supporters unable to generate presidential support for the direct vote plan, the Bayh Amendment underwent a slow death as the result of an unofficial filibuster in the Senate. Debate opened with Bayh and a few supporters outlining the deficiencies of the electoral college and the remedies that direct election would provide. Direct vote opponents, such as Carl T. Curtis of Nebraska, Hruska, and Thurmond, launched a series of attacks on the amendment. One of the chief criticisms concerned the run-off provision, which Curtis called "a fatal defect" through which "we would have a period of doubt and confusion and a period when the country, particularly in world affairs, would suffer." Eastland seconded this hesitation over the run-off and also voiced his opposition to the idea of direct election itself. Encompassing the general attitude of the opposition in his comments, he argued that the amendment "would work against the conservative political elements in the United States, diminish the political power of the less populous states, require Federal election standards to which all states

would have to conform, create splinter parties and require long periods to resolve recounts.”<sup>48</sup>

After a few days of debate, it became clear to Bayh that he lacked the votes to carry the amendment.<sup>49</sup> As Senate Majority Leader Mike Mansfield of Montana prepared to move for a cloture vote to end debate, Bayh worked to make some compromise that would give him the ten additional votes he thought he needed for a two-thirds majority. After failing to make any significant agreements, Mansfield moved to invoke cloture on September 17 and came six votes shy of the necessary three-fifths majority to end debate.<sup>50</sup> Bayh continued to scratch and claw for the amendment and eventually forced Mansfield to move for cloture again on September 29, this time falling short by five votes. In both votes, twenty of twenty-six southern Senators voted against cloture.<sup>51</sup> Though Mansfield briefly entertained the notion of a third cloture vote, he decided on October 5 to postpone further consideration of the amendment until the end of the election-year recess in November. Bayh admitted that he “couldn’t hold out a lot of hope” for the amendment’s approval after the recess, and he was correct. The resolution never came up on the Senate floor again.<sup>52</sup>

When examining the effort to enact direct vote electoral reform via the Celler and Bayh Amendments, two main commonalities with the Twelfth Amendment and Lodge-Gossett Amendment are clear. First of all, the direct vote movement enjoyed the high mark of its success in response to a potential electoral crisis that featured individuals scheming to exploit the workings of the electoral system. George Wallace’s electoral strategy in 1968 was almost a direct descendent of Strom Thurmond’s in 1948. To some degree, Wallace and Thurmond’s efforts both echo the scheming of Aaron Burr and the

Federalists who wished to foil the Democratic-Republicans' presidential plans following the 1800 election. In each case, the threat posed to the legitimacy of the presidency led Congress to lend stronger consideration to reform proposals.

The other major similarity among the three reform efforts is their connection to the two-party system in America. While the ratification of the Twelfth Amendment helped to legitimize and embed the two-party system in American politics, the debate surrounding the Lodge-Gossett and Celler-Bayh Amendments often focused on how the proposed system would either protect or destroy the system. Opponents of both modes of electoral reform argued that the proportional plan or the direct vote plan would proliferate and encourage splinter parties and third parties. At the same time, supporters of electoral reform claimed that their plans would, on the contrary, maintain, protect and even rejuvenate traditional two-party politics. Thus, the Twelfth Amendment, the Lodge-Gossett Amendment, and Celler and Bayh Amendments help to illustrate the ingrained nature of the two-party system in American politics.

Despite the similarities that mark these three electoral reform movements, the Celler and Bayh Amendments stand out in a particular fashion. Whereas the debates over the Twelfth Amendment and the Lodge-Gossett Amendment were sometimes explicitly molded by the interests of political parties, the interests that shaped the debate over the Celler and Bayh Amendments seem to have been slightly more subtle than political parties. Opposition to the direct vote plan seems to have been concentrated in the South, but it would be difficult to characterize this opposition as distinctly Democratic or Republican. Opponents did not combat the direct vote plan explicitly because it would make Democratic or Republican victory more difficult. Rather, it seems that ideology

molded the opposition to these measures, at least to some extent. The realignment of party politics in the South that began in the 1950s and continued into the following decades may help explain this emphasis on ideology over party. Southern Democrats may have had difficulty identifying with the rest of the Democratic Party at this time and, as a result, found it easier to identify their interests in terms of ideology.

Another possible explanation for this voting behavior posits the Southern Democrats' opposition to electoral college reform as an extension of their opposition to the civil rights legislation of the preceding decade. Just as white southerners had opposed the Civil Rights Act of 1964 and the Voting Rights Act of 1965 for fear of expanding black electoral power, Southern Democrats may have felt that a direct-vote system would extend that power even further. After all, the winner-take-all system of the electoral college allowed white southerners to continue to control presidential politics in the South even with the addition of black voters. Thus, partisan politics – on a regional level – played a role in the formation of opposition to electoral college reform in 1969 and 1970.

## Notes

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- <sup>1</sup> “New of the Week in Review,” *New York Times*, Sept. 21, 1969.
- <sup>2</sup> Neal R. Peirce and Lawrence D. Longley, *The People’s President: The Electoral College in American History and the Direct Vote Alternative, Revised Edition* (New Haven: Yale University Press, 1981), 151-153.
- <sup>3</sup> *Ibid.*, 136.
- <sup>4</sup> *Congress and the Nation: Vol. II 1965-1968* (Washington, D.C.: Congressional Quarterly, 1969), 427.
- <sup>5</sup> Peirce and Longley, *The People’s President*, 159.
- <sup>6</sup> *Ibid.* 159.
- <sup>7</sup> *Congress and the Nation: Vol. II*, 427.
- <sup>8</sup> Peirce and Longley, *The People’s President*, 160.
- <sup>9</sup> *Congress and the Nation: Vol. II*, 428.
- <sup>10</sup> Peirce and Longley, *The People’s President*, 168.
- <sup>11</sup> *Congress and the Nation: Vol. II*, 428.
- <sup>12</sup> Edward Gossett, “Statement February 9, 1949, before the House Committee of the Judiciary,” *Direct Election of the President*, Ed. Julia E. Johnson (New York: H.W. Wilson, 1949), 165.
- <sup>13</sup> Henry Cabot Lodge, Jr., “Should the United States Abolish the Electoral College? Yes!” *The Rotarian*, July 1949, 53.
- <sup>14</sup> Thomas J. Brown “Should the President Be Elected by Direct Popular Vote? No!” *Direct Election of the President*, Ed. Julia E. Johnson (New York: H.W. Wilson, 1949), 122-127.
- <sup>15</sup> *Congress and the Nation: Vol. II*, 428.
- <sup>16</sup> “Electoral College Reform: State Legislators Favor Direct Vote for President,” *CQ Guide to Current American Government* (Spring 1967), 93.
- <sup>17</sup> *Congress and the Nation: Vol. II*, 428.
- <sup>18</sup> Peirce and Longley, *The People’s President*, 181.
- <sup>19</sup> *Congress and the Nation: Vol. II*, 428.
- <sup>20</sup> Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2007* (Washington: CQ Press, 2008), 341.
- <sup>21</sup> Peirce and Longley, *The People’s President*, 73.
- <sup>22</sup> *Ibid.*, 73-74.
- <sup>23</sup> Congressional Quarterly, *Presidential Elections Since 1789* (Washington D.C.: CQ Inc., 1983), 136.
- <sup>24</sup> *Ibid.*, 136.
- <sup>25</sup> *Ibid.*, 137.
- <sup>26</sup> Wallace S. Sayre and Judith H. Parris, *Voting for President: The Electoral College and the American Political System* (Washington D.C.: The Brookings Institution, 1970), 14.
- <sup>27</sup> Peirce and Longley, *The People’s President*, 182.
- <sup>28</sup> *1969 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1970), 897.
- <sup>29</sup> Peirce and Longley, *The People’s President*, 183-184.
- <sup>30</sup> *Ibid.*, 183.
- <sup>31</sup> *Ibid.*, 184.
- <sup>32</sup> *Ibid.*, 185.
- <sup>33</sup> *1969 Congressional Quarterly Almanac*, 899.
- <sup>34</sup> *Ibid.*, 898-899.
- <sup>35</sup> *Ibid.*, 898.
- <sup>36</sup> Peirce and Longley, *The People’s President*, 186.
- <sup>37</sup> *Ibid.*, 186.
- <sup>38</sup> *1969 Congressional Quarterly Almanac*, 44-45-H.
- <sup>39</sup> *Ibid.*, 100-A.
- <sup>40</sup> Peirce and Longley, *The People’s President*, 187.
- <sup>41</sup> *Ibid.*, 185; *1969 Congressional Quarterly Almanac*, 901.
- <sup>42</sup> Peirce and Longley, *The People’s President*, 188.
- <sup>43</sup> *1970 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1971), 840.
- <sup>44</sup> *Ibid.*, 841; Peirce and Longley, *The People’s President*, 188.

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- <sup>45</sup> *1970 Congressional Quarterly Almanac*, 841.
- <sup>46</sup> Peirce and Longley, *The People's President*, 189.
- <sup>47</sup> *Ibid.*, 190-191.
- <sup>48</sup> *1970 Congressional Quarterly Almanac*, 842-843.
- <sup>49</sup> Peirce and Longley, *The People's President*, 192.
- <sup>50</sup> *1970 Congressional Quarterly Almanac*, 844.
- <sup>51</sup> *Ibid.*, 844.
- <sup>52</sup> *Ibid.*, 845.

### **The National Popular Vote Plan**

“Since Congress has repeatedly refused to act, it’s refreshing to know states have the ability under the Constitution to step up and create the sensible solution Americans have long been supporting.”

