

Wisconsin's Role in Electing the President

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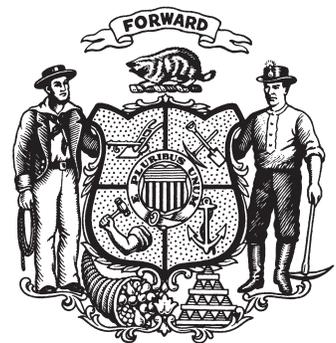


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WISCONSIN'S ROLE IN ELECTING THE PRESIDENT

SUMMARY

On November 7, 2000, projections indicate that more than 200 million Americans will be of voting age. Given past voter turnout, it is probable that slightly over 100 million will take part in electing the President of the United States. In Wisconsin, well over 2 million voters are expected to cast ballots in the November election.

This bulletin discusses the various steps in the selection of the U.S. President, including the presidential preference primaries and party caucuses, nomination of the candidates at the national party conventions, the November elections, and the Electoral College balloting. It specifically focuses on Wisconsin's role in electing the President.

I. INTRODUCTION

Selection of the U.S. President has become both costly and complex. According to the December 16, 1999, *New York Times*, it is estimated that by election day this November, the Republican and Democratic parties will have spent a combined total of at least \$300 million to support their presidential candidates. It is likely that total expenditures for the 2000 campaign will more than double that *Times* figure when all individual contributions and federal matching funds are included. As election costs have soared, a candidate's ability to raise funds has become critical to surviving the primary elections and securing a party nomination, let alone winning the election itself.

Public Funding in the 2000 Election. In 1973, to try to level the playing field, Congress initiated the presidential campaign fund, financed by an income tax checkoff system. Each taxpayer submitting an individual income tax form may voluntarily designate a \$3 checkoff to the fund at no cost to the filer. Prior to the nominating conventions, all candidates are eligible for matching funds from the Federal Elections Commission (FEC), if they agree to limit spending to: approximately \$40 million for all primary elections nationally; a set per state limit, based on number of voters; and no more than \$50,000 of personal funds. To receive grants for the primaries, the candidate must be seeking the nomination of a political party and show broad-based public support by raising over \$5,000 in each of at least 20 states. Though an individual contributor may legally donate up to \$1,000 to a candidate during the national primary period, only a \$250 maximum may be counted toward the \$5,000 per state requirement. Likewise, the federal grants for the primaries are limited to a \$250 maximum match on each individual's total contribution to the candidate.

The FEC reported on February 3, 2000, that a total of \$39.6 million has been certified in matching funds to eight eligible presidential candidates, including Gary Bauer, Elizabeth Dole, and Dan Quayle, all of whom have withdrawn from the race. Candidates George W. Bush and Steve Forbes did not choose to receive public funds, which means they were not restricted by any spending limits.

In addition to the matching funds for primaries, the two major party nominees are also entitled to approximately \$67 million each for the general election should they chose public funding. (Minor and new party candidates may also receive some public funding depending on their vote totals, but their spending in the general election is not limited.) By taking the public funding, the nominee promises to limit spending to the amount of the grant and refuse any private contributions. Candidates who do not take this funding have no such spending limits, but individuals contributing to them are limited to a total of \$1,000 for the general election campaign.

The Election Process. The selection of a U.S. President requires a complicated and lengthy process, covering almost a full year of voting hurdles. The steps a successful candidate must complete can be summarized briefly: 1) win delegates to the nominating convention through the state primaries and party caucuses, 2) win the party’s nomination through a majority vote of the delegates at the convention, 3) win the most Electoral College votes in as many states as possible in the November election, and 4) win 270 or more votes in the Electoral College. A successful candidate is not required to receive a majority of the popular votes cast. However, as this bulletin describes, the process is not as simple as it sounds.

