



# CONGRESSMAN'S REPORT

MORRIS K. UDALL • 2d District of Arizona

*House Office Building, Washington, D. C. 20515*

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## The Electoral College Is Flunking Out

Our U. S. Constitution is a simple and magnificent document on which a free and powerful society has been erected. But that Constitution contains a kind of political "time bomb" which ticks rather loudly right now. It may go off in the early hours of November 6 in an explosion which could produce the gravest kind of divisions and uncertainties for our country.

It's too late to completely defuse this bomb for 1968, but we ought to know its dangers, and we ought to take some makeshift action to minimize the damage to the Republic. Between now and 1972 we ought to make permanent corrections so it can never happen again.

I'm talking, of course, about a strange "college" which has no campus, football team, or even very many supporters. It's the Electoral College, a unique American device by which we make our most important political choice: who shall be our President.

Historians tell us that the method by which a President was to be chosen was one of the most disputed matters at the Philadelphia Convention of 1787. Various schemes were proposed and debated. Like so many things in the Constitution the Electoral College was a compromise blend of many suggestions. This was an era with limited communications between states and relatively low literacy. The founding fathers didn't really trust popular elections for national office. How could an illiterate laborer in rural Virginia be able to pick between presidential candidates from far-off Massachusetts or New York? It was believed, in the conditions of those times, that ordinary voters would be subject to deception and inclined to vote only for someone from their own state. This made it likely that the largest state, having the largest vote, would usually elect its own candidate.

Therefore they devised an indirect, two-stage election process:

1 --Voters would not pick a president; they would only choose from their own state some of the best and wisest men and let *them* pick a President. Called

"electors", these men would be impartial, uncommitted, and selected because of their independence, wisdom and knowledge of current affairs. Each state would pick as many electors as it had members of Congress. A majority of the electors could elect.

2--But the founding fathers feared that the electors might break up into multiple groups supporting men from their own states or regions, with no candidate getting a majority. To meet this possibility they devised a "contingent election" in the House of Representatives. The House members would elect a President from among the three top scorers in the Electoral College. But getting this far they found another fear: small states like Delaware and Rhode Island feared that New York and the bigger states would have more congressmen and thus elect all the Presidents. So a further compromise: In "contingent" House elections each state (regardless of population) would have one vote.

### **WHO'S ELECTED? NOBODY!**

So what does all of this have to do with you and me and George Wallace, Humphrey and Nixon? It may have a lot! Let me give you a possible "scenario":

*It's Wednesday morning, November 6, 1968. The election is over. You switch on the TV to find out the name of your new President. Who won? A haggard Chet Huntley gives you the answer: "Nobody!" But surely we'll know later in the day, you think. No, you won't. You **might** know on December 16 (if George Wallace can make a "deal", or as he terms it, a "covenant") before the Electoral College meets on that day. Or, if that doesn't come off, you **might** know on January 6, when the Congress meets. But that might depend on some cloakroom bargaining, or on the outcome of some closely-contested congressional seat in Oregon or North Carolina.*

*"But," you say, "the man with the most votes was elected as my governor and senator. I thought the man with the most votes would be President." The answer: Not necessarily! In 1876 Samuel Tilden received 250,000 more votes than Rutherford Hayes. The people voted for Tilden; the Electoral College voted for Hayes. Hayes was President.*

Thus it *did* happen in 1876. It *nearly* happened in 1948 and 1960. It *could* happen in 1968.

### **WHICH WISE, IMPARTIAL MEN?**

Some might argue that selection of a President by a group of wise, impartial men is a good idea. Perhaps so, but the fact is that we abandoned any pretense of doing so 160 years ago. Though we have long accepted the idea of popular, direct presidential

elections we keep the *machinery* of elite selection -- a process which was discarded before the United States had gone through its first four elections.

