

## FOREWORD

By Birch Bayh

On January 10, 1977, I introduced S.J. Res.1, a proposed Amendment to the Constitution to abolish the Electoral College and provide for direct election of the President and Vice President of the United States. As Chairman of the Senate Subcommittee on Constitutional Amendments, I held five days of hearings on this and related proposals that year, receiving testimony from 38 witnesses and hundreds of pages of additional statements and academic studies. This series of hearings was not the first time the Subcommittee on Constitutional Amendments undertook a review of the workings and implications of the Electoral College. In fact, my Subcommittee held its first hearing on the process of electing the President on February 28, 1966, and had amassed a record on the need for electoral reform of nearly 2,600 pages prior to the 1977 hearings.

At the end of this process, I was even more firmly convinced that the Electoral College had outlived whatever positive role it once played as a choice of convenience and compromise. Long overdue, the President and Vice President should be chosen by the same method every other elective office in this country is filled—by citizen voters of the United States in a system which counts each vote equally. In 1979 we came close to getting S.J.Res.1 through the Senate but in the end we could not get enough votes to end the filibuster blocking the Resolution. Our effort, like many before it, was relegated to the Congressional history books.

Unfortunately, Congress has continued to block this basic reform that has long-standing, overwhelming public support. Gallup polls have shown strong public support for nationwide popular election of the President for over five decades.<sup>1</sup> Numerous other polls have confirmed a high level of public support for this reform. Polls consistently show 60–80% of Americans believe they should be able to cast votes in the direct election of the President. That is why I unequivocally support this new strategy to provide for the direct election of the President and Vice

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<sup>1</sup> Gallup News Service. 2000. Americans have historically favored changing the way presidents are elected: Historical polling data show majority favored abolishing electoral college system more than 50 years ago. November 10, 2000.

President. This new approach is consistent with the Constitution but does not rely on the arduous process of a Constitutional Amendment.

Today more than ever, the Electoral College system is a disservice to the voters. With the number of battleground states steadily shrinking, we see candidates and their campaigns focused on fewer and fewer states. While running for the nation's highest office, candidates in 2004 completely ignored three-quarters of the states, including California, Texas, and New York, our three most populous states. Why should our national leaders be elected by only reaching out to 1/4 of our states? It seems inherently illogical, and it is.

Opponents of the direct election often point to the wisdom of the Founding Fathers in drafting the Constitution. No question, the Founders had incredible wisdom and foresight, but they were dealing with a much different society and the Electoral College was designed for the realities of the 18th Century. The landmass of the country was huge; travel and communication were arduous and primitive; and education was limited at best. Lack of information about possible Presidential candidates among the general public was a very real consideration. Also, there were issues involving slavery. At the time, 90% of the slave population lived in the South. Since the slaves could not vote, without the weighted vote of the Electoral College, the South faced electoral domination from Northern states. While not the first choice of any Founder, the Electoral College system solved these tricky considerations with a compromise which allowed them to complete the monumental task of creating our country's Constitution.

However, it soon became apparent that the Electoral College process devised by the Founders was flawed. In 1804 the initial Electoral College system was changed through the adoption of the 12th Amendment. Additional weaknesses became apparent. In the 1800s, there were three instances when the popular vote winner lost the Presidency. In 1824, John Quincy Adams was a minority vote winner over Andrew Jackson, as were Rutherford B. Hayes over Samuel J. Tilden (1876), and Benjamin Harrison over Grover Cleveland (1888). This anomaly is not that rare in the Electoral College system. In fact, a small shift of votes in one or two states would have thrown the election to the second-place vote winner five additional times in the last 60 years.

For example, in 1976, Jimmy Carter won a nationwide popular vote victory of 1.7 million votes. However, a change of only 25,579 votes in the states of Ohio and Mississippi would have reelected President Gerald Ford in the Electoral College. With a switch of 18,488 votes in the states of Ohio and Hawaii, the Electoral College normally would have produced a Ford victory. However, because a renegade elector from Washington state cast his vote for non-candidate Ronald Reagan, the final electoral vote count would have been Carter – 268, Ford – 269, and Reagan – 1. Under this scenario, with no candidate receiving the necessary 270 electoral votes, the President would have been chosen by the House of Representatives.

In recent history, we all remember the 2000 election, which awarded the Presidency to the candidate who came in second in the popular vote. In the last election, President Bush defeated Senator Kerry by more than 3 million votes nationwide. However, it is easy to overlook that a change of less than 60,000 votes would have put Ohio in the Kerry column under the Electoral College system and would have elected him President.

In the final analysis, the most compelling reason for directly electing our president and vice president is one of principle. In the United States every vote must count equally. One person, one vote is more than a clever phrase, it's the cornerstone of justice and equality. We can and must see that our electoral system awards victory to the candidates chosen by the most voters. In this day and age of computers, television, rapidly available news, and a nationwide public school system, we don't need nameless electors to cast our votes for president. The voters should cast them directly, themselves. Direct election is the only system that counts every vote equally and where the voters cast their ballots directly for the candidates of their choice. It has the additional virtue of operating in the way most Americans think the electoral process operates—and is expected to operate.

It is heartening to see the Every Vote Equal strategy described in this book which will correct the flawed system we maintain for electing our top two leaders. Our federation of states must band together to solve this long-standing, vexatious problem. 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. I hope you will join me in supporting this important effort.

The election of President of the United States should not be a contest between red states and blue states. The President should be chosen by a majority of our citizens, wherever they may live. Direct popular election would substitute clarity for confusion, decisiveness for danger, and popular choice for political chance.