

SPHEX OCT 3, 2019

Jim, please see the following:

After over 30 years of service as Assistant General Counsel and Claims Director with Nationwide Insurance Cham is now Of Counsel with Gentry Locke Attorneys. Cham has been a long time community volunteer having served among other organizations as President of the Boards of the Lynchburg Historical Foundation, the Old City Cemetery, the Library of Virginia in Richmond and is currently President of the Board of Trustees of Jones Memorial Library.

I look forward to seeing everyone on Thursday.

All the best, Cham

On Saturday, September 28, 2019, 12:35:22 PM EDT, James W. Wright <jimrite@mac.com> wrote:

Cham,

Please send me a brief bio that I can use to introduce you on Thursday. I am looking forward to your talk and believe that it is a power station.

Jim

Jim Wright

IS IT A POWER STATION, A SCHOOL OR WHAT ?

The institution that I am going to discuss this evening first came in to my consciousness in 1960 when I was in the second grade. As some of you may recall from one of my previous papers that was when I acquired a life long interest in the political process and good government. 1960 was the year of the Kennedy vs Nixon Presidential Campaign. There were references to a process I did not understand and after the election it faded into the background and I lost my interest in it until I became a serious student of U.S. political history and then in to the early / mid 1970s. As a U.S. Government undergraduate student at the University of Virginia I did a paper on it reviewing the institution. Since then the institution and process I will review this evening has become the subject of more discussion and has now become a very hot topic in political and government process circles of interest.

So what is this somewhat mysterious institution to which I am referring ? Is it A Power Station, A School or What ?

I am referring to the Presidential Electoral College and the process that leads to the election of the President of the United States.

My paper this evening will review how the Electoral College was established, how it operates, a review of some of the more controversial elections and some of the proposals being considered / put forth for changing or even abandoning it all together.

I am not going to review in detail the Constitutional Convention of 1787 that resulted in the U.S. Constitution that established the United States and which has subsequently governed our Federal government. However, it is important for our understanding of the Electoral College and the process by which we elect our U.S. President for us to understand why the Electoral College was chosen as the process and why I believe the wisdom that established it is still as wise and meaningful today as it was over 200 years ago.

The Delegates to the 1787 Constitutional Convention were as learned and wise a group of elected individuals that has ever assembled in the history of the United States. These Delegates include learned scholars like George Wythe, George Mason, James Madison, Alexander Hamilton, Benjamin Franklin and Roger Sherman. These individuals, all of whom had just risked their lives and fortunes in the Revolutionary War, were incredibly well read in Greek and Roman history, the history of the rise and fall of republics, democracies and all forms of government and had also served in various political positions both before, during and after the Revolutionary War, so they had a great deal of practical experience in the effective operation of governance. These early leaders were very concerned about the deficiencies in how governments operate and such issues as mob rule and the misuse of governmental powers through concentration.

It also needs to be remembered that the Delegates faced a daunting task in fashioning a document, a Constitution, that would be accepted by the 13 individual states as a common operating agreement. The concept of the United States was much different in 1787 than it is today. Individuals considered themselves firstly as citizens of their individual state and that the United States was only there for very limited purposes such as common defense and some economic regulation between the states.

Shortly after the Convention convened on May 25, 1787 James Madison proposed what came to be called the Virginia Plan and which, during extensive debate and

other competing plans being put forth, eventually came to be the accepted version of the U.S. Constitution.

Madison's original plan proposed a "National Executive to be chosen by a National Legislature". Roger Sherman of CT supported this method stating the national executive should be "absolutely dependent" on the national legislature. James Wilson of PA called for a national popular election. George Mason of VA thought a national popular election was "impracticable". After further deliberation Wilson changed his original approach and proposed a plan to create districts and hold popular elections to choose electors who would in turn vote for the national executive.

However, this plan was not accepted and further debate and deliberations occurred. Other plans were considered. Elbridge Gerry of Mass. proposed election by the state governors. Madison's proposal, the VA Plan, was rejected as being too parliamentary and made the national executive too dependent on the legislature and the office needed to be independent.

Finally, on July 25, Madison stated there were two options: an appointment by Electors chosen by the people or immediate appointment by the people. Madison favored popular election by the people.

But he recognized two legitimate concerns and I would submit these concerns are as legitimate today as they were then.

First, people would tend toward supporting candidates from their own states giving an advantage to larger states. Ironically at the time Virginia was the most populous of the states, holding about 10 % of the 4 million people inhabiting the various states, similar in proportion in our day to that of CA.

