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The Electoral College Explained

By KRISTINA DELL

Winston Churchill was fond of using the old saw that "democracy is the worst form of government — except for everything else." Many would say the same for the Electoral College. Get ready for its quirks and foibles to dominate the airwaves Tuesday if the election stays as close as the polls indicate. Here's a look at how it works, whom it favors and how it could influence the presidential outcome:

ORIGINS AND HOW IT WORKS

When you head to the booth this Tuesday, you won't actually be pulling the lever for John Kerry or George Bush. Rather, you will be casting a ballot for a slate of electors pledged to a particular candidate, who are then supposed to vote for the person you want to be president. The number of electors in each state is equal to the number of senators (two per state) plus the number of U.S. representatives, which varies according to the state's population as determined by the Census count every ten years. Presently, the Electoral College has 538 electors — 535 for the total number of senators and representatives plus three for Washington, D.C. Today, a candidate must receive 270 electoral votes to win.

The electors will meet in their respective state capitals to cast their votes for president and vice president on the Monday following the second Wednesday in December; it's as if the founders foresaw the need for recount time. The votes are sealed and sent to the president of the Senate, who opens and reads them before Congress on January 6th.

The reason we arrived at this system: Our founding fathers were all about compromise when they were choosing a mechanism for picking the president. One early idea was to have the Congress or the Senate decide, but that plan was nixed because it was felt that arrangement would have upset the government's balance of power and fostered corruption.

The founders feared a direct, winner-take-all election would be too

reckless. Since travel and communication around the country was slow, they worried that citizens wouldn't get sufficient information about candidates outside their state and would usually just pick someone from their region. With a direct popular vote, it is more likely that no candidate would receive a majority sufficient to govern a whole country, making challenges more frequent. Even if there was a clear winner, the selection of the president would often be decided by the biggest, most populous state with little attention paid to smaller ones. The Electoral College seemed like a better way to ensure the president had a wide geographic mandate.

SELECTING ELECTORS

State legislatures decide the manner by which electors are chosen, and not surprisingly, different states have adopted different methods. The two most common ways: either the elector is nominated by his or her state party committee (usually as a reward for years of stumping for the party) or the elector "campaigns" for the spot and a vote at the party's convention decides the winners.

Electors tend to fly under the radar, perhaps because parties usually don't pick people like Rush Limbaugh or Michael Moore to cast their ballots. Most people, unless they are closely involved with their state party, don't even know who their electors are. Those chosen to be electors tend to be highly engaged in their party or in politics, such as activists, state elected officials or even people who have personal ties to a candidate. Surprisingly, the Constitution stipulates very few qualifications. It speaks more to what electors can't be rather than who they should be. The following cannot be an elector: 1) a Representative or Senator 2) a high-ranking official in a position of "trust or profit" 3) someone who has "engaged in insurrection or rebellion" against the U.S.

This past Thursday, one of Kerry's Ohio electors, Representative Sherrod Brown, resigned because he is a congressman and thus constitutionally ineligible. The Kerry camp can replace him before November 2nd.

THE FAITHLESS ELECTOR

Since there is no federal law that requires electors to vote how they pledged they would, there have been a few instances where electors have not supported their party's candidate or the state's popular vote. In the past, electors have done this to make a statement when the election wasn't close and their vote wouldn't matter. But a faithless elector on Tuesday could wreak havoc around the country if there is a near tie in the Electoral College. Already one of West Virginia's five Republican electors, South Charleston Mayor Richie Robb, said that he might not vote for Bush if the President wins West Virginia (but he said it is unlikely he would support Kerry.)

Several states have responded to faithless electors by passing laws that make electors vote as they pledged. Some states have gone even farther by

slapping them with misdemeanors or fines. North Carolina, for example, levies a \$10,000 fine on an elector who forgoes his or her pledge. However, most scholars believe these state-level laws don't hold much water and would not withstand a constitutional challenge.

WINNER-TAKES-ALL VS. DISTRICT SYSTEM

Forty-eight states have the standard "winner-takes-all" electoral system: whichever presidential ticket amasses the most popular votes in a state wins all the electors of that state. Maine and Nebraska are the two exceptions. In these states, two electoral votes follow the winner takes all system and the rest (two for Maine, three for Nebraska) follow the "district system," a popular vote within each congressional district. While neither Maine nor Nebraska has ever split its electoral votes, this election could be a first. Currently, Kerry holds a slight lead in Maine, but if Bush wins in the 2nd District, the President would get one of the state's four electoral votes.

Another wild card is Colorado's Amendment 36, which would take effect immediately if it passes on Tuesday. This initiative would split up Colorado's electoral votes based on the percentage of votes each candidate wins in the state. Since Colorado is currently too close to call, Amendment 36 would most likely result in five electoral votes for the winner and four for the loser, potentially changing the outcome of the presidency and ensuring even more lawsuits than we saw in 2000.

AN ELECTORAL COLLEGE TIE: PARSING THE 12th AMENDMENT

It's feasible that we will have a repeat of 2000, with one candidate winning the popular vote, yet losing the election. Not ideal, sure, but at least we'd have a president. Even more divisive would be an electoral tie, a real possibility since polls in 11 swing states are too close to call. Assuming the other states vote as predicted, the Washington Post's computer analysis finds 33 combinations under which the swing states could line up to produce a 269 to 269 tie.

Under the 12th Amendment, if one candidate does not win the necessary 270 electoral votes to become president, the decision goes to the House, where each state has one vote. The House vote is by state delegations, not simple majority, and the winner must get the vote of 26 state delegations. Assuming the states follow party lines, there are currently 30 Republican delegations, 16 Democratic delegations (including Bernie Sanders of Vermont, who is independent but liberal) and 4 deadlocked delegations. This formula basically guarantees Bush a Victory — no need to call in the Supreme Court.

PROS AND CONS

Opponents of the Electoral College point to Bush as a reason to get rid of the current system — he's president even though he lost the popular vote.

Since the distribution of electoral votes tends to over-represent people in rural states, opponents argue that the system fails to accurately reflect the popular will. This over-representation occurs because a state's electors are based upon the number of representatives it has in the House (determined by population) plus the number of representatives it has in the Senate (two, no matter the state's population, giving more weight to small states.) Some argue that the winner-take-all mechanism in 48 states discourages independent or third party candidates from running because it would be difficult for them to get many electoral votes.

Proponents of the Electoral College system like the fact that a president must have a wide geographic distribution of support to win, believing this contributes to the cohesiveness of the country. They think the College helps minority interests because their votes could make a difference in the state, whereas the national popular majority would probably dilute them in a direct election. Some like that the Electoral College encourages a two-party system, because it forces candidates to move to the center of public opinion to get elected. In a direct election dozens of political parties, many with extreme, fringe ideas, would be encouraged to crop up to prevent a candidate from winning a popular majority. One of these parties could win the run-off and we would have more radical changes in policies from one administration to the next.

After the 2000 election, there was a lot of talk about doing away with this system, but it's unlikely this will happen anytime soon. To do so, we would need an amendment to the Constitution, which requires a two-thirds vote from Congress and then ratification by three-fourths of the states for it to become law. Small, rural states probably wouldn't support any such amendment because it would give them less of a voice.

In the end, the system works pretty well. For the past two hundred years, the Electoral College has picked a president, most of the time without incident. While not without its faults, the College has withstood the test of time, allowing peaceful elections to continue through tumultuous world wars, the civil rights struggle and economic depressions. It's a testament to the founding fathers' foresight that this ancient system of compromise continues to thrive.

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