Birch Bayh, February 23, 2006<sup>1</sup>

Birch Bayh’s efforts to abolish the electoral college in favor of direct popular election did not end when the Bayh Amendment fell victim to a Senate filibuster in 1970. The close presidential election of 1976, in which “a shift of less than 10,000 votes in Ohio and Hawaii... would have elected Ford despite a 1.7-million-vote deficit in the popular vote,” reinvigorated the case for electoral reform.<sup>2</sup> Bayh took the near misfire as an opportunity to revive his direct election plan. Acting quickly, Bayh’s Constitutional Amendment Subcommittee completed hearings on electoral reform on February 8, 1977 and recommended Bayh’s amendment to the full committee.<sup>3</sup> On March 22, 1977, President Jimmy Carter announced to Congress a five-part election reform package recommending measures such as election-day voter registration and the expansion of public campaign financing.<sup>4</sup> Calling the presidential election process “an issue of overriding governmental significance,” Carter made one of his recommendations a Constitutional amendment to provide for direct popular election.<sup>5</sup> Bayh hoped that Carter’s endorsement would help move his amendment along swiftly when it came before the Senate Judiciary Committee in June.

Republican Bill Scott of Virginia, however, stymied Bayh’s efforts by threatening to filibuster the amendment on the committee level. After Bayh conceded to providing Scott with more testimony from witnesses opposed to direct election, Scott dropped the filibuster but consequently held up the committee’s approval of the amendment until

September 1977.<sup>6</sup> With much momentum lost and “the press of [other] Senate business” at hand, the Bayh Amendment did not reach the Senate floor until July 1979, where the amendment came fifteen votes short of the necessary two-thirds majority.<sup>7</sup> Supporters of the 1979 incarnation of the Bayh Amendment “increased their strength among Southern Democrats but saw their inroads cancelled by gains for the opponents among Republicans and Northern Democrats.”<sup>8</sup> Thus, while Bayh gained supporters in the conservative South – most of them newer members of the Senate – he lost the support of northern liberals, some of whom feared that direct election would marginalize the minority groups who supported them and others who represented large states such as New York or New Jersey that they believed would be hurt under the direct election system.

Bayh’s inability to unite a two-thirds coalition of Senators in support of direct election – in both 1970 and 1979 – reflects the ambivalence and uncertainty regarding what groups would benefit or suffer from the reform. Just as advocates and opponents disagree as to how a national popular election would affect the two-party system, such opinions also vary on what regions and groups stand to lose the most from the reform: urban areas, minority blocs, small states, large states, etc. Without clearly defining the interests of any particular group that would gain from the reform, proponents of direct election struggled to find enough support for passage. One of the key reasons for this failure was that despite “national opinion polls consistently [showing] that a large majority of voters would favor direct vote,” there was a plain “absence of any public clamor for [an electoral] amendment.”<sup>9</sup> Falling fifteen votes shy of passage in 1979, the large margin of defeat made it clear that reformers “could postpone for years any further



effort to revamp the presidential election system.”<sup>10</sup> Accordingly, no proposal concerning electoral reform has reached the floor of either house since that time.<sup>11</sup>

The presidential elections of the next two decades helped repress serious interest in electoral reform. In each of the five elections between 1980 and 1996, the winning candidate won at least 200 more electoral votes than his closest opponent and outpolled his closest opponent by no less than five percent of the national vote.<sup>12</sup> These elections produced very little controversy regarding the electoral system. The Senate and the House did hold separate Judiciary Committee hearings on electoral college reform in 1992 and 1997, respectively, but neither committee reported any proposal to its floor.<sup>13</sup> Another sign of the absence of interest in electoral reform during the 1980s and 1990s is polling data – or the lack thereof. Whereas the Gallup organization asked citizens about electoral college reform on fourteen separate occasions between 1948 and 1980, the organization did not conduct any polls on electoral college reform between 1980 and 2001.<sup>14</sup>

Controversy returned to the realm of electoral politics, however, in the disputed 2000 election. In an election that “ended in a virtual tie, with the deadlock ultimately resolved by the Supreme Court,” the nation was faced with perhaps its greatest electoral crisis since the nineteenth century.<sup>15</sup> After George W. Bush received Florida’s disputed electoral votes, he became only the fourth candidate in history to lose the national popular vote and still win the presidency. During the nineteenth century, the electoral system had produced popular-vote losers John Quincy Adams in 1824, Rutherford B. Hayes in 1876, and Benjamin Harrison in 1888.<sup>16</sup> Just as those nineteenth-century electoral crises had catalyzed reform efforts such as those of Thomas Hart Benton and

Oliver P. Morton, it was widely expected that the 2000 election would be no different and would spawn a major electoral reform movement. In an editorial published soon after the Supreme Court's final decision, Arthur Schlesinger, Jr., predicted that "the fact that the popular-vote loser has won the electoral college over the popular-vote winner will certainly revive the campaign to abolish the electoral college and to replace it by the direct popular election of the president."<sup>17</sup> Just three days after the election, Senator-elect Hillary Rodham Clinton of New York announced that she would join a coalition of Congress members co-sponsoring a bill to abolish the electoral college and replace it with direct popular election.<sup>18</sup>

Less than two weeks later, however, Clinton conceded that the effort was "unlikely to be successful in the near term" and that she would instead focus on reforming the voting process itself.<sup>19</sup> As months went by and no distinct movement to reform the electoral college emerged, it became clear that Clinton was not alone in her disposition. Although "reform proposals were duly introduced" on the committee or subcommittee level, no further action was taken on any one of them.<sup>20</sup> With an electoral crisis fresh on the minds of both Democrats and Republicans, congressional "attention [instead] focused on proposals for election administration reform, resulting in passage of the Help America Vote Act" of 2002, which "substantially extended the role of the federal government... through the establishment of national standards" for voting systems and election technology.<sup>21</sup> It would seem that Congress viewed the 2000 electoral crisis as largely being a result of faulty, outdated, or inconsistent voting systems and practices across the states. As a result, they focused their efforts on correcting those problems while leaving the electoral college alone. Thus, the political capital that the

2000 election had made available to reformers was spent on reforming election administration rather than the electoral system.

When no major electoral reform effort had materialized by the end of the 2004 election, it became clear that the 2000 election had failed to “galvanize support for direct popular election or electoral college reform” as expected.<sup>22</sup> The inability of constitutional amendment proposals to gain congressional support following a major electoral crisis signaled that reform efforts in Congress may no longer be politically viable endeavors. In a 2005 report on congressional reform proposals, Thomas H. Neale of the Congressional Research Service concluded that:

Given the high hurdles – both constitutional and political – faced by any proposed amendment, [the electoral college] seems likely to remain in place unless or until its alleged failings become so compelling that large concurrent majorities in the public, the Congress, and the states, are prepared to undertake its reform or abolition.<sup>23</sup>

Advocates of reform were forced to consider whether any event could create the necessary majorities for an amendment if the electoral debacle of 2000 could not. Thus, unable to garner any major support in Washington, the electoral reform effort of the 2000s proved to be too weak to take any important steps towards successfully reforming the electoral system in the congressional arena.

As the reform effort in Washington dwindled, a new type of reform movement began to gain momentum in California. In February 2006, Dr. John R. Koza, the computer scientist who co-invented the scratch-off lottery ticket, spearheaded the creation of National Popular Vote, a new organization pioneering a novel approach to electoral reform.<sup>24</sup> Whereas previous reformers had focused on altering or abolishing the constitutionally established electoral system, Koza and National Popular Vote planned to

leave the Constitution untouched and capitalize on the document's electoral provisions. Specifically, the plan focused on the Constitution's stipulation that "Each State shall appoint" its electors "in such Manner as the Legislature thereof may direct."<sup>25</sup> National Popular Vote's proposal came "in the form of a state law that individual states may enact – one-by-one."<sup>26</sup> Each state would commit to casting all its electoral votes for the winner of the national popular vote, regardless of that candidate's standing in the state vote total. This plan, taking the form of an interstate compact, would go into effect once "identical laws have been enacted in enough states to assure that the nationwide popular vote winner will get enough electoral votes to be guaranteed election to the Presidency."<sup>27</sup> (See Appendix H)

While Koza claimed that the idea for the plan came to him in early 2004, he must have been influenced by the writings of certain scholars following the 2000 election.<sup>28</sup> In April 2001, Robert Bennett, a law professor at Northwestern University, published an article entitled "Popular Election of the President Without a Constitutional Amendment" in which he offered "a simple way to skirt the necessity of amendment."<sup>29</sup> Bennett imagined a scenario in which a state could provide "beforehand that its Electoral College delegation would be pledged to the winner of the nationwide popular vote. If states with just 270 electoral votes adopted such an approach, the popular vote winner would perform win the presidency."<sup>30</sup> In December 2001, Akhil Reed Amar and Vikram David Amar cited Bennett's idea and went into further detail on the concept, imagining various scenarios in which the nation could achieve direct election without a constitutional amendment. In their article, they suggested that it would be possible to enact the law if just the eleven most populous states agreed to cast their electoral votes for the national

popular winner. Additionally, they posited the possibility that in the 2004 election, each presidential and vice-presidential candidate “could pledge that, if he loses the national popular vote, he will ask his electors to vote for the national popular vote winner.”<sup>31</sup>

Amar and Amar acknowledged that their suggestions were far-fetched but perhaps worthwhile nonetheless: “Some will doubtless dismiss all this as mere academic daydreaming, but the daydreams are useful in illustrating how much constitutional creativity is possible within the existing constitutional framework, short of formal amendment.”<sup>32</sup>