Second, a few areas with higher concentrations of voters might come to dominate.

Madison spoke positively of the idea of the Electoral College and stated "there would be very little opportunity for cabal or corruption" in such a system.

The issues of the election of the national executive / president continued to be deliberated until September 4, 13 days before adjournment of the Convention,

when a committee of one member of each of the eleven states present at the Convention proposed the following which became Article II, Section 1 of the Constitution which reads:

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

The provision that gave each state the two votes representing the number of Senator was meant to help the smaller states think that their votes would still be important. This would still be an issue with any change to the current system, perhaps even more so given the disparities in population between the most populated and least populated states. It is also interesting to note the committee that made the recommended language was not a proportionally based committee but each rather each state had one vote regardless of population.

Federal officials were prohibited from being electors. A deadlock for president would be decided by the House of Representatives with one vote per state.

There were some other provisions which resulted in the office of vice president being voted on by the Electors and led to the problem of John Adam's chief political rival Thomas Jefferson being his vice president and then Aaron Burr almost stealing the presidency from Jefferson. But those procedural issues were cleared-up and the basic process for electing our President has been in place since adopted in 1787.

As a result of the language in the Constitution state legislatures have used their power to decide on various ways to choose their electors: appointing them directly, holding elections by districts or holding statewide elections. 48 states choose their presidential electors in a statewide winner-take-all vote. Maine and Nebraska elect one elector based on each congressional district's vote and the remaining two based on the state-wide vote. Virginia is one of the winner- take-all states with Electors being selected by the party of the candidate at a Congressional District Convention and two electors being selected by the state party convention. So there are Elector candidates from each party and the party of the candidate who wins the state wide vote has all of their candidates serve as Electors even if their individual Congressional District voted for the opposing candidate.

On a personal note, I had direct contact with the Electoral College process in 2000 when my spouse Edie was nominated as the Republican party elector from the 6th Congressional District. As a result of George Bush winning the state wide vote in Virginia Edie served as the Elector and the process, both the public process and that behind the scenes, was fascinating. There is much more detail to this story that I will not go in to tonight. But the process did work as it was designed and I was proud of Edie's part in it and I was also reassured the system while not perfect was a sound way to elect our President.

So what are the benefits of choosing our presidents through an Electoral College ?

Presidential elections are decentralized taking place on a state by state basis not in one "concentrated" mechanism. Although some see this as a flaw, some, including Elizabeth Warren wants to increase Federal power over elections. While there is a role for the Federal government in the election process I definitely do not think having them "in charge" is a good thing and the process is best left to the states and localities.

This decentralization has been of great value. Then President O'Bama noted this in 2016 when he stated it would be difficult for an outside country "to rig" the Presidential votes since our system is so decentralized. A more centralized or so called national system could be much more susceptible to manipulation and fraud. State boundaries serve as a fire break similar to watertight compartments on a ship. Disputes over mistakes or fraud are contained within individual states. A state can recount votes without causing a nationwide recount.

This was an issue in the 1876 presidential election which was the first election in which a presidential candidate won the electoral college without winning the popular vote. The issue was complicated because of the suppression of black votes by Democrats in Florida, Louisiana and South Carolina. As a result those states sent Congress two sets of electoral votes one favoring Republican Rutherford Hayes the other Democrat Samuel Tilden. The Republican controlled Congress finished counting the votes and declared Hayes the winner. While this result was questioned at least the Electoral College process contained the disputes to the individual states and allowed Congress to sort it out. There was no need for a nationwide recount and all the issues of fraud that arises in those situations. As Joseph Stalin once said: It's not the people who vote that count, it's the people who count the votes.

Another example of the Electoral College having a beneficial effect on the election process was 1992 when Bill Clinton received only 43 percent of the popular vote but 370 Electoral College votes which was 68 percent of the Electoral College votes: there was no question who was the legitimate winner.

But the greatest benefit of the Electoral College is the great incentive it creates to avoid regionalism or a candidate just focusing on four or five major states and six or eight of the largest jurisdictions.

Please look at the page of registered voters by state. As you can figure if a candidate focused on say six or eight of the most populated states and carried those states by a high enough percentage the candidate could win the election with nominal vote totals in the rest of the states. I submit it would not be a healthy process to have our President elected by six or eight of the largest jurisdictions in the country.

