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Marvin L. Simner
Western University, msimner@uwo.ca

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The Purpose of the Electoral College: A Seemingly Endless Controversy

Marvin L. Simner

In recent years the operation of the Electoral College, as specified in Article II of the Constitution, has come under repeated attack by Congressional representatives and others throughout the United States. The following material from Section 1 contains what are considered the most contentious provisions in this Article.

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 Congress...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....The Person having the greatest Number of Votes shall be the President...after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President.

Beyond these words the only other time “Electors” was mentioned in a major way in any of the constitutional documents was in the twelfth amendment and here only for the purpose of clarifying how the occupants of the two offices were to be selected. How the electors themselves were to be chosen was left to the state legislatures to decide, which is what has given rise to the following course of action that today is of central concern.

Electors are nominated in a different manner in different states, but they are most commonly elected at state party conventions or are otherwise appointed by the political parties. They obtain their positions because of their loyalty and hard work for the party. [1]

The current outcry from the opposition to this process holds that the final decision for President and Vice President should be made not through electors chosen by political parties but through an open election in which the population as a whole are asked to decide.

As an illustration of the highly divisive nature of this issue, between 1889 and 2004 it has been estimated that the number of proposals for change in the operation of the College was approximately 595 [2] and it has even been claimed that by 2017 the number may have reached as high as 752.[3] With regard to this need for change, the number that endorsed the replacement of Section 1 with what are referred to as direct election plans literally exploded during the 1980s and 1990s. [4] Between 1981 and 2010 of all the bills that dealt with the Electoral College, 86.8% called for the use of nation-wide popular election results in one form or another in deciding who should become the chief executive officers of the United States. In fact, as recently as 2016 Senator Barbara Boxer introduced a joint resolution in the

An abbreviated version of this article will appear in a forthcoming issue of the *Journal of the American Revolution*.

114th Congress to abolish the College and replace it with the direct election of the President and Vice President of the United States. [5] Her proposal was then followed by two others in the 115th Congress that addressed this same matter. [6] Over the years, however, Congress as a whole have repeatedly shown a decided unwillingness to endorse these initiatives. To explain this unwillingness, Thomas H. Neale, in his concluding remarks in a Congressional Research Service Report for Congress, drew upon the following comments by John F. Kennedy, who was a leading defender of the College.

In the course of Senate floor debate on this question in 1956, he [Kennedy] paraphrased a comment by Viscount Falkland, a 17th century English statesman, declaring of the electoral college, "It seems to me that Falkland's definition of conservatism is quite appropriate [in this instance]--When it is not necessary to change, it is necessary not to change." This aphorism may offer a key to the future prospects of the electoral college. To date, policymakers have generally concluded that it has not been necessary to change the existing system, or perhaps more accurately, there has been no compelling call for change. [7]

Contrary to Neale's conclusion, and as the above review indicates, there is now a growing as well as a compelling call for change. Rather than employ a strategy used in past and attack the political method for selecting electors, it would seem a more appropriate way to address this issue might be to consider the original purpose for electors as revealed in the words and actions of the Framers, ask if this purpose still exists, and if not, whether it is time to re-evaluate the actual need for electors.

Background

The initial debate over the use of electors was launched on May 29, 1787 when Charles Pinckney of South Carolina "laid before the House for their consideration, the draught of a foederal government to be agreed upon between the free and independent States of America." [8] Pickney then elaborated on the many issues the representatives needed to address in the forthcoming days, one of which included the following resolution put forward by Governor Randolph of Virginia: "that a National Executive be instituted; to be chosen by the National Legislature... " [9] Four days later, and in opposition to Randolph's recommendation, James Wilson of Pennsylvania moved that a national executive should not be chosen in this manner but instead should be elected in the following manner.