When National Popular Vote held its initial press conference in February 2006, Koza released *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*, a book in which he and his colleagues outlined their plan in great detail. In the book, Koza acknowledges the work of Bennett and Amar and Amar yet draws distinctions between their ideas and his proposal. First, he points out that his plan takes the form of an interstate compact, giving it “the specific advantage[s] of making the states’ contemplated joint actions into a legally enforceable contractual obligation on all the participating states” and thus “preventing a state from unilaterally withdrawing from the agreed arrangement for partisan political reasons in the midst of a presidential election campaign.”<sup>33</sup> Second, Koza points out that the other plans “did not contain a provision making the effective date of the system contingent on the enactment of substantially identical laws in states that collectively possess a majority of the electoral votes (i.e., 270 of the 538 electoral votes).”<sup>34</sup> He adds the obvious point that in Bennett and the Amar brothers’ proposals – which had been almost strictly academic in nature – “the statutory language and the operational details were not specified.”<sup>35</sup>

Beginning in 2004, Koza had worked with attorney Barry F. Fadam, a specialist in election law and an expert on initiatives and referendums, to craft the necessary legislation to introduce his electoral reform. Having served as the chief executive of Scientific Games in Atlanta, Koza already had experience with interstate compacts, as he had previously worked on creating multistate lotteries such as the Powerball.<sup>36</sup> By the time that Koza and Fadam went public with their proposal in 2006, they had collected a bipartisan set of endorsements from former members of Congress and brought them on board as the group's advisory board.<sup>37</sup> At National Popular Vote's initial press conference that February, former independent presidential candidate John Anderson of Illinois and Birch Bayh, now retired, headlined the plan's supporters. Anderson called it "an innovative approach that is a politically practical way to achieve the goal of nationwide popular election of the President," while Bayh characterized the plan as "refreshing" and "the right way to fix the system."<sup>38</sup> Other supporters included former Republican Congressmen John Buchanan of Alabama and Tom Campbell of California.<sup>39</sup>

Despite only having the support of what one critic called "an ad-hoc bunch of amateurs, once-weres, might-bes, and goo-goos," the National Popular Vote plan soon received solid editorial support in major newspapers.<sup>40</sup> When Illinois became the first state to have the proposal introduced in its state legislature, the *Chicago Sun-Times* offered its support on March 1, applauding the group "for thinking outside the box."<sup>41</sup> Two weeks later, a *New York Times* editorial billed the plan as "an ingenious solution" and placed the effort in the same tradition as the reforms that guaranteed blacks and women the right to vote.<sup>42</sup> In his syndicated column, Neal R. Peirce, who had documented the failed reform efforts of the 1960s and 1970s, wrote that the "inventive

proposal” gave him “a rare surge of political hope.”<sup>43</sup> This wave of support escorted the proposal through its initial introduction in the state legislatures of Illinois, California, Colorado, Missouri, Louisiana, and New York between January and August 2006.

Nevertheless, the National Popular Vote plan enjoyed only enough momentum to carry its proposal to the desk of one governor in its first year. In California, Democratic Assemblyman Tom Umberg sponsored the proposal in the State Assembly and moved it to the assembly’s floor by late May. Supporters of the proposal focused on the notion that California is “virtually ignored during presidential campaigns,” due to its recent status as a solidly Democratic state.<sup>44</sup> While the measure had been billed as nonpartisan from its creation, the Assembly’s final vote told a different story. In a 49-31 vote in favor of the proposal, every Democrat voted for the plan, while all but one Republican voted against it. The Senate vote in late August was virtually identical, with all Democrats except one supporting the measure and all Republicans opposing it.

In an attempt to explain the Republican opposition, Kirk Dillard, a Republican state senator co-sponsoring the measure in Illinois, suggested that “the Bush-Gore memory may have some undercurrents for Republicans.”<sup>45</sup> Robert Richie, executive director of the electoral-reform group FairVote, explained that “some of the Republican opposition has been very knee-jerk, as has some of the Democratic support.”<sup>46</sup> Asked why he had opposed the proposal, Republican Assemblyman Chuck Devore said, “I just took a look at who was behind the movement, and they were left-wing partisans.”<sup>47</sup> In September 2006, Republican governor Arnold Schwarzenegger handed the National Popular Vote plan its first major setback when he vetoed the measure. In his veto message, Schwarzenegger argued that while he appreciated “the intent of this measure to

make California more relevant in the presidential campaign,” he could not agree to the possibility of “giving all our electoral votes to the candidate that a majority of Californians did not support.”<sup>48</sup>

While many had acknowledged that California’s enactment of the National Popular Vote plan would “definitely transform it from a smoldering thing into a fire,” Schwarzenegger’s veto did not bring the effort to a total halt.<sup>49</sup> In early January 2007, the Colorado Senate approved the measure by a vote of 19 to 15. Just like California, however, the vote was split along partisan lines, with only one Democrat crossing the party line to vote against it.<sup>50</sup> Although the proposal was postponed indefinitely on the committee level in Colorado’s House of Representatives, the plan had picked up enough momentum elsewhere to gain measurable success by the end of 2007. Between February and April, both Democrat-dominated houses of the Hawaii state legislature approved the plan with strong majorities. Republican governor Linda Lingle, however, issued a veto on April 23, claiming that it was not “in the best interest” of the Hawaiian people for their electoral votes to be “awarded in a manner that may not reflect the will of the majority of the voters in Hawaii.”<sup>51</sup> The Senate voted 20 to 5 to override the veto, but the House of Representatives adjourned on May 3 without conducting its own vote.

While the National Popular Vote plan was working its way through the Hawaii state legislature and into the governor’s office, state legislators in Maryland were making even more significant strides. The Maryland Senate voted in late March to approve the plan by a margin of 29 to 17, and the House of Delegates followed a week later, passing the measure by an 84-54 vote. Maryland’s legislators, however, did not demonstrate the strict partisan voting that their counterparts in other states had. In the Senate vote, three



Democrats joined the fourteen Republicans in opposition.<sup>52</sup> Likewise, in the House, eighteen Democrats teamed with all but one Republican to vote against the plan.<sup>53</sup> The debate in both houses focused on how the reform would affect Maryland's significance in presidential campaigns. Supporters bemoaned the notion that reliably Democratic "Maryland has become a spectator state" and suggested that the law would "give Maryland more of a voice in a national election."<sup>54</sup> Opponents countered with the argument that "the system proposed could just switch the target for candidates from closely divided states to large cities with many voters – a scenario that would not necessarily empower Maryland."<sup>55</sup> Further, they predicted that a national recount would invite "mass chaos."<sup>56</sup> Despite these concerns, Governor Martin O'Malley, a Democrat, signed the bill into law on April 10, thus making Maryland the first state to enact the proposal and giving National Popular Vote its first major victory.

The success in Maryland helped usher the proposal through the state senates of both North Carolina and Illinois before the end of May, but it was not until the next year that National Popular Vote racked up its next significant achievements. By early January 2008, both of New Jersey's houses had approved the National Popular Vote plan in fairly partisan votes. Only four Democrats joined the Republican bloc opposing the bill in the General Assembly for a 43-32 vote, and only two Republicans joined the Democrats in the Senate for the passing vote of 22 to 13.<sup>57</sup> Using arguments similar to those made in Maryland, the bill's sponsors claimed that the plan would bring more electoral competition and attention to New Jersey, another Democratic state. Opponents disapprovingly called the proposal "a backdoor end-run of the federal Constitution."<sup>58</sup>

On January 13, Democratic governor Jon Corzine signed the bill into law, making New Jersey the second state to join the National Popular Vote plan.

Around the same time, the Illinois House of Representatives was preparing to vote on the proposal. The Illinois Senate had already passed the bill in May 2007 by a 37-22 vote, with only three Democrats and three Republicans crossing party lines. When the bill came to a vote in the House on January 9, the partisan divide was even sharper: only one Republican voted with the Democrats in a 64-50 vote.<sup>59</sup> On April 7, Democratic governor Rod Blagojevich, who had co-sponsored an amendment to abolish the electoral college as a U.S. representative in 2000, signed the bill into law, and Illinois became the third – and the largest, with twenty-one electoral votes – state to join the National Popular Vote plan.<sup>60</sup> Not long thereafter, Hawaiian legislators – who had reintroduced the National Popular Vote proposal in March 2008 with overwhelming majorities in support – received another veto message from Lingle. This time, however, legislative leaders had enough votes to override the veto and did so on May 1, making Hawaii the fourth state to enact the National Popular Vote the legislation.<sup>61</sup>

After winning three states within five months, National Popular Vote had built momentum and seemed to be in position to win a few more states before the end of 2008. While Koza and Fadam had never hoped to enact their plan in time for the 2008 presidential election, they sought from the beginning to “find enough traction as an issue” that candidates would have to address their plan. Three states in the northeast, however, curtailed the “snowball effect” that Koza and Fadam had anticipated heading into the fall.<sup>62</sup> On May 16, in a situation very similar to Hawaii’s in 2007, Vermont governor Jim Douglas, a Republican, vetoed the National Popular Vote proposal after both Democrat-

heavy houses of its legislature had approved the measure by solid margins. Douglas justified his veto by explaining that he was “not willing to cede Vermont's voice in the election... to the influence and interests of larger states.” According to Douglas, the plan “would fundamentally alter the presidential election method prescribed in the U.S. Constitution” and “contribute to the undoing of the delicate balance that the Electoral College maintains among the states.”<sup>63</sup> Koza’s response to Douglas’ veto illustrated the major debate surrounding the proposal: “The governor has it exactly backward, because it’s the big battleground states that are empowered and get most of the attention from the presidential candidates and the smaller states are almost unanimously non-competitive in the presidential election process.”<sup>64</sup>

National Popular Vote suffered another setback on July 2 when Rhode Island’s Republican governor Don Carcieri vetoed its proposal after the state’s heavily Democratic legislature had approved the plan in May and June. In his veto message, Carcieri called the legislation an attempt “to subvert the Constitution” and suggested that attempts to alter the electoral college should come in the form of a constitutional amendment: “The state legislature should focus on legislative matters that are germane to our state and leave federal matters to our congressional delegation.”<sup>65</sup> Meanwhile, on July 9, the Massachusetts House of Representatives passed the proposal by an overwhelming majority of 116 to 37. After the Senate also approved the measure on July 30, the bill needed one final vote of enactment on July 31, the legislature’s final day in session. With a full agenda, however, the Senate ran out of time and was unable to take the vote required to send the proposal to the governor.<sup>66</sup> The failure of Massachusetts’ state legislature to pass the National Popular Vote legislation to Democratic governor

Deval Patrick signaled a disappointing end to the 2008 legislative season for the plan's advocates.

