

his wife, Mike, and daughter, Sidnee, on this new assignment. The Congress and the country applaud the selfless commitment his entire family has made to the Nation in supporting his military career.

I know I speak for all of my colleagues in expressing my heartfelt appreciation to General Ted Mercer. He is a credit to both the Air Force and the United States of America. We wish our friend the best of luck in his new command.

#### ARTHUR M. SCHLESINGER, JR. ON AMERICAN DEMOCRACY

Mr. KENNEDY. Mr. President, few individuals have made a greater contribution to the study of American history than Professor Arthur M. Schlesinger, Jr.

Arthur's been a pre-eminent historian for over half a century, ever since 1946, when he won the Pulitzer Prize at the age of 28, for his book "The Age of Jackson."

As Oscar Wilde once said—anybody can make history but only a truly great man can write history. And Arthur Schlesinger has written about history with unsurpassed eloquence, and he's shaped that history with his unsurpassed wisdom and scholarship. In so many ways, Arthur Schlesinger represents the best of the liberal and progressive ideal in the 20th century.

Arthur Schlesinger continues to represent these ideals in the 21st century, and I believe that his article on the 2000 presidential election published in last month's issue of *The American Prospect* will be of interest to all of us in Congress. I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the *American Prospect*, Mar. 25, 2002]

#### NOT THE PEOPLE'S CHOICE

(By Arthur M. Schlesinger, Jr.)

The true significance of the disputed 2000 election has thus far escaped public attention. This was an election that made the loser of the popular vote the president of the United States. But that astounding fact has been obscured: first by the flood of electoral complaints about deceptive ballots, hanging chads, and so on in Florida; then by the political astuteness of the court-appointed president in behaving as if he had won the White House by a landslide; and now by the effect of September 11 in presidentializing George W. Bush and giving him commanding popularity in the polls.

"The fundamental maxim of republican government," observed Alexander Hamilton in the 22d *Federalist*, "requires that the sense of the majority should prevail." A reasonable deduction from Hamilton's premise is that the presidential candidate who wins the most votes in an election should also win the election. That quite the opposite can happen is surely the great anomaly in the American democratic order.

Yet the National Commission on Federal Election Reform, a body appointed in the wake of the 2000 election and co-chaired (honorarily) by former Presidents Gerald Ford and Jimmy Carter, virtually ignored it.

Last August, in a report optimistically entitled *To Assure Pride and Confidence in the Electoral Process*, the commission concluded that it had satisfactorily addressed "most of the problems that came into national view" in 2000. But nothing in the ponderous 80-page document addressed the most fundamental problem that came into national view: the constitutional anomaly that permits the people's choice to be refused the presidency.

Little consumed more time during our nation's Constitutional Convention than debate over the mode of choosing the chief executive. The framers, determined to ensure the separation of powers, rejected the proposal that Congress elect the president. Both James Madison and James Wilson, the "fathers" of the Constitution, argued for direct election by the people, but the convention, fearing the parochialism of uninformed voters, also rejected that plan. In the end, the framers agree on the novel device of an electoral college. Each state would appoint electors equal in number to its representation in Congress. The electors would then vote for two persons. The one receiving a majority of electoral votes would then become president; the runner-up, vice president. And in a key sentence, the Constitution stipulated that of these two persons at least one should not be from the same state as the electors.

The convention expected the electors to be cosmopolitans who would know, or know of, eminences in other states. But this does not mean that they were created as free agents authorized to routinely ignore or invalidate the choice of the voters. The electors, said John C. Calhoun, a Virginia congressman, are the "organs . . . acting from a certain and unquestioned knowledge of the choice of the people, by whom they themselves were appointed, and under immediate responsibility to them."

Madison summed it up when the convention finally adopted the electoral college: "The president is now to be elected by the people." The president, he assured the Virginia ratifying convention, would be "the choice of the people at large." In the First Congress, he described the president as appointed "by the suffrage of three million people."

