

Electing the President

What might have been ---What could be?

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An informational report adapted from various sources

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<u>Date</u>	<u>Party</u>	<u>Candidate</u>	<u>Electoral Votes</u>	<u>Popular Votes</u>
1948	Democratic	Harry Truman	303	24,105,695
	Republican	Thomas Dewey	189	21,969,170
	States' Rights	Strom Thurmond	39	1,169,021
	Progressive	Henry Wallace	0	1,156,103
1960	Democratic	John Kennedy	303	34,227,096
	Republican	Richard Nixon	219	34,107,646
	Independent	Harry Byrd	15	---
	Socialist Labor	Eric Hass	---	47,522
1968	Republican	Richard Nixon	301	31,710,470
	Democratic	Hubert Humphrey	191	30,898,055
	Am. Independent	George Wallace	46	9,446,167
1976	Democratic	Jimmy Carter	297	40,830,763
	Republican	Gerald Ford	240	39,147,793
	Independent	Eugene McCarthy	0	756,691
1980	Republican	Ronald Reagan	489	43,904,153
	Democratic	Jimmy Carter	49	35,483,883
	Independent	John Anderson	0	5,720,060

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Electing the President

Origins of the Electoral College

In order to appreciate the reasons for the Electoral College, one must understand its historical context and the problems that the Founding Fathers were trying to solve. They faced the difficult question of how to elect a president in a nation that:

- was composed of thirteen large and small states jealous of their own rights and powers and suspicious of any central national government,
- contained only 4 million people spread up and down a thousand miles of Atlantic seaboard barely connected by transportation or communication,
- believed that political parties were mischievous if not downright evil, and,
- felt that gentlemen should not campaign for public office, believing "The office should seek the man, the man should not seek the office."

How, then, to choose a president without political parties, without national campaigns, and without upsetting the carefully designed balance between the presidency and the Congress on one hand and between the states and the federal government on the other?

The Constitutional Convention considered several possible methods of selecting a president.

One idea was to have the Congress choose the president. This idea was rejected, however, because some felt that making such a choice would be too divisive an issue and leave too many hard feelings in the Congress. Others felt that such an arrangement would upset the balance of power between the legislature and executive branches of the federal government.

A second idea was to have the state legislatures select the president. This idea, too, was rejected out of fears that a president so

beholden to the state legislatures might permit them to erode federal authority and thus undermine the whole idea of a federation.

A third idea was to have the president elected by a direct popular vote. Direct election was rejected not because the Framers of the Constitution doubted public intelligence but rather because they feared that without sufficient information about candidates from outside their state, people would naturally vote for a "favorite son" from their own state or region. At worst, no president would emerge with a popular majority sufficient to govern the whole country. At best, the choice of president would always be decided by the largest, most populous states with little regard for the smaller ones.

Finally, a so-called "Committee of Eleven" in the Constitutional Convention proposed an indirect election of the president through a College of Electors. The idea was for the most knowledgeable and informed individuals from each state to select the president based solely on merit and without regard to state of origin or political party.

The First Design

In the first design of the Electoral College:

- Each state was allocated a number of electors equal to the number of its senators plus the number of its representatives. This arrangement was built upon an earlier compromise in the design of the Congress itself and thus satisfied both large and small states.
- The manner of choosing the electors was left to the individual state legislatures, thereby pacifying the states suspicious of a central national government.
- Members of Congress and employees of the federal government were specifically prohibited from serving as electors in order to maintain the balance between the legislative and executive branches of the federal government.
- Each state's electors were required to meet in their respective states rather than all together in one great meeting. This

arrangement, it was thought would prevent bribery, corruption, secret dealing, and foreign influence.

- In order to prevent electors from voting only for a "favorite son" of their own state, each elector was required to cast two votes for president, at least one of which had to be for someone outside their home state. The idea was that the winner would likely be everyone's second favorite choice.

- The electoral votes were to be sealed and transmitted from each of the states to the President of the Senate who would then open them before both houses of the Congress and read the results.

- The person with the most electoral votes, provided that it was an absolute majority, became president. Whoever obtained the next greatest number of electoral votes became vice-president.

