Is School Out at the Electoral College?

October 2000

Imagine waking up November 8 to some version of the following headline:

NEW YORK—Despite losing the popular vote by more than 250,000 votes Al Gore won the presidential election last night after narrow victories in Pennsylvania, Michigan and Florida gave him a 286 to 249 Electoral College victory over George Bush. A Gore spokesman said the President elect was….

A shocker? You bet! While politically knowledgeable Americans understand that victory in the Electoral College trumps the popular vote, millions of others are at best only dimly aware that such an anomaly can happen.

It can happen because certain configurations of the popular vote—the most likely scenario is one in which a candidate could win several large states narrowly while losing decisively in a number of smaller states—can award the presidency to the Electoral College winner who may be the loser of the popular vote.

Is this scenario likely? Under existing conditions, it has a significant probability of happening this year. Current polls and much expert opinion both forecast an unusually close election—with a number of key large states likely to be decided by relatively few votes. It’s in close elections with tight races in key large states that a repudiation of the popular vote winner is most likely to occur, exactly the kind of Electoral College map that prevails this year.

A bit of history helps one understand how the Electoral College might be a problem. Proposed at the Constitutional Convention in 1787 as a compromise method for electing the president, it is an idea loosely based on classical structures found in ancient Rome and Greece. Virtually invented for the occasion, the Electoral College created a council of wise old men in each state—elites who would elect a president by majority vote or, failing to produce a majority, would produce a list of five finalists. The House of Representatives then would make the final selection.

Delegates to the Constitutional Convention thought the system would normally work as a two-step process. First, the elite electors chosen in each state would “nominate” five (later changed to three by the Twelfth Amendment) presidential candidates. Then the House would choose among these five, with each state casting one vote and a majority of the states necessary for election.

But the Electoral College never worked that way. The unanticipated emergence of political parties, combined with the inexorable expansion of the suffrage, completely altered the original design. By the end of the nineteenth century presidential elections had evolved in practice into the convoluted system we have today, whereby popular votes in each state decide how that state’s electoral vote is cast, regardless of the overall national vote.

One argument against the Electoral College is that it will ultimately misfire, and elect a president who has lost the popular vote, thereby creating a crisis of constitutional succession. Nor is this a
theoretical problem. It has happened three times—in 1824, 1876, and 1888, and has been narrowly averted in several other elections. In fact, mathematicians calculate there is a one in two chance that in a very close election the Electoral College would select a president who has lost the popular vote, as in 1960, and a one in three chance that, in a moderately close election, such as in 1976, the same possibility exists.

Moreover, this is not the end of the potential problems. Even more mind-boggling is the possibility that a duly selected elector might cast a vote for a candidate other than the one to whom the elector is pledged. Termed the “faithless elector problem” this has actually happened only a handful of times and has never changed the outcome of an election. Still, the possibility exists in extraordinary circumstances that faithless electors could nullify the popular vote.

Yet another problem is that the Electoral College machinery might toss the election into the House of Representatives. This happens if no candidate receives a majority of the Electoral College vote. Residents of larger states would be vastly underrepresented in any election decided by the House. Nor is there any way to forecast on what basis such an election might be decided, though partisan affiliation would be a powerful determinant.

So what alternatives exist, assuming the political will to fix the Electoral College before a constitutional crisis generates the necessary political will to reform the presidential selection process. Certainly, this question has been asked before. Some five hundred reform proposals, most of which require amending the U.S. Constitution, have been introduced into Congress since 1797. They fall into two major categories: proposals to redesign the Electoral College, and proposals to abolish it and replace it with the direct election of the president.

Electoral college redesign proposals are numerous and vary considerably. The simplest—the so-called automatic plan—would eliminate electors but keep the Electoral College votes cast in each state. The most elaborate would distribute electoral votes proportionately on the basis of actual popular vote.

In contrast, direct popular election proposals would abolish the Electoral College completely and elect the president with a majority or plurality of the popular vote. Some of these proposals provide for runoff elections when some minimum support threshold is not obtained.

Notwithstanding the debate over reforming or eliminating the Electoral College, the Electoral College remains an archaic, anti-democratic, and confusing election system. Sooner or later it is going to leave the American people with a genuine constitutional crisis. Eventually, the Electoral College will misfire again when a popular vote winner is not the Electoral College winner. When this will occur is the only remaining question. It may occur sooner than we think.

By:

G. Terry Madonna, Director
Center for Politics & Public Affairs
Millersville University