That the States be divided into Districts—and that the persons, qualified to vote in each District, elect Members for their respective Districts to be electors of the Executive Magistracy. That the electors of the Executive Magistracy meet and they or any of them shall elect by ballot, but not out of their own Body, a Person in whom the Executive authority of the national government shall be vested. [10]

Central to Wilson's view was his strong belief that if a true republic was to be established such a person needed to be elected by the people at large. [11] Although the procedure he recommended was certainly indirect and in opposition to a national public referendum, the reason he favored this approach stemmed from a belief, widely held at the time, that a public referendum was simply impractical. [12] Given the length and breadth of the newly formed country, coupled with the relatively slow and extremely poor means of communicating across vast distances, the average voter would have little if any knowledge of those who were best equipped to lead the country if such persons resided at a considerable distance from themselves. To circumvent this difficulty, according to Wilson's scheme, the voters in each state would select from an array of knowledgeable and worldly candidates within their

own state, individuals who would then serve for the voters in that state, as proxies or intermediaries in a forthcoming election of the most qualified person to serve as the chief executive officer for the country at large.

While Wilson's motion was defeated by a vote of 7 to 2 and Randolph's motion was approved by a vote of 8 to 2, for the most part, it was these two diametrically opposite and competing positions coupled with many other matters concerning the presidency, that dominated the Congressional deliberations throughout June, July, and much of August. The final meetings were held on August 24 and again on September 4-6 when the representatives were asked to approve, disapprove, or modify the overall wording in the initial version of the entire constitution prepared by an eleven-member committee appointed by Congress.

The August 24 debate

Among the items the representatives were asked to consider on August 24 was the following clause modeled after the original resolution put forward by Randolph on May 29.

The executive power of the United States shall be vested in a single person...He shall be elected by ballot by the Legislature. [13]

Near the start of the debate Daniel Carrol of Maryland moved to eliminate "by the Legislature" and insert in its place "by the people," which was defeated by a vote of 9 to 2. Charles Pinkney then moved to keep "by the Legislature" but to insert after Legislature the words "and by a majority of the votes of the members [of the Legislature] present when the vote was called." Unlike Carrol's motion, Pinkney's motion was approved by vote of 10 to 1. [14] Upon learning of this latter result Gouverneur Morris from Pennsylvania was outraged!

Morris argued that any person who now desires to become President and who also wishes to seek re-election will become totally dependent on the wishes of the national legislature throughout his term and therefore will be unable to serve as an independent judge on matters that affect the welfare of the country-as-a-whole. As recorded in the minutes:

Mr. Govr Morris opposed the election of the President by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his Station, as leading to Legislative tyranny. If the Legislature have the Executive dependent on them, they can perpetuate & support their usurpations by the influence of tax-gatherers & other officers, by fleets of armies &c. Cabal & corruption are attached to that mode of election... [15]

To guard against "all these evils," (to use Morris' terminology) and in keeping with Wilson's original motion, Morris then moved that "the President shall be chosen by Electors to be chosen by the people of the several States." [16] Unlike the previous motions by Carrol and Pinkney where definitive results were obtained, the outcome here showed a much less definitive outcome with 6 states voting in opposition, 5 voting in favor. Nevertheless, and when considered relative to the original vote on Wilson's motion, these results indicate that the representative's opinions on the use of electors had clearly begun to shift. Whereas only 2 states voted in favor before, now 5 states did so, and previously 7 voted against, while here 6 states were opposed. The states were then polled on the first part of Morris's motion: "shall be chosen by electors." The issue this time was whether his proposal contained

an “an abstract question.” Here the most that can be said is an indeterminant outcome occurred: 4 agreed, 4 disagree, and 2 were divided. [17]

September 4-6

Due to the uncertainty over Morris’s motion, in the next iteration of the constitution the eleven-member committee recommended, on September 4, the following wording in the clause concerned with electors.

Each State shall appoint in such a manner as it’s Legislature may direct, a number of Electors equal to the whole number of Senators, and Members of the House of representative to which the State may be entitled in the legislature. [18]

The following material from the minutes of September 4 not only summarize several remarks made by Wilson but also provides a general sense of the ordeal that the representatives faced when forced to resolve this issue.

