

Electing the People's President: The Popular Origins of the Electoral College

Christina Villegas

California State University, San Bernardino

Abstract:

The Electoral College is frequently critiqued as an undemocratic relic of an antiquated constitutional system. Such criticism is largely based on the belief that electing the president by a straight popular vote or allocating electoral votes proportionally would make the system more representative of majority will. Proponents of the Electoral College generally do not challenge this assumption, but instead argue that the system serves other important ends such as balancing the electoral interests of small and large states and minimizing the possibility of fraud. In fact, the dominant view of both critics and proponents of the Electoral College is that the system was always intended to fortify the influence of the states, rather than to facilitate the expression of majority will. The purpose of this essay is to demonstrate, to the contrary, that the primary—though frequently overlooked or underemphasized—objective of the system, from its inception, was to maintain popular influence over the selection of the president.

“It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the people for the special purpose, and at a particular conjuncture.”

– Alexander Hamilton, *Federalist 68*

Introduction

The Electoral College is currently one of the least understood and most unpopular aspects of American constitutional democracy. Civic knowledge surveys reveal that a large percentage of the American public is unfamiliar with the process and how it operates, yet a majority of registered members of both major parties overtly favor eliminating the system.ⁱ Indeed, transforming the system is the most frequently proposed constitutional reform, and statutory proposals to alter the process, such as the National Popular Vote Compact, have gained substantial support in recent years.

Most critiques of the Electoral College are based on the assumption that the system is undemocratic and outmoded and that electing the president by a straight popular vote or allocating electoral votes proportionally would make the system more representative of the public will. Thus, dissatisfaction with the process generally stems from the belief that the selection system was never intended to facilitate majority rule. Proponents of the Electoral College generally do not challenge this supposition, but instead argue that the system serves other important ends such as: balancing the electoral interests of small and large states, maintaining the two-party system, and minimizing the possibility of fraud. Hence, the dominant view among critics and advocates of the Electoral College alike is that the system was never intended to directly represent the popular will.

In contrast to those who charge that the Electoral College was designed by men who “were deeply mistrustful of popular opinion” and “did not want the election of the president to be left to the people,”ⁱⁱⁱ the purpose of this article is to demonstrate that the primary — though frequently overlooked or underemphasized — objective of the leading architects of the system was to maintain popular influence over the selection of the president. In the first part of this article, I summarize the contemporary charge, made by supporters and critics of the Electoral College alike, that preserving federalism and the prerogatives of the states has always been the system’s leading objective. Here, I maintain that this commonly held perception is not rooted in the expressed intent of the system’s leading architects. Instead, it is based on an appeal to specific components of the system, namely the allocation of votes to states (which slightly boosts the voting power of the smaller states to a greater degree than their populations would merit) and the contingency mode of election by state in the House of Representatives — components, which the leading Framers refused to defend on principle, but would only endorse as necessary evils and prudential compromises. In the second part, I examine the Constitutional Convention debates to demonstrate that those directly involved in shaping the Electoral College expressly sought to facilitate and preserve popular influence over the selection of the chief executive.

To clarify, in revisiting the origins of the Electoral College, my objective is not to discount evidence of various political advantages derived from the current operation of the presidential selection process. Instead, I aim to highlight the often overlooked and mischaracterized intent of the system in hopes that such an examination will help promote a more accurate basis for evaluating whether — in spite of significant historical changes in American democracy — the selection system still fulfills its original, popular purpose.

Federalism and Original Intent?