The elector idea was killed by the development of a vigorous two-party system -- something the founding fathers never contemplated at all. In fact, the original Constitution directed each elector to vote for *two* candidates for President, and none for Vice-President. The man with the most votes was to be elected President and the second man, Vice-President. With the retirement of George Washington, political leaders soon split into major camps, and it soon became apparent that this provision would usually elect our two top officials from opposite parties. (Had we continued this practice, our President today would be LBJ; his Vice-President would be Barry Goldwater.) The 12th Amendment remedied this particular defect, and electors now vote separately for President and Vice-President; candidates now run as a ticket and come from the same party.

Over the early 1800's the practice of electing famous, independent electors was entirely abandoned, and the political parties began to select partisan elector candidates whose sole function was to vote for the candidate to whom they were openly committed. For the last 150 years few voters have even known or cared about the identity of the electors for whom they technically voted. (How many readers can name the Arizonans who cast our five votes for Goldwater in 1964 -- or the five Democratic electors they defeated?)

Yet -- and this is an ever-present danger -- the electors are still legally and constitutionally independent "wise men" who cannot be *compelled* to vote for the men under whose banner they run.

## SOME CLOSE CALLS

Despite all these dangers and difficulties our presidential elections are *usually* decided by sufficient margins that the popular choice is elected. But "usually" isn't good enough! We've had some close calls and a few instances where the majority will was thwarted. Here are some examples of each:

- \*\* In 1800 Aaron Burr and Thomas Jefferson each received 73 electoral votes. The tie threw the outcome into the House. After much maneuvering and considerable logrolling, Jefferson was elected.
- \*\* In 1824 a four-party election gave electoral votes to John Quincy Adams (84), Jackson (99), Clay (37) and Crawford (41). Though Jackson *had more*

*electoral votes and more popular votes* than any other candidate, Clay made a deal with the supporters of Adams, and Adams was elected.

- \*\* In 1876 Samuel Tilden received 250,000 more popular votes than Rutherford B. Hayes. The election never got to the House because Hayes had one more electoral vote and subsequently took office.
- \*\* In 1948 a switch of 12,400 votes from Truman to Dewey in California and Ohio would have denied either man an electoral majority, and the House would have had to choose.
- \*\* Likewise in 1960 a switch of 8,900 votes from Kennedy to Nixon in Illinois and Missouri would have thrown the election into the House. One unfaithful Oklahoma elector, publicly pledged to Nixon, sought a secret deal by which he and other GOP electors would join with uncommitted Southern electors to vote for Sen. Harry Byrd.

### **HOW REAL IS THE DANGER?**

Will history merely add 1968 to the list of "close calls", or will the world's most powerful nation really have its luck run out this time? Let's do some supposing to see just how real the danger is:

- Suppose George Wallace carries the five Southern states (Louisiana, Mississippi, Alabama, South Carolina, Georgia) which went for Goldwater in 1964.
- Of the other states, Nixon carries the ones he took in 1960.
- Humphrey takes the rest; i.e., those which went for Kennedy in 1960 plus the -- District of Columbia (given the vote in 1961).

When the electors meet on December 16, with 270 votes needed to win (a majority of the 538), the result will be: Wallace 47, Nixon 229, Humphrey 262. Unless Wallace has made a "covenant" to put one or the other over the top in the Electoral College, or unless some electors renege on their public pledges, *there is no winner*.

Suppose the electors all stick to their pledged positions. Let's see what would happen. The election now goes to the House. A period of uncertainty will begin and will last until the House votes on January 6. As the new Congress gathers after New Year's Day (for it's the *new* and not the old Congress which votes for President), the maneuvering and the rumors reach a pitch. There are many uncertainties:

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Remember each state gets one vote; Nevada with 460,000 people and one congressman casts one vote. So does New York with 41 congressmen and 18 million people.

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In fact, in a contingent election in 1969, it is theoretically possible for 76 congressmen

from 26 states representing 30 million people to elect a President, outvoting 24 states with 359 Congressmen and 148 million people!