While Koza and Fadam had hoped their plan would gain some exposure during the 2008 election season, the presidential campaigns came and went largely without addressing electoral reform as an issue. Furthermore, the results of the election were clear-cut and uncontroversial, as Barack Obama scored a solid seven-percentage point margin in the popular vote and won the electoral college by 192 electoral votes.<sup>67</sup>

“Without a compelling reason to proceed,” the National Popular Vote plan seemed likely to stall or, at the very least, continue to lose momentum.<sup>68</sup> In early 2009, it was difficult to foresee the ultimate fate of Koza's plan. By the end of May, legislators in thirty states had introduced the National Popular Vote legislation. As the months wore on, however, it became clear that the initiative had lost momentum. At the end of the year, only one state, Washington, had passed the bill and signed it into law. In fact, of the thirty states considering the legislation, only ten had either one of their legislative chambers approve the measure. Thus, twenty states either failed or did not vote on the proposal, while sixteen others did not consider the bill at all in 2009. (Appendix I)

Despite the disappointing results of 2009, National Popular Vote expected to reintroduce its proposal in most states in 2010. Whether or not its prospects will improve remains to be seen. By early February, Maine's House of Representatives had already reconsidered the measure and voted it down by a vote of 50 to 95.<sup>69</sup> Opponents – largely Republican – launched the same attacks that had been made since the plan's initial introduction. State representative Stacey Fitts called the plan “an end-run around the Electoral College,” “essentially an urban power grab that would let big population centers

chose our presidents,” and “a nightmare scenario” if a recount was necessary. Further, he argued that “pledging Maine’s electoral votes to the national popular vote winner” would mean “holding Maine hostage to other states’ [voting] standards” and regulations.<sup>70</sup> At the time of writing, the only other state to be confirmed as actively considering the proposal is Alaska, whose Senate Judiciary Committee began hearings on the bill on February 19.<sup>71</sup>

While the National Popular Vote plan has launched a novel, state-based approach to electoral reform, it has also provided an insightful look at how partisan presidential politics have trickled down to state and local levels. In nearly every state in which it has been considered, the proposal has drawn support and opposition based almost entirely on party identification. The National Popular Vote organization continues to insist that the measure is bipartisan, particularly by pointing to the five former Republican congressmen on its advisory board. Nevertheless, the movement has gathered far more Democratic supporters than Republican. Colorado state senator Shawn Mitchell, a Republican who opposed the measure, attempted to characterize this partisan tendency:

For Democrats, it’s a reaction to wanting to poke George W. Bush in the eye. After the 2000 vote, Democrats seemed to react with “popular vote good, Electoral College bad,” and Republicans, being more traditionalists, have responded with “Electoral College good, popular vote bad.”<sup>72</sup>

Other Republicans have expressed their opposition in more explicit terms of interests, claiming that since the reform would refocus campaigns on urban centers, which “tilt leftward, the system would be more likely to pull candidates to the liberal end of the spectrum.”<sup>73</sup> By eliciting strong, partisan-based opposition, the National Popular Vote plan falls into the tradition of the Twelfth Amendment and the Lodge-Gossett Amendment. One needs to look no further than the Republican vote tallies and the vetoes

of Republican governors to see that this proposal quickly became – implicitly or explicitly – a partisan issue.

The National Popular Vote plan does, however, draw a sharp contrast with the other reform attempts examined in this paper. The Twelfth Amendment, the Lodge-Gossett Amendment, and both incarnations of the Bayh Amendment demonstrated how an electoral crisis could galvanize a reform movement. National Popular Vote, on the other hand, did not come directly in response to the electoral crisis of 2000. Although nearly every publication on the proposal mentioned the 2000 election as an example of the type of electoral “misfire” that the plan aimed to avoid, Koza, Fadam, and other National Popular Vote proponents rarely mentioned the 2000 election as a motivating factor.<sup>74</sup> Instead, they claimed that the proposal’s purpose was more focused on reforming how presidential campaigns operated. As a result, they more often referred to the 2004 election and the manner in which campaigns spent their time and money.<sup>75</sup> Nevertheless, it should not be forgotten that the scholarship of Bennett and Amar and Amar – from which Koza likely developed his plan – did come directly in response to the 2000 electoral crisis. Thus, it would appear that the 2000 election did precipitate the National Popular Vote plan, albeit in an indirect fashion.

The understated and indirect nature of the effect of the 2000 electoral crisis is a phenomenon worth considering. The absence of any major reform attempts in the years immediately following the 2000 election suggests that some element of the 2000 electoral “misfire” differentiates it from the elections of 1800, 1948, and 1968. Without an Aaron Burr, Strom Thurmond, or George Wallace figure, the distinguishing feature of the 2000 election appears to be the absence of candidates intending to manipulate the electoral

system and damage the legitimacy and integrity of the presidency or the American two-party system. In the debates over the Lodge-Gossett and Celler-Bayh Amendments following the 1948 and 1968 elections, one of the primary arguments about the reforms concerned whether they would protect or weaken the two-party system. While some scholars and journalists did address that question with regard to the National Popular Vote plan, the integrity of the two-party system has hardly been at the center of debate.<sup>76</sup> Thus, the debate over the National Popular Vote plan has not demonstrated the same fixation on preserving the two-party system that characterized the discussion regarding previous electoral reform movements. The most likely explanation for this difference is that the 2000 election did not appear to threaten the two-party system. This justification suggests that the content of the debate regarding a particular electoral reform movement is defined, at least in part, by the features of the electoral crisis that preceded it.

## Notes

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- <sup>1</sup> “Prepared remarks from press conference,” *National Popular Vote*, February 23, 2006 <<http://www.nationalpopularvote.com/pages/releases/20060223.php>>.
- <sup>2</sup> *Congress and the Nation, Vol. V 1977-1980* (Washington, D.C.: Congressional Quarterly, 1981), 942.
- <sup>3</sup> *1977 Congressional Quarterly Almanac* (Washington D.C.: Congressional Quarterly, 1978), 811.
- <sup>4</sup> Jimmy Carter, “Election Reform Message to Congress,” *The American Presidency Project*, March 22, 1977 <<http://www.presidency.ucsb.edu/ws/index.php?pid=7218>>.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> *1977 Congressional Quarterly Almanac*, 811.
- <sup>7</sup> *Congress and the Nation, Vol. V*, 942-943.
- <sup>8</sup> *1979 Congressional Quarterly Almanac* (Washington, D.C.: Congressional Quarterly, 1980), 553.
- <sup>9</sup> *Ibid.*, 553.
- <sup>10</sup> *Ibid.*, 551.
- <sup>11</sup> L. Paige Whitaker and Thomas H. Neale, *The Electoral College: An Overview and Analysis of Reform Proposals* (Washington, D.C.: Congressional Research Service, 2004), 18.
- <sup>12</sup> Harold W. Stanley and Richard G. Niemi, *Vital Statistics on American Politics, 2009-2010* (Washington, D.C.: CQ Press, 2010), 21.
- <sup>13</sup> “Past attempts at reform,” *FairVote* <<http://archive.fairvote.org/?page=979>>.
- <sup>14</sup> Alec M. Gallup, *The Gallup Poll Cumulative Index: Public Opinion, 1935-1997* (Wilmington, DE: Scholarly Resources, Inc.: 1999), 427; Alec M. Gallup and Frank Newport, *The Gallup Poll Cumulative Index: Public Opinion, 1998-2007* (Lanham, MD: Rowman & Littlefield Publishers, 2000), 79.
- <sup>15</sup> Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Development, 1776-2007* (Washington: CQ Press, 2008), 426.
- <sup>16</sup> Neal R. Peirce and Lawrence D. Longley, *The People’s President: The Electoral College in American History and the Direct Vote Alternative, Revised Edition* (New Haven: Yale University Press, 1981), 48.
- <sup>17</sup> Arthur Schlesinger, Jr., “Fixing the Electoral College,” *The Washington Post*, December 19, 2000.
- <sup>18</sup> “Hillary Clinton wants to end Electoral College,” *United Press International*, November 10, 2000.
- <sup>19</sup> Edward Lewine, “Hil Rethinks Her Vote Plan: Doubts bill will KO Electoral College,” *Daily News (New York)*, November 22, 2000.
- <sup>20</sup> Whitaker and Neale, *The Electoral College: An Overview and Analysis of Reform Proposals*, 25.
- <sup>21</sup> Thomas H. Neale, *The Electoral College: Reform Proposals in the 108<sup>th</sup> Congress* (Washington, D.C.: Congressional Research Service, 2005), 10.
- <sup>22</sup> Whitaker and Neale, *The Electoral College: An Overview and Analysis of Reform Proposals*, 26.
- <sup>23</sup> Neale, *The Electoral College: Reform Proposals in the 108<sup>th</sup> Congress*, 11.
- <sup>24</sup> “Press release for initial press conference,” *National Popular Vote*, February 23, 2006 <[http://www.nationalpopularvote.com/pages/releases/20060223\\_initial.php](http://www.nationalpopularvote.com/pages/releases/20060223_initial.php)>.
- <sup>25</sup> “The Constitution of the United States of America,” *The United States Government Manual 2008/2009* (Pittsburgh: Office of Federal Register, 2008), 9.
- <sup>26</sup> “Press release for initial press conference,” *National Popular Vote*.
- <sup>27</sup> *Ibid.*
- <sup>28</sup> Rick Lyman, “Innovator Devises End Run Around Electoral College,” *The New York Times*, September 22, 2006.
- <sup>29</sup> Robert Bennett, “Popular Election of the President Without a Constitutional Amendment,” originally published in *Green Bag*, Vol.4, Spring 2001, reprinted in *The Longest Night: Polemics and Perspectives on Election 2000*, ed. Arthur J. Jacobson and Michel Rosenfeld (Berkeley, CA: University of California Press, 2002), 392.
- <sup>30</sup> *Ibid.*, 393.
- <sup>31</sup> Akhil Reed Amar and Vikram David Amar, “How to Achieve Direct National Election of the President Without Amending the Constitution: Part Three Of A Three-part Series On The 2000 Election and The Electoral College,” *FindLaw’s Writ*, December 28, 2001 <<http://writ.news.findlaw.com/amar/20011228.html>>.
- <sup>32</sup> *Ibid.*



