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Tuesday, September 07, 2004

**Why not scrap the Constitution while you're at it?**

N/A

By Cary Ichter

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CARY ICHTER

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The upcoming presidential election is nearly upon us. Election 2004 begins in the shadow of Election 2000 and the incongruous results of the contest in which Al Gore won the popular vote and George Bush won the election.

For those who would have preferred President Gore to President Bush, there is a need to find a villain in that outcome. In the immediate aftermath of the contest, a number of villains were identified. For some, the villain is the president; for others, it is the U.S. Supreme Court; still others blame the butterfly ballot, the hanging

chad or the vast right-wing conspiracy.

Identifying a Villain

As we approach another November contest for the hearts, minds and votes of the American people, a more traditional villain has once again been identified: the Electoral College.

Last month, in these pages, Ann Woolner attacked the Electoral College for nullifying millions of votes (Daily Report, Aug. 25, 2004.) Then, The New York Times joined the chorus of voices—if two can be called a chorus—calling for the abolition of the Electoral College.

Why scrap this constitutional icon? According to Woolner, the winner-take-all nature of the Electoral College renders the votes of those who vote for the loser in each state meaningless. I imagine that those who vote for a losing candidate in a direct election will feel much more fulfilled having known that their votes were counted in a losing cause.

The Times' argument is more philosophical on the subject. According to the Times, "the majority does not rule and every vote is not equal—those are reasons enough for scrapping the [Electoral College] system." The constitutional scholars at the Times' went on to announce, "There is no interest higher than making every vote count."

Perhaps Woolner and the Times have a point. The Founding Fathers intentionally created a republican form of government based upon democratic principles. The system was specifically designed to protect liberty and freedom from the possible tyrannical excesses of unchecked democratic rule. While the genius of that constitutional system has served this nation well for more than 225 years, perhaps it is time to start all over again with first principles up for debate.

Woolner notes that the advocates of the republican form of government do not complain about the direct election of governors, mayors and members of Congress. She apparently does not appreciate that governors and mayors are not part of the republican government created by the Constitution.

As for Congress, it makes sense that members of the House of Representatives are directly elected in that they are intended to represent the interests of the people. U.S. senators, on the other hand, were originally elected by the various state legislatures and were intended to represent the interests of the states, rather than the people. The 17th Amendment changed that process by providing for direct election of senators. The wisdom of that change is a subject for a different day.

The Times editorial rejects the notion that the Electoral College plays a significant role in protecting the interests of the states and correctly notes that the Senate already serves to protect the interests of the states because each state, regardless of size or population, has two senators to represent its interests.

But wait: Shouldn't we be looking at the composition of the Senate as well? In making public policy, Wyoming's two senators represent the will of 500,000 residents, while California's two senators represent the interests of 35.5 million. In a system in which there is "no higher interest than making every vote count," how can this injustice be allowed to persist? How can the representatives of so few have as much influence as the representatives of so many? As long as we are scrapping constitutional institutions, shouldn't we scrap the Senate as well?

Nine Votes Too Many

And what about the Supreme Court? Not only do they have culpability with regard to the 2000 election, but it is difficult to imagine a more anti-democratic institution. Who voted for the justices? No one. And yet the Supreme Court has the temerity to strike down laws that have been approved by the House (the only nominally democratic institution in our government).

How many millions of votes have been rendered utterly meaningless by the nine votes exercised by the members of the Supreme Court? Where the highest interest is giving full effect to every vote, the Supreme Court must go.

And as long as we are talking about the presidency, what about the presidential veto? How can a single man, who is not democratically elected in the first place, prevent the will of the people's representatives from becoming law? How can we allow that to happen in a system that places its highest value on making sure that every vote counts?

What is the source of all this evil marginalization of votes? The Constitution. Well, who voted for that? Answer: the

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states. Is it any wonder, therefore, that institutions such as the Electoral College and the Senate were created by this dangerously anti-democratic document—a document conceived of and ratified by the states themselves?

So, after we are done scrapping the Electoral College, the Senate, the Supreme Court and the presidential veto, we should turn our attention to the Constitution. I am sure that the constitutional scholars on the Times' editorial board will be entirely comfortable with the idea of tearing up the Constitution and having a national referendum on the government's structure and the rights to be preserved in a new, more-democratic government.

All in favor of the First Amendment say "aye." All in favor of civil rights say "aye."

#### Starting From Scratch

Now, the idea of starting from scratch with such sacred principles may be somewhat discomfiting to some, but surely not to Woolner and the constitutional scholars at the Times. They know that the institutions that the Founding Fathers created to neutralize the excesses of the states, the excesses of the federal government and the excesses of the majority are "arcane" and antiquated. And while the Times only a few years back supported the Electoral College, we should not be concerned that these scholars might be more moved by momentary popular passion.

If we don't like the way the new government works out, we can always vote in a new one. The risks associated with scrapping tried and true structures should be of no moment to us because, as we know, "there is no higher interest than making every vote count." Surely any system that fails to recognize this highest interest is not worthy of preservation. r