KEY WISCONSIN DATES IN THE 2000 PRESIDENTIAL ELECTION

Dates	Event	How Dates Set	Process
January 4, 2000	Certification for Primary	Wis. Stats., Sec. 8.12	Recognized Wisconsin parties certify their intention to participate in presidential preference primary.
January 25, 2000	Ballot Selection	Wis. Stats., Sec. 8.12	Representatives of participating parties select names to appear on primary ballot.
April 4, 2000	Presidential Preference Primary	Wis. Stats., Sec. 8.12	All Wisconsin voters eligible to vote in open primary to express presidential preference.
July 31 – August 3, 2000	Republican National Convention	By Party (variable)	Party nominates its candidates for President and Vice President.
August 14-17, 2000	Democratic National Convention	By Party (variable)	Party nominates its candidates for President and Vice President.
September 5, 2000	Nomination of Minor Party and Independent Candidates and Elector Selection	Wis. Stats., Sec. 8.20	Minor party and independent candidates for President and Vice President file nomination papers and slates of electors.
October 10, 2000	Elector Selection for Recognized Wisconsin Parties	Wis. Stats., Sec. 8.18	Recognized Wisconsin parties nominate slates for Wisconsin presidential electors.
November 7, 2000	Election of Presidential Electors	U.S. Code, Title 3, Secs. 1, 3	Wisconsin voters elect 11 presidential electors as part of national election.
December 18, 2000	Electoral College Vote	U.S. Code, Title 3, Sec. 7	Wisconsin electors meet at State Capitol to vote separately for President and Vice President.
January 6, 2001	Official Count of Electoral Votes	U.S. Code, Title 3, Sec. 15	Electoral votes counted and announced before joint session of U.S. Congress.
January 20, 2001	Inauguration	U.S. Constitution, Twentieth Amendment	Newly elected President and Vice President take office.

II. SELECTION OF DELEGATES TO THE NOMINATING CONVENTION

The American way of electing presidents defies understanding by the rest of the world, and sometimes it seems even we can't figure out how the process works – or is supposed to work. Presidential primaries, a key reform that grew out of the 1968 campaign, have become so movable and so chaotic that one could say with confidence that the smoke-filled rooms at the old political conventions did a better job.

– Durham (North Carolina) *Herald-Sun* editorial

The presidential nomination process begins with the selection of delegates to the national party conventions through state presidential primary elections, party caucuses, or party conventions. The specific method varies from state to state according to national and state party rules and state laws. Dates for the primaries are usually determined by the state legislatures, whereas caucuses and conventions are scheduled by the parties. In recent years, the presidential primary has become the predominant vehicle by which the parties select their convention delegates. In 2000, it is reported that 43 states and the District of Columbia will hold presidential preference primary elections and those elections will select nearly 90% of the delegates. (See the accompanying appendix for a state-by-state description.)

Wisconsin's Presidential Preference Primary. Wisconsin pioneered the presidential primary for selecting delegates to national party conventions in the early 1900s. The Wisconsin Legislature enacted the nation's first primary law in 1903, requiring that all candidates for partisan office be nominated by voters, not handpicked in political conventions. However, Florida became the first state to use the presidential primary in 1904, because Wisconsin's law required approval in a statutory referendum in November 1904 before it took effect.

Wisconsin was the first state to mandate a presidential primary. Chapter 369, Laws of 1905, specifically required that Wisconsin delegates to the national political party conventions be elected in primaries. Under this law, prospective delegates stated no preference for a presidential candidate, either on their nomination papers or the ballot. Thus, the voter cast a ballot for the individual delegate, not for a preferred presidential candidate. Many legislative changes have been made to the primary law since its initial adoption, including Chapter 90, Laws of 1967, which eliminated the names of proposed convention delegates from the primary ballots. Current procedure is to list only the names of prospective presidential candidates.

Official preparation for the Wisconsin presidential preference primary begins when an eligible recognized political party certifies to the state Elections Board that it plans to participate in the election. (The usual deadline for certification is the first Tuesday in January, or the following day if Tuesday falls on January 1.) Eligibility depends on demonstrated polling strength in the most recent gubernatorial election. The party's candidate for governor must have received at least 10% of the vote in that election in order for the party to appear on the primary ballot. Both the Democratic and Republican Parties have certified they will participate in the April 2000 balloting. (Smaller parties may also petition to appear on the printed ballot for the presidential primary, but none has petitioned for the 2000 ballot.)

On the last Tuesday in January, officials of those parties certified for the presidential primary meet as a committee at the State Capitol to determine and certify to the Elections Board which of their presidential contenders will appear on the printed ballot.

Section 8.12 (1) (b), Wisconsin Statutes, states:

The committee shall place the names of all candidates of political parties whose candidacy is generally advocated or recognized in the national news media throughout the United States on the ballot, and may, in addition, place the names of other candidates on the ballot. The committee shall have sole discretion to determine that a candidacy is generally advocated or recognized in the national news media throughout the United States.