"It was desirable," Alexander Hamilton wrote in the 68th *Federalist*, "that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided." As Lucius Wilmerding, Jr., concluded in his magisterial study of the electoral college: "The Electors were never meant to choose the President but only to pronounce the votes of the people."

Even with such a limited function, however, the electoral college has shaped the contours of American politics and thus captured the attention of politicians. With the ratification of the 12th Amendment in 1804, electors were required to vote separately for president and vice president, a change that virtually guaranteed that both would be of the same party. Though unknown to the Constitution and deplored by the framers, political parties were remolding presidential elections. By 1836 every state except South Carolina had decided to cast its votes as a unit—winner take all, no matter how narrow the margin. This decision minimized the power of third parties and created a solid foundation for a two-party system.

"The mode of appointment of the Chief Magistrate [President] of the United States," wrote Hamilton in the 68th *Federalist*, "is almost the only part of the system, of any consequence, which has escaped without severe censure." This may have been true when Hamilton wrote in 1788; it was definitely not true thereafter. According to the Congressional Research Service, legislators since the First Congress have offered

more than a thousand proposals to alter the mode of choosing presidents.

No legislator has advocated the election of the president by Congress. Some have advocated modifications in the electoral college—to change the electoral units from states to congressional districts, for example, or to require a proportional division of electoral votes. In the 1950s, the latter approach received considerable congressional favor in a plan proposed by Senator Henry Cabot Lodge, Jr., and Representative Ed Gossett. The Lodge-Gossett amendment would have ended the winner-take-all electoral system and divided each state's electoral vote according to the popular vote. In 1950 the Senate endorsed the amendment, but the House turned it down. Five years later, Senator Estes Kefauver revived the Lodge-Gossett plan and won the backing of the Senate Judiciary Committee. A thoughtful debate ensued, with Senators John F. Kennedy and Paul H. Douglas leading the opposition and defeating the amendment.

Neither the district plan nor the proportionate plan would prevent a popular-vote loser from winning the White House. To correct this great anomaly of the Constitution, many have advocated the abolition of the electoral college and its replacement by direct popular elections. The first "minority" president was John Quincy Adams. In the 1824 election, Andrew Jackson led in both popular and electoral votes; but with four candidates dividing the electoral vote, he failed to win an electoral-college majority. The Constitution provides that if no candidate has a majority, the House of Representatives must choose among the top three. Speaker of the House Henry Clay, who came in fourth, threw his support to Adams, thereby making him president. When Adams then made Clay his secretary of state, Jacksonian cries of "corrupt bargain" filled the air for the next four years and helped Jackson win the electoral majority in 1828.

"To the people belongs the right of electing their Chief Magistrate," Jackson told Congress in 1829. "The first principle of our system," he said, is "that the majority is to govern." He asked for the removal of all "intermediate" agencies preventing a "fair expression of the will of the majority." And in a tacit verdict on Adams's failed administration, Jackson added: "A President elected by a minority can not enjoy the confidence necessary to the successful discharge of his duties."

History bears out Jackson's point. The next two minority presidents—Rutherford B. Hayes in 1877 and Benjamin Harrison in 1889—had, like Adams, ineffectual administrations. All suffered setbacks in their midterm congressional elections. None won a second term in the White House.

The most recent president to propose a direct-election amendment was Jimmy Carter in 1997. The amendment, he said, would "ensure that the candidate chosen by the votes actually becomes President. Under the Electoral College, it is always possible that the winner of the popular vote will not be elected." This had already happened, Carter said, in 1824, 1876, and 1888.

Actually, Carter placed too much blame on the electoral system. Neither J.Q. Adams in 1824 nor Hayes in 1876 owed his elevation to the electoral college. The House of Representatives, as noted, elected Adams. Hayes's anointment was more complicated.

In 1876, Samuel J. Tilden, the Democratic candidate, won the popular vote, and it appeared that he had won the electoral vote too. But the Confederate states were still under military occupation, and electoral boards in Florida, Louisiana, and South Carolina disqualified enough Democratic ballots to give Hayes, the Republican candidate, the electoral majority.

