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Extract from Tara Ross, Enlightened Democracy: The Case for the Electoral College (2d ed. 2012), citing Tillman's Betwixt Principle and Practice

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election. Unfortunately, it dropped the issue when Perot dropped out of the race (temporarily, as it turns out). The issue was never raised in any serious manner again. The lack of consideration regarding this issue is unfortunate. Obviously, fair and impartial contingent election procedures can most easily be identified before the outcome of any one election hangs in the balance. Once the procedures are actually needed, partisan considerations are certain to taint any discussion of logistical procedures that remain unresolved. The House of Representatives should consider these logistical issues and adopt procedures for a contingent election, even though no immediate need for them appears on the horizon.

America's method of presidential election remains largely as it was first conceived by the Founders in the summer of 1787. The procedure seems unnecessarily complicated to many modern-day Americans, yet the Founding Fathers believed the Electoral College to be an ingenious solution to the problems facing the new country. Max Farrand, in his *The Framing of the Constitution of the United States*, reports: "[F]or of all things done in the convention the members seemed to have been prouder of that than of any other, and they seemed to regard it as having solved the problem for any country of how to choose a chief magistrate." The Founders spent months of extensive deliberation on the topic of presidential election. They found it to be one of the hardest topics facing the Convention, because of the necessity of incorporating so many conflicting values into the election system. When the Electoral College proposal was completed, they viewed it as a unique and commendable solution—a solution that came as close to perfection as possible in an imperfect world. More importantly, creation of the Electoral College allowed the Founders to reflect the many, apparently contradictory, goals of the new republic in their presidential election process.
Notes

38. Id. §§ 9–11.
40. See id. § 15.
41. U.S. CONST. amend XII.
42. Id.
43. There may be some ambiguity if more than three candidates tie for one or more of the top three spots. See William Josephson, Senate Election of the Vice President and House of Representatives Election of the President, 11 U. PA. J. CONST. L. 597, 630–31, 633–34 (2009).
44. See id. at 613 (discussing the considerations if more than two candidates tie for the top spots).
45. A detailed discussion of these logical issues is beyond the scope of this book, but these questions are discussed at length in id.; see also HARDAWAY, supra note 5, at 55–61.
46. The Constitution makes provision for what constitutes a quorum of states (“a quorum for this purpose shall consist of a member or members from two-thirds of the states”), but it does not address the subject of quorums within state delegations. U.S. CONST. amend. XII; see also Josephson, supra note 43, at 630, 636–37.
47. Id. The 1825 House Rules are reprinted in AFTER THE PEOPLE VOTE, supra note 34, at 85 app. D (citation omitted).
48. For an argument that multiple interpretations can be given to the phrase “a majority of the votes given,” see Josephson, supra note 43, at 629. Josephson argues that the phrase could mean “the whole number of votes given is such state” as opposed to “a majority of those present and voting.” Id. This author leans toward the latter interpretation, per the examples in the text.
49. U.S. CONST. amend. XII.
50. But see Josephson, supra note 43, at 602 n.11 (“When the Twelfth Amendment says ‘ballot,’ it means the identity of each voter is not revealed, i.e., is secret.”). Further discussion of the meaning of the “ballot” requirement can be found at HARDAWAY, supra note 5, at 58; Josephson, supra note 43, at 632.
51. See, e.g., 10 ANNALS OF CONG. 1032–33 (1801) (quoting the National Intelligencer).
52. U.S. CONST. amend. XX, § 1.
54. HARDAWAY, supra note 5, at 56 (discussing House deliberations in 1992).
55. Seth Tillman has criticized this argument, made in the first edition of Enlightened Democracy. He states:
But any such course is in all likelihood unconstitutional. One House cannot generally bind a successor House. Each House, elected every two years, has equal constitutional powers under the terms of the Constitution, and that temporal equality extends to equal authority to make or unmake House rules governing contingency elections for President.
Seth Tillman, Brute Force Principle and Practice: Tara Ross’s Defenses of the Electoral College, 1 N.Y.U. J.L. & LIBERTY 921, 923 (2005) (book review). Naturally, subsequent Houses would have to readopt these procedures, just as they already readopt their standing rules at the beginning of each Congress (usually adopted en bloc, but with amendments). That fact does not obscure the point that discussing and adopting procedures early, before there is a need for