Section 8.12 (1) (c) does provide, however, that a person or committee acting on behalf of the person “may submit to the [elections] board a formal petition to have the person’s name appear on the presidential preference ballot.” Lyndon LaRouche, Jr., has been certified by the board under this process to appear on the 2000 ballot. (This is the first successful petition effort since Ellen McCormack was certified in 1976.) The candidates certified to appear on Wisconsin’s 2000 presidential primary ballot are:

Democrats – Bill Bradley, Al Gore;

Republicans – Gary Bauer*, George W. Bush, Steve Forbes*, Orrin G. Hatch*, Alan Lee Keyes, Lyndon LaRouche, Jr.** , John S. McCain

* Indicates candidate has publicly withdrawn but has not filed an official disclaimer to date.

** Certified by the state Board of Elections 2/25/00 on petition of the candidate.

Wisconsin conducts an “open primary”, which means that, unlike most other states, Wisconsin voters do not have to declare a party affiliation in order to participate in the primary election. The voter is given the ballots of all parties and must decide which ballot to cast in the secrecy of the voting booth. There are safeguards to prevent the voter from marking more than one ballot.

After the balloting, state party organizations may decide whether and how they want to translate the results of the open primary into delegate selection for the national nominating conventions.

Primary Problems. The process for selecting presidential nominees is not only complex, in that each state sets its own rules for choosing its delegates to the national convention, but the process has developed serious problems.

When primaries were introduced in the early 1900s, they sought to break the hold of political kingmakers. Yet in a potentially disastrous distortion of a reform that aimed to make the nominating process more democratic, we’ve created a system that is closed and unresponsive.

– Mark A. Siegel, *Christian Science Monitor*

One problem is that more and more states are trying to schedule their primaries in the first month or two of the election year, a phenomenon known as “frontloading”. This has raised barriers for almost all individuals except the well-financed or best-connected candidates. Because of frontloading in 2000, it is estimated that by March 7, nearly 70% of the delegates to the Republican and Democratic convention will have been chosen.

Wisconsin frontloaded during the 1996 presidential race when it temporarily moved its presidential preference primary from the traditional April date to the middle of March to participate in the “Big Ten Tuesday” in which Illinois, Michigan, Ohio, and Wisconsin held their primaries on the same day. Although no change was made in the date for Wisconsin’s 2000 presidential preference primary, there was discussion by Wisconsin’s U.S. Representative

Thomas Barrett, as well as various state legislative and party leaders, about holding future presidential primaries in conjunction with the state's February nonpartisan primary elections, rather than the April spring election.

Numerous suggestions have been made to improve the nomination system, including: 1) holding a national primary; 2) having four regional primaries – East, West, North, and South – beginning in March and ending in June of the election year with the order rotated every four years; and 3) conducting primaries and caucuses on five Tuesdays at 2-week intervals in May and June with each state being assigned a given Tuesday according to population. In Wisconsin, 1999 Assembly Joint Resolution 92, introduced by Representative Scott Walker and others, requests Congress to consider a rotating regional presidential primary system. The suggested plan would divide the United States into four geographic regions with Wisconsin included in the midwestern region. Under this system, Wisconsin would hold its primary on the first Monday after the first Tuesday in May 2004, and thereafter on a rotating basis in June, March, April, and May.

III. THE NATIONAL NOMINATING CONVENTIONS

The first stage of the presidential election concludes when the delegates from each party meet at their respective national conventions to nominate the candidates for President and Vice President. In 2000, the Republicans will meet July 31-August 3 in Philadelphia, and Democrats will convene August 14-17 in Los Angeles.

The 2000 Democratic National Convention will have a total of 4,366 delegates (compared to 4,320 delegates in 1996), and the 2000 Republican National Convention will have 2,066 (compared to 1,990 delegates in 1996). Both delegations include representatives of the District of Columbia, Puerto Rico, the U.S. Territories, and some miscellaneous slots.

The two parties differ in the method of allocating seats and the types of delegates selected. The Democrats, for example, determine the number of delegates a state may send on the basis of a state's showing in the past three elections and the state's votes in the preceding Electoral College.

The Republicans, on the other hand, allow each state a certain base number of at-large delegates, plus three district delegates for each Congressional district in the state. They also allocate additional delegates at-large on the basis of a state's support for the Republican candidate in the most recent presidential election and for the Republican candidates in the most recent elections for governor, U.S. Senator and U.S. Representative. This year, in an effort to ease frontloading, the Republicans added a bonus percentage to the state's delegate total if the state held its preference primaries, caucuses, or conventions within specific dates: March 15-April 14 (5%), April 15-May 14 (7.5%), and May 15-June 20 (10%).

