



## ***2016 QUESTION***

### ***The Dan O'Hanlon Essay Competition***

**First Prize ~ \$1,000**

**Second Prize ~ \$500**

***The Electoral College:***

## Should We Keep It, Abolish It, or Reform It?

The 2016 primary election season is unlike any other in recent memory. The public is extraordinarily polarized. Both the Republican and Democratic parties are experiencing disruption on an epic scale. Whether the parties are similar is debatable; some say they are completely different ideologically and otherwise while others claim that both parties are too close for comfort to entrenched power and corporate interests. Both parties find themselves accused of being part of a system that is "rigged," "unfair," and generally unrepresentative of the common people. In other words, many people are feeling disenfranchised.

While the national primaries will end in June and each party's nominating convention will be over by late July, the feelings of unfairness and exclusion expressed by many Americans are unlikely to be assuaged anytime soon. Against this backdrop, it is interesting to consider the Electoral College – the system created by the Constitution's framers in 1787 to elect the President and Vice President of the United States.

### THE CONTROVERSY

It is no exaggeration to say that the Electoral College has been controversial since the outset. It was a compromise and immediately cited by some Anti-Federalists as one reason to be against the new Constitution. According to a publication by the [National Archives](#), over the last 200 years, more than 700 resolutions to reform or abolish it have been put forth in Congress. Moreover, public opinion polls consistently show that the majority of Americans want to abolish it. The American Bar Association has criticized it as "archaic" and, in 1987, 69% of lawyers polled said it should be abolished. The academic and political community are divided, however, with some highly respected scholars and politicians defending it, and others believing it has outlived its usefulness or, at the least, should be reformed to better reflect the voice of the people.

Its defenders claim that it promotes stability, protects federalism by providing a balance of power between state and federal governments, gives small states a voice in the electoral process, and strengthens the two-party system, which in turn results in the election of moderate governments, resulting in stability. In other words, they claim that, in general, it has worked pretty well. Its detractors point out that, because all but two states award all of their electoral votes in a "winner-take-all" system, most states and voters are ignored while all the campaigning is focused upon a relatively few swing states. Detractors also criticize it as inconsistent with the core democratic principle of "one person, one vote," contending that it discourages voter participation because many people feel that their votes will not matter (for example, a "blue" vote in a reliably "red" state that awards all of its electoral votes to the winning candidate, even if that candidate won by only the slightest percentage). They also argue that it inappropriately empowers small states and over-represents those states with lower turnouts, enhancing the influence of regions that are sparsely populated and diluting the influence of large states. Worst of all, as they correctly observe, it can result in a situation where the winner of the popular vote loses in the Electoral College and does not become

President. Indeed, this very thing has happened on four occasions, the most recent occurring in 2000, when Al Gore received over 500,000 more popular votes than George W. Bush, but Bush won in the Electoral College and became President.

## THE FRAMERS

Why did the Framers create this complicated and indirect system for electing the highest officeholder in the land? First, it is important to remember that most did not share our modern notions of democracy as an unadulterated positive good. Indeed, in 1787, most Americans – including women and minorities – were not even allowed to vote. People were accustomed to having the franchise restricted to white male property owners. In light of this, it seemed perfectly logical to the Framers that a relatively small collection of the elites in American society – Jefferson famously called the Framers an “assembly of demigods” – should make key decisions regarding governance, even in a representative democracy. We should also remember that there were 13 diverse states attempting to come to agreement although they had conflicting interests: some were large states, some were small states, and the different regions had different economic interests they wanted to protect (including, unfortunately, the interest of some states in preserving slavery). As a result, compromise was the only way to come up with a Constitution.

The Electoral College was devised in the latter part of the Constitutional Convention; by this time, the delegates had spent a long summer in Philadelphia. Despite the heat, they kept the windows closed when they met to protect the secrecy of the proceedings. Put plainly, the delegates were hot and tired and -- after months of deliberating -- wanted to go home. The delegates had rejected proposals for election of the President by the legislature or by direct popular vote. Regarding the former, they believed that it would threaten separation of powers, compromise the independence of the executive, and enhance the risk of corruption in the process of choosing the President. Regarding the latter, they believed that due to the size of the country, and the inefficiency and ineffectiveness of communications at that time, voters would have a difficult time learning enough about the candidates to make informed decisions and would instead err on the side of electing local favorites. (For an excellent summary of the Framers's deliberations surrounding the question of how to elect the President, see Stewart, David O., *The Summer of 1787: The Men Who Invented the Constitution* (New York: Simon & Schuster, 2008), Ch. 13, Ch. 19; Appendix 1.)

Thus, the Electoral College was adopted as a compromise. It is set forth in the U.S. Constitution as Article II, Section 1.

## THE ESSAY QUESTION

Is the Electoral College a valuable device that protects key interests in a stable democracy? Or is it an outdated infringement on the popular will that has outlived its purpose in the modern era of effective communication? Or, as some contend, does it have some aspects that are worth keeping and others that should be reformed?

Your essay should reflect an understanding of how the Electoral College works. It should also reflect **your own research** into the issue and careful consideration of all sides of the argument. If you are of the opinion that the Electoral College should be abolished or reformed, your essay should state what should replace it or explain how it should be changed. If you contend that the Electoral College should remain in its current form, your essay should explain your reasoning for that view. Your essay should also reflect an understanding of what is required to change the Electoral College.

## SOME USEFUL BACKGROUND MATERIAL

There is a plethora of material discussing all sides of the Electoral College debate. The following material may serve as a starting point for your research. It is expected that you will cite additional sources to bolster your arguments. Of course, your research should reflect a high degree of information literacy.