The Republicans controlled the Senate; the Democrats, the House. Which body would count the electoral votes? To resolve the deadlock, Congress appointed an electoral commission. By an 8-7 party-line vote, the commission gave all the disputed votes to Hayes. This was a supreme election swindle. But it was the rigged electoral commission, not the electoral college, that denied the popular-vote winner the presidency.

In 1888 the electoral college did deprive the popular-vote winner, Democrat Grover Cleveland, of victory. But 1888 was a clouded election. Neither candidate received a majority, and Cleveland's margin was only 100,000 votes. Moreover, the claim was made, and was widely accepted at the time and by scholars since, that white election officials in the South banned perhaps 300,000 black Republicans from the polls. The installation of a minority president in 1889 took place without serious protest.

The Republic later went through several other elections in which a small shift of votes would have given the popular-vote loser an electoral-college victory. In 1916, if Charles Evans Hughes had gained 4,000 votes in California, he would have won the electoral-college majority, though he lost the popular vote to Woodrow Wilson by more than half a million. In 1948, a shift of fewer than 30,000 votes in three states would have given Thomas E. Dewey the electoral-college majority, though he ran more than two million votes behind Harry Truman. In 1976, a shift of 8,000 votes in two states would have kept President Gerald Ford in office, though he ran more than a million and a half votes behind Jimmy Carter.

Over the last half-century, many other eminent politicians and organizations have also advocated direct popular elections: Presidents Richard Nixon and Gerald Ford; Vice Presidents Alben Barkley and Hubert Humphrey; Senators Robert A. Taft, Mike Mansfield, Edward Kennedy, Henry Jackson, Robert Dole, Howard Baker, and Everett Dirksen; the American Bar Association, the League of Women Voters, the AFL-CIO, and the U.S. Chamber of Commerce. Polls have shown overwhelming public support for direct elections.

In the late 1960s, the drive for a direct-election amendment achieved a certain momentum. Led by Senator Birch Bayh of Indiana, an inveterate and persuasive constitutional reformer, the campaign was fueled by the fear that Governor George Wallace of Alabama might win enough electoral votes in 1968 to throw the election into the House of Representatives. In May 1968, a Gallup poll recorded 66 percent of the U.S. public in favor of direct election—and in November of that year, an astonishing 80 percent. But Wallace's 46 electoral votes in 1968 were not enough to deny Nixon a majority, and complacency soon took over. "The decline in one-party states," a Brookings Institution study concluded in 1970, "has made it far less likely today that the runner-up in popular votes will be elected President."

Because the danger of electoral-college misfire seemed academic, abolition of the electoral college again became a low-priority issue. Each state retained the constitutional right to appoint its electors "in such manner as the legislature thereof directs." And all but two states, Maine and Nebraska, kept the unit rule.

Then came the election of 2000. For the fourth time in American history, the winner of the popular vote was refused the presidency. And Albert Gore, Jr., had won the popular vote not by Grover Cleveland's dubious 100,000 but by more than half a million. Another nearly three million votes had gone to the third-party candidate Ralph Nader, making the victor, George W. Bush, more than ever a minority president.

Nor was Bush's victory in the electoral college unclouded by doubt. The electoral vote turned on a single state, Florida. Five members of the Supreme Court, forsaking their usual deference to state sovereignty, stopped the Florida recount and thereby made Bush president. Critics wondered: if the facts had been the same but the candidates reversed, with Bush winning the popular vote (as indeed observers had rather expected) and Gore hoping to win the electoral vote, would the gang of five have found the same legal arguments to elect Gore that they used to elect Bush?

I expected an explosion of public outrage over the rejection of the people's choice. But there was surprisingly little in the way of outcry. It is hard to image such acquiescence in a popular-vote-loser presidency if the popular-vote winner had been, say, Adlai Stevenson or John F. Kennedy or Ronald Reagan. Such leaders attracted do-or-die supporters, voters who cared intensely about them and who not only would have questioned the result but would have been ardent in pursuit of fundamental reform. After a disappointing campaign, Vice President Gore simply did not excite the same impassioned commitment.