Wisconsin's Democratic Delegates. A total of 92 Wisconsin Democratic delegates are slated to attend the national convention, along with nine district alternates and four at-large alternates. The Wisconsin delegation is selected, in part, through a state caucus following the presidential primary. Delegates from the nine congressional districts and statewide at-large delegates are chosen on the basis of proportional representation, related to the popular vote received in the district or state. Wisconsin follows the rules of the Democratic National Committee, which deny district delegates to a candidate who receives less than 15% of a particular district vote and at-large delegates to a candidate with less than 15% of the state vote. Other

delegates, such as elected officials, are chosen by the state party's administrative committee. The delegation will include 50 district delegates, 19 at-large delegates, and 23 party leaders and elected official delegates. National party rules require gender equality in the makeup of the delegation.

Wisconsin's Republican Delegates. The Wisconsin Republicans will choose 37 delegates for their 2000 national convention through a caucus following the presidential primary. They use a "winner-take-all" system, instead of proportional representation. The winner of a congressional district wins all delegate slots for that district, and the statewide winner gets all the at-large delegates. The Wisconsin Republican Party delegation consists of 27 congressional district delegates (three from each district), six at-large delegates, and four bonus-delegate slots awarded on the following criteria: GOP governor bonus (1), GOP control of either house of the state legislature or 25% increase in GOP membership (1), and scheduling the Wisconsin primary between March 15 and April 14 (2). In addition, there are 37 alternates. National party rules do not require gender equality in the makeup of the delegation.

Court Decisions About Delegate Selection. In recent years, questions have been raised about the authority of individual states to legislate delegate selection procedures. In *Cousins v. Wigoda*, 419 U.S. 477 (1975), the U.S. Supreme Court declared: "The States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates." Under this ruling, party rules would preempt and supersede state laws governing the selection and apportionment of party delegates in case of any conflicts.

Several years later, Wisconsin was the focus of another U.S. Supreme Court case concerning the role of the state versus the national party in determining delegates to the national political party conventions. In *Democratic Party of United States of America et al. v. Wisconsin ex rel. Bronson C. La Follette et al.*, 450 U.S. 107 (1981), the Democratic National Committee (DNC) challenged the Wisconsin state law that mandated the Wisconsin delegation must be bound by the results of the April open primary. The DNC was concerned that persons voting the Democratic ballot were not required to publicly declare their party affiliation, as required by national party rules. As a result, members of other political parties (or voters with no political affiliation) could, and did, "cross over" to affect the Democratic outcome. The party claimed that its right to freedom of association, as protected by the First and Fourteenth Amendments to the U.S. Constitution, would be violated if it had to accept delegates forced on it by "outsiders". The Court ruled that it was permissible for the Democratic Party of the United States to refuse to seat delegates from the State of Wisconsin because they were elected in an open primary, a procedure that violated national party rules. The Court stated:

... a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution. (123-124)

The State has a substantial interest in the manner in which its elections are conducted, and the National Party has a substantial interest in the manner in which the delegates to its National Convention are selected. But these interests are not incompatible and to the limited extent they clash in this case, both interests can be preserved. The National Party rules do not forbid Wisconsin to conduct an open primary. But if Wisconsin does open its primary, it cannot require that Wis-

consin delegates to the National Party Convention vote there in accordance with the primary results, if to do so would violate Party rules. (126)

The result of this 1981 case and the imposition of the national party rules was that, although the Wisconsin presidential primary was held on April 3, 1984, the Wisconsin Democratic Party used a party caucus system to select its delegates to the 1984 national convention. (The Republican Party used the primary results to allocate its delegates as usual.)

In March 1986, the DNC changed its position and allowed Wisconsin Democrats to select their national convention delegates based on an open primary rather than a party caucus system. Thus, Wisconsin Democratic delegates in 1988 and the following conventions have tended to reflect the results of the April presidential preference vote.

The Wisconsin Legislature accommodated the U.S. Supreme Court's decision by passing 1985 Wisconsin Act 304, effective July 1, 1986, which repealed the statutory provisions requiring that the delegate selection for the national conventions reflect the results of the April primary. Although Wisconsin law still provides for an open presidential preference vote, the statutes no longer dictate how delegates to the national party conventions are selected. The primary serves only an advisory function for the subsequent party caucuses, which actually select the convention delegates.