- In the event that no one obtained an absolute majority in the Electoral College or in the event of a tie vote, the U.S. House of Representatives, as the chamber closest to the people, would choose the president from among the top five contenders. They would do this (as a further concession to the small states) by allowing each state to cast only one vote with an absolute majority of the states being required to elect a president. The vice presidency would go to whatever remaining contender had the greatest number of electoral votes. If that, too was tied, the U.S. Senate would break the tie by deciding between the two.

In all, this was quite an elaborate design. But it was also a very clever one when you consider that the whole operation was supposed to work without political parties and without national campaigns while maintaining the balances and satisfying the fears in play at the time.

The Second Design

This first design of the Electoral College lasted through only four presidential elections. For in

the meantime, political parties had emerged in the United States. The very people who had been condemning parties publicly had nevertheless been building them privately. And too, the idea of political parties had gained respectability through the persuasive writings of such political philosophers as Edmund Burke and James Madison.

One of the accidental results of the development of political parties was that in the presidential election of 1800, the electors of the Democratic-Republican Party gave Thomas Jefferson and Aaron Burr (both of that party) an equal number of electoral votes. The tie was resolved by the House of Representatives in Jefferson's favor -- but only after 36 tries and some serious political dealings which were considered unseemly at the time. Since this sort of bargaining over the presidency was the very thing the Electoral College was supposed to prevent, the Congress and the states hastily adopted the Twelfth Amendment to the Constitution by September of 1804.

The Twelfth Amendment to the Constitution

To prevent tie votes in the Electoral College which were made probable, if not inevitable, by the rise of political parties (and quite possibly to facilitate the election of a president and vice president of the same party), the 12th Amendment requires that each elector cast one vote for president and a separate vote for vice-president rather than casting two votes for president with the runner-up being made vice-president. In the event that no candidate receives a majority of votes in the Electoral College, the election is thrown into the House of Representatives and the Senate. Current procedures for such "contingent elections" are clearly spelled out. The House of Representatives selects the president from among the top three candidates. Regardless of its population and number of representatives, each state delegation in the House has only one vote, for a total of 50 votes. The District of Columbia, which sends a nonvoting delegate to the House has no vote. The state's choice is determined by a vote within its delegation. If

that vote is a tie, the state loses its vote. A winning candidate must receive the votes of a majority -- 26 states. There is no limit to the number of ballots in the House. If the House fails to choose a president by Inauguration Day, January 20th, the Twentieth Amendment requires that the vice-president elect, provided that the Senate has chosen one, serve as president until the House makes its choice.

In a contingent election the Senate selects the vice-president. The choice is between the top two vice-presidential vote-getters in the Electoral College. Each senator has one vote, for a total of 100 votes (no vote for the District of Columbia). A vice-president must be elected by a majority -- 51 of the whole Senate.

If the Senate also fails to elect a vice-president, the Succession Act of 1948 provides that the Speaker of the House shall act as president until a president is chosen. This law was enacted under authority given to Congress by the Twentieth Amendment.

Although the procedures for the way the House and Senate vote are set by the Constitution, there are no rules governing how individual members of Congress vote in such contingent elections in the House and Senate. Members are free to vote as they please within their state's delegation. It is conceivable, under these circumstances that the House might select a president of one party and the Senate, a vice-president of the other.

It is noteworthy that when the Twelfth Amendment was passed the idea of electing the president by direct popular vote was not widely promoted as an alternative to redesigning the system. This may be because the physical and demographic circumstances of the country had not changed that much in a dozen or 50 years. It may also have been because the excesses of the recent French revolution had given the populists some pause to reflect on the wisdom of too direct a democracy.

Today, the individual party candidates for elector are seldom listed on the ballot. Instead, the expression "Electors for" usually appears in fine print on the ballot in front to each set of candidates for president and vice-president (or

else the state law specifies that votes cast for the candidates are to be counted as being for the slate of delegates pledged to those candidates). It is still true, however, that voters are actually casting their votes for the electors for the presidential and vice-presidential candidates of their choice rather than for the candidates themselves.

Historical Curiosities

In the evolution of the Electoral College, there have been some interesting developments and remarkable outcomes. Critics often try to use these as examples of what can go wrong. Yet most of these historical curiosities were the result of profound political divisions within the country which the designers of the Electoral College system seem to have anticipated as needing resolution at the higher level.