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Further, it takes 26 states to win, and it sometimes happens that a state's congressional delegation is equally divided. Today Oregon has two Democrats and two Republicans; Montana is 1-1, Illinois 12-12. If each of these congressmen remained loyal to his party, these three deadlocked states would have no vote at all. And, of course, the District of Columbia, with no congressional delegation, would have no vote.

The possibilities for deadlock and the temptations for backroom deals are clearly apparent if we assume for discussion that the 91st Congress is constituted exactly like the 90th. Here would be the lineup:

- 3 deadlocked states could not vote.
- 5 Southern states have Democratic delegations, but under our assumption above these states have voted for Wallace. These delegations, though Democratic, would be under tremendous pressure to cast their votes for Wallace.
- 24 states have predominantly Democratic delegations.
- 18 states (including Arizona) have predominantly GOP delegations.

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Thus, none of the three candidates could count on the necessary 26 states. The temptation to "bargain" for the presidency would be enormous, and in this deadly game any number of congressmen can play -- in all kinds of combinations.

## **SOME OTHER DEFECTS**

I hope that those who have read this far will agree with me that this system is a ridiculous and outdated way to make our most vital political choice. In fact, I've only outlined a few of the many defects of the Electoral College system. Let's complete the case against it:

*"Winner-take-all"*. If you're one of the 237,000 Arizonans (49.5%) who voted for LBJ in 1964, or one of the 2,800,000 Californians (41%) who voted for Goldwater, you might as well have stayed in bed. Your vote didn't count. The Electoral College gives *all* a state's electoral votes to the man who receives the most votes in that state. In 1960 Nixon received 3,259,000 votes in California (50.1%), Kennedy 3,224,000 (49.6%), but the Electoral College counted it as a shutout: Nixon 32, Kennedy 0.

*"Pivotal states and bloc voting"*. The "winner take all" system means that presidential elections,

nominations and strategy are largely geared to and controlled by the politics of the seven key states which control 210 electoral votes of the 270 needed. The people who pick the candidates and write the platforms know that grabbing a solid bloc of perhaps 300,000 Puerto Rican votes in New York, 250,000 farm votes in downstate Illinois, or maybe 100,000 suburban votes in Cleveland can swing a big, pivotal state and pick up more electoral votes than are found in all the Rocky Mountains.

*"One-party rule forever."* Nebraska rarely votes for Democratic presidents; Massachusetts or Maryland rarely vote Republican. Members of the minority party in those states have little incentive to arouse interest or build a two-party system. Presidential candidates of their party are unlikely to waste time helping them get 45% of the presidential vote rather than 40%. If everyone's vote counted the same in every state, political parties would be strengthened in all states; and candidates and platform makers would have to concern themselves with small states as well as large, with one-party states as well as pivotal states.

The situation was well summed up by the noted writer, James MacGregor Burns, when he said:

*"Most Americans, regardless of party, are agreed on the failings of the Electoral College. It is unfair, inaccurate, uncertain, and undemocratic. Unfair, because the presidential candidate losing a State by even a close margin forfeits all of that State's electoral votes. Inaccurate, because in*

*most elections the winner's electoral votes are inflated grotesquely out of proportion to his popular vote. Uncertain, because Presidential electors are not legally bound to vote for the candidate who carried the State. And undemocratic, because if no candidate wins a majority of the Electoral College, the verdict is rendered, in the House of Representatives, where each State delegation, no matter how large, casts but a single vote in choosing among the top three candidates."*

I've come to the strong conclusion that *only* direct, national, popular election of our Presidents will resolve the problems I've outlined and rid us of this political monstrosity which opens up so many possibilities of political wheeling and dealing. Only direct, popular election will insure that every voter in every state will have his voice heard. In a recent poll my constituents agreed. It's too late to do anything about 1968, for constitutional amendments take at least two or three years. But basic reform ought to have priority with the new 91st Congress. If I serve in that Congress, I intend to sponsor a constitutional amendment to bring it about.

