

Lawrence D. Longley and Neal R. Peirce

The **Electoral College Primer** 2000

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Lawrence D. Longley and Neal R. Peirce

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acknowledgments

We understand that not everyone is as interested in the mysteries of the electoral college as a means of determining the American president as we have come to be over a period of more than thirty years. Yet, as we argue in this book, the inadequacies of this means of electing the people's president may well, at some point, require an understanding of its strange quirks and important consequences.

We came to our mutual interest in the electoral college by different routes. Neal Peirce, first as political editor of *Congressional Quarterly* and then as a founding editor of the *National Journal*, found himself describing in numerous columns and articles how the electoral college works, and finally resolved to alert the general public to its potentially disastrous possibilities in a book published in 1968.

Lawrence Longley, a presidential scholar and political scientist, found Peirce's book so stimulating that he wrote his own study of the electoral college, *The Politics of Electoral College Reform*, published by Yale University Press in 1972 and revised in 1975. Subsequently, the two of us joined forces in 1981 on *The People's President*, also fittingly published by Yale University Press. This book traced the operations of the electoral college throughout American history and examined the intense efforts of the preceding fifteen years to abolish the beast.

Many people have assisted and stimulated our efforts over the years to clarify this almost inscrutable topic. Neal Peirce notes especially, once again, the advice and counsel of collaborator-advisers John D. Feerick, Charles W. Bischoff, and Roan Conrad and the late James C. Kirby, Jr. and Robert G. Dixon, Jr.

Lawrence Longley continues to be grateful for the challenging stimulation of his fine students at Lawrence University and at the Budapest University of Economics and ELTE University in Hungary. Two Lawrence University undergraduates stand out, not only as outstanding students but as collaborators in research and books. Alan G. Braun was co-author of *The Politics of Electoral College Reform*, and John H. Yunker, while a Lawrence undergraduate, co-authored several important research monographs and articles. Another then-undergraduate student also deserves special recognition: James D. Dana, now of Northwestern University. Dana and Longley collaborated on several studies measuring the changing biases of the electoral college in the 1980s and 1990s which have received congressional note. One of the special pleasures of teaching at a fine undergraduate school such as Lawrence University is having the opportunity of working with bright, young, emergent scholars like Braun, Yunker, and Dana.

The preparation of this book was invaluablely assisted by Vicki Koessl of Lawrence University, who skillfully produced the final manuscript and tables from materials previously prepared with care by Susan Peter. Their professionalism and unfailing good spirits are once again gratefully acknowledged. John Covell, senior editor at Yale University Press, provided important encouragement for the book, Lawrence Kenney was a skillful manuscript editor, and the book's index was well prepared by Julianne Means.

In closing, both authors wish to make special note of the support and kindnesses of their wives, Judith and Barbara. Behind every successful writer there often is a spouse encouraging one to "hit those keys," asking "Want some more coffee?" or gently suggesting that the author might want to get some sleep. We thank them.

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chapter one

The Election of 2000 Is Not Quite Decided: A Fantasy

Early in the morning of November 8, following election night, November 7, 2000, Peter Jennings of ABC Television sat back in his chair during a station break and surveyed the final election results.¹ He had looked forward to broadcasting the conclusion of the presidential contest of the year 2000 after months of reporting countless stories about the twists and turns of this remarkable political year, but he was stunned as the realization sank in that the election was by no means over. No candidate had received an electoral vote majority. The 2000 election had *not* been decided by the voters. Instead the election would depend on the future actions of candidates, electors, and members of the House of Representatives. It would be, he realized, a long and continuing story.

How had the nation arrived at an uncertain outcome on election night? A major factor was the personal unpopularity of the two major party nominees. Gov. George W. Bush of Texas had finally succeeded in defeating John McCain, Elizabeth Dole, Steve Forbes, and others to win the Republican presidential nomination, but only at the cost of making broad issue concessions to the Republican right—positions which had made it difficult for him to appeal to moderates and independents—and had generated a general impression of inconsistency. The result was a candidate who was viewed by many as standing for little except expediency: the nominee of a party dispirited over the lack of commitment and national political experience of its own standard-bearer.