Contemporary proponents of the Electoral College commonly promulgate the view that preserving federalism and the prerogative and influence of the states, especially the small states, has always been and continues to be the system's leading objective.ⁱⁱⁱ Law professor Robert Hardaway, for example, refers to the system's design, which includes a weighted influence in favor of the small states, as the "bulwark and foundation stone of [the] new federal system."^{iv} Likewise, conservative political analyst Phyllis Schlafly contends, "Our Founding Fathers understood that America is a nation of both 'we the people' and a federal system of states, so it allows all states, regardless of size, to be players in electing our President."^v Another supporter writes, "The Electoral College was originally designed by the Founding Fathers as a *federal hedge against the domination of the absolute national majority over the individual states*. Without the College, the delicate balance between national unity and regional distinctiveness would be lost and the various states would lose much of their power over the Executive Branch."^{vi}

The claim that the system is meant to fortify federalism and minimize the influence of majoritarianism became even more pronounced in response to vehement critiques of the undemocratic, archaic nature of the selection process following the election of 2000. For instance, Cato Institute Scholar John Samples countered such critiques by maintaining that whereas "[d]irect election of the president would reflect the will of a majority," the Electoral College, in contrast, "provides representation for both the population at large and the states. It thereby tempers and limits the power of majority rule."^{vii}

Critics of the Electoral College, who seek to adopt a more "democratic" selection process such as a nationwide popular vote, tend to agree that the core justification for the system's

allocation of electoral votes to states is that it “forces candidates to pay attention to state-based interests in general and to the interests of the small states in particular.”^{viii} In fact, some scholars have contended that — due to the transformation of the process that has occurred since the founding — the federalism justification for the system is the only original defense that remains relevant.^{ix} Thus, the system’s strongest adversaries attempt to demonstrate through empirical data that a move to a direct election would have virtually no effect on federalism.^x George Edwards, for example, directly confronts the assumption that states, as states, currently “embody coherent, unified interests and communities” in need of special consideration or protection.^{xi} Pointing out the substantial diversity of interests within individual states such as Illinois, California, Virginia, and New York, Edwards cites historian Jack Rakove, who concludes, “States have no interest, as states, in the election of the president; only citizens do.”^{xii} In other words, even within smaller states that receive special consideration in the Electoral College, citizens do not have common interests in need of protection any more than large states as states have common interests. Those who defend the Electoral College on such grounds, Edwards contends, confuse the interests that may unite local communities or groups of individuals with the interests of states as a whole.^{xiii} Furthermore, Edwards and others have pointed out, that there is little empirical evidence that the Electoral College forces presidential candidates to be any more oriented to states or the interests within them than they would be under a system of direct popular vote.^{xiv} Thus, as another scholar maintains, while preserving a decisive role for the states may have been necessary for the new, fledgling government in 1787, it is no longer a relevant justification for violating the democratic principle of “one man, one vote.”^{xv}

In spite of its widespread adoption by modern scholars, the belief that the chief aim of the Electoral College is the protection of state interests in the selection of the nation’s chief

executive is not rooted in specific statements of those who initially designed and defended the system. Rather, it is an outgrowth of the original rules and operation of the system. The process for selecting a president was initially laid out in Article II, section 1 of the U.S. Constitution, which vests the power to elect the president in special electors chosen for that purpose. According to the Constitution, each state is designated a number of electors equal to its combined number of senators and representatives in Congress. These electors are chosen and cast their votes in a manner prescribed by the state legislatures. As originally adopted, the constitutional electoral system, allowed each elector to vote for two persons, at least one of whom had to inhabit a different state than the elector. The person who received a majority of the states' combined electoral votes would be elected president and the person who finished second would become vice-president. Following the election of 1800, in which Thomas Jefferson and Aaron Burr received an equal number of electoral votes, this aspect of the college was fine-tuned by the 12th amendment so that each elector would cast one vote for president and one for vice-president. In the case when no candidate receives a majority of electoral votes, the Constitution specifies that the House of Representatives will choose the winner from the three highest vote recipients, with each state delegation in the House casting one vote, regardless of population.