Yet surely the 2000 election put the Republic in an intolerable predicament—intolerable because the result contravened the theory of democracy. Many expected that the election would resurrect the movement for direct election of presidents. Since direct elections have obvious democratic plausibility and since few Americans understand the electoral college anyway, its abolition seems a logical remedy.

The resurrection has not taken place. Constitutional reformers seem intimidated by the argument that a direct-election amendment would antagonize small-population states and therefore could not be ratified. It would necessarily eliminate the special advantage conferred on small states by the two electoral votes handed to all states regardless of population. Small-state opposition, it is claimed, would make it impossible to collect the two-thirds of Congress and the three-fourths of the states required for ratification.

This is an odd argument, because most political analysts are convinced that the electoral college in fact benefits large states, not small ones. Far from being hurt by direct elections, small states, they say, would benefit from them. The idea that "the present electoral-college preserves the power of the small states," write Lawrence D. Longley and Alan G. Braun in *The Politics of Electoral Reform*, "... simply is not the case." The electoral-college system "benefits large states, urban interests, white minorities, and/or black voters." So, too, a Brookings Institution report: "For several decades liberal, urban Democrats and progressive, urban-suburban Republicans have tended to dominate presidential politics; they would lose influence under the direct-vote plan."

Racial minorities holding the balance of power in large states agree. "Take away the electoral college," said Vernon Jordan as president of the Urban League, "and the importance of being black melts away. Blacks, instead of being crucial to victory in major states, simply become 10 percent of the electorate, with reduced impact."

The debate over whom direct elections would benefit has been long, wearisome, contradictory, and inconclusive. Even computer calculations are of limited use, since they assume a static political culture. They do not take into account, nor can they predict, the changes wrought in voter dynamics by candidates, issues, and events.

As Senator John Kennedy said during the Lodge-Gossett debate: "It is not only the

unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system," Kennedy observed, "it is necessary to consider all the others. . . . What the effects of these various changes will be on the Federal system, the two-party system, the popular plurality system and the large-State-small-State checks and balances system, no one knows."

Direct elections do, however, have the merit of correcting the great anomaly of the Constitution and providing an escape from the intolerable predicament. "The electoral college method of electing a President of the United States," said the American Bar Association when an amendment was last seriously considered, "is archaic, undemocratic, complex, ambiguous, indirect, and dangerous." In contrast, as Birch Bayh put it, "direct popular election of the president is the only system that is truly democratic, truly equitable, and can truly reflect the will of the people."

The direct-election plan meets the moral criteria of a democracy. It would elect the people's choice. It would ensure equal treatment of all votes. It would reduce the power of sectionalism in politics. It would reinvigorate party competition and combat voter apathy by giving parties the incentive to get out their votes in states that they have no hope of carrying.

The arguments for abolishing the electoral college are indeed powerful. But direct elections raise troubling problems of their own—especially their impact on the two-party system and on JFK's "solar system of governmental power."

In the nineteenth century, American parties inspired visiting Europeans with awe. Alexis de Tocqueville, in the 1830s, thought politics "the only pleasure which an American knows." James Bryce, half a century later, was impressed by the "military discipline" of the parties. Voting statistics justified transatlantic admiration. In no presidential election between the Civil War and the end of the century did turnout fall below 70 percent of eligible voters.

The dutiful citizens of these high-turnout years did not rush to the polls out of uncontrollable excitement over the choices they were about to make. The dreary procession of presidential candidates moved Bryce to write his famous chapter in *The American Commonwealth* titled "Why Great Men Are Not Chosen President." But the party was supremely effective as an agency of voter mobilization. Party loyalty was intense. People were as likely to switch parties as they were to switch churches. The great difference between then and now is the decay of the party as the organizing unit of American politics.