Vice President Al Gore, on the other hand, had presided over a relative love-in at the Democratic convention in August in Los

Angeles. As the candidate of a relatively unified party, in striking contrast with the ideologically deeply divided Republican party, he would have done better in November except for persistent concerns which lingered throughout the fall campaign over the economy, continuing disputes over his campaign fund-raising practices, and Gore's close association with the controversy-plagued outgoing Clinton administration. Vice President Gore, a leader on technology issues, was even criticized by some for the lack of national preparedness for computer problems manifested at the start of the year 2000. As election day approached, Gore was seen by many, after nearly eight years as vice president, as an uninspiring choice for the presidency—a candidate marked more by dullness than by leadership. Many wished there were an attractive alternative to the newfound staunch conservatism of Governor Bush and the longtime secondary figure of the outgoing Clinton administration, Al Gore.

The chief beneficiary of the general lack of enthusiasm for Bush and Gore was a personality who sprang forth on the national stage dramatically and unexpectedly in late October 1999. Four years earlier, in 1995, Gulf War military leader Gen. Colin L. Powell had been widely expected to be a candidate for the presidency in 1996, and his explorations, first of an independent presidency campaign and then of a campaign for the Republican nomination, had generated considerable excitement and media notice. In November 1995, however, General Powell had astonished the nation by announcing that he would not be a presidential candidate in 1996 (and presumably in subsequent elections). Thus his statement four years later, in October 1999, that he *would* seek the presidency in 2000 as a political independent “in order to offer the nation fresh and pragmatic national leadership” was not only a stunning surprise but to many seemed to promise an appealing contrast to the worn and dull personality of Al Gore and the new ideological stridency of George W. Bush.

There was precedent for the rekindled independent electoral ambitions of General Powell. Seven years earlier, in 1992, Ross Perot had launched a curious on-again, off-again independent presidential

candidacy which, nevertheless, won the votes of more than 19 million Americans—almost one in five of the electorate. This was a total vote far in excess of the support won by any previous independent or third-party candidate in the history of the Republic. In 1996, Perot's presidential efforts were less successful as the candidate of his personally organized Reform party, winning that year only 8.4 percent of the national vote. Still, Perot's twin presidential candidacies of 1992 and 1996 offered Powell precedent and encouragement that an independent choice for president might have significant electoral appeal.

Emboldened by polls reporting continuing high support for himself as a widely admired and popular national figure and by evidence of the disenchantment of most Americans with the two major parties and their prospective presidential nominees, Powell announced, in an interview on October 25, 1999, on CNN's *Larry King Live*, that he would be willing to offer himself as an independent candidate for election as president of the United States—if there was evidence of popular support for such a step. Such evidence rapidly emerged: in fast-solidifying poll support for Powell as a potential presidential candidate and in wave after wave of mail, faxes, and e-mails that cascaded into the newly established headquarters of the Powell for President National Exploratory Committee and flooded the editorial offices of every major media outlet, nationally and locally. Clearly General Powell's prospective candidacy had touched the nation's heart and mind.

A major initial problem facing the emerging Powell campaign was securing state ballot access for his independent presidential effort. If his name was not on the ballot in many states, his campaign efforts would quickly lose credibility, despite his personal popularity. The Powell campaign got off to a promising start by overcoming daunting obstacles to win official ballot designation in the megastate of California on November 23, 1999, within the first month of its existence. Subsequently it quickly went on to obtain ballot listings in Ohio, Maine, and additional states. By the early months of 2000 it

had established that it would be able to get on sufficient state ballots for potentially respectable popular and electoral vote showings. Assisted by high-powered legal counsel and supported by a network of enthusiastic volunteers (as well as many “paid volunteers”) in the various states, Powell eventually, by mid-2000, was able to gain ballot listings for his campaign in each of the fifty states, along with the District of Columbia. Some of these successes came easily: in the state of Washington he needed to obtain the signatures of fewer than 200 registered voters. Other states presented more substantial tasks: in North Carolina he needed 51,904 signatures and in Florida 65,596. Very specific state requirements concerning the geographical distribution of signatures, short petition circulation periods, and even, in South Carolina, the requirement that petition signers record not only their precinct numbers but also list their personal voter registration numbers, bedeviled his efforts. Many observers had initially thought that his independent campaign would at best be able to get on no more than 35 or 40 state ballots; its success in getting listed in all states (as had Perot’s candidacy in 1992 and 1996) provided a major boost to the new candidate’s credibility.

