

ON THE ELECTORAL COLLEGE (delivered at the meeting of the Louisiana Electors, December 17, 2012, in the State Capitol)

Secretary Schedler, Bishop Muench, honorable Electors, and distinguished guests:

Sometime within the next hour, the eight electors present will be called upon to do their solemn duty of casting Louisiana's votes to choose the next President and Vice-President of the United States. If the law is being followed, electors are gathering at this hour in the capitals of all fifty states and the District of Columbia to do the same. Together these electors, 538 in all, constitute the Electoral College, and it is their votes—to be officially tallied by Congress in January—that determine who will be inaugurated to the Presidency and Vice-Presidency on January 20. The electors themselves were chosen by popular election in the states on November 6, running as pledged to vote for one or another slate of candidates. If all the electors vote today as pledged, Mr. Obama and Mr. Biden will defeat Mr. Romney and Mr. Ryan by a vote of 332 to 206.

Why does the U.S. Constitution require that the President be chosen in this way? Although no one thinks the system works as it was intended or even expected to work by the Founding Fathers, it does seem clear that they had in mind several important aims that the system still achieves. First, they meant for the President to be a constitutional officer, chosen for a limited time and governing according to law, neither a monarch, who claimed power without popular consent and employed it without regard to law, nor a demagogue, whose eloquence might so sway the majority that they would use him to work their will without restraint. Thus they meant for the President to be chosen by the people, but indirectly; the authoritative

will of the people was to be respected, but popular passions would be cooled. Second, they wanted to ensure that the executive would be independent of the legislative power, so they established an electoral body that existed only for a single purpose and in a sense for a single day and required that its members not hold other federal office. Third, they wanted to avoid convulsion, conspiracy, and corruption, which had plagued the election of supreme rulers over history; hence they did not convene the College as a convention in a single place, but established that the actual vote would be dispersed. Finally, they felt they needed to respect differences in the politics and the electorates of the different states; hence they left to the legislature of each state the choice of how to pick its electors.

Although some delegates to the Philadelphia Convention in 1787 that wrote the original Constitution supposed that the Electoral College would usually fail to pick a President and that as a consequence the choice would typically be made according to the fallback mechanism (election by the House of Representatives, each state voting as a unit), in practice Americans quickly found ways to organize politically in order to succeed through the Electoral College. Thus national political parties were born and proposed tickets for the Presidency and Vice-Presidency. The Twelfth Amendment in 1803 separated the vote for these two offices (initially the VP was the runner-up for the Presidency) and thus implicitly acknowledged the legitimacy of the fledgling party system. Originally only a few states chose their electors by a popular vote, while as late as the eve of the Civil War South Carolina chose its electors in the state legislature, as many had at first. By 1828, however, most of the states had begun to choose electors in a popular vote, pledged to

national candidates, and most decided that whichever candidate won the plurality of votes in the state would win all its electors. In short, the election of the President became more democratic as the states democratized. Except in 1800 and 1824, when a tie in one case and a crowded field in another threw the election to the House, the Electoral College has always produced a victor—although in 1876 and of course in 2000, disputes arose over who were chosen as electors in Florida and, in the first instance, in several other states, including our own.

In recent years, the Electoral College system has come under attack, usually by people who think it would be better to choose the President by a direct, national popular vote. In 1969 a proposed constitutional amendment to that effect passed the House of Representatives but failed to come to a vote in the Senate because of the threat of a filibuster. In 1977 a similar proposal led to hearings in the Senate but passed neither House. In recent years, a proposal called the National Popular Vote has led nine state legislatures (but not Louisiana) to pass acts instructing their electors to vote for the winner of the national popular vote, regardless of the winner in their own state, provided similar legislation passes enough states to constitute an electoral majority, which to date it has not. Why, in our age that celebrates democracy and the logic of one-person, one-vote, has the Electoral College retained the support of the American people?

First, I think Americans recognize that the laws of the states have already made the Electoral College democratic in the place where democracy has its surest home: the states themselves. Essentially, through the mechanism of the Electoral College, the same political sovereign that made and can change the Constitution—

the people in their states—selects the highest officer under that Constitution. This has consequences that reverberate throughout the political system: States acquire a political identity on the national scene by the way they vote for President, and most candidates know from the very beginning of the campaign season (now perhaps as early as the day after the previous election) that they have to design their campaign strategy taking into account the peculiarities of all the states they hope to win.

Minority interests easily overlooked when one treats the more than one hundred million voters as a single mass command attention when at issue is the electoral votes of a decisive state. Can anyone think our whole system of state primary elections would remain without the counting of electoral votes by state?

Second, the Electoral College produces a clear result relatively quickly, usually magnifying a narrow but decisive victory—as today’s vote is expected to do—and isolating any uncertainty or voter fraud to particular states, who after all are the ones who conduct even federal elections to this day. Moreover, with only a couple exceptions over two hundred years, the Electoral College vote aligns with the popular vote, not accidentally but because it takes widespread popular support to win either, at least in practice.

Finally, the Electoral College brought into being and is sustained by the two-party system, encouraging the major competitors for the nation’s highest honor to join established coalitions with relatively clear platforms and thus offer voters a relatively clear choice, while encouraging the parties themselves to become vast coalitions that respect the immense diversity of our nation, rather than spawning numerous splinter parties that might align more closely with individuals’ personal

opinions but avoid the hard work of finding political partners and making political friends. Political moderation—the avoidance of extremism and the achievement of respect for interests and beliefs very different from one’s own—is promoted by an Electoral College that leaves no state forgotten except at a candidate’s peril. A national plebiscite, by contrast, would run roughshod over American traditions that link liberty to local self-government, the ability of communities to identify their own needs and craft solutions for themselves.

As members of the Electoral College, then, you have the solemn duty to represent the majority of the voters of our state for the single purpose of electing the next President. Though with the outcome of the election already known—at least if electors remain faithful—there might be a tendency to think your particular vote does not matter. I hope I have given you reason to see that it does—not only for the contest of the day, but for the whole constitutional structure upon which our liberty depends.

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