

Guinier, L. (December 4, 2000). Making every vote count. *The Nation*.

For years many of us have called for a national conversation about what it means to be a multiracial democracy. We have enumerated the glaring flaws inherent in our winner-take-all form of voting, which has produced a steady decline in voter participation, underrepresentation of racial minorities in office, lack of meaningful competition and choice in most elections, and the general failure of politics to mobilize, inform and inspire half the eligible electorate. But nothing changed. Democracy was an asterisk in political debate, typically encompassed in a vague reference to "campaign finance reform." Enter Florida.

The fiasco there provides a rare opportunity to rethink and improve our voting practices in a way that reflects our professed desire to have "even- vote count." This conversation has already begun, as several highly educated communities in Palm Beach experienced the same sense of systematic disfranchisement that beset the area's poorer and less-educated communities of color. "It felt like Birmingham last night," Mari Castellanos, a Latina activist in Miami, wrote in an e-mail describing a mammoth rally at the 14,000-member New Birth Baptist Church, a primarily African-American congregation in Miami. "The sanctuary was standing room only. So were the overflow rooms and the school hall, where congregants connected via large TV screens. The people sang and prayed and listened. Story after story was told of voters being turned away at the polls, of ballots being destroyed, of NAACP election literature being discarded at the main post office, of Spanish-speaking poll workers being sent to Creole precincts and vice-versa. ... Union leaders, civil rights activists. Black elected officials, ministers, rabbis and an incredibly passionate and inspiring Marlene Bastiene—president of the Haitian women's organization—spoke for two or three minutes each, reminding the assembly of the price their communities had paid for the right to vote and vowing not to be disfranchised ever again."

We must not let this once-in-a-generation moment pass without addressing the basic questions these impassioned citizens are raising: Who votes, how do they vote, whom do they vote for, how are their votes counted and what happens after the voting? These questions go to the very legitimacy of our democratic procedures, not just in Florida but nationwide—and the answers could lead to profound but eminently achievable reforms.

Who votes—and doesn't? As with the rest of the nation, in Florida only about half of all adults vote, about the same as the national average. Even more disturbing, nonvoters are increasingly low-income, young and less educated. This trend persists despite the Voting Rights Act, which since 1970 has banned literacy tests nationwide as prerequisites for voting—a ban enacted by Congress and unanimously upheld by the Supreme Court.

We are a democracy that supposedly believes in universal suffrage, and yet the differential turnout between high-income and low-income voters is far greater than in Europe, where it ranges from 5 to 10 percent. More than two-thirds of people in America with incomes greater than \$50,000 vote, compared with one-third of those with income under \$10,000. Those convicted of a felony are permanently banned from voting in Florida and twelve other states. In Florida alone, this year more than 40,000 ex-felons, about half of them black, were denied the opportunity to vote. Canada, on the other hand, takes special steps to register former prisoners and bring them into full citizenship.

How do they vote? Florida now abounds with stories of long poll lines, confusing ballots and strict limitations on how long voters could spend in the voting booth. The shocking number of invalid ballots—more ballots were "spoiled" in the presidential race than were cast for "spoiler" Ralph Nader—are a direct result of antiquated voting mechanics that would shame any nation, let alone one of the world's oldest democracies. Even the better-educated older voters of Palm Beach found, to their surprise, how much they had in common with more frequently disfranchised populations. Given how many decisions voters are expected to make in less than five minutes in the polling booth, it is common sense that the polls should be open over a weekend, or at least for twenty-four hours, and that Election Day should be a national holiday. By highlighting our wretched

record on voting practices, Florida raises the obvious question: Do we really want large voter participation?

Whom do they vote for? Obviously, Florida voters chose among Al Gore, George Bush and a handful of minor-party candidates who, given their status as unlikely to win, were generally ignored and at best chastised as spoilers. But as many voters are now realizing, in the presidential race they were voting not for the candidates whose name they selected (or attempted to select) but for "electors" to that opaque institution, the Electoral College. Our constitutional framers did some things well—chiefly dulling the edge of winner-take-all elections through institutions that demand coalition-building, compromise and recognition of certain minority voices—but the Electoral College was created on illegitimate grounds and has no place in a modern democracy.

As Yale law professor Akhil Reed Amar argues, the Electoral College was established as a device to boost the power of Southern states in the election of the President. The same "compromise" that gave Southern states more House members by counting slaves as three-fifths of a person for purposes of apportioning representation (while giving them none of the privileges of citizenship) gave those states Electoral College votes in proportion to their Congressional delegation. This hypocrisy enhanced the Southern states' Electoral College percentage, and as a result, Virginia slaveowners controlled the presidency for thirty-two of our first thirty-six years.