Early financing successes of the Powell movement gave important additional psychological and political encouragement. Direct mail and other citizen appeals by the Powell campaign during the final months of 1999 were surprisingly successful and raised, by the end of that year, \$14.8 million (subsequently to be supplemented by another \$23.7 million of donations in the calendar year 2000). The end-of-1999 financial base of the Powell independent campaign compared reasonably well with money initially raised by many of the major party contestants for their party’s nominations—although this rough equity of campaign resources would disappear in 2000 when the major party nominees enjoyed massive federal grants for their general election campaigns denied to independent candidate Powell.

Initially some had viewed Powell essentially as a “spoiler candidate” who had no realistic prospects of winning a significant number of electoral votes—if any. Such, in fact, had been precisely the result

of Perot's presidential efforts in 1992 and 1996, most notably in 1992 when, despite receiving nearly 19 percent of the national vote, he won no electoral votes at all—a total wiping out of his popular support when translated into electoral votes (a fate he likewise but less dramatically suffered in 1996). The anticipation that Powell would be unlikely to win any electoral votes, however, faded quickly as 1999 turned into 2000. Polls reported Powell's voter support increasing from the low 20 percent range to the mid-30 percent range, and—in a few fleeting national surveys—even exceeding the support of probable major party candidates Gore and Bush. By the beginning of the summer of 2000, Powell appeared to have converted the presidential election of 2000 into that rarity, a true three-way choice.

September of 2000, however, was not a good month for Colin Powell. He found himself increasingly hounded and derided by the press as lacking specific and substantive solutions to the nation's problems. In numerous interviews, his tendency to respond in generalities to detailed questions concerning his issue positions began to foster an image of a presidential candidate who lacked real understanding of the problems of the day. This growing perception of shallowness, together with occasionally manifested demonstrations of personal prickliness, evolved as a major setback to Powell's efforts to have his presidential candidacy taken seriously.

Further hurting Powell was the increasing tendency of the national media in September and during subsequent months of the 2000 election to focus on likely state-by-state election results. Under the electoral college system, virtually every state's electoral votes are determined as a bloc on a winner-take-all basis. Running second (or third) in a state has no rewards. In the closing weeks of the campaign, voter attention began to shift from the Powell phenomenon to the question of which candidate—Bush, Gore, or sometimes Powell—was likely to carry a particular state. Many states—especially some of the largest ones—appeared to be very closely balanced between Bush and Gore. Voters began to see a vote for Powell in those instances as “wasted” in terms of the real choice in their state. Powell's national

Table 1 Hypothetical Results of the 2000 Election

| | Popular Votes | | Electoral Votes | |
|--|---------------|------------|-----------------|------------|
| | Total | Percentage | Total | Percentage |
| George W. Bush (R) | 41,771,000 | 39.9 | 232 | 43.1 |
| Al Gore (D) | 39,921,000 | 38.2 | 244 | 45.4 |
| Colin L. Powell (Ind.) | 22,271,470 | 21.3 | 62 | 11.6 |
| Others | 637,190 | .6 | 0 | 0 |
| Bush popular vote margin of 1,850,000. Needed to win: 270 electoral votes. | | | | |

poll figures slowly declined as many Republicans and Democrats returned to their traditional partisan moorings and as independents shifted and divided between Powell and the two major party candidates. By election night, Powell's campaign had lost almost one-third of its strength from its high point in mid-July. Although it failed in the final election night popular vote tally to exhibit its full potential, the Powell campaign had succeeded—unintentionally, in the view of most observers—in creating an outcome of consequence: an undecided presidential election.

The final vote results, which Peter Jennings had been studying, were as shown in table 1.

Several stunning results were evident. George W. Bush had “won” the election in popular votes, receiving 1,850,000 more votes than Democratic candidate Al Gore. Bush's popular votes, however, had not been distributed among the states to maximum advantage. A number of his popular votes had been wasted in unnecessarily large margins beyond what was needed to carry a state. Gore's votes, on the other hand, had been more economically distributed among the states. He had carried his states by generally thin margins—and had carried enough such states to lead Bush in electoral votes, 244 to 232.