In 1824, there were four fairly strong contenders in the presidential contest (Andrew Jackson, John Quincy Adams, William Crawford, and Henry Clay) each of whom represented an important faction within the now vastly dominant Democratic-Republican Party. The electoral votes were so divided among them that no one received the necessary majority to become president (although the popular John C. Calhoun did receive enough electoral votes to become vice-president). In accordance with the provisions of the 12th Amendment, the choice of president was passed on to the House of Representatives who narrowly selected John Quincy Adams despite the fact that Andrew Jackson had obtained the greater number of electoral votes. This election is often cited as the first one in which the candidate who obtained the greatest popular vote (Jackson) failed to be elected president. The claim is a weak one, though, since six of the twenty-four states at the time still chose their electors in the state legislature. Some of these (such as sizable New York) would likely have returned large majorities for Adams had they conducted a popular election.

The 1836 presidential election was a truly strange event. The developing Whig Party, for example, decided to run three different presidential candidates (William Henry Harrison,

Daniel Webster, and Hugh White) in separate parts of the country. The idea was that their respective regional popularity would ensure a Whig majority in the Electoral College which would then decide on a single Whig presidential ticket. This fairly inspired scheme failed when Democratic-Republican candidate Martin Van Buren won an absolute majority of electors. Nor has such a strategy ever again been seriously attempted. Yet Van Buren himself did not escape the event entirely unscathed. For while he obtained an electoral majority, his vice-presidential running mate (Richard Johnson) was considered so objectionable by some of the Democratic-Republican electors that he failed to obtain the necessary majority of electoral votes to become vice-president. In accordance with the 12th Amendment, the Senate exercised its judgement and selected Johnson as vice-president anyway.

In the 1872 election, Democratic candidate Horace Greeley (he of earlier "Go West, young man, go West" journalistic fame) thoughtlessly died during that period between the popular vote for electors and the meeting of the Electoral College. The electors who were pledged to him, clearly unprepared for such an eventuality, split their electoral votes among several other Democratic candidates (including three votes for Greeley himself as a possible comment on the incumbent Ulysses S. Grant). That hardly mattered since the Republican Grant had readily won an absolute majority of electors.

In 1876, the country once again found itself in serious political turmoil, echoing, in some respects, both the economic divisions of 1824 and the impending political party realignments of 1836, but with the added bitterness of Reconstruction. A number of deep cross currents were in play. After a vast economic expansion, the country had fallen into a deep depression. Monetary and tariff issues were eroding the Union Republican coalition of East and West while a solid Republican black vote eroded the traditional Democratic hold on the South. The incumbent Republican administration of Grant had suffered a seemingly endless

series of scandals involving graft and corruption on a scale hitherto unknown. And the South was eager to put an end to Radical Reconstruction which was, after all, a kind of vast political mugging. Against this backdrop, the resurging Democratic Party easily nominated Samuel J. Tilden, the popular Governor of New York, and Thomas A. Hendricks of Indiana (shrewd geographic choices under the circumstances). The Republicans, in a more turbulent convention, selected Ohio Governor Rutherford B. Hayes and William A. Wheeler of New York. A variety of fairly significant other parties also cropped up, further shattering the country's political cohesion.

This was about as good a prescription for election chaos as anyone might hope for. It is almost surprising that things did not turn out worse than they did. For on election night, it looked as though Tilden had pulled off the first Democratic presidential victory since the Civil War -- although the decisive electoral votes of South Carolina, Florida, and Louisiana remained in balance. Yet these states were as divided internally as was the nation at large. Each state finally delivered two sets of electoral votes -- one set for Tilden and one set for Hayes. Because the Congressional procedures for resolving disputed sets of electors had expired, the Congress established a special 15-member commission to decide the issue in each of the three states. After much partisan intrigue, the special commission decided (by one vote in each case) on Hayes' electors from all three states. Thus Hayes was elected president despite the fact that Tilden, by everyone's count, had obtained a slight majority of popular votes (although the difference was a mere 3% of the total vote cast). As a final note, the Congress enacted in 1887 legislation that delegated to each state the final authority to determine the legality of its choice of electors and required a concurrent majority of both houses of Congress to reject any electoral vote. That legislation remains in effect to this day so that the events of 1876 will not repeat themselves.

