Certainly do not control the outcome. Indeed, suburbs and rural areas account for about three-quarters of the voters in these states as well as nationally. Similarly, national advertisers do not write off a state merely because a competitor has a 10 percent edge in sales. The leading company does not abandon a state merely because it already has a lead. Instead, both go after every single possible customer.

Under the National Popular Vote bill, neither Democrats nor Republicans could afford to ignore the concerns and interests of voters in California and the numerous other spectator states. States should take advantage of the power they possess under the Constitution and reform the Electoral College so that it reflects the will of the voters on a nationwide basis.

Arnold: Terminate This Gimmick

Robert Weissberg

One of these years an entrepreneurial political junkie will endow the “Wondrous Civic Reforms Gone Awry” museum. It would fill a city block, offer a glitzy gift shop, and have numerous special exhibits, for example, “Today’s Cure Is Tomorrow’s Villain” (e.g., the poll tax, disenfranchising felons, the long ballot), “It Sounded Perfect at the Time” (e.g., paperless electronic voting, term limits, the FCC’s equal-time provision, same-day registration), and “The Cure Is Worse Than the Disease” (e.g., campaign finance reform to reduce electioneering costs, endless primaries, eviscerating political parties). Should it be enacted, Koza’s proposal for direct presidential election by having state legislatures reverse their states’ popular vote will warrant an exhibit hall. Potential visitors might be forewarned that displays “may be unsuitable for the faint-hearted.”

All proposals for reform entail a vision of an allegedly defective status quo. Koza claims that in the United States every vote should be of equal importance regardless of one’s residence, and that our current presidential voting arrangement, sadly, fails this requirement. This is a normative—an “ought”—proposition derived from some hazy democratic theory, and as a political dictate it enjoys no

Robert Weissberg is a policy advisor to the Heartland Institute and emeritus professor of political science at the University of Illinois at Urbana-Champaign. This article was written specifically for this edition of Points of View.
special legal or historical standing. It is just his personal opinion. Many would reasonably insist that inequality remains part of the federal system. This prescription is not any different from other lofty “democratic” essentials—i.e., voters should be informed, elections should be fair, politicians should be honest, and newspapers should be unbiased, among dozens of possibilities. The Founders rejected majority rule as the overarching governance principle (e.g., the structure of the U.S. Senate and numerous super-majority requirements in our Constitution), and to argue that strict uniformity of voter influence somehow defines democracy betrays a simplistic—if naive—grasp of democracy.

More important, this equality can be accomplished via a constitutional amendment if Congress and the states deem it wise, and other than some post-2000 presidential election grumbling, scant support exists for a majority popular vote rule system. The constitutional route—not stealthy politicking in a few accommodating legislatures—is the appropriate pathway. Altering our electoral structure via amendment has been executed on several occasions—the 12th, 15th, 17th, 18th, 22nd, 23rd, 24th, and 26th Amendments all revised our election process—so it is bizarre to insist that constitutional mechanisms are too clumsy or that some pressing national emergency requires immediate action.

Besides, reform via the Constitution would permit a full and careful national debate, something unlikely to occur with just-below-the-radar state legislative measures. If indeed, as Koza claims, 70 percent of the public truly wants direct presidential election, one can only wonder why artful pandeers fail to exploit this demand for selfish career gains.

What about Koza’s argument that unequal Electoral College votes, compounded by the winner-takes-all system (save in two states), means that voters in two-thirds of states are “ignored” by today’s presidential candidates? Koza, for example, speaks of candidates personally fawning over Iowa’s voters by pledging to step up ethanol production, surely an economic benefit to a corn-producing state. But, since tax subsidies apply regardless of where corn grows, voters everywhere potentially benefiting from ethanol probably follow these “local” appeals. A vigorous pro-environmental address in media-rich downtown Manhattan may, in fact, be more carefully heeded in Alaska and other wilderness areas, and this is exactly the intent.

More generally, today’s highly nationalized mass media make “kissing babies” localism obsolete even though it lingers as part of our civic folklore. “Pressing the flesh” now largely consists of network news accounts of candidates shaking a few hands. Like William McKinley, who conducted his 1896 presidential campaign entirely from his front porch, a modern candidate can reach every citizen, everywhere, without leaving home, and with clever marketing, this can be as folksy “personal” as New York Mayor Fiorello La Guardia reading the funny pages over WNYC radio during the city’s newspaper strike. Think of YouTube and other modern “personal” interactive tactics. As for the quaint notion that it is “good” for presidential candidates to visit every state, this is electoral suicide. Richard Nixon in 1960, honoring his promise to do exactly that, flew to Alaska on election eve while John F. Kennedy rallied the troops in key, oft-visited battleground states, and these votes were decisive.
An adviser who suggested this frenzied course would soon be fired—this is a “Go duck hunting among the geese” strategy.

Even if a system rewarded showering attention on voters in every state, this is a recipe for personal exhaustion (if not delirium), huge expense, and pointlessly building organizations to facilitate this manic activity. Sensible grumbling already exists about the “permanent campaign,” and a candidate who “personally paid attention to everyone, not just those in key states” (Koza) could do little else other than campaign 24/7. How expensive hyper-physical activity (not just broadcasting commercials nationally) enriches “democracy” is uncertain though it will surely enrich consultants, local media, and others feeding off what will be America’s first billion-dollar election. Never-ending helter-skelter campaigning will also fatigue the electorate, so that by the time Election Day arrives, voters will be comatose. After several such sleep-inducing marathons, reformers will doubtless propose limiting electioneering to a British-style six weeks to sustain excitement and thereby heighten turnout and this, in turn, would necessitate concentrating on only a few key states.