Contemporary scholars of the Electoral College frequently reference the system's allocation of electoral votes to states (which slightly boosts the voting power of smaller states to a greater degree than their populations would merit) and the auxiliary mode of election by state in the House as evidence of the Framers' intent to promote federalism and the influence of the states in the selection of the chief executive.^{xvi} For instance, referring to the allocation of electoral votes to the states, Political scientist Michael Uhlmann writes, "The Electoral College, in short, is organized on precisely the same principle as the United States Congress, and for

precisely the same reason. Neither institution recognizes population alone as the exclusive measuring rod for democratic legitimacy.”^{xvii}

It should be noted, however, that the chief architects of the original selection system — including James Madison, James Wilson, Alexander Hamilton, and Gouverneur Morris — never explicitly mentioned the preservation of federalism or the prerogatives of the state governments as a primary purpose for the system. In fact, leading constitutional architects only spoke of the components of the system that favored states as states as necessary and prudential compromises based on the unique political situation of the new nation — a situation in which sovereign states were assenting to yield a portion of their sovereignty to a central government that would be drawn directly from the people and would have the authority to operate on citizens as citizens. In the *Federalist Papers*, Madison, referring to the equal allocation of votes in the Senate (which became a partial component of the Electoral College system) asserts, “It is superfluous to try, by the standard of theory, a part of the Constitution which is allowed on all hands to be the result, not of theory, but of a spirit of amity, and that mutual deference and concessions which the peculiarity of our political situation rendered indispensable.”^{xviii} In other words, the principle that, in a government drawn directly from the people, each district should have “a PROPORTIONAL share in the government,” would not have been politically possible given the objections of the smaller states. In fact, as Madison points out in a letter on the convention proceedings, “The little States [initially] insisted on retaining their equality in both branches [of Congress].” This demand, according to Madison, “created more embarrassment and a greater alarm” for the Convention than all other demands made by individual states.^{xix} Consequently, Madison concludes in the *Federalist Papers*, “Under this alternative, the advice of prudence must be to embrace the lesser evil; and instead of indulging a fruitless anticipation of the possible

mischief which may ensure, to contemplate rather the advantageous consequences which may qualify the sacrifice.”^{xx}

Shortly after the Connecticut Compromise kept the Convention from dissolving by resolving the issue of representation in Congress, the delegates revisited the issue of the mode of electing the nation’s chief executive. Gouverneur Morris moved to replace executive selection by the legislature with an election by “the people at large.” Morris, however, was immediately met with objections that a direct popular election would significantly weaken the influence of the small states.^{xxi} Having recently resolved the debate over representation in Congress, many of the delegates did not want to revisit this contentious issue. Thus, it was largely understood that the compromise in regards to equal representation in the Senate would have to extend in some form to the selection of the president.^{xxii} Nevertheless, the advantage of states in the Electoral College is far more watered down than the concession to the small states in Congress granted by the Connecticut Compromise. As George Edwards points out, “The two extra votes given to each state were not allocated on a federative principle. Instead, the extra votes were to serve as a corrective for large state power. The federative principle would have required that these extra electors be organized like the Senate as a separate body with a veto on popular representation.”^{xxiii}

In comparison to the allocation of electoral votes to states based on their total representation in Congress (which only minimally increased the influence of small states relative to their population), the contingency mode of election in the House of Representatives by state delegation was a significant concession both to the small states and to those who had favored congressional election of the President. The procedure reintroduced the legislature into the selection process and gave proportionately more influence to the smaller states, so as to balance

the advantage that the more populous states had in the electoral vote. Nevertheless, even though Madison had conceded that the equal allocation of votes in the Senate could have certain advantages,^{xxiv} he and other supporters of the constitutional mode of selection were overtly hostile to the congressional contingency election weighted in favor of the small states.