Benjamin Harrison's election in 1888 is really the only clear cut instance in which the Elec-

toral College vote went contrary to the popular vote. This happened because the incumbent, Democrat Grover Cleveland, ran up huge popular majorities in several of the 18 states which supported him while the Republican challenger, Benjamin Harrison, won only slender majorities in some of the larger of the 20 states which supported him (most notably in Cleveland's home state of New York). Even so, the difference between them was only 110,476 votes out of 11,381,032 cast -- less than 1% of the total. Interestingly, in this case, there were few critical issues (other than tariffs) separating the candidates so that the election seems to have been fought and won more on the basis of superior party organization in getting out the vote than on the issues of the day.

These are the major historical curiosities of the Electoral College system. Some cite them as flaws in the system. However, as the election of 1888 demonstrates, the Electoral College system imposes two requirements on candidates for the presidency:

- that the victor obtain a sufficient popular vote to enable him to govern, and
- that such a popular vote be sufficiently distributed across the country to enable him to govern.

Such an arrangement ensures a regional balance of support which is a vital consideration in governing a large and diverse nation, even though in close elections distribution of support may take precedence over majority of support.

The Current System

Today the Electoral College is made up of 538 members with a majority of 270 required to elect. These electors are selected by the political parties or independent candidates in each state and their names submitted to the state's chief election official. This year (1992) the members meet on December 14th in their respective state capitals and cast their electoral votes -- one for president and one for vice-president. The electoral votes are then sealed and transmitted from each state to the President of the Senate who, on January 6,

1993, opens and reads them before both houses of Congress.

Distribution of Electoral Votes

State	1981 -1990	1991 -2000
Alabama	9	9
Alaska	3	3
Arizona	7	8
Arkansas	6	6
California	47	54
Colorado	8	8
Connecticut	8	8
Delaware	3	3
District of Columbia	3	3
Florida	21	25
Georgia	12	13
Hawaii	4	4
Idaho	4	4
Illinois	24	22
Indiana	12	12
Iowa	8	7
Kansas	7	6
Kentucky	9	8
Louisiana	10	9
Maine	4	4
Maryland	10	10
Massachusetts	13	12
Michigan	20	18
Minnesota	10	10
Mississippi	7	7
Missouri	11	11
Montana	4	3
Nebraska	5	5
Nevada	4	4
New Hampshire	4	4
New Jersey	16	15
New Mexico	5	5
New York	36	33
North Carolina	13	14
North Dakota	3	3
Ohio	23	21
Oklahoma	8	8
Oregon	7	7
Pennsylvania	25	23
Rhode Island	4	4
South Carolina	8	8
South Dakota	3	3
Tennessee	11	11
Texas	29	32
Utah	5	5
Vermont	3	3
Virginia	12	13
Washington	10	11
West Virginia	6	5
Wisconsin	11	11
Wyoming	3	3

TOTAL ELECTORAL VOTE: 538
NEEDED TO ELECT: 270

In what is commonly referred to as "winner take all," the electors are expected to vote for the candidate who won the greatest number of votes in their state. As one can see from the box above, Virginia now has thirteen electors. The Code of Virginia is somewhat unclear as to whether our electors are "bound." It does state that the electors shall be expected to vote for the candidate to whom they are pledged. Although electors almost always vote for the candidate to whom they are pledged, the Constitution does not bind them to do so, and in fact an independent elector is what the Framers had in mind when they first designed the college. Alexander Hamilton wrote,

It was desirable that the sense of the people should operate in the choice of [the President]. This end will be answered by committing the right of making [the choice] not to any pre-established body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable that the immediate election should be made by men capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow citizens from the general masses, will be most likely to possess the information and discernment requisite to so complicated an investigation.

Pro's and Con's of the Electoral College System

There have in its 200-year history, been a number of critics and proposed reforms to the Electoral College system -- most of them trying to eliminate it. But there are also staunch defenders of the system who offer powerful arguments in its favor.

Proponents of the Electoral College system normally defend it on the philosophical grounds that it:

- contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president
- enhances the status of minority interests,
- contributes to the political stability of the nation by encouraging a two-party system, and
- maintains a federal system of government and representation.