The popular vote and electoral vote results of the presidential election of 2000 had produced a divided verdict as to the winner of

the election. Bush could claim a popular vote win, while Gore could cite his lead in electoral votes. But neither candidate could claim the victory that counts: a majority of 270 votes in the electoral college. Colin Powell won his 62 electoral votes from narrow plurality wins in only four states: Maine (Powell's strongest state—4 electoral votes), Massachusetts (12 electoral votes), New York (33 electoral votes), and Virginia (13 electoral votes). With his 62 electoral votes—the most won by a third candidate in American history—Powell had deadlocked the electoral college. No one would know in early November who would be the next president. Instead, the decision would depend on actions to be taken forty-one days later, at meetings of the electoral college on December 18, or possibly on the voting of the House of Representatives starting on January 6, 2001.

Many observers initially assumed the deadlocked election would simply go to the House in January. Soon, however, it became evident that the next step in the troubled election of 2000 would be neither simple nor certain. Federal statutes call for meetings of each state's slate of electors in the respective state capitals on the first Monday after the second Wednesday in December, which in 2000 would be Monday, December 18. Electors are usually assumed to be rubber stamps, automatically confirming the popular verdict of the election day some six weeks earlier. In this case, however, enormous pressures were exerted on Powell electors to defect either to Gore or to Bush in order to resolve the constitutional crisis.

Gore would need only 26 more votes to win the election and assiduously appealed—publicly and privately—to each Powell elector, most of whom were newcomers to electoral politics and lacked extensive political background. The Gore appeal rested on a simple argument: the election is now effectively over as far as Powell and his campaign are concerned, and therefore the Powell elector should vote for Gore, the leader in electoral votes, in order to resolve the national election crisis and uncertainty. Further, if the election were not resolved now, subsequent proceedings in the House would give little recognition to the Powell campaign or to its concerns. Powell

electors were told that they could perform a public service by resolving the political and constitutional crisis by voting for the electoral vote winner now instead of delaying the decision for weeks by forcing the election into the uncertainties of the House in January. Gore's appeal to the Powell electors was particularly fervent because his strategists knew well that unless he could win in the electoral college on December 18, his prospects in the Republican-controlled House would be uncertain at best.

George Bush, of course, was not inactive during this period. In his press conference on November 9, two days after the election, he cited his lead of nearly 2 million popular votes over Gore and stressed "the legitimacy of the popular vote choice." He added pointedly, "I am sure the American people expect the candidate who has run first in popular votes to become president—either by actions of the electors on December 18, or by the constitutionally prescribed procedures beginning on January 6. Any other outcome would be an affront to the Constitution and to the democratic processes of free and fair popular elections."

Quiet and determined contact was also under way between the Bush campaign and individual Powell electors. The Bush appeal to these electors was that the popular will must be respected by the election as president of the candidate who had been preferred by the American people—George W. Bush. A concern of Bush strategists was that unless he could win in the electoral college on December 18, his claim of the legitimacy of the popular vote would be of less importance in the party-dominated House—although continuing, albeit weak, Republican majority control of that body offered Bush some solace.

Presidential candidate Powell was under perhaps the strongest pressure of any of the candidates. He had run hoping that he could carve out for himself a key position between Gore and Bush while offering himself as an outspoken fresh face capable of exercising forceful presidential leadership. Instead of winning a majority of the electoral votes—or even a figure comparable to his popular vote

exceeding 21 percent—he had received less than 12 percent of the electoral votes. Now his contribution to the presidential campaign was seen as that of a spoiler—a creator of crisis in the electoral college. In light of these bitter developments, what should he do?

Although Powell retained many sympathies with Republican issue concerns, he could not contemplate doing anything to enhance the likelihood of George Bush becoming president. The disdain and even contempt he felt toward Bush (more than toward Gore) as a result of many months of bitter and intensive feuding ruled out any Powell action now helping the Republican candidate.

Helping Gore, on the other hand, was a possibility. Only 26 votes separated him from an electoral college majority, and Powell had 62. He could be a kingmaker by giving Gore the necessary electoral votes, respect the “electoral vote verdict,” and resolve the national uncertainty all at once. Powell, however, could not bear to do it. Gore, he felt, represented little more than a continuation of the disastrous Clinton administration. If such weak leadership were elected, a Gore presidency would be the third administration in a row dominated by doctrinaire liberals and policy amateurs. Powell had fought too hard against both to be willing to renew their hold upon the presidency.