- <sup>33</sup> John R. Koza, Barry Fadem, et al., *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (Los Altos, California: National Popular Vote Press, 2008), 271-272.
- <sup>34</sup> *Ibid.*, 272.
- <sup>35</sup> *Ibid.*, 274.
- <sup>36</sup> Lyman, “Innovator Devises End Run Around Electoral College.”
- <sup>37</sup> The National Popular Vote Advisory Board consists of former Congressman and presidential candidate John Anderson (R-I-IL), former senator Birch Bayh (D-IN), former Congressman John Buchanan (R-AL), former Congressman Tom Campbell (R-CA), former Congressman Tom Downey (D-NY), former senator David Durenberger (R-MN), and former senator Jake Garn (R-UT). Source: <<http://www.nationalpopularvote.com>>.
- <sup>38</sup> “Prepared remarks from press conference,” *National Popular Vote*.
- <sup>39</sup> Koza, Fadam, et al., *Every Vote Equal*, xxiii-xxxi.
- <sup>40</sup> Hendrik Hertzberg, “Comment: Count ‘Em,” *The New Yorker*, February 27, 2006.
- <sup>41</sup> “We vote for a fairer way to decide national elections,” *Chicago Sun-Times*, March 1, 2006.
- <sup>42</sup> “Drop Out of the College,” *The New York Times*, March 14, 2006.
- <sup>43</sup> Neal R. Peirce, “At long last: A truly fair popular presidential vote?” *Houston Chronicle*, March 5, 2006.
- <sup>44</sup> “Legislation to Elect U.S. President by National Popular Vote Clears Assembly,” *California State Assembly Democratic Caucus*, May 31, 2006 <<http://democrats.assembly.ca.gov/templates/ademmain.aspx?articleid=362&zoneid=8>>.
- <sup>45</sup> Ben Adler, “Would the National Popular Vote Advantage Red-State Republicans?” *The American Prospect*, January 9, 2009 <[http://www.prospect.org/cs/articles?article=would\\_the\\_national\\_popular\\_vote\\_advantage\\_red\\_state\\_republicans](http://www.prospect.org/cs/articles?article=would_the_national_popular_vote_advantage_red_state_republicans)>.
- <sup>46</sup> *Ibid.*
- <sup>47</sup> Lyman, “Innovator Devises End Run Around Electoral College.”
- <sup>48</sup> Arnold Schwarzenegger, “Veto Message – AB 2948,” September, 29, 2006 <<http://www.assembly.ca.gov/acs/acsframeset2text.htm>>.
- <sup>49</sup> Lyman, “Innovator Devises End Run Around Electoral College.”
- <sup>50</sup> “Senate Journal - 15<sup>th</sup> Day - January 24, 2007,” *Senate Journal: Sixty-Sixth General Assembly, State of Colorado, First Regular Session*, January 24, 2007 <[http://www.leg.state.co.us/CLICS%5CCLICS2007A/csljournals.nsf/4D104719C0353EF78725698300768D5D/45EAE1CA5DF26D058725726D0053D5F2/\\$FILE/jour\\_015.pdf](http://www.leg.state.co.us/CLICS%5CCLICS2007A/csljournals.nsf/4D104719C0353EF78725698300768D5D/45EAE1CA5DF26D058725726D0053D5F2/$FILE/jour_015.pdf)>.
- <sup>51</sup> Linda Lingle, “Statement of Objections to Senate Bill No. 1956,” April 23, 2007, <[http://www.capitol.hawaii.gov/session2007/bills/GM787\\_.PDF](http://www.capitol.hawaii.gov/session2007/bills/GM787_.PDF)>.
- <sup>52</sup> John Wagner and Olivia Wiggins, “Md. Looks to Dodge Electoral College; Senate Approves Bill on Popular Vote but Won’t Go It Alone,” *The Washington Post*, March 29, 2007.
- <sup>53</sup> Lisa Rein, “State Poised to Become First To Scuttle Electoral College,” *The Washington Post*, April 3, 2007.
- <sup>54</sup> *Ibid.*; Wagner and Wiggins, “Md. Looks to Dodge Electoral College.”
- <sup>55</sup> *Ibid.*
- <sup>56</sup> *Ibid.*
- <sup>57</sup> “Bill Report: A4225,” *New Jersey State Legislature* <<http://www.njleg.state.nj.us/bills/BillView.asp>>; *The Council of State Governments State Directory, Directory I – Elective Officials, 2007* (Lexington, KY: Council of State Governments, 2007), 200-203.
- <sup>58</sup> Tom Hester, Jr., “New Jersey Governor Signs Popular Vote Measure,” *Associated Press*, January 13, 2008.
- <sup>59</sup> “Senate Vote: House Bill 1685: Third Reading,” *State of Illinois Ninety-Fifth General Assembly*, May 31, 2007 <[http://www.ilga.gov/legislation/votehistory/95/senate/09500HB1685\\_05312007\\_004000T.pdf](http://www.ilga.gov/legislation/votehistory/95/senate/09500HB1685_05312007_004000T.pdf)>; “House Roll Call Vote: House Bill 1685,” *State of Illinois Ninety-Fifth General Assembly*, January 9, 2008 <[http://www.ilga.gov/legislation/votehistory/95/house/09500HB1685\\_01092008\\_007000C.pdf](http://www.ilga.gov/legislation/votehistory/95/house/09500HB1685_01092008_007000C.pdf)>; *The Council of State Governments State Directory*, 78-82.
- <sup>60</sup> Nguyen Huy Vu, “Governor signs bill to bypass the Electoral College for popular vote,” *Associated Press*, April 7, 2008.
- <sup>61</sup> Derrick DePledge and Trenea Shapiro, “Emergency-power veto stands,” *Honolulu Advertiser*, May 2, 2008.

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- <sup>62</sup> Lyman, "Innovator Devises End Run Around Electoral College."
- <sup>63</sup> Nancy Remsen, "Douglas vetoes presidential vote bill," *Burlington Free Press*, May 17, 2008.
- <sup>64</sup> John Curran, "Douglas vetoes bill to bypass Electoral College system," *The Boston Globe*, May 16, 2008.
- <sup>65</sup> Donald L. Carcieri, "Veto Message: H. 7707," *State of Rhode Island and Providence Plantations*, July 2, 2008.
- <sup>66</sup> Glen Johnson, "Massachusetts lawmakers run out of time on pending bills," *Associated Press*, August 1, 2008.
- <sup>67</sup> U.S. Federal Election Commission, *2008 Official Presidential General Election Results*, <<http://www.fec.gov/pubrec/fe2008/2008presgeresults.pdf>>.
- <sup>68</sup> Thomas H. Neale, *The Electoral College: 111<sup>th</sup> Congress Proposals and Other Developments* (Washington, D.C.: Congressional Research Service, 2009), 26.
- <sup>69</sup> "Maine House nixed popular vote bill," *Associated Press*, February 2, 2010.
- <sup>70</sup> "Rep. Pitts Calls National Popular Vote 'Urban Power Grab'," *States News Service*, January 28, 2010.
- <sup>71</sup> "Lawmakers ponder popular presidential vote," *Associated Press*, February 20, 2010.
- <sup>72</sup> Valerie Richardson, "Alliance gains against Electoral College; Seeks power of popular vote for president," *The Washington Times*, April 6, 2009.
- <sup>73</sup> *Ibid.*
- <sup>74</sup> Gregory M. Lamb, "New push to pick the president by popular vote," *Christian Science Monitor*, September 4, 2008.
- <sup>75</sup> Nguyen Huy Vu, "States consider plan to bypass Electoral College for popular vote," *Associated Press*, February 10, 2008; Richardson, "Alliance gains against Electoral College."
- <sup>76</sup> Schlesinger, Jr., "Fixing the Electoral College"; David Lublin, "Popular Vote? Not Yet.; Problems With a Plan to Kill the Electoral College," *The Washington Post*, July 16, 2007.

## Conclusion

After examining these four attempts at electoral college reform, two conclusions can be drawn regarding the conditions necessary for successfully reforming the electoral college. First, a major electoral crisis must initially threaten the legitimacy of the presidential election, the integrity of the two-party system, or both. Second, the party supporting the reform must be unified in its attempt to alter the electoral system. From these two conclusions, predictions can be made for the likelihood for successful reform attempts in the near future.