Convention Procedure. In their national conventions, the parties nominate their presidential and vice presidential candidates and adopt a national party platform. Second only to the elections themselves, these mass meetings are the highlight of party politics in the United States, and they receive full media attention. The hopes and future success of a party are often tied to the success of its standard bearer in the November election, and the enthusiasm expressed by the many delegates in fulfilling their convention duties serves as a unifying force that strengthens and preserves the party.

National party conventions are not regulated by federal or state law. Each party sets its own rules and regulations, but the operating procedures for the two major conventions are actually quite similar. At the opening of each convention, a temporary chairperson is chosen to conduct proceedings while the credentials committee checks the state delegates and seats those approved. When the official delegates have been seated, the convention elects its permanent chairperson and votes on the national party platform, which has been prepared by the platform committee.

With the advent of television coverage, the conventions have tended to schedule their major events for prime time, and presidential nominations usually begin by the third evening of the convention. Each state is polled in alphabetical order. States that do not wish to nominate a candidate yield to the next state. A nomination by one state is seconded by another state, and it is customary that, when a name is submitted, there is a nominating and a seconding speech.

Voting on the nominees begins after all nominations have been made and seconded. A voice vote is conducted alphabetically by state, and a simple majority is sufficient to select the party's presidential candidate. Since 1952, no major convention has required more than one ballot to determine its presidential candidate. Prior to the introduction of primary elections to narrow the field of candidates, and televised coverage, which encourages a show of unity before the general public, voting could run for many ballots with the "favorite sons" of many states in contention. The record number of presidential ballots occurred in 1924, when the Democratic National Convention required 103 ballots to nominate John W. Davis.

Once the national convention has selected its presidential candidate, it begins the same process to choose the candidate for Vice President. While nominations may be made from the floor, it is customary for the presidential candidates to name their own running mates. The convention usually nominates these choices and affirms them by acclamation.

Financing the Conventions. Convention costs have mounted over the years. The funds contributed by taxpayers cover only part of the total amount needed. The major portion of funding is raised through underwriting by the host cities and host states and corporate contributions. (Corporations are barred from contributing to individual candidates.) According to recent news reports, this year's host cities have been busy soliciting money. The *Philadelphia Inquirer* reported that at the beginning of this year, many prominent Philadelphia-area and national companies have already contributed between \$20 million and \$25 million to help offset the costs of the Republican National Convention. The San Diego *Union-Tribune* reported last November that corporate donors had already guaranteed 65% of the \$35.3 million needed to bring the Democratic National Convention to Los Angeles.

In the late 1970s, Congress established a federally funded grant program to help major parties finance their respective conventions. The intent of Congress in establishing these grants was to curtail undue influence of corporate interests. The FEC has certified \$13.2 million to support the 2000 nominating conventions for each of the two major political parties. If the party accepts funding, it must limit its convention spending to that amount. Minor parties may qualify for partial convention funding depending on their presidential candidates' vote total in the preceding election. The Reform Party will be entitled to \$2.5 million in 2000.

IV. THE ROLE OF THE ELECTORAL COLLEGE

Although most voters assume they are electing the President and Vice President when they go to the polls in November, in fact, they are choosing "presidential electors", who will cast the actual ballots for those offices. The framers of the Constitution had difficulty deciding how to select the President, and finally agreed upon the system of presidential electors as a compromise to offset fears about leaving such a critical decision to Congress or the voters at-large.

2000 ALLOCATION OF PRESIDENTIAL ELECTORS

State	Electors	State	Electors	State	Electors
Alabama	9	Kentucky	8	North Dakota	3
Alaska	3	Louisiana	9	Ohio	21
Arizona	8	Maine	4	Oklahoma	8
Arkansas	6	Maryland	10	Oregon	7
California	54	Massachusetts	12	Pennsylvania	23
Colorado	8	Michigan	18	Rhode Island	4
Connecticut	8	Minnesota	10	South Carolina	8
Delaware	3	Mississippi	7	South Dakota	3
District of Columbia	3	Missouri	11	Tennessee	11
Florida	25	Montana	3	Texas	32
Georgia	13	Nebraska	5	Utah	5
Hawaii	4	Nevada	4	Vermont	3
Idaho	4	New Hampshire	4	Virginia	13
Illinois	22	New Jersey	15	Washington	11
Indiana	12	New Mexico	5	West Virginia	5
Iowa	7	New York	33	Wisconsin	11
Kansas	6	North Carolina	14	Wyoming	3
				TOTAL	538

There are a total of 538 electors nationwide, who are collectively called the "Electoral College". Each state has as many electors as its combined number of senators and representatives to Congress, so the state allocations range from 54 in California to a minimum of three in those states that have two senators and only one representative. (The District of Columbia has three electors, based on the Twenty-Third Amendment to the Constitution, ratified in 1961.) Wisconsin has 11 electors, because its Congressional delegation includes two senators and nine representatives. The national allocation of the presidential electors is likely to change before the 2004 election due to the 2000 U.S. Census. For example, if Wisconsin loses a congressional seat, as some think it might, its number of electors would drop to 10.