The elections of 1888 and 1892 are real life examples of this issue.

In 1888 Democrat President Grover Cleveland won the plurality of the popular vote by winning by large margins in the overwhelmingly Democrat States in the south. He won Texas alone by 146,461 votes whereas his national popular vote margin was only 94,530. He won six southern states by margins of greater than 30 %. But he did not win re-election. Rather Cleveland lost to Benjamin Harrison who won 58 percent of the Electoral College votes. The Electoral College ensured that super majorities in one region of the country would not be sufficient to win the Presidency.

In 1892 Cleveland ran again and this time in addition to winning the south he expanded his appeal to win New York, Illinois, Indiana, Wisconsin and California thereby defeating Benjamin Harrison who had won four years previously. He won a smaller percentage of the popular vote but won by a margin of 277 to 145, 62 percent, of the Electoral College votes with 22 votes to the third party candidate.

We are in a period of a very divided electorate and it is important for the political health of the country for there to be as much incentive as possible for candidates and political parties to build broad coalitions.

As I hope the above figures demonstrate, the Electoral College does help push candidates and political parties to build coalitions and abolishing the Electoral

College would be yet one more factor increasing the tendency to political extremes.

The biggest single objection to the Electoral College is that the U.S. is a democracy and the majority should rule and the Electoral College occasionally results in someone being elected President who did not receive the most votes.

While the word democracy is one of the adjectives used to describe the American form of government it needs to be coupled with the adjective republic.

A democracy implies the voters make decisions directly.

A republic implies the people and their elected representatives both hold power and work together to govern.

The drafters of the Constitution were very wary of direct democracies, they knew from their extensive knowledge of history how democracies in Greece and Rome failed.

Therefore, when they drafted the Constitution they also included elements of a republic to balance-out the deficiencies of a democracy.

This approach is somewhat analogous to how school board members are selected. In VA jurisdictions have a right to have school board members elected by direct vote or appointed by the elected governing body. Lynchburg has opted for selection by City Council. I think this approach generally results in better school board members than those selected in a direct election though it can be argued it is not as democratic. The same issue arises as to the election of state judges. One only needed to hear the late Delegate Lacey Putney relate his experience with elected judges in other states to know that Virginia's method of election by the General Assembly is a preferable approach, though again it can be argued it is not as democratic.

The judgment and wisdom of this combined approach by Drafters of the U.S. Constitution was confirmed by the French Revolution of 1789 to 1799 when there were many examples of excesses and abuses based on pure democratic decisions.

There are many countries around the world who represent this combined approach. For example, Canada, Israel and the United Kingdom do not have a popularly elected head of government. Rather the head of the government is elected by the legislature.

Germany and India have systems similar to the Electoral College.

In none of these countries is the national popular vote the deciding element of the selection of the president or head of government.

Also, in the United States itself, from state legislatures to the U.S. House of Representatives and the U.S. Senate, the aggregate popular vote does not determine who is in charge of these bodies. The determining factor is winning districts or states.

I would submit that changing the system of electing our President to a straight national vote would not be consistent with the nuanced way in which our government is designed to function not just as a democracy but rather as a democratic republic and ultimately the change could result in many unintended consequences.

There are a number of proposals being put-forth as to how to change the system by eliminating the Electoral College.

Perhaps the most prominent is entitled The National Popular Vote Interstate Compact or NPV.

The premise of the NPV is that Electors should be appointed based on the national popular vote. So, if a state like California voted for Elizabeth Warren but the national popular vote favored Donald Trump then California's Electors would ignore the votes of their own citizens and cast their votes for Trump. This is a dramatic departure from our current approach in which electors represent the vote of their own state. There is a great deal of cynicism about the governmental process and I would submit this approach would be one more reason the average citizen would think government is not there to represent their interest.

NPV would have the same effect as abolishing the Electoral College. Fraud in one state would effect every state and elections that are close would require nationwide recounts. Candidates could win based on intense support from a narrow region or big cities. NPV would also reward states with lax election laws-the higher the turnout, legal or not, the more power for that state. Would states really trust, with no power to verify, other state's voting return totals ?

NPV has a “trigger” and would only take effect if adopted by enough states to control 270 electoral votes. So far 14 states and the District of Columbia have signed onto the compact with a total of 189 electoral votes.

NPV is probably unconstitutional anyway based on the structure of the Electoral College clause plus the fact that Article I, Section 10 requires interstate compacts to receive Congressional consent.