Recognizing the strong regional interests and loyalties which have played so great a role in American history, proponents argue that the current system contributes to the cohesiveness of the country by requiring a distribution of popular support to be elected president. Without such a mechanism, they point out, presidents would be selected either through the domination of one populous region over the others or through the domination of large metropolitan areas over rural ones.

Proponents believe that the practical value of requiring a distribution of popular support outweighs whatever sentimental value may be attached to obtaining a bare majority of popular support. They point out that the current system is designed to work in a rational series of defaults: if a candidate receives a substantial majority of the popular vote, then that candidate is virtually certain to win enough electoral votes to be elected president; in the event that the popular vote is extremely close, then the election defaults to that candidate with the best distribution of popular votes (as evidenced by obtaining the absolute majority of electoral votes); in the event the country is so divided that no one obtains an absolute majority of electoral votes, then the choice of president defaults to the states in the U.S. House of Representatives. One way or another, the winning candidate must demonstrate both a sufficient popular support to govern as well as a sufficient distribution of that support to govern.

Proponents also point out that the Electoral College actually enhances the status of minority groups. This is so because the votes of even small minorities in a state may make the difference between winning all of that state's

electoral votes or none. Since ethnic minority groups in the U.S. happen to concentrate in those states with the most electoral votes, they assume an importance to presidential candidates well out of proportion to their number. The same principle applies to other special interest groups such as labor unions, farmers, environmentalists, etc.

Because of this "leverage effect" the presidency as an institution tends to be more sensitive to ethnic minority and other special interest groups than does the Congress as an institution. Changing to a direct election of the president, some believe, could actually damage minority interests since their votes would be over-whelmed by a national popular majority.

Proponents further argue that the Electoral College contributes to the political stability of the nation by encouraging a two-party system. This is true simply because it is extremely difficult for a new or minor party to win enough popular votes in enough states to have a chance of winning the presidency. Even if they won enough electoral votes to force the decision into the U.S. House of Representatives, they would still have to have a majority of over half the state delegations in order to elect their candidate -- and in that case, they would hardly be considered a minor party.

Finally, proponents argue that the Electoral College maintains a federal system of government and representation. Their reasoning is that in a formal federal structure, important political powers are reserved to the component states. In the United States, for example, the House of Representatives was designed to represent the states according to the size of their population. The Senate was designed to represent each state equally regardless of its population. The Electoral College was designed to follow this same pattern. Proponents believe that to abolish the Electoral College would lead to the nationalization of our central government -- to the detriment of the states

Those who object to the Electoral College system and favor a direct popular election of the president generally do so on four grounds:

- the possibility of electing a minority president (one without the absolute majority of popular votes)
- the risk of so-called "faithless" electors
- the possible role of the Electoral College in depressing voter turnout, and
- its failure to accurately reflect the national popular will.

The first concern of opponents is not unfounded since there are three ways in which this could happen.

One way in which a minority president could be elected is if the country were so deeply divided politically that three or more presidential candidates split the electoral votes among them such that no one obtained the necessary majority. This occurred, as previously noted in 1824 and was unsuccessfully attempted in 1948 and again in 1968. Should that happen today, there are two possible resolutions: either one candidate could throw his electoral votes to the support of another (before the meeting of the electors) or else, absent an absolute majority in the Electoral College, the U.S. House of Representatives would select the president in accordance with the 12th Amendment. Either way, the person taking office would not have obtained the absolute majority of the popular vote.

A second way in which a minority president could take office is if one candidate's popular support were heavily concentrated in a few states while the other candidate maintained a slim popular lead in enough states to win the needed majority of the Electoral College.

A third way of electing a minority president is if a third party or candidate, however small drew enough votes from the top two than no one received over 50% of the national popular total. Far from being unusual, this sort of thing has happened 15 times including Wilson in both 1912 and 1916, Truman in 1948, Kennedy in 1960, and Nixon in 1968. The only remarkable thing about those outcomes is that

few people noticed and even fewer seemed to care. Would a direct election have changed those outcomes?