- U.S. Constitution, Art. I, Section 2.
- U.S. Constitution, Amendment XII (declared ratified September 25, 1804)
- [Federalist No. 68](#), by Alexander Hamilton
- [Federalist No. 64](#), by John Jay
- [Federalist No. 39](#), by James Madison
- Timothy S. Boylan, "[A Constitutional Defense of the Electoral College and the Election of the American President.](#)" *The Open Political Science Journal*, 1 (2008): 50-58.
- William C. Kimberling, "[The Electoral College.](#)" Federal Election Commission, Revised May 1992.
- Richard A. Posner, "[In Defense of the Electoral College.](#)" Slate, Nov. 12, 2012.
- Edwards, George C., III, *Why the Electoral College is Bad for America*, (New Haven: Yale University Press, 2004) . This book is available on-line as an e-book through Marshall University Libraries.
- Marshall University *Amicus Curiae* Lecture on Constitutional Democracy, November 29 , 2012, George C. Edwards III, "Evaluating the Electoral College," accessed at [www.marshall.edu/spc](http://www.marshall.edu/spc) via the link for Amicus Curiae Lecture Series. Scroll down through previous lectures to find it.
- Justin Curtis, "[Recrafting the Electoral College.](#)" Harvard Political Review, November 16, 2015.
- "[Problems with the Electoral College](#)"
- Berns, Walter, Judith A. Best, and Charles Fried. "[PRO: Should the Current Electoral College System Be Preserved?](#)" *Congressional Digest* 80.1 (2001): 16-30. *Marshall University Libraries: EBSCO Publishing*. Web. 19 May 2016.
- Durbin, Richard J., Amar, Akhil, and Jefferson-Jenkins, Carolyn. "[CON: Should the Current Electoral College System Be Preserved?](#)" *8 Congressional Digest* 80.1 (2001) 17-31. *Marshall University Libraries: EBSCO Publishing*. Web 19 May 2016.

**Additional Research.** As stated above, you should do additional research to support your arguments. You must be sure that all of your research is properly cited and can be located and verified by the contest judges. At all times, you should be cognizant of your

Marshall "information literacy" learning outcomes as you evaluate the appropriateness of source material.

## **RULES AND PRIZES**

This contest is open to any Marshall University student who will be enrolled full-time and in good academic standing in September of 2016. A suggested length for a standard academic essay is 10-15 pages, but there is no required length or page limitation.

Winning entries should demonstrate a thorough understanding of the reasoning and thoughtful consideration of each side of this debate. Careful proofing to ensure that there are no typographical or grammatical errors is **strongly** recommended. All entries should be typewritten, double-spaced, and submitted via a PDF attached to an email addressed to: [patricia.proctor@marshall.edu](mailto:patricia.proctor@marshall.edu). You should create a "read" receipt to ensure that your entry is received. Your entry must be received on or before August 15, 2016.

**Deadline for submission for the 2016 contest is August 15, 2016.**

The winners will be recognized in a special awards ceremony dedicated to the Essay Competition as part of the celebration of Constitution Week in September. First Prize is \$1,000; Second Prize is \$500.

### **Submit entries to:**

Patricia Proctor, Director  
Simon Perry Center for Constitutional Democracy  
Marshall University, Old Main Room 314  
One John Marshall Drive  
Huntington, WV 25755

[patricia.proctor@marshall.edu](mailto:patricia.proctor@marshall.edu)

## **HISTORY OF THE CONTEST**

The Dan O'Hanlon Essay Competition was established in 2009, after an anonymous donor requested that Marshall find a way to promote scholarship related to the Constitution and simultaneously honor retired Cabell County Circuit Court Judge Dan O'Hanlon. Prior to his long career on the bench, Judge O'Hanlon served as professor and chair of the Marshall University Criminal Justice Department. In 2007, he was selected by the West Virginia Justice Association as Judge of the Year. The awards for the winners of the competition are presented in a public ceremony each year during the week in September that Marshall University celebrates the birthdays of both the United States Constitution and Chief Justice John Marshall, for whom the university is named.

## PREVIOUS WINNERS

### 2015

Nicholas Alexander O'Donnell (1st)-[SuperPAC Ed: How Citizens United Sets a Faulty Precedent for Corruption and Distortion](#)

Sepideh Ghenatnevi Dunham (2nd)-[Citizens Unite: Combating Corporate Suppression of the Voice of the People](#)

### 2014

Sophia D. Mills (1st)-[A Step Too Far: Protecting Privacy in a Digital Age](#)

Olivia Milam (2nd)- [The NSA's Bulk Metadata Program and the Fourth Amendment: Holding True to the Spirit of the Constitution in the Face of Technology](#)

### 2013

Laurel Anne Peace (1st) - [Disobeying the Constitution](#)

Adam Shaver (2nd) - [The Constitution's Necessity in American Government](#)

### 2012

Joshua Thompson (1st) - "The Individual's Voice in Democracy: The Right to Vote"

Lesley Cruickshank (2nd) - "Section 5 of the Voting Rights Act: Preclearance and Public Policy"

### 2011

W. Austin Smith II (1st) - "Constitutional Interpretation"

Justin Setliff (2nd) - "The View of an Originalist"

### 2010

Aaron Preece - "The Right to Free Speech in an Academic Setting"

### 2009

Joshua Cottle -- "Protecting the Constitution: Balancing the Rights of the People and the Union"



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