The first conclusion is reasonably apparent on the surface. The effort to enact the Twelfth Amendment was clearly in response to the election of 1800, in which Aaron Burr unsuccessfully schemed to undermine his own party's intention to elect Thomas Jefferson as president. The Lodge-Gossett Amendment of 1950 gained much of its support after the 1948 presidential election featured two splinter-party groups, one of which earned thirty-nine electoral votes from only 2.4% of the popular vote and threatened to hold the balance of power if the election went to the House for its resolution. A similar potential crisis came close to fruition two decades later in the 1968 election. George Wallace unofficially planned to gain the balance of power in a close election and then exercise control over his electors to exchange electoral votes for policy concessions. The threat that Wallace posed to the integrity of the presidency and the balance between the major parties helped escort the Celler and Bayh Amendments to the floors of the House and Senate, respectively. Although the National Popular Vote organization claims that its movement is not necessarily a response to the 2000 election, it is hard to imagine the

effort achieving its level of success without the controversy of the 2000 election reawakening the debate over the electoral college.

The second conclusion emanates from the debates that the reform attempts invoked and the votes that determined the success or failure of their measures. Arguments against the Twelfth Amendment were put into distinctly partisan terms, with the Federalists singling themselves out as the victims of the reform. As a result of this perception, the issue became a highly partisan one, and the final vote reflected the division between the two parties. In the Senate, all nine Federalists and only one Democratic-Republican voted against the amendment. The vote count in the House was highly similar with all thirty-five Federalist votes going against the amendment and only seven Democratic-Republicans crossing the party line. The partisan nature of the debate and the solidarity of the Democratic-Republicans helped escort the amendment through both houses of Congress. Congress's consideration of the Lodge-Gossett Amendment demonstrated similar party solidarity from the Democrats in the Senate, with only four senators in opposition compared with forty-six in support. On the other hand, the final vote in the House told a different story, as many northern Democrats joined the mainly Republican opposition to split the Democratic vote 87-116 and consequently fail the bill.

On the surface, Democratic support of the Celler Amendment in 1969 could hardly be considered solid, with 184 representatives voting in favor of the bill and 44 against it. In fact, the Republicans demonstrated stronger support for the proposal with a 154-26 party vote. Looking at the regional breakdown, however, the vote on the Celler amendment stands as a clear example of the division within the Democratic Party after southern politics began realigning in the 1950s. Northern Democrats voted for the

proposal by a margin of 142 to 3; southern Democrats split their votes 42-41. While the larger number of northern Democrats had prevented party division from becoming a problem in the House, their counterparts in the Senate did not enjoy the same luxury. In the first cloture motion for the Bayh Amendment in 1970, thirty-three Democrats voted in favor of ending debate and voting on the bill, and eighteen voted to continue the filibuster. Of those votes, only three southern Democrats supported the motion while sixteen voted with the opposition. Without a unified party vote, the Bayh Amendment was unable to overcome the Republican-led filibuster. In contrast, the Democratic legislators in almost every state in which the National Popular Vote plan has passed have demonstrated tremendous solidarity in their voting. By voting along party lines, the bill has been passed to eight governors over the course of four years.

With these two conclusions in mind, it seems possible that reform of the electoral college could occur on the federal level but not in the immediate future. Any serious reform attempt will require a major electoral crisis involving a third party of some sort that can seriously threaten the two-party balance of American politics. Unless that balance is in danger or the legitimacy of the president's election comes into question, the electoral college appears to be firmly entrenched in the electoral system. Nevertheless, if such a crisis were to occur, it seems that either modern political party could demonstrate the discipline and unity necessary to pass a constitutional amendment.

Considering the future of the National Popular Vote movement, it seems nearly impossible that the plan will go into effect before the 2012 election. With only sixty-one electoral votes currently, the plan will have to accumulate an additional 209 electoral votes before it becomes active. Based on the trends set by Maryland, New Jersey,

Illinois, Hawaii and Washington, the bill requires solid Democratic majorities in both legislative houses and the approval of a Democratic governor in a solidly Democratic state. While there are several states that fit this mold, the largest such state is New York, which has not yet taken any action on the National Popular Vote legislation beyond its initial introduction. Most of the other potential states have ten electoral votes or fewer. Moving at its current pace, the National Popular Vote plan will not be able to amass the necessary votes to affect the 2012 election or the 2016 election.

## **Appendix A**

### James Wilson's Proposed Intermediate Electoral System

"that the Executive Magistracy shall be elected in the following manner: That the States be divided into ----- districts: & that the persons qualified to vote in each district for members of the first branch of the national Legislature elect ----- members for their respective districts to be electors of the Executive magistracy, that the said Electors of the Executive magistracy meet at ----- and they or any ----- of them so met shall proceed to elect by ballot, but not out of their own body ----- person in whom the Executive authority of the national Government shall be vested."<sup>A</sup>

## **Appendix B**

### Committee of Eleven's Proposal for Executive Selection

'He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner, viz. Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the Seat of the Genl. Government, directed to the President of the Senate-The President of the Senate shall in that House open all the certificates; and the votes shall be then & there counted. The Person having the greatest number of votes shall be the President, if

such number be a majority of that of the electors; and if there be more than one who have such majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President: but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President. And in every case after the choice of the President, the person having the greatest number of votes shall be vice- president: but if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.<sup>1B</sup>

### **Appendix C**

Excerpt from Article II, Section 1 of the U.S. Constitution

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of



Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.<sup>c</sup>

## Appendix D

### Twelfth Amendment to the U.S. Constitution

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;

The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.<sup>D</sup>

## **Appendix E**

### The Lodge-Gossett Amendment – Senate Joint Resolution 2

#### Article –

**Section 1.** The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of 4 years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of

electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

Within 45 days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6<sup>th</sup> day of January following the election, unless the Congress by law appoints a different day not earlier than the 4<sup>th</sup> day of January and not later than the 10<sup>th</sup> day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President if such number be at least 40 percent of the whole number of electoral votes. If no person have at least 40 percent of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President the Senate and the House of Representatives sitting in joint session shall choose immediately by ballot the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

The Vice President shall be likewise elected at the same time and in the same manner and subject to the same provisions as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall devolved upon them, and for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

**Section 2.** Paragraphs 1, 2, and 3 of section 1, article II of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

**Section 3.** This article shall take effect on the 10<sup>th</sup> day of February following its ratification.

**Section 4.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within 7 years from the date of its submission to the States by the Congress.<sup>E</sup>

## **Appendix F**

The Celler Amendment – House Joint Resolution 681

Article –

**Section 1.** The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President. Each elector

shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President. No candidate shall consent to the joinder of his name with that of more than one other person.

**Section 2.** The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for electors of President and Vice President, the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

**Section 3.** The pair of persons having the greatest number of votes for President and Vice President shall be elected, if such number be at least 40 per centum of the whole number of votes cast for such offices. If no pair of persons has such number, a runoff election shall be held in which the choice of President and Vice President shall be made from the two pairs of persons who received the highest numbers of votes.

**Section 4.** The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

**Section 5.** The Congress may by law provide for the case of the death or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice-President-elect.

**Section 6.** The Congress shall have power to enforce this article by appropriate legislation.

**Section 7.** This article shall take effect one year after the 21<sup>st</sup> day of January following ratification.<sup>F</sup>

## **Appendix G**

### The Bayh Amendment – Senate Joint Resolution 1

#### Article –

**Section 1.** The people of the several States and the District constituting the seat of government of the United States shall be the electors of the President and Vice President. In such elections, each elector shall cast a single vote for two persons who shall have consented to the joining of their names on the ballot for the offices of President and Vice President. No persons shall consent to their name being joined with that of more than one other person.

**Section 2.** The electors in each State shall have the qualifications requisite for the electors of Members of the Congress from that State, except that any State may adopt less restrictive residence requirements for voting for President and Vice President than for Members of Congress and Congress may adopt uniform residence and age requirements for voting in such elections. The Congress shall prescribe the qualifications for electors from the District of Columbia.

**Section 3.** The persons joined as candidates for President and Vice President, having the greatest number of votes shall be declared elected President and Vice President, if such number be at least 40 per centum of the total number of votes certified.

If none of the persons joined as candidates for President and Vice President shall have at least 40 per centum of the total number of votes certified, a runoff election shall be held between the two pairs of persons joined as candidates for President and Vice President who received the highest numbers of votes certified.

**Section 4.** The days for such elections shall be determined by Congress and shall be the same throughout the United States. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed by the Congress for such elections in the District of Columbia.

**Section 5.** The Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

**Section 6.** If, at the time fixed for declaring the results of such elections, the presidential candidate who would have been entitled to election as President shall have died, the vice-presidential candidate entitled to election as Vice President shall be declared elected President.

The Congress may by law provide for the case of the death or withdrawal of any candidate or candidates for President and Vice President and for the case of the death of both the President-elect and Vice-President-elect and, further the Congress may by law provide for the case of a tie.

**Section 7.** The Congress shall have power to enforce this article by appropriate legislation.



**Section 8.** This article shall take effect on the 1<sup>st</sup> day of May following its ratification.<sup>G</sup>

## **Appendix H**

“Agreement Among the States to Elect the President by Nationwide Popular Vote”

**Article I–Membership:** Any State of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

**Article II–Right of the People in Member States to Vote for President and Vice President:** Each member state shall conduct a statewide popular election for President and Vice President of the United States.