The electors never meet as a group. Instead, they are required by federal law to gather in their respective states to vote on the first Monday after the second Wednesday in December of the presidential year (December 18, 2000). To be elected President, a candidate must receive a majority (at least 270) of the possible national total of electoral votes for that office. The Vice President is chosen on a separate ballot and must also receive at least 270 votes. Theoretically, the President and Vice President could be elected from different parties, but party loyalty makes that outcome unlikely.

Federal Provisions. The operation of the Electoral College is closely controlled by the U.S. Constitution, federal law, and state statutes. Curiously, although the electoral method was created by the U.S. Constitution, the popular term "electoral college" does not appear anywhere in the Constitution or any of its amendments. Nor is it used in any of the federal statutes passed in later years to define the process.

Article II, Section 1, of the U.S. Constitution provides:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative or person holding an office of trust or profit under the United States, shall be appointed an elector.

The U.S. Constitution gives the states considerable latitude in determining how their respective presidential electors are chosen. Originally, state legislatures selected the electors themselves, but they have since opted for a popular vote by the people in November. Federal law now requires: "The electors of President and Vice President shall be appointed in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President."

Problems in electoral voting arose early due to development of political parties and the fact that the original constitution did not require the electors to vote separately for the offices of President and Vice President. Instead, the electors cast two ballots at the same time without specifying the office, and the top two vote getters were named President and Vice President. In 1800, this voting procedure created a tie vote between Thomas Jefferson and Aaron Burr, which had to be settled by the House of Representatives. As a result, the Twelfth Amendment to the U.S. Constitution was ratified in June 1804 to require the electors to cast separate ballots for each office and record the number of votes. It also provided: "The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed . . ."

Wisconsin Provisions. Section 8.18, Wisconsin Statutes, provides that on the first Tuesday in October of a presidential election year (October 10, 2000), each political party's state officers,

holdover state senators and its candidates nominated in the September primary for state and legislative offices, will meet in the State Capitol to nominate the party's slate of presidential electors. The slate for each party consists of one elector nominated from each of the nine congressional districts and two electors from the state at-large. Once the nominees are determined by vote, their names are certified immediately by the chairperson of the party's state committee to the chairperson of the state Elections Board.

In addition to the participation of recognized political parties in the presidential elector process, Wisconsin also provides for the selection of electors in November on behalf of minor parties and independent candidates. According to Section 8.20, Wisconsin Statutes, minor party or independent candidates for President and Vice President must submit their nomination papers by 5 p.m. on the first Tuesday in September (September 5, 2000). The nomination papers must contain 2,000 to 4,000 signatures and must list one candidate for elector from each congressional district and two from the state at-large. Section 8.185, Wisconsin Statutes, allows write-in candidates for President and Vice President to seek the appointment of their electors in the November election. However, write-in votes are dismissed as merely "scattering" unless the candidate has filed a list of presidential electors with the state Elections Board at least 14 days before the election or the candidate receives more than 10% of the total vote cast in the smallest election reporting unit.

In Wisconsin and most other states, the names of the candidates for President and Vice President appear on the November ballot in place of the names of the presidential electors. Section 5.10, Wisconsin Statutes, provides:

Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast.

On the first Monday after the second Wednesday in December in each presidential year (December 18, 2000), the presidential electors, who were chosen when their candidate won the most popular votes in November, meet at the State Capitol in Madison at noon to cast their ballots for President and Vice President. This meeting represents Wisconsin's portion of the Electoral College.

Section 7.75, Wisconsin Statutes, states that electors must cast a ballot for the presidential and vice presidential candidates they were chosen to elect. However, since there is no statutory penalty for being a "faithless elector" by voting for someone else, the only real constraints on elector voting are custom, tradition, and loyalty to the candidate and party. This feature in the electoral voting varies from state to state. Although 24 states, including Wisconsin, bind their electors to vote as pledged, only five have actual penalties for violations. (Despite this, it appears that nationally, since the first Electoral College vote in 1789, only nine electors have violated their pledges.)

