

February 9, 2011

The Hon. Hollis French
State Capitol Room 417
Juneau, AK 99801

Dear Senator French:

I am writing in the hope that you will include the attached testimony in your consideration of S. 39.

Tara Ross wrote you earlier and expressed her opposition from a thoughtful constitutionally conservative point of view. I am writing from a professionally non-partisan, personally liberal point of view.

I would hope that you might take these views into consideration at your hearing tomorrow and I thank you in advance for so doing.

Sincerely yours,

Curtis Gans

TESTIMONY
of
Curtis Gans, Director
CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE
to
STATE AFFAIRS COMMITTEE
ALASKA STATE SENATE
Re: S.31
February 8, 2011

My name is Curtis Gans. I am director of the Center for the Study for the American Electorate, a non-partisan, non-profit research and public policy development institution which I co-founded in 1976 and have been its executive director since that time. The primary mission of that institution has been to provide data and analysis about citizen participation in America's political life and to pursue bi-partisanly supported public policy initiatives aimed at enhancing voting and other forms of civic involvement. With respect the issues facing this hearing, I have testified twice before Congress on this issue, have written about it for more than one major publication, have been cited in a variety of publications and now am a mid-wife to a small bi-partisan study committee headed by former Reps. Mickey Edwards and Martin Frost looking for solutions to problems posed by the electoral college, solutions that do not include the direct election of the president.

I am grateful for the opportunity presented to express my considered views on this issue and thank both the elected officials and staff that made this testimony possible.

The question that is being raised by National Popular Vote and the campaign for direct elections for president is not whether our elections should be more democratic but rather what kind of democracy should the United States be.

The proponents of direct elections for president want to ensure: 1. That each citizen's

vote to be equal to every other citizen's vote; 2. That the person who gets the greatest number of votes nationally becomes president, whether that vote count constitutes a majority of the American eligible citizens (a result never achieved by any candidate for president since 1824), a majority of those voting (achieved by about 60 percent of the persons elevated to the presidency) or only a plurality of those voting (a group that includes not only Al Gore but also Andrew Jackson, Abraham Lincoln, Woodrow Wilson, Harry S. Truman, John F. Kennedy, Richard Nixon, Bill Clinton and eight other presidents). and 3. That no minor party or independent candidate B a Ralph Nader, Ross Perot, John Anderson or George Wallace B can deny the person with the greatest number of citizen votes the presidency by denying him or her the electoral votes in one or more states..

Direct elections would accomplish all of these goals. The question is at what price.

The basic effect of moving from an electoral college system to direct elections would be to totally nationalize the election of American presidents with some major negative consequences, including but not limited to:

1. Manipulation: The central question in the creation of any system of election is its incentive structure -- what activities it encourages and what it does not. Arguably the worst thing that has happened in the modern era to the conduct of American politics is the coaxial cable and the free rein it has given political consultants to pollute our airwaves with attack ads every biennium -- driving up the cost of campaigns, driving voters both from the polls and increasingly from respect either for political leadership or the political process as a whole.

While even with the electoral college, increasingly the bulk of campaign resources are poured into televised political advertising, direct elections would insure that almost all monetary resources would be poured into such advertising. There would be virtually no incentive to try to mobilize constituencies, organize specific interests or devote any resources to such things as voter registration and education. The result of direct elections is that campaigns would be run on

the basis of polling the gross number of likely voters across America and targeting television messages to their interests and views. Our election would, in essence, not be a contest between two putative Presidents, but rather between two would-be king-makers, the non-responsible and increasingly irresponsible consultants who generate the advertising -- in a race to the bottom to see who can do the better job of turning off the other's potential voters.

As a corollary to a national media campaign is that the rest of a candidate's political activities are to alight in various places for brief periods to get free media attention. And it is virtually certain that the places the candidates will alight will be those with the largest population and the greatest media reach. That does not, I think, include Alaska B unless a former governor is a nominee.

2. Grassroots engagement: The same incentives that would, under a direct election system, propel all campaign resources into television advertising would virtually eliminate the devotion of any resources to grassroots and citizen involvement. Under the electoral college, there is a strong incentive -- at least in some states -- for campaigns, interests and others to organize groups on the grassroots level because some of those groups may be determinative in winning state electoral votes. It is, for instance, in the Republican Party's interest to organize Christian conservatives in the south to offset the Democratic Party's advantage among African-Americans in the region.

But were the nation as a whole the only base of votes, it is unlikely that any campaign would find it cost-effective to devote any resources to organization and involvement. That, in turn, would undermine the already declining base of political participation and American pluralism.

3. Pluralism: The success of American democracy has rested, in part, on achieving a balance between the will and desires of the majority of Americans and recognizing the rights and needs of various minorities. The electoral college serves to protect the latter in national politics.

To take the most obvious example, the number of farmers in the United States has dwindled so precipitously that nationally they are no longer a serious numerical factor in electoral outcomes -- despite the fact that most of the food we have on our tables is due to their individual and collective effort. In a system of direct elections, their concerns could easily be ignored. But because their votes are critical to winning electoral votes in several mid-western and western states, their needs must be addressed, their views must be solicited, their allegiances must be competed for.

The needs and aspirations of America's African-American population could easily be ignored in a direct election. They comprise perhaps 12 percent of the eligible electorate. But in several Southern states, they account for nearly a majority of eligible citizens, and they comprise a significant and, perhaps on occasions, pivotal minorities in several northern states. The electoral college insures, in national elections, that their views must be taken into account.