**Article III–Manner of Appointing Presidential Electors in Member States:** Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate. The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.” The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner. At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate

and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state. The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by Congress. In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state. If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees. The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained. This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

**Article IV–Other Provisions:** This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state. Any member state may withdraw from this agreement, except that a withdrawal

occurring six months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term. The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally. This agreement shall terminate if the electoral college is abolished. If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

**Article V—Definitions:** For purposes of this agreement, “chief executive” shall mean the Governor of a State of the United States or the Mayor of the District of Columbia; “elector slate” shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate; “chief election official” shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate; “presidential elector” shall mean an elector for President and Vice President of the United States; “presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors; “presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state; “state” shall mean a State of the United States and the District of Columbia; and

“statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.<sup>H</sup>

## Appendix I

### State Action on National Popular Vote Plan in 2009<sup>1</sup>

STATE	ACTION TAKEN	STATE	ACTION TAKEN
Washington	Passed into law on April 28, 2009	Alabama	No action taken in 2009
New Mexico	Passed House level on February 20, 2009	Arizona	No action taken in 2009
Arkansas	Passed House level on February 23, 2009	California	No action taken in 2009
Vermont	Passed Senate level on February 27, 2009	Idaho	No action taken in 2009
Oregon	Passed House level on March 12, 2009	Indiana	No action taken in 2009
Colorado	Passed House level on March 17, 2009	Louisiana	No action taken in 2009
Nevada	Passed House level on April 21, 2009	Montana	No action taken in 2009
Connecticut	Passed House level on May 15, 2009	North Dakota	No action taken in 2009
Rhode Island	Passed Senate level on May 19, 2009	Ohio	No action taken in 2009
Delaware	Passed House level on June 24, 2009	South Carolina	No action taken in 2009
Kentucky	Introduced on January 9, 2009	South Dakota	No action taken in 2009
Massachusetts	Introduced on January 13, 2009	Tennessee	No action taken in 2009
Maine	Introduced on January 12, 2009	Texas	No action taken in 2009
Virginia	Introduced on January 14, 2009	Utah	No action taken in 2009
Nebraska	Introduced on January 21, 2009	Wisconsin	No action taken in 2009
Florida	Introduced in January 2009	Wyoming	No action taken in 2009
Mississippi	Introduced in January 2009	Maryland	Passed in 2007
Missouri	Introduced in January 2009	Hawaii	Passed in 2008
Oklahoma	Introduced in January 2009	Illinois	Passed in 2008
Georgia	Introduced on February 1, 2009	New Jersey	Passed in 2008
Alaska	Introduced on February 2, 2009		
Minnesota	Introduced on February 4, 2009		
Iowa	Introduced on February 11, 2009		
West Virginia	Introduced on February 16, 2009		
New York	Introduced on February 17, 2009		
Kansas	Introduced in February 2009		
New Hampshire	Introduced on March 4, 2009		
Pennsylvania	Introduced on March 20, 2009		
North Carolina	Introduced on April 9, 2009		
Michigan	Introduced on May 20, 2009		

## Notes

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<sup>A</sup> Source: *The Avalon Project: Documents in Law, History and Diplomacy*, Yale Lillian Goldman Law Library, <[http://avalon.law.yale.edu/18th\\_century/debates\\_602.asp](http://avalon.law.yale.edu/18th_century/debates_602.asp)> Imaged from: *The Debates in the Federal Convention of 1787, which framed the Constitution of the United States of America, reported by James Madison, a delegate from the state of Virginia*, Ed. Gaillard Hund and James Brown Scott (Oxford: Oxford University Press, 1920).

<sup>B</sup> Source: *The Avalon Project: Documents in Law, History and Diplomacy*, Yale Lillian Goldman Law Library, <[http://avalon.law.yale.edu/18th\\_century/debates\\_904.asp](http://avalon.law.yale.edu/18th_century/debates_904.asp)>; Imaged from: *The Debates in the Federal Convention of 1787, which framed the Constitution of the United States of America, reported by James Madison, a delegate from the state of Virginia*, Ed. Gaillard Hund and James Brown Scott (Oxford: Oxford University Press, 1920).

<sup>C</sup> Source: <<http://www.earlyamerica.com/earlyamerica/freedom/constitution/text.html>>

<sup>D</sup> Source: <[http://www.archives.gov/exhibits/charters/constitution\\_amendments\\_11-27.html#12](http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html#12)>

<sup>E</sup> Source: Neal R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative, Revised Edition* (New Haven: Yale University Press, 1981), 289-290.

<sup>F</sup> Source: Peirce and Longley, *The People's President*, 292.

<sup>G</sup> Source: Peirce and Longley, *The People's President*, 292-293.

<sup>H</sup> Source: John R. Koza, Barry Fadem, et al., *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (Los Altos, California: National Popular Vote Press, 2008), 248-249.

<sup>I</sup> Data compiled by author, from National Popular Vote website <<http://www.nationalpopularvote.com>>.

## Bibliography

- Adler, Ben. "Would the National Popular Vote Advantage Red-State Republicans?" *The American Prospect* January 9, 2009. <[http://www.prospect.org/cs/articles?article=would\\_the\\_national\\_popular\\_vote\\_advantage\\_red\\_state\\_republicans](http://www.prospect.org/cs/articles?article=would_the_national_popular_vote_advantage_red_state_republicans)>.
- Amar, Akhil Reed, and Vikram David Amar. "How to Achieve Direct National Election of the President Without Amending the Constitution: Part Three Of A Three-part Series On The 2000 Election and The Electoral College." *FindLaw's Writ* December 28, 2001. <<http://writ.news.findlaw.com/amar/20011228.html>>.
- Bennett, Robert. "Popular Election of the President Without a Constitutional Amendment." Originally published in *Green Bag* 4 (Spring 2001). Reprinted in *The Longest Night: Polemics and Perspectives on Election 2000*. Ed. Arthur J. Jacobson and Michel Rosenfeld. Berkeley, CA: University of California Press, 2002.
- Boller, Jr., Paul F. *Presidential Campaigns: From George Washington to George W. Bush*. New York: Oxford University Press, 2004.
- Brewer, Basil. "Republican Opposition Views." *Standard-Times* March 9, 1949.
- Brown, Thomas J. "Should the President Be Elected by Direct Popular Vote? No!" *Direct Election of the President*. Ed. Julia E. Johnson. New York: H.W. Wilson, 1949.
- Carcieri, Donald L. "Veto Message: H. 7707." *State of Rhode Island and Providence Plantations* July 2, 2008.
- Carter, Jimmy. "Election Reform Message to Congress." *The American Presidency Project* March 22, 1977. <<http://www.presidency.ucsb.edu/ws/index.php?pid=7218>>.

- Curran, John. "Douglas vetoes bill to bypass Electoral College system." *The Boston Globe* May 16, 2008.
- Dahl, Robert A. *How Democratic is the American Constitution?*. New Haven: Yale University Press, 2003.
- DePledge, Derrick, and Treena Shapiro. "Emergency-power veto stands." *Honolulu Advertiser* May 2, 2008.
- Elliott, Jonathon. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Washington, D.C.: Taylor & Maury, 1836.
- Ellis, Richard J., and Michael Nelson. *Debating the Presidency: Conflicting Perspectives on the American Executive*. Washington, D.C.: CQ Press, 2006.
- Farrand, Max. *The Framing of the Constitution of the United States*. New Haven: Yale University Press, 1913.
- Ferling, John E. *Adams vs. Jefferson: The Tumultuous Election of 1800*. New York: Oxford University Press, 2004.
- . *The First of Men: A Life of George Washington*. Knoxville: University of Tennessee Press, 1988.
- Foulke, William Dudley. *The Life of Oliver P. Morton: Including His Important Speeches, Vol. II*. Indianapolis: Bowen-Merrill, 1899.
- Gallup, Alec M. *The Gallup Poll Cumulative Index: Public Opinion, 1935-1997*. Wilmington, DE: Scholarly Resources, Inc.: 1999.
- Gallup, Alec M., and Frank Newport. *The Gallup Poll Cumulative Index: Public Opinion, 1998-2007*. Lanham, MD: Rowman & Littlefield Publishers, 2000.

- Gossett, Edward. "Statement February 9, 1949, before the House Committee of the Judiciary." *Direct Election of the President*. Ed. Julia E. Johnson. New York: H.W. Wilson, 1949.
- Grant, James. *John Adams: Party of One*. New York: Farrar, Strauss and Giroux, 2005.
- Hardaway, Robert M. *The Electoral College and the Constitution: The Case for Preserving Federalism*. Westport, CT: Praeger, 1994.
- Hertzberg, Hendrik. "Comment: Count 'Em." *The New Yorker* February 27, 2006.
- Hester, Jr., Tom. "New Jersey Governor Signs Popular Vote Measure." *Associated Press* January 13, 2008.
- Jackson, Andrew. "First Annual Message to Congress (1829)." *Historic Documents on the Presidency 1776-1989*. Ed. Michael Nelson. Washington, D.C.: Congressional Quarterly, 1989.
- Johnson, Glen. "Massachusetts lawmakers run out of time on pending bills." *Associated Press* August 1, 2008.
- Kallenbach, Joseph E. "Presidential Election Reform." *Direct Election of the President*. Ed. Julia E. Johnson. New York: H.W. Wilson, 1949.
- Ketcham, Ralph. *The Anti-Federalist Papers and the Constitutional Convention Debates*. New York: Signet, 2003.
- Koza, John R., Barry Fadem, et al. *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Los Altos, California: National Popular Vote Press, 2008.
- Kuroda, Tadahisa. *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787-1804*. Westport, CT: Greenwood, 1994.



Lamb, Gregory M. "New push to pick the president by popular vote." *Christian Science Monitor* September 4, 2008.

Larson, Edward J. *A Magnificent Catastrophe: The Tumultuous Election of 1800, America's First Presidential Campaign*. New York: Free Press, 2007.

Lewine, Edward. "Hil Rethinks Her Vote Plan: Doubts bill will KO Electoral College." *Daily News (New York)* November 22, 2000.