## **WHAT CAN BE DONE THIS YEAR?**

But what about this year? Need we just wring our hands, pray, and hope for the best? No, there is a temporary, makeshift plan which can eliminate some of these dangers and uncertainties. If our political leaders are willing to place country above party, and majority rule above partisan maneuvering, we can prevent the bomb from doing much damage even if it goes off.

In July I co-sponsored with Charles Goodell, an outstanding Republican congressman from New York, the bipartisan Goodell-Udall plan to meet this emergency. We have already been joined by more than 50 congressmen and congressional candidates, by prominent senators and other political leaders. The proposal has been endorsed "in principle" by Mr. Nixon and Vice-President Humphrey, and is supported by major newspapers, including the *New York Times* and *Washington Post*, and the *Tucson Daily Citizen*, *Arizona Daily Star* and *Arizona Republic* in my own state.

Supporters of this plan come from both major parties, represent all different political candidates and many different political philosophies. But we are agreed on some fundamental points:

- \*\* The new 37th President -- the one official who speaks and acts with a mandate from all Americans -- ought not to owe his election to any trade or bargain or deal or cloakroom maneuver. *He ought to be that man who receives the most votes.*
- \*\* A minority presidency, or a "bargained" presidency, would be crippled and paralyzed before it began and throughout its four-year term. Our new President should be able to unite and lead our people without this kind of cloud over his election.
- \*\* With vital decisions to be made between November 6 and the inauguration, Americans cannot afford to be in doubt for two months as to who will take office on January 20.
- \*\* A political party ought not to be in a position to be tempted to use its accidental distribution of House states to elect a minority President and thus thwart the people's will.

### **HOW THE PLAN WOULD WORK**

There are some intricacies to the Goodell-Udall proposal, but its essence is simple: a "gentleman's agreement" that members of the House of Representatives of the 91st Congress, if required to elect a President, will vote for that candidate who receives the most popular votes *in the nation*. Here's how we propose to put it into effect:

- 1) Congressional candidates -- both incumbents and challengers -- are asked to pledge in writing that in a contingent election they will vote, regardless of party, for the candidate with the largest national popular vote.
- 2) Presidential candidates, party leaders, governors, senators and opinion leaders will be asked to publicly endorse the plan and support it. The presidential candidates would specifically pledge that they would make no Electoral College "deals" to circumvent the popular vote result.
- 3) Congressmen taking the pledge will not be bound unless and until sufficient members have joined to make it fairly certain that under any reasonably foreseeable outcome we will have sufficient votes in the House to assure the election of the popular-vote winner.

This sensible gentleman's agreement would eliminate the period of possible paralysis and uncertainty, would avoid any temptation to bargain away the presidency. It would bridge the gap until we can amend the Constitution.

Of course the proposal conceivably could cause some difficulties for those of us who participate. One of my colleagues asked me to suppose that Humphrey carries my congressional district, that Wallace carries Arizona, and that Nixon carries the nation. Would I want to vote with my district, my state or my nation, he asks? Under the Goodell-Udall plan I'd be bound, in that case, to vote for Nixon. But the people who elected me would know in advance of my intention and of my reasons. When they went to the polls -- even if they voted for Wallace -- the people would know that *their* decision -- not mine -- would determine the outcome.

### **THE COUNTRY COMES FIRST**

Our two-party system is a vital, essential and uniquely American part of our successful political life. But I've always held that my country comes first, my state second, and my party third. This is a case where good men of both parties ought to put the country first. I hope it works out that way. But whether it does or not, I trust we will start to amend the Constitution next year and end for all time the prospect of such a political poker game with the American people putting up the stakes.

A handwritten signature in cursive ink, appearing to read "Morris Udall". The signature is fluid and somewhat stylized, with a long horizontal line extending from the end of the "a" in "Udall".