Accordingly, on November 29, Colin Powell issued a public appeal to his electors to hold fast and “vote according to the expectations of those who had voted for them” by voting for him on December 18. “The electoral college vote must reflect the popular vote results in each state,” he said. “The House of Representatives is the constitutionally mandated contingent electoral mechanism for resolving any electoral college deadlock.” Off the record he was said to be hopeful that the House, an institution deeply in disdain but comprised of members instinctively attuned to constituency sentiment, might be receptive to a candidate who could bring fresh perspective and action to national leadership and who also had run well in, and even carried, many members’ congressional districts.

On December 18, starting at noon local time, the national tele-

vision networks reported in continuous coverage the meetings of the electors in each of the states and the District of Columbia. By mid-afternoon, the nation knew the results: Bush had gained 8 Powell electors for a final electoral total of 240 votes, 30 short of a majority, and Gore had won the support of 7 Powell electors for 251 electoral votes, 19 short of the necessary number. Forty-seven electors had remained with Powell. There could be no second vote of the electoral college; it had completed its work, as inconclusive as it might be. The election now certainly would go to the newly elected House of Representatives, meeting at 1 P.M. on Saturday, January 6, 2001, only fourteen days before the constitutionally scheduled inauguration day for the new president of January 20.

The House of Representatives contingent procedure is a most curious mechanism for electing the president. Under the Twelfth Amendment to the Constitution, the House choice is limited to the top three candidates for president in electoral votes, and voting in the House is by one vote per state delegation. An absolute majority of state delegations—today, 26—is needed for House election of the president. Delegations which are evenly split cast no vote, but the necessary majority of 26 states still holds. Meanwhile the Senate meets to elect the vice president from among only the top *two* contenders, with one vote per senator.

Serious problems of fairness certainly exist: in the total exclusion of any representation in these proceedings for the 700,000 residents of the District of Columbia, the inhabitants of which had voted for president in November, and in the absolute equality, in the election of the president, of huge states such as California and New York and tiny states such as Rhode Island and Delaware. Beyond these problems of equity lurks a more serious problem: what if the House itself should deadlock and be unable to agree upon a president?

At precisely 1 P.M. on Saturday, January 6, 2001, the Senate and House met in joint session to count the electoral votes as certified by each state. By 2 P.M. it was official—no candidate for president or vice president had the necessary majority, and each chamber would have

to act. In light of what was seen as its particular difficulties in choosing from three candidates, the House began its proceedings first, starting at 3:30 P.M. the same day. (The Senate, accustomed to a more deliberate pace, did not begin its efforts to elect the vice president until two days later, on Monday, January 8.)

The House of Representatives found the election of president to be an exceedingly difficult task, in large part because no one party controlled a majority of state delegations. Prior to the 2000 congressional elections, 25 state delegations had been controlled by Republicans, 20 had been controlled by Democrats, 4 had been split and would cast no vote should party lines hold, and one state (Vermont) had been represented by a single representative, Bernard Sanders, a political independent and self-described Socialist. This apparent Republican advantage in House voting for president was, however, illusory, even prior to the 2000 election. Of the 25 Republican state delegations (one less than the absolute minimum of 26 states needed for presidential election), 7 were Republican by only one vote—a loss of even a single Republican seat in these states in November 2000 would remove it from the Republican column.

As expected, the 2000 congressional elections slightly eroded the already very thin Republican margin in the House (a net loss of 3 seats) and, more significantly, the number of Republican-controlled state delegations also declined. Two of the previously Republican states (New Mexico and Tennessee) became Democratic, while two previously Democratic states (Connecticut and Maine) became tied in partisan balance, and one formerly partisan-tied state (Nevada) gained a Democratic majority state delegation. Five states were left with divided partisan control. The apparent state vote, then, as of January 2001, was Republican 23, Democrat 21, divided 5, and Vermont represented by Congressman Sanders.

Further complicating matters was the continued candidacy of Colin Powell. Although he had carried only four states, including the megastate of New York, he had run first in 72 individual congressional districts across the country. Representatives from those districts