The modern history of parties has been the steady loss of the functions that gave them their classical role. Civil-service reform largely dried up the reservoir of patronage. Social legislation reduced the need for parties to succor the poor and helpless. Mass entertainment gave people more agreeable diversions than listening to political harangues. Party loyalty became tenuous; party identification, casual. Franklin D. Roosevelt observed in 1940: "The growing independence of voters, after all, has been proved by the votes in every presidential election since my childhood—and the tendency, frankly, is on the increase."

Since FDR's day, a fundamental transformation in the political environment has further undermined the shaky structure of American politics. Two electronic technologies—television and computerized polling—have had a devastating impact on the party system. The old system had three

tiers: the politician at one end, the voter at the other, and the party in between. The party's function was to negotiate between the politician and the voter, interpreting each to the other and providing the links that held the political process together.

The electronic revolution has substantially abolished this mediating role. Television presents politicians directly to the voters, who judge candidates far more on what the box shows them than on what the party organization tells them. Computerized polls present voters directly to the politicians, who judge the electorate far more on what the polls show them than on what the party organization tells them. The political party is left to wither on the vine.

The last half-century has been notable for the decrease in party identification, for the increase in independent voting, and for the number of independent presidential candidacies by fugitives from the major parties: Henry Wallace and Strom Thurmond in 1948, George Wallace in 1968, Eugene McCarthy in 1976, John Anderson in 1980, Ross Perot in 1992 and 1996, and Ralph Nader and Pat Buchanan in 2000.

The two-party system has been a source of stability; FDR called it "one of the greatest methods of unification and of teaching people to think in common terms." The alternative is a slow, agonized descent into an era of what Walter Dean Burnham has termed "politics without parties." Political adventurers might roam the countryside like Chinese warlords, building personal armies equipped with electronic technologies, conducting hostilities against various rival warlords, forming alliances with others, and, if they win elections, striving to govern through ad hoc coalitions. Accountability would fade away. Without the stabilizing influences of parties, American politics would grow angrier, wilder, and more irresponsible.

There are compelling reasons to believe that the abolition of state-by-state, winner-take-all electoral votes would hasten the disintegration of the party system. Minor parties have a dim future in the electoral college. Unless third parties have a solid regional base, like the Populists of 1892 or the Dixiecrats of 1948, they cannot hope to win electoral votes. Millard Fillmore, the Know-Nothing candidate in 1856, won 21.6 percent of the popular vote and only 2 percent of the electoral vote. In 1912, when Theodore Roosevelt's candidacy turned the Republicans into a third party, William Howard Taft carried 23 percent of the popular vote and only 1.5 percent of the electoral votes.

But direct elections, by enabling minor parties to accumulate votes from state to state—impossible in the electoral-college system—would give them a new role and a new influence. Direct-election advocates recognize that the proliferation of minor candidates and parties would drain votes away from the major parties. Most direct-election amendments therefore provide that if no candidate receives 40 percent of the vote the two top candidates would fight it out in a runoff election.

This procedure would offer potent incentives for radical zealots (Ralph Nader, for example), freelance media adventures (Pat Buchanan), eccentric billionaires (Ross Perot), and flamboyant characters (Jesse Ventura) to jump into presidential contests; incentives, too, to "green" parties, senior-citizen parties, nativist parties, right-to-life parties, pro-choice parties, anti-gun-control parties, homosexual parties, prohibition parties, and so on down the single-issue line.

Splinter parties would multiply not because they expected to win elections but because their accumulated vote would increase their bargaining power in the runoff. Their multiplication might well make runoffs the

rule rather than the exception. And think of the finagling that would take place between the first and second rounds of a presidential election! Like J.Q. Adams in 1824, the victors would very likely find that they are a new target for "corrupt bargains."

Direct election would very likely bring to the White House candidates who do not get anywhere near a majority of the popular votes. The prospect would be a succession of 41 percent presidents or else a succession of double national elections. Moreover, the winner in the first round might often be beaten in the second round, depending on the deals the runoff candidates made with the splinter parties. This result would hardly strengthen the sense of legitimacy that the presidential election is supposed to provide. And I have yet to mention the problem, in close elections, of organizing a nationwide recount.