In *Federalist 68*, Alexander Hamilton explains that the contingency mode of election in the House was introduced because “it might be unsafe to allow less than a majority to be conclusive.”^{xxv} In other words, because the system could not always guarantee that a President would be chosen by a majority of electoral votes, those at the Convention opted for a contingency process based on a different form of majority selection. In the final days of the Convention, however, Madison strongly opposed this auxiliary plan precisely for its undemocratic tendencies. According to Madison, the plan was ill-conceived because it would allow “the representatives of a *Minority* of the people [to] reverse the choice of a *majority* of the *States* and of the *people*.”^{xxvi} While Madison hoped that the Convention might yet come up with “some cure for this inconveniency,”^{xxvii} he later observed that Convention was constrained both by the “anxiety of the smaller states,” and the “hurrying influence produced by fatigue and impatience,” present in the latter stages of the Convention.^{xxviii} Following ratification, it became clear that, contrary to Madison’s initial hopes, the features of the selection process as originally designed would not prevent frequent final selection by the House. This realization led Thomas Jefferson to report, “I have no hesitation in saying that I have ever considered the constitutional mode of election ultimately by the legislature voting by states as the most dangerous blot in our Constitution.”^{xxix}

Popular Origins of the Selection System

Constitutional scholars frequently allege that the Framers of the Electoral College were seeking to set up a system that would not only shore up federalism, but also minimize the influence of majoritarianism.^{xxx} According to the late Walter Berns, the Framers intentionally “devised institutions, such as the electoral college, to modify or qualify the majority principle.”^{xxxix} While such scholars are correct to point out the Framers’ belief that unfettered majoritarianism would be inconsistent with social stability, the public good, and private rights, this fact is often used to give credence to the false claim that the Framers favored an aristocratic system in which majority opinion would have little influence over the operation of government — a claim regularly disseminated in commentary on the Electoral College system. According to J. Allen Smith — one of the first of many scholars to perpetuate this critical view of the origins of the Electoral College — the constitutional selection process was adopted to “guard against the choice of a mere popular favorite and ensure the election of a President acceptable to the conservative and well-to-do classes.” Smith further alleged that “[i]t was taken for granted that the indirect method would enable the minority to control the choice.”^{xxxix} Smith’s charge, however, not only exaggerates the Framers’ fear of popular government generally, it also fails to acknowledge the overtly popular intentions expressed by the most influential architects of the presidential selection process.

Although the Constitution limits the scope and character of power and channels the functions of government with a view to protecting the public good and private rights from unjust majorities and their representatives, the leading Framers were far from hostile to public opinion expressed through majority action. Throughout the *Federalist Papers*, Publius emphasizes the importance of a rational dependence on the people and identifies such a dependence as “the

primary control on the government.”^{xxxiii} Even in *Federalist* 10, where Madison famously emphasizes the threat of majority faction to republican government, Madison hopes to mitigate such threat while still “preserv[ing] the spirit and form of popular government.” Madison implies that an extended republic will achieve this objective by necessitating that a national majority be a coalition of various interests. Representative democracy in such a republic, Madison believes, would be more in line with the true spirit of the nation and less susceptible to “men of factious tempers, local prejudices, and sinister designs,” who would “first obtain the suffrages, and then betray the interests of the people.”^{xxxiv}

The Constitutional Framers particularly sought the emergence of a non-parochial majority in the selection of the nation’s president (the one representative whose constituency extends to the nation as whole). Far from seeking to minimize the influence of the majority in the selection of the chief executive, defenders of the Electoral College maintained that it would be the best means of facilitating such a majority. In fact, while the argument that the Electoral College was designed to protect federalism is based on individual components of the system, the principled arguments and expressed intent of those most directly involved in shaping the system focused not on preserving the prerogatives of the states, but on preserving popular influence among the citizenry as a whole. As Gary Glenn observes, “Anyone who takes the trouble to actually read the debates in the Constitutional Convention will see that what was behind the Electoral College was not a hostility to popular election of the president. Virtually all the Founders wanted to encourage coalescence of a popular majority, or as close to it as possible, behind one presidential candidate.”^{xxxv}

