

Don't End Run the Constitution

Jim L. Riley

Professor of Politics

A plan to subvert existing procedures for choosing the President is now under consideration in the Colorado legislature and elsewhere. Based on fundamental misperceptions of the Electoral College and its significance, and grounded in the belief that established mechanisms for changing the Constitution are doomed to failure, supporters of this scheme are seeking to activate a group as few as eleven of the most populous states to enter into a Compact by which their electoral votes would automatically go to the candidate who got the most popular votes throughout the nation. Their singular goal is to guarantee that the individual who received the largest number of popular votes would become President.

There are two separate aspects of this plan – one procedural and one substantive -- that render it inappropriate and unwise in the extreme. In the first instance, it seeks to effectively change the Constitution without abiding by the established amending processes. Under the present method the popular votes for President are counted *within the states*. Changing this fundamental constitutional principle through the device of an Interstate Compact rather than following regular amendment processes amounts to denigration of the Constitution and the rule of law for a single political goal: direct national election of the President.

Direct or national popular election of the President has long been touted as necessary for the principle of democracy. Indeed, this method was considered and rejected twice by the Framers of the Constitution in 1787. The United States of America is not and never has been a democracy. It is a *federal republic*. Moreover, it should never seek to become a pure democracy which has features contrary to overriding principles of representative government, protection of minority rights and federalism. Substantively, the Interstate Compact proposal has all of the weaknesses and problems presented by the direct election amendment plan:

- Likely long periods of uncertainty and doubt about who won the popular vote would result– multiply the Florida debacle of 2000 by a factor of thousands due to challenged votes among the 180,000 voting precincts throughout the U.S. These bitter and protracted battles would involve scores if not hundreds of law suits.
- There is general agreement that proliferation and strengthening of extremist political parties would develop. This would be accompanied by a weakening of

the two party system and its moderating impact on political discourse. Very quickly, probably at the very first election held under the compact plan, there would be a splintering of the electorate producing a result in which no candidate would get anything near a majority of the popular vote. Absent a contingency plan to force a majority selection, the probability of a candidate being chosen President with a significantly diminished percent of the popular vote would be very high.

- Consequently, this plan would quickly produce demands that some form of run-off election be held. Run-off elections change the dynamic of the campaign in basic ways. Voters would tend to “vote their heart” in the first election in order to send a message to the political system. Tapping into this enlarged willingness by voters to abandon their weakly held allegiance to one of the major parties, demagogic candidates and extremist parties will flourish in numbers and grow in strength. Interest groups will tend to morph into political parties. Amidst this cacophony of louder and more abrasive political voices, will be the enormous cost involved in a run-off election. The cost would be both in terms of dollars and voter fatigue, particularly the voter with moderate views.
- States as states would lose all significance and relevance under this compact proposal. Candidates would seek only to maximize total voter support. The need to build concurrent pluralities among states with electoral votes totaling 270 or more would disappear.

Changing our current system of choosing a President to any popular vote plan would, in the words of the late Senator Patrick Moynihan (D-NY), be nothing less than “the most radical transformation in our political system that has ever been considered.” The existing method of electing a President requires the building of electoral pluralities throughout the country with vastly different views on public policy. No such requirement of political diversity would be present under the compact-direct election plan. Candidates would have no impetus to find common ground among widely disparate geographical, ideological, ethnic, and otherwise clustered groups.

Reformers, obsessed with the prospect of a “runner-up” president (one who received fewer national popular votes than his/her primary opponent but won the electoral vote) seem blinded to the potentially disastrous consequences of sacrificing the fundamental principle of federalism to the altar of a “plebiscitary majority.” Basing presidential elections on the federal principle requires election and governance by concurrent pluralities throughout the country. Candidate and Presidents must pay now attention to competing geographical interests. Yet, in the pursuit of a national majority reformers are willing to put at risk this vital foundation of the American political system. Moreover, if

the federal principle is not appropriate in choices for Presidents, why then is it appropriate for the selection of members of the House of Representatives and the U.S. Senate? The populist rationale' for direct national election of the President applies with full force to the Congress. And yet, in the words of Martin Diamond, "Americans have always believed that there is more to democracy itself than merely maximizing national majoritarianism; our idea of democracy includes responsiveness to *local* majorities as well." The risk of a "runner-up" President is far less dangerous to the well being of the nation than endangering fundamental political institutions and procedures.

There is no perfect electoral system. The present Electoral College method tends to produce decisive, generally accepted election results with Presidents who are able to govern with broad national support obtained from widely different regions of the country.