The 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. He [Wilson] had never made up an opinion on it entirely to his own satisfaction. He thought the plan on the whole [the use of electors] a valuable improvement on the former [having the national legislature alone decide on the presidency]. It gets rid of one great evil, that of cabal & corruption. [19]

On September 6 the principal focus of the debate was on the need to clarify and endorse the wording in the above clause. Closure was reached that day on the appointment of electors (9 voted in favor, 2 opposed) [20] and the final version of the Constitution was then sent for ratification on September 10.[21]

Outcome

Although the overall concept of each state choosing their own electors had been approved by the representatives and ratified by Congress, [22] during the first presidential election in 1789 slightly more than half the states preferred that the final choice of electors needed to be made, not by the public at large within the states as originally intended, but instead by the state legislatures. Of the ten states that voted, six employed this method. Somewhat similar results were obtained through 1824. In 1828, however, the number that used this method sharply declined. Of the 24 states that voted that year only Delaware, New York and South Carolina employed this procedure and, with the single exception of South Carolina who later joined the rest in 1860, from 1832 through at least 1892 according to McKee, [23] all the states only made use of the popular vote, which was in keeping with the original federalist position.

Implications

What are the implications to be drawn from the foregoing account? In view of the issue at hand, it is important to note the purpose of electors at the time its use was ratified. As stated above, because of the vast distances across the country coupled with the poor means of communicating across these distances, during federal elections it was widely held that the average voter would have had little or no knowledge of those who might be seeking election. To circumvent this problem the major purpose of the electors was to serve as knowledgeable proxies for the voting public at large. In today’s world,

however, widespread communication of political ideology is no longer hindered by time or distance and those who seek office now readily address their constituents either through travel or by the media regardless of where they live. Hence, although the proxy system was quite appropriate for the era in which it was intended, in contemporary society it is doubtful that such a system is any longer necessary.

Equally relevant to this conclusion are the added findings reported above which show that the Framers themselves were not at all united in their initial support of electors and only gradually came to appreciate their importance. To reiterate, on June 2 only two states voted in favor of electors whereas by September 6, nine of the states now approved their use. In all likelihood this change largely occurred because there was no other reasonable alternative available at the time.

A third point that emerges from this account bears on a remark by Charles T. Canady, a member of the House of Representatives and, in 1997, chair of a congressional subcommittee charged with the task of reviewing the Electoral College. According to Canady, among those who continue to support the College “the Electoral College is essential in preserving the principles of federalism embedded in our Constitution.” [24] While others more recently have made the same remark [25], if this remark is correct, the underlying principles that were initially responsible for the federalist approach (electors should be chosen by the public at large) are clearly at odds with the current approach which is based largely on the elector’s “loyalty and hard work for the party”.

Considered together all three points suggest that the Electoral College, at present, is neither serving its original purpose nor is it being implemented according to the will of the Framers. Given the longstanding reluctance by Congress to alter the constitution to eliminate the college, is there a solution to this dilemma? While several mainly unsuccessful alternatives have been advanced over the years (26), there is one that now appears to be gaining considerable support without the need to disturb the constitution. Known as the National Popular Vote Interstate Compact (NPVIC), this approach, which incorporates both the use of electors as well as the popular vote,[27] requires a number of states to form a joint compact and pledge to award all their electoral votes to the presidential ticket that wins the most popular votes nationwide, regardless of who wins any particular state. [28] As of 2020 fifteen states along with the District of Columbia have joined and together control 196 of the 270 electoral votes needed to secure a presidential election. [29]

According to its supporters, with this approach the final decision in a presidential election would then be determined by the popular vote alone which has always been the goal of those who favor the use of a direct election procedure. It remains to be seen, however, if the NPVIC will be able to sufficiently increase its membership numbers and thereby attract the additional 74 required electoral votes to win the presidency. Equally uncertain is whether it will also be able to withstand the challenges that appear to be mounting by those who are opposed to this solution. [30] By way of a hopeful message, though, Thomas Paine in *Common Sense* nearly 250 years ago concluded that “A long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason.” If Paine is correct, perhaps the real question here is not whether the NPVIC or still another alternative will provide the successful solution, but whether the collective patience of those who have long been calling for change will finally run out.