Like other aspects of the Constitution, the Electoral College was shaped in part by the concessions demanded by the small and southern states. In spite of these necessary concessions,

however, two basic theoretical goals dominated the debate proceedings over presidential selection. The first was to facilitate the selection of the president by a truly national majority. The second was to promote the selection of a candidate with the proper qualifications and character for high office. As Madison summarized some years after the Convention, “Next to the propriety of having a President the real choice of a majority of his Constituents, it is desirable that he should inspire respect and acquiescence by qualifications not suffering too much by comparison.”^{xxxvi}

The station of independent electors, adopted in place of direct popular election, was first introduced as a means of achieving these goals. Although both the Virginia and New Jersey Plans (the foundational documents of the Constitution) provided for the election of the chief executive by the national legislature, several of the delegates adamantly opposed such selection believing it would threaten the independence of the branches and would make the president overly dependent on the will of Congress. Thus, a large portion of the debate centered on what method of selection would replace legislative selection. The con-federalists at the Convention (those who favored retaining much of the state sovereignty that had existed under the Articles of Confederation) initially supported the election of the president by either the state legislatures or state governors. Many of the delegates were concerned that state legislative or executive selection would make the president overly beholden to the state governments in the same way that congressional election would make the president dependent on Congress. Constitutionally, this would be problematic because the president, as chief executive of the federal government “is to act for *the people* not for the *States*.”^{xxxvii}

The belief that “the ultimate authority,” of both the state and national governments, “resides in the people alone,”^{xxxviii} led three of the Constitution’s leading Framers — James

Wilson, James Madison, and Gouverneur Morris — to initially endorse direct popular election of the president. James Wilson was first at the convention to declare that he at least “in theory” favored “an election by the people,” or by electors chosen by the people according to district “without the intervention of the states.”^{xxxix} Wilson’s proposals were met with both intrigue and cynicism. George Mason favored the idea of direct election, but thought it would be “impracticable.”^{xl} Others were concerned that the states’-righters would vehemently oppose either direct or indirect popular election without the intervention of states. Charles Pinckney expressed the widespread fear among the small states that the most populous states would always select the president under such a system.^{xli} Eldbridge Gerry liked the idea of electors chosen directly by the people, but feared that “it would alarm... the State partizans, as tending to supersede altogether the State authorities.”^{xlii} Madison pointed out that although direct election by the people was “the fittest in itself,” the southern states would never assent to such a plan because “[t]he right of suffrage was much more diffusive in the Northern than the Southern states; and the latter could have no influence in the election on the scores of the Negroes.”^{xliii} In other words, although the southern states received representation in the House for three-fifths of their slave population, the eligible voting population in the southern states that could influence a presidential election in the case of a direct popular vote was small. Hence, Madison recognized that until slavery and suffrage discrepancies were eliminated in the South, the substitution of electors for a direct popular vote would “obviate this difficulty” and would therefore be “liable to the fewest objections.”^{xliv}

In sum, the only viable option the delegates had to appease state partisans and fend off the confederalizing threat to popular election was a system of presidential electors elected in a manner determined by the state legislatures. Such a plan appealed both the state partisans and

those who favored popular election because the state legislatures could either appoint the state's electors or they could allow the state's voters to directly choose the electors themselves. While there has never been a Constitutional mandate on the state legislatures in this regard, several of the leading delegates made clear their intent for direct selection by the people. James Madison and James Wilson, speaking before their respective state ratifying conventions, emphasized that the president "will be the choice of the people at large," and that "with the approbation of the state legislatures, the people may elect with only one remove."^{xliv} Alexander Hamilton, summarizing the benefits of the constitutional selection system, wrote in the *Federalist Papers* that "under the plan devised by the convention... the people of each state shall choose a number of persons as electors, equal to the number of senators and representatives of such state in the national government." Consequently, the president would be dependent for his continuation in office on none "but the people themselves."^{xlvi} Moreover, the operation of the system in practice quickly conformed to the intent of direct popular selection of electors. By 1824, all but six of the twenty-four states provided for popularly selected electors and by 1832 popular election was near universal.^{xlvii}