Its immoral origins notwithstanding, the Electoral College was soon justified as a deliberative body that would choose among several candidates and assure the voice of small geographic areas. But under the Electoral College, voters in small states have more than just a voice; indeed their say often exceeds that of voters in big states. In Wyoming one vote in the Electoral College corresponds to 71,000 voters; in Florida, one electoral vote corresponds to 238,000 voters. At minimum we should eliminate the extra bias that adding electors for each of two senators gives our smallest states. As Robert Naiman of the Center for Economic and Policy Research reports, allowing each state only as many electors as it has members in the House of Representatives would mean, for example, that even if Bush won Oregon and Florida, he would have 216 and Gore would have 220 electoral votes.

Today its backers still argue that the Electoral College is necessary to insure that small states are not ignored by the presidential candidates. Yet the many states—including the small ones—that weren't close in this election were neglected by both campaigns. Some of the nation's biggest states, with the most people of color, saw very little presidential campaigning and get-out-the-vote activity. Given their lopsided results this year, we can expect California, Illinois, New York, Texas and nearly all Southern states to be shunned in the 2004 campaign.

How are their votes counted? The presidency rests on a handful of votes in Florida because allocation of electoral votes is winner-take-all—if Gore wins by ten votes out of 6 million, he will win 100 percent of the state's twenty-five electoral votes. The ballots cast for a losing candidate are always "invalid" for the purposes of representation; only those cast for the winner actually "count." Thus winner-take-all elections underrepresent the voice of the minority and exaggerate the power of one state's razor-thin majority. Winner-take-all is the great barrier to representation of political and racial minorities at both the federal and the state level. No blacks or Latinos serve in the U.S. Senate or in any governor's mansion. Third-party candidates did not win a single state legislature race except for a handful in Vermont.

Given the national questioning of the Electoral College sparked by the anomalous gap between the popular vote and the college's vote in the presidential election, those committed to real representative democracy now have a chance to shine a spotlight on the glaring flaws and disenfranchisement inherent in winner-take-all practices and to propose important reforms.

What we need are election rules that encourage voter turnout rather than suppress it. A system of proportional representation—which would allocate seats to parties based on their proportion of the total vote—would more fairly reflect intense feeling within the electorate, mobilize more people to participate and even encourage those who do participate to do so beyond just the single act of voting on Election Day. Most democracies around the world have some form of proportional voting

and manage to engage a much greater percentage of their citizens in elections. Proportional representation in South Africa, for example, allows the white Afrikaner parties and the ANC to gain seats in the national legislature commensurate with the total number of votes cast for each party. Under this system, third parties are a plausible alternative. Moreover, to allow third parties to run presidential candidates without being "spoilers," some advocate instant-runoff elections in which voters would rank their choices for President (see box on next page). That way, even voters whose top choice loses the election could influence the race among the other candidates.

Winner-take-all elections, by contrast, encourage the two major parties to concentrate primarily on the "undecideds" and to take tens of millions of dollars of corporate and special-interest contributions to broadcast ads on the public airwaves appealing to the center of the political spectrum. Winner-take-all incentives discourage either of the two major parties from trying to learn, through organizing and door-knocking, how to mobilize the vast numbers of disengaged poor and working-class voters. Rather than develop a vision, they produce a product and fail to build political capacity from the ground up.

What happens after the voting? Our nation is more focused on elections now than it has been for decades; yet on any given Sunday, more people will watch professional football than voted this November. What democracy demands is a system of elections that enables minor parties to gain a voice in the legislature and encourages the development of local political organizations that educate and mobilize voters.

Between elections, grassroots organizations could play an important monitoring role now unfulfilled by the two major parties. If the Bush campaign is right that large numbers of ballots using the same butterfly format were thrown out in previous elections in Palm Beach, then something is wrong with more than the ballot. For those Democratic senior citizens in Palm Beach, it was not enough that their election supervisor was a Democrat. They needed a vibrant local organization that could have served as a watchdog, alerting voters and election officials that there were problems with the ballot. No one should inadvertently vote for two candidates; the same watchdog organizations should require ballot-counting machines like those in some states that notify the voter of such problems before he or she leaves the booth. Voters should be asked, as on the popular TV quiz show, "Is that your final answer?" And surely we cannot claim to be a functioning democracy when voters are turned away from the polls or denied assistance in violation of both state and federal law.

Before the lessons of Florida are forgotten, let us use this window of opportunity to forge a strong pro-democracy coalition to rally around "one vote, one value." The value of a vote depends on it being fairly counted but also on its counting toward the election of the person the voter chose as her representative. This can happen only if we recognize the excesses of winner-take-all voting and stop exaggerating the power of the winner by denying the loser any voice at all.