Nonetheless it will be interesting to see how this and other proposals develop.

In closing I hope I have reminded you of some information you may have forgotten or perhaps information of which were not aware. I think it has been fairly obvious from my presentation that I support the present system of the Electoral College and how we elect our President. It concerns me greatly that abolishing it will give rise to the such things as splinter parties, more extreme political positions and undermine the Constitution in general. I hope you continue to watch this issue and as a result of this paper are better informed to make your own judgment.

Handout to match winning president with electoral votes and percentage of popular vote

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Currently total of 538 Electoral College votes, 270 votes needed to win the Presidency

Can you match the following winning President with their percentage of the popular votes and their number of Electoral College votes.

For example, Bill Clinton in 1992 received 370 Electoral votes, which was 68 % and 43 % of the popular vote

Lincoln, 1860

Wilson, 1916

Kennedy, 1960

Bush, 2000

1. 277 Electoral votes, 52 % ; popular vote percentage of 49
2. 271 Electoral votes, 50.37 % ; popular vote percentage of 48
3. 180 Electoral votes, 59 %; popular vote percentage of 40
4. 303 Electoral votes, 56 %; popular votes percentage of 49

Questions / discussion

Table 4a. Reported Voting and Registration of the Citizen Voting-Age Population, for States: November 2016
(In thousands)