The substitution of electors for a direct popular vote was not only viewed as a necessary concession to the states in order to minimize, as much as possible, the role of state politicians in the selection of the president, it was also defended on the grounds that it would effectively facilitate the formation of a national majority behind a qualified, meritorious candidate. Contrary to the common claim that the leading Framers feared direct election because they did not trust the voters, Madison, Morris, and Wilson had expressed on separate occasions that the people themselves would be the best judge of candidates "whose merits had rendered [them] an object of general attention and esteem" and that direct election would be as likely as any other method

proposed to “produce an Executive Magistrate of distinguished character.”^{xlvi} In fact, the Constitutional Framers had wholeheartedly embraced the idea of direct election for members of the House of Representatives based on the same belief that “the great body of the people of the United States” should be trusted to select for public office those citizens “whose merit may recommend [them] to the esteem and confidence of [their] country.”^{xlix} The application of representative democracy to the entire nation in the selection of president, however, posed challenges non-existent in the direct election of members of the House. As George Mason observed, “The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.” For this reason, Mason — though a renowned champion of democratic causes — warned that granting the people at large the responsibility of choosing “a proper character for chief Magistrate,” would be like “refer[ing] a trial of colours to a blind man.”^l Even James Wilson, the convention’s strongest proponent of direct election, later acknowledged that direct election would be problematic in an electoral district the size of the whole union.^{li}

Throughout the proceedings, various apprehensions were raised concerning the effectiveness of representative democracy on a national scale. Several of the delegates openly feared that, in a country the size of the United States, it would be unlikely for a majority of the people to concur in favor of any one candidate. Individual voters would not always have sufficient information to make intelligent choices about the merits and qualifications of candidates outside of their state or region. Thus, they would naturally vote for a local “favorite son.” This would make it nearly impossible for one candidate to emerge with the support of a national popular majority. Consequently, the president would frequently be chosen solely by votes of the more populous states or regions of the country. In such a situation, there would be a

greater incentive for demagogic, nefarious characters to obtain the suffrages of the people by appealing to their parochial prejudices and geographical interests only to betray the true interests of the national electorate in the end. Under these circumstances, Shlomo Slonim observes, “the popular election would have the trappings of representative democracy, but not the essence.”^{lii}

The leading defenders of a scheme of statewide electors defended the system on the grounds that it would remedy these concerns and thereby give a more accurate expression to the national public will. Firstly, as Hamilton explains in *Federalist* 68, the right of selecting the nation’s chief executive would be vested in electors chosen directly by the people for that purpose alone. Hamilton continues that a small number of electors “selected by their fellow citizens” would be more likely than the general mass of citizens to possess the knowledge and discernment to choose “characters pre-eminent for ability and virtue.” Thus, electors would be charged with the duty of making a wise choice that their constituents would support. Hamilton additionally points out that electors acting on behalf of their constituents will be required to operate under circumstances “favorable to deliberation.” He explains that because the electors meeting in each state would be temporary bodies of men, not serving in any other office under the United States and chosen for the sole purpose of selecting the president, it would be difficult to tamper with them or bribe them “to prostitute their votes in advance.” Thus, presidential electors would be less susceptible “to the cable, intrigue and corruption” that so often causes representatives of the people to betray their trust.^{liii}

In order to increase the likelihood that a majority of electors would choose a continental character, each elector was given two votes, one of which had to be cast for a non-home state candidate. The intention of this extra vote, which was ultimately negated by the Twelfth Amendment, was to force the people’s electors to cast at least one vote for an acceptable national

figure. The rationale was that the first vote could be given to a favorite fellow citizen, while the second could be cast for a continental character supported by electors from multiple states. Based on these factors, Martin Diamond concludes, “Clearly, then, what the Framers were seeking was not an undemocratic way to substitute elite electors for the popular will; rather, as they claimed, they were trying to find a practicable way to extract from the popular will a non-parochial choice for the President.”^{liv}