What If the Popular Vote and the Electoral Vote Are at Variance? The prevalent method of electoral voting, as set by law in almost all states, allows the presidential candidate who wins a plurality (the highest number but not necessarily a majority) of the state's popular vote in November to receive all the state's electoral votes. Only Maine and Nebraska provide that each elector who represents a congressional district must vote according to the district's plurality, rather than following the statewide vote. Because of the "winner-take-all" system, a candidate may win the presidency without receiving a plurality of the overall national popular vote. Opponents of the Electoral College and proponents of the direct election of the pres-

idency often cite the cases in United States history when a President won office through the electoral vote although he actually had fewer popular votes nationwide than his opponent. There were three such Presidents: John Quincy Adams (1824), Rutherford Hayes (1876), and Benjamin Harrison (1888).

What If the Electors Are Deadlocked? A strong bid by a third party candidate could result in the winner of the popular vote failing to win the required majority of 270 or more electoral votes. If the front-runner is denied a majority of the electoral votes, the election of the President must be conducted in the House of Representatives. The House makes its selection from the three candidates with the most electoral votes by voting on a state-by-state basis. The Twelfth Amendment to the U.S. Constitution provides:

[T]he votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states [34], and a majority of all the states [26] shall be necessary to a choice.

The House of Representatives has been involved in electing a President on only two occasions, following the general elections of 1800 (Thomas Jefferson) and 1824 (John Quincy Adams).

The Twelfth Amendment provides that if no candidate receives a majority of the vice presidential electoral vote, the Vice President will be chosen by the Senate from the two candidates receiving the most votes. The senators vote individually, rather than by state. A quorum for this purpose is two-thirds of the senators (67), and a majority (51) is necessary to make a choice. The only occasion when the Senate was called upon to elect a Vice President occurred in 1837 when Richard Johnson, because of a personal scandal, did not receive a majority of the electoral votes. The Senate did, however, elect Johnson to the office.

Should the Electoral College Be Continued? The Electoral College has had its supporters and opponents over the years, but feelings are strongest when close bipartisan elections or strong third party candidates threaten to overturn the results of the November popular election.

A comprehensive description of the problems with the Electoral College is found in a 1967 publication by the American Bar Association, *Electing the President, A Report on the Commission on Electoral College Reform*:

The electoral college method of electing a President of the United States is archaic, undemocratic, complex, ambiguous, indirect, and dangerous. Among other things, the present system allows a person to become President with fewer popular votes than his major opponent; grants all of a state's electoral votes to the winner of the most popular votes in the state thereby canceling all minority votes cast in the state; makes it possible for presidential electors to vote against the national candidates of their party; awards all of a state's electoral votes to the popular winner in the state regardless of voter turnout in the state; assigns to each state at least 3 electoral votes regardless of its size; fails to take into account population changes in a state between censuses; allows for the possibility of a President and a Vice President from different political parties; and employs an unrepresentative system of voting for President in the House of Representatives.

The major criticisms leveled by opponents against the Electoral College include: 1) a candidate with a majority of the popular vote can lose the election; 2) a voting deadlock in the Electoral College could throw the presidential selection process into the House of Representatives allowing all kinds of deals to be made; and 3) only one-half of the states require electors to vote for the candidate who won the state's popular vote, while the electors from the other states are theoretically able to vote for whomever they please.

Supporters of the Electoral College point out that the present system has been used for many years and has served the country fairly well. Abolishing the Electoral College and replacing it with a direct election of the President, they claim, would encourage the rise of multiple political parties, which would be detrimental to the two-party system. Another fear is that abolishing the Electoral College would tend to reduce the importance of the states in the federal system. Under a direct election system, states with large populations could become overly important at the expense of the less populated states. Proponents also claim that the "winner-take-all" mechanism can have a positive effect because it magnifies the winner's margin and, thereby creates a sense of national support for the newly elected President, rather than exposing divisions in the national electorate.

Alternatives to the Current Electoral College. The proposals to alter the manner of electing the President fall into four principal categories:

1) *Direct popular election* would abolish the Electoral College and replace it with a direct, nationwide popular vote for President and Vice President. Most of the direct popular election proposals require that a winning candidate must receive at least 40% of the votes cast.

2) The *district system*, which is similar to the current systems in Maine and Nebraska, would retain the Electoral College, but abolish the "winner-take-all" tabulation of electoral votes within a state. This system would provide for the election of one elector from each of the nation's 435 congressional districts with two electors chosen at-large in each of the 50 states. The District of Columbia would continue to select three electors.