Opponents of the Electoral College system also point to the risk of so-called "faithless" electors. A "faithless" elector is one who is pledged to vote for his party's candidate for president but nevertheless votes for another candidate. There have been 7 such electors in this century and as recently as 1988 when a Democratic elector in the state of West Virginia cast his votes for Lloyd Bentsen for president and Michael Dukakis for vice-president instead of the other way around. Faithless electors have never changed the outcome of an election, though, simply because most often their purpose is to make a statement when the outcome is obvious, rather than to make a difference.

The possible role of the Electoral College in depressing voter turnout is another concern of the system's opponents. Their argument is that, since each state is entitled to a specific number of electoral votes regardless of its voter turnout, there is no incentive in the states to encourage voter participation. While this argument has a certain surface plausibility, it fails to account for the fact that presidential elections do not occur in a vacuum. Other offices as well as ballot issues share the voter's attention.

Finally, some opponents of the Electoral College point out, quite correctly, its failure to accurately reflect the national popular will in at least two respects:

- First, the distribution of electoral votes in the College tends to over-represent people in rural states. This is because the number of electors for each state is determined by the number of members it has in the House plus the number of members it has in the Senate (which is always two regardless of the state's size). The result is that in 1988, for example, the combined voting age population (3,119,000) of the seven least populous jurisdictions of Alaska, Delaware, the District of Columbia, North Dakota, South Dakota, Vermont

and Wyoming carried the same voting strength in the Electoral College (21 electoral votes) as the 9,614,000 persons of voting age in the state of Florida. Each Floridian's potential vote carried about one third the weight of a potential vote in the other states listed.

- A second way in which the Electoral College fails to accurately reflect the national popular will stems primarily from the winner-take-all mechanism whereby the presidential candidate who wins the most popular votes in the state wins all the electoral votes of that state. One effect of this mechanism is to make it extremely difficult for third-party or independent candidates ever to make much of a showing in the Electoral College.

Proposals for Change

Over the years, some of those who basically support the Electoral College system, as well as those who think it works badly, have suggested changes in the system. A direct election amendment has been introduced in the Senate over 60 times. Former Senator Birch Bayh repeatedly introduced a constitutional amendment providing for direct election of the president and vice-president. Under the Bayh plan, candidates for president and vice-president would be required to run together in each state and the District of Columbia, and voters would make their choices directly, without any intervening slate of electors. If the candidate team with the most votes received at least 40 percent of the nationwide popular vote, that pair would be declared elected; if no pair received that amount there would be a runoff election between the two top pairs.

This year's emergence (1992) of what appeared to be a strong challenger to the two party candidates caused a renewed interest in the system of how our president is elected. Once again a bill to amend the Constitution and provide for the direct election of the president and vice-president was introduced to the Senate, this time by Senator David Pryor of Arkansas. In order for such an amendment to pass, it must receive a 2/3 majority vote in the

Senate and an equal majority in the House. From there the proposed amendment would go to each state legislature for approval. Thirty eight states are needed for ratification. Although Senator Pryor is optimistic about his bill's chances, it remains in the Senate Judiciary Committee at this writing.

National Position

A League -wide study of the presidential electoral process culminated in a 1970 position supporting the direct election of the president by popular vote as essential to representative government. The position states: The League of Women Voters of the United States believes that the direct-popular-vote method for electing the president and vice-president is essential to representative government. The League of Women Voters believes, therefore, that the electoral college should be abolished.

The League has testified and lobbied for legislation to amend the Constitution to replace the electoral college with a direct election of the president, including provisions for a national runoff election in the event no candidates (president or vice-president) received 40 percent of the vote. The measure, which passed the House and came close to passage in the Senate in 1971, has been revived in each successive Congress without success.

The League believes strongly that the electoral college should be abolished; reform of the electoral college should only be considered as a last resort. If undertaken, such reform should include: allocating electoral votes proportionally to the popular vote within each state and the District of Columbia; abolishing the office of elector; or amending the U.S. Constitution to bind electors to vote as directed by the electorate.

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A significant portion of the background material for this paper came from the Federal Election Commission's publication, "The Electoral College," written by William C. Kimberling.

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Mr. Mike Hodson, Legislative Aide to Senator David Pryor, Washington, D.C.

Ms. Peggy Sims, Assistant to the Director, FEC National Clearinghouse on Election Administration.