Lingle, Linda. "Statement of Objections to Senate Bill No. 1956." April 23, 2007.  
<[http://www.capitol.hawaii.gov/session2007/bills/GM787\\_.PDF](http://www.capitol.hawaii.gov/session2007/bills/GM787_.PDF)>.

Lippman, Walter. "Proposed Change Should Be Rejected." *Today and Tomorrow* (syndicated column) March 9, 1950.

Lodge, Jr., Henry Cabot. "Lodges Argues for his Plan." *Presidential Election Reforms*. Ed. Walter M. Daniels. New York: H.W. Wilson, 1953.

---. "Should the United States Abolish the Electoral College? Yes!" *The Rotarian* July 1949: 24-25, 52.

Longley, Lawrence D., and Neal R. Peirce. *The Electoral College Primer*. New Haven: Yale University Press, 1996.

Lublin, David. "Popular Vote? Not Yet.; Problems With a Plan to Kill the Electoral College." *The Washington Post* July 16, 2007.

Lyman, Rick. "Innovator Devises End Run Around Electoral College." *The New York Times* September 22, 2006.

McCormick, Richard P. *The Presidential Game: The Origins of American Presidential Politics*. (New York: Oxford University Press, 1982.

- Milkis, Sidney M., and Michael Nelson. *The American Presidency: Origins and Development, 1776-2007*. Washington, D.C.: CQ Press, 2008.
- Morley, Felix. "Democracy and the Electoral College." *Modern Age* 5 (1961): 373-388.
- Morton, Oliver P. "The American Constitution." *The North American Review* 124 (May-June 1877): 341-346.
- . "The American Constitution II." *The North American Review* 125 (July-August 1877): 68-79.
- Neale, Thomas H. *The Electoral College: Reform Proposals in the 108<sup>th</sup> Congress*. Washington, D.C.: Congressional Research Service, 2005.
- . *The Electoral College: 111<sup>th</sup> Congress Proposals and Other Developments*. Washington, D.C.: Congressional Research Service, 2009.
- Ornstein, Norman J. "Three Disputed Elections." *After the People Vote: A Guide to the Electoral College*. Ed. Walter Berns. Washington D.C.: AEI Press, 1992.
- Patman, Wright. "Should the United States Abolish the Electoral College? No!" *The Rotarian* July 1949: 24-25, 54.
- Peirce, Neal R. "At long last: A truly fair popular presidential vote?" *Houston Chronicle* March 5, 2006.
- . *The People's President: The Electoral College in American History and the Direct-Vote Alternative*. New York: Simon and Schuster, 1968.
- Peirce, Neal R., and Lawrence D. Longley. *The People's President: The Electoral College in American History and the Direct Vote Alternative, Revised Edition*. New Haven: Yale University Press, 1981.

- Rein, Lisa. "State Poised to Become First To Scuttle Electoral College." *The Washington Post* April 3, 2007.
- Remsen, Nancy. "Douglas vetoes presidential vote bill." *Burlington Free Press* May 17, 2008.
- Richardson, Valerie. "Alliance gains against Electoral College; Seeks power of popular vote for president." *The Washington Times* April 6, 2009.
- Sayre, Wallace S., and Judith H. Parris. *Voting for President: The Electoral College and the American Political System*. Washington, D.C.: The Brookings Institution, 1970.
- Schlesinger, Jr., Arthur. "Fixing the Electoral College." *The Washington Post* December 19, 2000.
- Schwarzenegger, Arnold. "Veto Message – AB 2948." September, 29, 2006.  
<<http://www.assembly.ca.gov/acs/acsframeset2text.htm>>.
- Silva, Ruth C. "The Lodge-Gossett Resolution: A Critical Analysis." *The American Political Science Review* (March 1950): 86-99.
- Simmons, Edward B. "Lodge Plan Virtually Bars Election of GOP President." *Standard-Times* January 19, 1949.
- Stanley, Harold W., and Richard G. Niemi. *Vital Statistics on American Politics, 2009-2010*. Washington, D.C.: CQ Press, 2010.
- Taft, Robert A. "Letter to Rentfro B. Creager." *The Papers of Robert A. Taft*. Ed. Clarence E. Wunderlin, Jr. Kent, OH: Kent State University Press, 2006.
- U.S. Federal Election Commission. *2008 Official Presidential General Election Results*.  
<<http://www.fec.gov/pubrec/fe2008/2008presgeresults.pdf>>.

Vu, Nguyen Huy. "Governor signs bill to bypass the Electoral College for popular vote." *Associated Press* April 7, 2008.

---. "States consider plan to bypass Electoral College for popular vote." *Associated Press* February 10, 2008.

Wagner, John, and Olivia Wiggins. "Md. Looks to Dodge Electoral College; Senate Approves Bill on Popular Vote but Won't Go It Alone." *The Washington Post* March 29, 2007.

Whitaker, L. Paige, and Thomas H. Neale. *The Electoral College: An Overview and Analysis of Reform Proposals*. Washington, D.C.: Congressional Research Service, 2004.

Wilmerding, Jr., Lucius. "Reform of the Electoral System." *Political Science Quarterly* 64 (March 1949): 1-23.

*1969 Congressional Quarterly Almanac*. Washington, D.C.: Congressional Quarterly, 1970.

*1970 Congressional Quarterly Almanac*. Washington, D.C.: Congressional Quarterly, 1971.

*1977 Congressional Quarterly Almanac*. Washington, D.C.: Congressional Quarterly, 1978.

*1979 Congressional Quarterly Almanac*. Washington, D.C.: Congressional Quarterly, 1980.

*The Avalon Project: Documents in Law, History and Diplomacy*. Yale Lillian Goldman Law Library. <[http://avalon.law.yale.edu/18th\\_century/debates\\_602.asp](http://avalon.law.yale.edu/18th_century/debates_602.asp)>. Imaged from *The Debates in the Federal Convention of 1787, which framed the*

*Constitution of the United States of America, reported by James Madison, a delegate from the state of Virginia.* Ed. Gaillard Hund and James Brown Scott. Oxford: Oxford University Press, 1920.

“Bill Report: A4225.” *New Jersey State Legislature*. <<http://www.njleg.state.nj.us/bills/BillView.asp>>.

*Congress and the Nation: Vol. II 1965-1968.* Washington, D.C.: Congressional Quarterly, 1969.

*Congress and the Nation, Vol. V 1977-1980.* Washington, D.C.: Congressional Quarterly, 1981.

“The Constitution of the United States of America.” *The United States Government Manual 2008/2009.* Pittsburgh: Office of Federal Register, 2008.

*The Council of State Governments State Directory, Directory I – Elective Officials, 2007.* Lexington, KY: Council of State Governments, 2007.

“Drop Out of the College.” *The New York Times* March 14, 2006.

“Electoral College Reform: State Legislators Favor Direct Vote for President.” *CQ Guide to Current American Government* (Spring 1967): 93.

“Hillary Clinton wants to end Electoral College.” *United Press International* November 10, 2000.

“House Roll Call Vote: House Bill 1685.” *State of Illinois Ninety-Fifth General Assembly* January 9, 2008. <[http://www.ilga.gov/legislation/votehistory/95/house/09500HB1685\\_01092008\\_007000C.pdf](http://www.ilga.gov/legislation/votehistory/95/house/09500HB1685_01092008_007000C.pdf)>.

“Lawmakers ponder popular presidential vote.” *Associated Press* February 20, 2010.

“Legislation to Elect U.S. President by National Popular Vote Clears Assembly.”

*California State Assembly Democratic Caucus* May 31, 2006. <<http://democrats.assembly.ca.gov/templates/ademmain.aspx?articleid=362&zoneid=8>>.

“Maine House nixed popular vote bill.” *Associated Press* February 2, 2010.

“News of the Week in Review.” *New York Times* Sept. 21, 1969.

“Past attempts at reform.” *FairVote*. <<http://archive.fairvote.org/?page=979>>.

“Prepared remarks from press conference.” *National Popular Vote* February 23, 2006.

<<http://www.nationalpopularvote.com/pages/releases/20060223.php>>.

*Presidential Elections Since 1789*. Washington, D.C.: CQ Inc., 1983.

“Press release for initial press conference.” *National Popular Vote* February 23, 2006.

<[http://www.nationalpopularvote.com/pages/releases/20060223\\_initial.php](http://www.nationalpopularvote.com/pages/releases/20060223_initial.php)>.

“Rep. Pitts Calls National Popular Vote ‘Urban Power Grab’.” *States News Service* January 28, 2010.

“Rules Committee Blocks Clearance On Bill To Kill Electoral College.” *Associated Press* March 10, 1950.

“Senate Journal - 15<sup>th</sup> Day - January 24, 2007.” *Senate Journal: Sixty-Sixth General Assembly, State of Colorado, First Regular Session* January 24, 2007.

<[http://www.leg.state.co.us/CLICS%5CCLICS2007A/csljournals.nsf/4D104719C0353EF78725698300768D5D/45EAE1CA5DF26D058725726D0053D5F2/\\$FILE/jour\\_015.pdf](http://www.leg.state.co.us/CLICS%5CCLICS2007A/csljournals.nsf/4D104719C0353EF78725698300768D5D/45EAE1CA5DF26D058725726D0053D5F2/$FILE/jour_015.pdf)>.

“Senate Vote: House Bill 1685: Third Reading.” *State of Illinois Ninety-Fifth General Assembly* May 31, 2007. <[http://www.ilga.gov/legislation/votehistory/95/senate/09500HB1685\\_05312007\\_004000T.pdf](http://www.ilga.gov/legislation/votehistory/95/senate/09500HB1685_05312007_004000T.pdf)>.

“We vote for a fairer way to decide national elections.” *Chicago Sun-Times* March 1,  
2006.