3) The *proportional system* would keep each state's electoral vote, but divide the votes in direct proportion to the popular vote in the state.

4) The *automatic plan* would keep the electoral system but abolish the individual electors by requiring that the electoral vote of each state be cast automatically for the winner of a plurality in that state.

Direct popular election would require abolishing the Electoral College and would necessitate amendment of the U.S. Constitution. The other three proposed changes in the Electoral College could be accomplished through amending legislation passed by the Congress.

The Final Step. After the electors cast their electoral ballots – one for president and one for vice president – in December, the stated votes are transmitted to the President of the U.S. Senate who on the following January 6, opens and reads them before both houses of Congress. The presidential candidate who received at least 270 electoral votes (a majority of the 538 possible votes) is declared president. Likewise, the vice president must be selected by an absolute majority. At noon on January 20, the duly elected president and vice president are sworn into office.

V. APPENDIX

2000 PRESIDENTIAL PRIMARIES AND CAUCUSES BY DATE

State	Date	Method of Selection	Democratic Delegates	Republican Delegates
Iowa	Jan 24	Caucus	56	25
New Hampshire	Feb. 1	Primary	29	17
Delaware	Feb. 8 (Rep.); March 27 (Dem.)	Primary (R); Caucus (D)	22	12
South Carolina	Feb. 19 (Rep.); March 9 (Dem.)	Primary (R); Caucus (D)	52	37
Arizona	Feb. 22 (Rep.); March 11 (Dem.)	Primary (R); Party-run Primary (D)	55	30
Michigan	Feb. 22 (Rep.); March 11 (Dem.)	Primary (R); Party-run Primary (D)	157	58
North Dakota	Feb. 29 (Rep.); March 7 (Dem.)	Primary (R); Caucus (D)	22	19
Virginia	Feb. 29 (Rep.); April 15, 17 (Dem.)	Primary (R); Caucus (D)	96	56
California	March 7	Primary	434	162
Connecticut	March 7	Primary	67	25
Georgia	March 7	Primary	92	54
Hawaii	March 7 (Dem.); May 19 (Rep.)	Caucus/Convention	33	14
Idaho	March 7 (Dem.); May 23 (Rep.)	Caucus (D); Primary (R)	23	28
Maine	March 7	Primary	32	14
Maryland	March 7	Primary	93	31
Massachusetts	March 7	Primary	118	37
Missouri	March 7	Primary	92	35
New York	March 7	Primary	294	101
Ohio	March 7	Primary	170	69
Rhode Island	March 7	Primary	33	14
Vermont	March 7	Primary	22	12
Washington	March 7	Caucus (D); Caucus/Convention (R)	94	37
Colorado	March 10	Primary	61	40
Utah	March 10	Primary	29	29
Wyoming	March 10 (Rep.); March 25 (Dem.)	Caucus (D); Convention (R)	18	22
Minnesota	March 11, 12 (Dem.); April 25 (Rep.)	Caucus (D); Caucus/Convention (R)	91	34
Nevada	March 12 (Dem.); May 25 (Rep.)	Caucus (D); Caucus/Convention (R)	29	17
Florida	March 14	Primary	186	80
Louisiana	March 14	Primary	73	29
Mississippi	March 14	Primary	48	33
Oklahoma	March 14	Primary	52	38
Tennessee	March 14	Primary	81	37
Texas	March 14	Caucus/Primary Combination (D); Primary (R)	231	124
Illinois	March 21	Primary	189	74
Kansas	April 4	Primary	42	35
Pennsylvania	April 4	Primary	191	78
Wisconsin	April 4	Primary	92	37
Alaska	April 22 (D); May 19 (R)	Caucus (D); Caucus/Convention (R)	19	23
District of Columbia	May 2	Primary	33	15
Indiana	May 2	Primary	88	55
North Carolina	May 2	Primary	103	62
Nebraska	May 9	Primary	32	30
West Virginia	May 9	Primary	42	18
Kentucky	May 15 (Rep.); May 23 (Dem.)	Primary	58	31
Oregon	May 16	Primary	58	24
Arkansas	May 23	Primary	48	24
Alabama	June 6	Primary	63	44
Montana	June 6	Primary	24	23
New Jersey	June 6	Primary	124	54
New Mexico	June 6	Primary	35	21
South Dakota	June 6	Primary	22	22

Sources: Democratic National Convention 2000; Republican National Committee.

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