As for the “flaw” of a president elected by pluralities or even losing the popular vote, this is nothing more than rounding up the usual suspects to damn the Electoral College. Elections, like football games, are fought under existing rules, and altering these rules retrospectively will always produce different outcomes. To claim that Gore “really” won in 2000 is the equivalent of asserting that one’s football team “really” won, despite scoring fewer points, since they outgained their opponents in total yards or some other irrelevant statistic.

Consider the possible legitimacy of this “interstate compact” end-run around the Constitution. A plethora of election systems exist among today’s certifiable democratic regimes, from sundry proportional representational (PR) formulas to far simpler single-member district, first-past-the-post American-style arrangements. These survive if judged legitimate—legally valid and psychologically accepted—by the populace. Substantial change thus imposes heavy burdens since participants must grasp the mechanics and, critically, accept the “new” outcome as “fair.” This is not as straightforward as it might appear. Americans might be uncomfortable with a European PR list system that precludes selecting individual candidates. Europeans, on the other hand, often belittle our antiquated free-for-all system.

This interstate compact scheme opens the door to nonstop confusion, litigation, and outcomes reflecting unanticipated events. All of these undermine legitimacy, no small cost given that the present system (admitted warts and all) does yield accepted outcomes. Consider what appears to be self-evident: Who won the popular vote? Suppose, as is often the case, that the “victorious” presidential candidate receives less than an absolute majority, thanks to several small parties (1948, 1968, 1992, 1996, and 2000, for instance). Further assume, as was certainly true in 2000, that voters for these third parties might “reasonably” be understood to favor one of the two candidates lacking the absolute majority—i.e., Nader voters generally preferring Gore over Bush. Do state legislatures award their states’ Electoral College votes to the statistical winner though he or she lacks a clear majority, or do they become savvy mind readers and choose electors for the “real” winner who may trail the statistical winner by a few votes?
Needless to say, the partisan composition of the state legislature, not some fixed, agreed upon in advance clear-cut rules, may be decisive. Perhaps second choices should be elicited at voting time or, absent that possibility, dubious public opinion polls regarding ideological proximity may suffice in such situations. Circumstances could easily resemble what transpired in 2000 when the courts wrestled with sundry interpretative questions (e.g., should “double voting” be invalidated even though the voter’s intention was obvious), though now under the Koza plan battles are to be fought in multiple state legislatures, largely in secret, with all the predictable horse-trading. Much depends on arcane provisions imbedded in these interstate compacts, and consequently the electorate’s “final decision” may be unknown for months as armies of lawyers swarm across thirty or more legislatures. Challenges may entail not only disputing interpretations of “majority winner” but taking the entire interstate compact system into court; perhaps arguing that by reversing their states’ popular vote outcomes, state legislatures are violating the 14th Amendment’s equal protection of the laws. Who knows? The final result might be victory by clever litigation, hardly a “democratic” triumph.

And what legislatures bestow, they can revoke. The presidential election is not concluded when TV pundits declare the winner; rather, only when the Senate president says so some two months later is the tally official (Article II, section 1). What if a state changes its mind in the interim? For example, what if a Republican-dominated state legislature decides to honor its state’s popular majority by revoking the compact so as to give the GOP candidate a victory? That is, rules are altered after the game seems over, and this would be legal! This reversal could also be executed by unaccountable state or federal judges, and the prospect of this gamesmanship can add troubling uncertainty to a process whose legitimacy requires ironclad rules. This would be government by judiciary, not popular rule.

Moreover, as would be true for any direct election scheme, quarrels over the precise vote count would plague thousands of jurisdictions, not just, say, a suspicious Florida or Ohio county. This, in turn, would encourage prior partisan scrutiny of literally tens of thousands of polling places to stop fraud or shield one’s own cheating. Yet again, the acrimony that plagued Florida during 2000 may now become standard and generate bitter charges of “stolen” elections.

But leave aside for the moment likely months of inconclusiveness and the possible need for an interim president. How is the public, long acquainted with Ye Olde Dumb-as-Rocks Electoral College system, to react to states reversing popular majorities in the name of some murky “fairness”? Imagine a Democratic candidate winning a huge majority in California only to see the state’s Electoral College votes awarded to the GOP candidate who wins the national popular vote? No doubt, hoards of professors will have to be mobilized to explain that this “restores true democracy” to American politics. A few unsophisticated Californian Democrats might reasonably ask why they voted in the first place since it made no difference. This concoction has just too many moving parts to satisfy those accustomed to the old system.

Now for the bottom line. This supposed “reform,” like nearly all reforms, artfully disguises a partisan agenda. I suspect, though I cannot prove, that Democrats champion this restructuring since they anticipate—perhaps thanks
to Hispanic immigration—a swelling of future supporters in states where they already dominate, e.g., California, New York, New Jersey, Illinois. But since the present arrangement counts only victory in a state and disregards margin, these “extra” Democratic votes are wasted. The ideal would be to transfer these “surplus” Blue votes to Red states and turn the tide there, but since this is legally impossible, the surplus can be made “to count” in these Red states via interstate compacts. In other words, half a million extra California Democratic votes “wipes out” smaller GOP victories in a dozen or more less populous Red states.

Over and above all the problems we have elicited, this is an uncertain ploy. Such schemes often backfire as circumstances shift and often produce next year’s problem to be reformed. We can only advise the California governor (and others contemplating this measure) to just say “no.” Or as the Terminator would put it, “Hasta la vista, Baby.”

Internet resources
Visit our Web site at www.mhhe.com/diclerico11e for links and resources relating to Elections.