Conclusion

The Electoral College is one of the most controversial aspects of American constitutional democracy. Support for the system among the public remains low due in part to a lack of understanding of how the system operates and in part to the belief that the system is both archaic and undemocratic. In fact, the widely held conviction that the system was intentionally designed to frustrate the expression of the public will and minimize majoritarianism in the selection of the nation’s chief executive has largely gone unchallenged. Even many of the system’s defenders ignore its inherently democratic roots and instead focus on its various current advantages, the chief one being the system’s role in preserving federalism and the prerogative of the states. This defense, however, is somewhat misleading as the leading architects of the system never defended the selection process based on its inherent federalism. On the contrary, the system’s primary architects purely viewed the components of the process that favored states as states as necessary concessions to the con-federalists that should be mitigated as much as possible in so far as they would interfere with the popular will.

Moreover, in contrast with those who argue that the system was meant to “temper or limit the power of majority will,” the Convention proceedings reveal that the leading architects of the

system were not seeking to frustrate the public will, but rather to discover a prudential means of maintaining popular influence over the selection of the president. As Martin Diamond points out, “[A]ny fair and full reading of the evidence demands the conclusion [that] the majority of the Convention, and especially the leading architects of the Constitution, conceived the Electoral College simply as the most practical means by which to secure a free, democratic choice of an independent and effective chief executive.”^{iv} Furthermore, although the system experienced significant changes in the early years of its operation — most notably resulting from the development of the party system — an understanding of the overtly popular intentions of the system provides a more accurate foundation for analyzing whether such structural changes have helped fulfill the original goal of minimizing the likelihood of an undemocratic House contingency election or the selection of a geographically or ideologically narrow candidate.

ⁱ “Civic Literacy Survey: Additional Finding,” *Intercollegiate Studies Institute*, 2008; Lydia Saad, “Americans Call for Term Limits, End to Electoral College,” *Gallup*, January 18, 2013.

ⁱⁱ Carolyn Jefferson-Jenkins, “Who Should Elect the President? The Case against the Electoral College,” *National Civic Review* 90, no. 2 (Summer 2001): 173; *Gray v. Sanders*, 372 U.S. 368, 376 n.8 (1963).

ⁱⁱⁱ Judith Best, *The Case Against the Direct Election of the President: A Defense of the Electoral College* (London: Cornell University Press, 1971), 214; Judith Best, *The Choice of the People: Debating the Electoral College* (Lanham, MD: Rowman and Littlefield, 1996), 31-41.

^{iv} Robert M. Hardaway, *The Electoral College and the Constitution: The Case for Preserving Federalism* (Westport, CT: Praeger Publishers, 1994), 14.

^v Phyllis Schafly, “National Popular Vote is a Bad Idea,” *Creators Syndicate*, December 6, 2011.

^{vi} George Grant, *The Importance of the Electoral College* (San Antonio, TX: Vision Forum Ministries, 2005), 17.

^{vii} John Samples, “Keep the Electoral College,” *Cato Institute*, December 1, 2000.

^{viii} George C. Edwards, *Why the Electoral College Is Bad for America* (New Haven, CT: Yale University Press, 2004), 100.

^{ix}“Rethinking the Electoral College Debate: The Framers, Federalism, and One Person, One Vote,” *Harvard Law Review* 114, no.8 (June 2001).

^x Paul Boudreaux, “The Electoral College and Its Meager Federalism,” *Marquette Law Review* 88, no.2 (Fall 2004).

^{xi} Edwards, *Why the Electoral College Is Bad for America*, 93.

^{xii} Jack Rakove, “The Accidental Electors,” *New York Times*, December 19, 2000 in Edwards, *Why the Electoral College is Bad for America*, 93.

^{xiii} Edwards, *Why the Electoral College Is Bad for America*, 94-97.

^{xiv} Edwards, *Why the Electoral College Is Bad for America*, 100-114; See also Boudreaux, “The Electoral College and Its Meager Federalism.”

^{xv} Jefferson-Jenkins, “Who Should Elect the President?” 174.