End Notes

- [1] Tara Ross and Robert M. Hardaway, "The compact clause and the National Popular Vote: Implications for the Federal Structure." *New Mexico Law Review*, Vol. 44 (2), (2014), see footnote on 428.
- [2] Anonymous, "The Electoral College: An overview and analysis of reform proposals." *CRS Report RL 30804*, (November 5, 2004) 2.
- [3] Anonymous, "The Electoral College: Reform Proposals in the 114th and 115th Congress." *CRS Report R44928*, (August 24, 2017) 4.
- [4] Gary Bugh, *Electoral College Reform: Challenges and Possibilities*, (Surrey, England: Ashgate Publishing, 2010) 88.
- [5] Anonymous, "A Joint Resolution Proposing an Amendment to the Constitution of the United States to Abolish the Electoral College and to Provide for the Direct Popular Election of the President and Vice President of the United States." *S.J. Res. 41*, (November 15, 2016).
- [6] Anonymous, *CRS Report R44928*, (August 24, 2017).
- [7] Thomas H. Neale, "Electoral College Reform: 111th Congress Proposals and Other Current Developments." *CRS Report R40895*, (September 13, 2010), 28.
- [8] *Records of the Federal Convention*, 2, (May 29, 1787),16.
- [9] *Ibid.*, 21.
- [10] *Ibid.*, (June 2, 1787), 77.
- [11] Charles C. Thach, *Creation of the Presidency, 1775-1789*. Baltimore, OH: Johns Hopkins Press, (1922) 86-87.
- [12] Robert M. Alexander, *Representation and the Electoral College* (Oxford, England: Oxford University Press, 2019), 51.
- [13] *Records of the Federal Convention*, 2, (August 24, 1787) 401.
- [14] *Ibid.*, 402-403.
- [15] *Ibid.*, 403-404.
- [16] *Ibid.*, 404.
- [17] *Ibid.*, 404.
- [18] *Ibid.*, (September 4, 1787) 493 - 494.
- [19] *Ibid.*, 501.
- [20] *Ibid.*, (September 6, 1787) 517
- [21] *Ibid.*, (September 10, 1787) 572-573.

[22] For more information on the debate that led to approval and ratification see Robert M. Alexander, Chapter 3.

[23] Thomas Hudson McKee, *The National Conventions and Platforms of all Political Parties, 1789 to 1905*. Baltimore, MD: The Friedenwald Company, 1906), 7-68.

[24] Anonymous, "Proposals for Electoral College Reform," *H.J. Res 28 and H.J Res 43, Serial No. 87*, (September 4, 1997) 2.

[25] Thomas H. Neale, "The Electoral College: Reform Proposals in the 107th Congress." CRS Report *RL 30844*, (March 13, 2001) 1; Anonymous, *CRS Report R44928*, (August 24, 2017), 4.

[26] Robert M. Alexander, Chapter 8.

[27] Michael Brody, "Circumventing the Electoral College: Why the National Popular Vote Interstate Compact survives Constitutional Scrutiny under the Compact Clause," *Legislation and Policy Brief*, Vol. 5, (1), Article 2, (2013).

[28] Anonymous, "The National Popular Vote Initiative: Direct Election of the President by Interstate Compact" *CRS Report R43823*, (December 12, 2014), 4.

[29] Elliott Ramos, There's a plan afoot to replace the Electoral College, and your state may already be part of it. *Nbcnews.com*. (November 10, 2020).

[30] Robert M. Hardaway, *Saving the Electoral College: Why the Popular Vote Would Undermine Democracy*, (Santa Barbara, CA: Praeger, 2019); Norman R. Williams, "The danger of the National Popular Vote Compact." *Harvard Law Review Blog*, (March 13, 2019); Jennifer S. Hendricks, "Popular election of the president: using or abusing the Electoral College?" *Election Law Journal*, Vol. 7 Summer (2008), number 3. Derek T. Muller, "The compact clause and the national popular vote interstate compact." *Election Law Journal*, Vol. 6 Fall (2007), number 4.

