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Taming the Electoral College By Robert W. Bennett

On March 14 the *New York Times* endorsed a plan for popular election of the president without a constitutional amendment, describing it as "ingenious" and ascribing it to a group of former members of Congress. The idea was actually first advanced by Robert Bennett in a conference in the wake of the 2000 election and then in two articles in a journal called *The Green Bag* in 2001 and 2002. Bennett is the author of *Taming the Electoral College* just published by the Stanford University Press.

This book explores perilous aspects of the electoral college. Most serious is the possibility that "faithless electors" would ignore the popular vote in their states that put them in office and would thereby change an election outcome. If an election were changed by faithless electors, the damage to American democracy could be very great.

And second, if no electoral college majority votes in favor of a single candidate, the choice of the president lies with the House of Representatives, with each state commanding one vote. This too could prove damaging because of the power it would repose in just a few representatives.

The 2000 election showed that we would do well to take action now in order to prevent these scenarios from occurring. In any given election neither is likely but they become entirely possible in close electoral college races like that of 2000. Both possibilities could be dealt with by constitutional amendment, but passing an electoral college amendment has proven very difficult to achieve.

Taming the Electoral College offers nonconstitutional solutions to these and other risks that lurk in the electoral college process. It offers nuanced and fresh ideas for the non-constitutional possibility of a direct presidential election.

The author's preferred solution would be to move ahead as expeditiously as possible with faithless elector reform, and pursue the nationwide vote possibility after that effort is underway, and at least reasonably under control. This would not require universal adoption of a faithless elector provision. In the author's view, eventual action among all the states is quite likely once the problem—and the solution—gain a good measure of political visibility.

Finally, if this seems unworkable, the faithless elector effort might have to be put aside for the time being. The fate of the nationwide vote effort might then come into reasonably clear focus in the next three or four years. If it should be fully successful, the faithless elector problem would no longer be serious. If unsuccessful or successful in a more modest version, perhaps the faithless elector problem could then take center stage with a good chance of success.

“Bennett treats a timely, important, and complex topic with consummate skill, and his analysis of the electoral college's history and contemporary functioning is full of fresh insights. His writing is so lucid, even affable, that the book is sure to be engaging to both specialists and general readers. This is a remarkable accomplishment.”

—Stephen Siegel,
DePaul University

“Robert Bennett lucidly unveils the many complexities of a familiar but largely unknown institution in American life. The Electoral College is at once a process, a mystery and a dispenser of ultimate political power. It will henceforth be impossible to write knowledgeably about it without consulting this book.”

—Norman Dorsen,
New York University School of Law; ACLU President, 1976-1991

Robert W. Bennett is the Nathaniel L. Nathanson Professor of Law and former Dean of the School of Law at Northwestern University. He is the author of *Talking It Through: Puzzles of American Democracy* (2002).

To arrange an event or interview with the author, please call Puja Sangar at (650) 724-4211.