In short, direct elections promise a murky political future. They would further weaken the party system and further destabilize American politics. They would cure the intolerable predicament—but the cure might be worse than the disease.

Are we therefore stuck with the great anomaly of the Constitution? Is no remedy possible?

There is a simple and effective way to avoid the troubles promised by the direct-election plan and at the same time to prevent the popular-vote loser from being the electoral-vote winner: Keep the electoral college but award the popular vote winner a bonus of electoral votes. This is the "national bonus" plan proposed in 1978 by the Twentieth Century Fund Task Force on Reform of the Presidential Election Process. The task force included, among others, Richard Rovere and Jeanne Kirkpatrick. (And I must declare an interest: I was a member, too, and first proposed the bonus plan in *The Wall Street Journal* in 1977.)

Under the bonus plan, a national pool of 102 new electoral votes—two for each state and the District of Columbia—would be awarded to the winner of the popular vote. This national bonus would balance the existing state bonus—the two electoral votes already conferred by the Constitution on each state regardless of population. This reform would virtually guarantee that the popular-vote winner would also be the electoral-vote winner.

At the same time, by retaining state electoral votes and the unit rule, the plan would preserve both the constitutional and the practical role of the states in presidential elections. By insulating recounts, it would simplify the consequences of close elections. By discouraging multiplication of parties and candidates, the plan would protect the two-party system. By encouraging parties to maximize their vote in states that they have no chance of winning, it would reinvigorate state parties, stimulate turnout, and enhance voter equality. The national-bonus plan combines the advantages in the historic system with the assurance that the winner of the popular vote will win the election, and it would thus contribute to the vitality of federalism.

The national-bonus plan is a basic but contained reform. It would fit comfortably into the historic structure. It would vindicate "the fundamental maxim of republican government . . . that the sense of the majority should prevail." It would make the American democracy live up to its democratic pretensions.

How many popular vote losers will we have to send to the White House before we finally democratize American democracy?

## ADDITIONAL STATEMENTS

### LOCAL LAW ENFORCEMENT ACT OF 2001

• Mr. SMITH of Oregon. Mr. President, I speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

A terrible crime occurred September 14, 1998 in Hayward, CA. A woman in a gay and lesbian bar was verbally assaulted and threatened by two men. Donald R. Santos, 40, and Lance E. Alves, 45, were charged with making terrorist threats and interference of civil rights because of sexual orientation, in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. By passing this legislation and changing current law, we can change hearts and minds as well.●

### TAKE OUR DAUGHTERS TO WORK DAY

• Ms. LANDRIEU. Mr. President, as you walk the halls of the Senate today, you might have noticed many young and bright faces. Today we are celebrating the 10th anniversary of "Take Our Daughters to Work Day." Senate HUTCHINSON and I have been pleased to oversee today's activities with our colleagues.

Over 11-million girls ages 9-15 are spending today with their parents, relatives, friends, neighbors and other mentors experiencing the wide range of careers the world has to offer.

Since 1993, 71-million young women—and yes, some young men, too—have participated in this outstanding program. According to a recent poll commissioned by the Ms. Foundation for Women, girls believe the program increased their interest in education, broadened their thinking about the future, and strengthened their relationship with their parents and other caring adults.

This morning's Senate activities began with a breakfast and a tour of the Senate floor for approximately 200 girls and their sponsors, many of them Senate staff members and assistants who wanted to share with their girls the excitement and challenges of working in our Nation's Capitol, and in particular, here in the Senate.

This year I am happy to host ten young ladies, all with very promising futures, most from my home State of Louisiana. Please welcome: Miss Lily Cowles of Shreveport, LA; Miss Caroline Pullen and Miss Claire Pullen of Houston, TX; Miss Keely Childress of Monroe, LA; Miss Elisabeth Whitehead