^{xvi} i.e. Robert M. Hardaway, *The Electoral College and the Constitution*,” 14, 82.

^{xvii} Michael M. Uhlmann, “As the College Goes, So Goes the Constitution,” *Claremont Review of Books* 1, no.2 (Winter 2001).

^{xviii}Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Charles Kessler and Clinton Rossiter (New York: New American Library, 2003), 62:375.

^{xix} Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven, CT: Yale University Press, 1966), III:135.

^{xx} Madison, *Federalist* 62: 375-376.

^{xxi} Farrand, *The Records of the Federal Convention*, II:29-32.

^{xxii} Hardaway, *The Electoral College and the Constitution*, 81.

^{xxiii}Edwards, *Why the Electoral College Is Bad for America*, 115.

^{xxiv} Madison, *Federalist* 62:376

^{xxv} Hamilton, *Federalist* 68:412.

^{xxvi} Farrand, *The Records of the Federal Convention*, II:536.

^{xxvii} Ibid.

^{xxviii}“James Madison to George Hay,” August 23, 1823, *The Founders’ Constitution*, http://press-pubs.uchicago.edu/founders/documents/a2_1_2-3s10.html.

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- xxix Thomas Jefferson, "Letter to George Hay, August 17, 1823," in *The Works of Thomas Jefferson*, ed. Paul Leicester Ford, Federal Edition (New York: G.P. Putnam's Sons, 1905), 12: 303.
- xxx Herbert Storing, "In Defense of the Electoral College," in *Toward a More Perfect Union: Writings of Herbert J. Storing*, ed. Joseph M. Bessette (Washington D.C.: The AEI Press, 1995), 396-397.
- xxxi Walter Berns, "Let's Hear It for the Electoral College," in *After the People Vote: A Guide to the Electoral College*, ed. John C. Fortier, 3rd ed. (Washington D.C.: The AEI Press, 2004), 53.
- xxxii J. Allen Smith, *The Spirit of American Government* (Cambridge, MA: Harvard University Press, 1965), 135.
- xxxiii Madison, *Federalist* 51:319.
- xxxiv Madison, *Federalist* 10:77.
- xxxv Gary Glenn, "The Electoral College and the Development of American Democracy," *Perspectives on Political Science* 32, no.1 (Winter 2003): 6.
- xxxvi "James Madison to George Hay."
- xxxvii Farrand, *The Records of the Federal Convention*, II:403.
- xxxviii Madison, *Federalist* 46:291.
- xxxix Farrand, *The Records of the Federal Convention*, I: 68, 80.
- xl Ibid, 69.
- xli Farrand, *The Records of the Federal Convention*, II.30.
- xlii Farrand, *The Records of the Federal Convention*, I.80.
- xliii Farrand, *The Records of the Federal Convention*, II.56-57.
- xliv Ibid.
- xlvi Johnathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, 2nd ed. (Salem, N.H.: Ayer, 1987), 3:487, 512.
- xlvi Hamilton, *Federalist* 68:412.
- xlvi By 1830 all of the states except for South Carolina provided for electors chosen directly by the people. Since 1860, all presidential electors within each state have been chosen by direct popular election.
- xlvi Farrand, *The Records of the Federal Convention*, II:29,56.
- xlvi Madison, *Federalist* 57:349.
- ¹ Farrand, *The Records of the Federal Convention*, II.31.

^{li} Farrand, *The Records of the Federal Convention*, III:167.

^{lii} Shlomo Slonim, "Designing the Electoral College," in *Inventing the Presidency*, ed. Thomas E. Cronin (Lawrence, KS: University Press of Kansas), 39.

^{liii} Hamilton, *Federalist* 68:410-411.

^{liv} Martin Diamond, *The Electoral College and the Idea of American Democracy* (Washington, D.C.: The American Enterprise Institute, 1977), 5.

^{lv} Diamond, *The Electoral College and the Idea of American Democracy*, 5.