STATE	Total Population	Total Citizen Population	Registered				Voted					
			Total registered	Percent registered (Total)	Margin of Error ¹	Percent registered (Citizen)	Margin of Error ¹	Total voted	Percent voted (Total)	Margin of Error ¹	Percent voted (Citizen)	Margin of Error ¹
UNITED STATES	245,502	224,059	157,596	64.2	0.3	70.3	0.3	137,537	56.0	0.3	61.4	0.3
ALABAMA	3,717	3,651	2,526	68.0	2.5	69.2	2.5	2,095	56.4	2.7	57.4	2.7
ALASKA	518	502	358	69.1	2.6	71.3	2.6	308	59.4	2.8	61.3	2.8
ARIZONA	5,196	4,585	3,145	60.5	2.2	68.6	2.3	2,769	53.3	2.3	60.4	2.4
ARKANSAS	2,216	2,116	1,456	65.7	2.7	68.8	2.6	1,241	56.0	2.8	58.7	2.8
CALIFORNIA	29,894	24,890	16,096	53.8	1.0	64.7	1.0	14,416	48.2	1.0	57.9	1.0
COLORADO	4,242	3,895	2,893	68.2	2.4	74.3	2.3	2,707	63.8	2.5	69.5	2.5
CONNECTICUT	2,759	2,483	1,763	63.9	2.6	71.0	2.6	1,586	57.5	2.7	63.9	2.8
DELAWARE	729	669	487	66.8	2.6	72.8	2.5	417	57.2	2.7	62.3	2.8
DISTRICT OF COLUMBIA	553	512	420	75.9	2.4	82.1	2.2	380	68.7	2.6	74.3	2.5
FLORIDA	16,202	14,428	9,604	59.3	1.3	66.6	1.3	8,578	52.9	1.3	59.5	1.3
GEORGIA	7,626	7,048	4,892	64.1	1.8	69.4	1.8	4,246	55.7	1.9	60.2	1.9
HAWAII	1,064	974	530	49.8	2.7	54.4	2.8	460	43.3	2.7	47.3	2.8
IDAHO	1,224	1,150	790	64.5	2.7	68.7	2.7	714	58.3	2.7	62.1	2.8
ILLINOIS	9,723	8,970	6,665	68.5	1.6	74.3	1.5	5,719	58.8	1.7	63.8	1.7
INDIANA	4,988	4,795	3,298	66.1	2.2	68.8	2.2	2,795	56.0	2.3	58.3	2.3
IOWA	2,394	2,292	1,657	69.2	2.6	72.3	2.5	1,454	60.7	2.7	63.4	2.7
KANSAS	2,142	2,029	1,438	67.1	2.8	70.9	2.8	1,243	58.0	3.0	61.3	3.0
KENTUCKY	3,348	3,246	2,253	67.3	2.7	69.4	2.7	1,850	55.3	2.8	57.0	2.9
LOUISIANA	3,463	3,353	2,446	70.6	2.5	73.0	2.4	2,067	59.7	2.6	61.6	2.7
MAINE	1,058	1,038	830	78.5	2.5	80.0	2.5	754	71.3	2.8	72.7	2.8
MARYLAND	4,623	4,158	3,114	67.3	2.3	74.9	2.3	2,737	59.2	2.4	65.8	2.5
MASSACHUSETTS	5,374	4,967	3,660	68.1	2.1	73.7	2.0	3,315	61.7	2.2	66.7	2.2
MICHIGAN	7,624	7,332	5,434	71.3	1.7	74.1	1.7	4,713	61.8	1.8	64.3	1.8
MINNESOTA	4,190	3,985	3,055	72.9	2.3	76.7	2.2	2,738	65.3	2.4	68.7	2.4
MISSISSIPPI	2,203	2,170	1,725	78.3	2.3	79.5	2.2	1,470	66.7	2.6	67.7	2.6
MISSOURI	4,626	4,486	3,333	72.1	2.2	74.3	2.2	2,906	62.8	2.4	64.8	2.4
MONTANA	798	790	581	72.8	2.3	73.5	2.3	521	65.2	2.4	65.9	2.4
NEBRASKA	1,407	1,336	1,008	71.7	2.6	75.5	2.6	893	63.4	2.8	66.8	2.8
NEVADA	2,234	1,975	1,371	61.4	2.7	69.4	2.7	1,195	53.5	2.8	60.5	2.9
NEW HAMPSHIRE	1,044	1,012	763	73.1	2.5	75.4	2.5	698	66.9	2.7	69.0	2.6
NEW JERSEY	6,862	5,958	4,165	60.7	1.9	69.9	2.0	3,665	53.4	2.0	61.5	2.1
NEW MEXICO	1,547	1,396	916	59.2	2.5	65.6	2.6	765	49.4	2.6	54.8	2.7
NEW YORK	15,506	13,751	9,142	59.0	1.3	66.5	1.4	7,869	50.7	1.3	57.2	1.4
NORTH CAROLINA	7,631	6,960	5,194	68.1	1.8	74.6	1.7	4,700	61.6	1.9	67.5	1.9
NORTH DAKOTA	583	564	424	72.8	2.4	75.2	2.4	362	62.1	2.6	64.2	2.6
OHIO	8,811	8,499	6,128	69.5	1.6	72.1	1.6	5,408	61.4	1.7	63.6	1.7
OKLAHOMA	2,923	2,746	1,861	63.7	2.8	67.8	2.8	1,555	53.2	2.9	56.6	3.0
OREGON	3,185	2,929	2,147	67.4	2.6	73.3	2.6	1,942	61.0	2.7	66.3	2.8
PENNSYLVANIA	9,980	9,596	6,909	69.2	1.5	72.0	1.5	6,008	60.2	1.6	62.6	1.6
RHODE ISLAND	836	766	538	64.4	2.7	70.3	2.7	464	55.5	2.8	60.6	2.9
SOUTH CAROLINA	3,733	3,598	2,575	69.0	2.5	71.6	2.4	2,233	59.8	2.6	62.1	2.6
SOUTH DAKOTA	631	612	437	69.3	2.7	71.4	2.7	362	57.3	2.9	59.1	2.9
TENNESSEE	5,057	4,872	3,251	64.3	2.2	66.7	2.2	2,630	52.0	2.3	54.0	2.3
TEXAS	20,172	17,378	11,724	58.1	1.2	67.5	1.2	9,626	47.7	1.2	55.4	1.3
UTAH	2,096	1,969	1,398	66.7	2.3	71.0	2.2	1,234	58.9	2.4	62.7	2.4
VERMONT	500	488	351	70.2	2.8	71.9	2.8	305	61.0	3.0	62.5	3.0
VIRGINIA	6,343	5,829	4,399	69.4	1.9	75.5	1.9	3,973	62.6	2.0	68.2	2.0
WASHINGTON	5,592	5,104	3,906	69.9	2.0	76.5	2.0	3,382	60.5	2.2	66.3	2.2
WEST VIRGINIA	1,434	1,425	913	63.6	2.8	64.1	2.8	723	50.4	2.9	50.8	2.9
WISCONSIN	4,465	4,354	3,323	74.4	2.2	76.3	2.1	3,068	68.7	2.3	70.5	2.3
WYOMING	436	427	304	69.7	2.7	71.1	2.7	277	63.5	2.8	64.8	2.8

¹ This figure added to or subtracted from the estimate provides the 90-percent confidence interval.
Source: U.S. Census Bureau, Current Population Survey, November 2016