Union members, Christian fundamentalists, Latinos, fiscal conservatives, rural denizens are but a few of the significant minorities whose views and needs might be ignored if campaigns were totally nationalized.

American governance -- and the durability of its laws --derives its strength, not from the one-time expression of a national will, but from the coalescence of disparate interests into consensus. Direct election promotes a national will. The electoral college is a primary instrument for forging coalition and consensus.

4. Participation: The undermining of both grassroots activity and pluralism -- mobilization and sub-party level engagement cannot but have a negative effect on participation. So too will the aggregation of votes solely on a national level.

In this age of intense polling, where the movement of national numbers in the

Presidential horse-race is tracked more intensively and surely more publicly than the heartbeat and blood pressure of a patient in intensive care, it will become increasingly difficult for the citizen to see how his vote will make much difference in a national electorate in which the margins of victory are usually in the millions of votes. It is much more likely that a citizen will see, in most jurisdictions (the District of Columbia excepted), his or her vote making a difference in the hundreds or thousands (as in less than 1,000 in Florida in 2000) which determine the allocation of electoral votes in individual states. In a sense the existence of an electoral college enhances both the perception and reality of electoral competition, where direct elections acts in precisely the opposite direction.

In recent elections, because of the intense focus of campaign activity B including massive grassroots campaigns, coalition building in those states and effective person-to-person get out the vote campaigns B turnout in the "battleground states" has substantially exceeded that of the other states that have been elected or get only a televised advertising campaign.

5. Federalism: There were times, particularly in the 1960's, when those who supported segregation of the races tended to use the cover of state's rights to mask their desire to keep African-Americans in their place, when the structure of American federalism -- the diffusion of power between the national government and the states and localities -- was called into question.

More recently, however, there is a bi- or multi-partisan consensus that the idea of states and localities might be a good one -- that the administration of many programs is better handled at levels closer to the citizenry, that the states do serve as innovators and laboratories for useful, productive and, particularly in the cases of welfare reform and crime control, better public policy solutions than the national government can formulate.

In national politics, the instrumentality which forces consideration of federalism is the electoral college. By mandating the gathering of votes by states, it forces the engagement of state leaders and party organizations and elevates concern about state and local issues. We sacrifice

that, I believe, to the detriment of the welfare of American democracy.

6. Recounts: While the situation may not occur often, but likely might have occurred both in the 1960 and 2000 elections, a very close election with disputes over the validity of votes and the bona fides of some casting ballots might call for a recount as occurred in Florida in 2000 and might have occurred in Illinois and Texas in 1960 but for the grace, then, of Richard Nixon. But if such a recount were needed, one would need a recount of all the ballots cast in the nation, a process that would make the 37-days of recounts, contention and court decisions in 2000 seem like a pleasant walk in the park.

Supporters of direct elections usually cite polls to buttress their position -- polls which show a majority of Americans supporting direct elections. But I would venture to say that none of those polls raise the consequences of direct elections in the questions that are asked. Were the public asked not only whether they desired direct elections, but whether they desired direct elections even if it meant campaigns only run on television, erosion of grassroots activity and pluralism, declining voter participation and the erosion of federalism, the results might be very different.

Our founding fathers may not have had the best reasons for adopting an indirect system for the election of Presidents. But American democracy has survived, prospered, grown and strengthened under this means of electing our presidents and despite the fact that a handful of winners of a plurality of the national vote were not elevated to the presidency. It is not at all clear whether it would prosper equally in a direct election system.

The electoral college system of electing presidents is not without its flaws, the two most prominent of which are the limited number of states in which the presidency is contested and the profoundly inequitable procedure for decided elections in which neither candidate gets a majority of electoral votes.

Under the present electoral college system and with the exception of Maine and Nebraska, the winner of the popular vote in each state B whether the margin of victory is one vote or 1 million B gets all the electoral votes of that state. So, in states where, by demography and history, one party is assured of victory and the other of defeat both parties abandon those states in favor of states where there is competition and the electoral votes at stake may determine the electoral college outcome. So, in many recent elections as few as 12 states have been in play. But the problem is not the electoral college per se, but the winner-take-all aspect of the current way electors are chosen.

If instead of either direct elections or winner-take-all, states were to adopt either a proportional allocation of electors based on the popular vote outcome or the Maine-Nebraska system whereby the winner of states overall popular vote gets two electors (the standard based on U.S. Senate representation which is identical in all states) and the balance are given the popular vote winner in each congressional district, there would be an incentive to campaign in virtually every state, to engage in grassroots and coalition building activity, to enhance turnout and, probably but not certainly, achieve an electoral college result closer to that of the national popular vote than under the present system.

The current method of resolving elections in which no candidate achieves a majority of the popular vote is an abomination. Under the present Constitutionally-mandated system, the House of Representatives with each state casting one vote will elect the new president. That, in turn means, that Wyoming with 350,000 eligible voters will have the same clout as California with 24 million. That needs to be radically changed.

States have the power to choose how their electors are selected so they can choose proportionality or the Maine-Nebraska system, but it will take a constitutional amendment to change the method of resolving inconclusive electoral college results. Both, however, are worth doing.

To return to where this testimony started, do we want democracy by plebescite or do we

want a democracy which is more complex and more complete.

In sum, I hope you reject S.31, maintain the modest advantage of small states like Alaska, Connecticut, Vermont and Wyoming, among others in the election of presidents, and keep (and later perhaps improve) a system that has served the nation well and preserved certain essential underpinnings of a healthy American democracy.

Thank you again.