



Who Will Elect the President? The Electoral College System

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Every four years, the Electoral College, a little known feature of our Constitution, enjoys a fleeting moment of fame. About six weeks after the long grind of the presidential election is over, the 538 members of the college meet in their respective states to perform their sole constitutional function: to elect the President and Vice-President of the United States. But the impact of the college on presidential elections is far greater-and more controversial-than its brief life indicates. For example, many knowledgeable observers of American politics attribute the predominance of two major parties to the winner-take-all feature of the college's state-based system. In all but two states, losing candidates, whether they got two million or two votes, get no electors. (Maine and Nebraska allot two electoral votes to the candidate who wins the statewide popular vote; the balance are allocated based on the popular vote by congressional district.)

As a result, small parties and less well known candidates seldom have had a chance to affect the outcome of an election directly. The usual effect of so-called "third-force" candidates is to take away votes from one major party candidate in a close race, tipping the results to the other major party candidate. But if a third or fourth candidate does manage to carry at least one state or some electoral votes-and that has happened in four elections since 1900-then he or she may have a huge impact-partly because the House of Representatives gets to choose the President (and the Senate, the Vice-President) if the Electoral College can't produce an absolute majority.

Politicians and pundits disagree as to whether the college favors small states, or whether it gives an indirect advantage to rural areas or to ethnic minority clusters in populous states. They disagree over its value as a preserver of federalism or as an impediment to the principle of one-person, one-vote. All observers agree, however, that every four years the

voters of America need to be reminded of the ins and outs of the Electoral College system before they cast their ballot for President.

How It Works

Americans choose their President in a complicated series of steps that have evolved from Article I, Section 2 of the U.S. Constitution, through various amendments, federal and state laws, political party rules and traditions.

The Constitution authorizes each state to appoint a number of electors equal to the number of representatives plus senators that the state has in Congress. To this total of 435 plus 100, the Twenty-Third Amendment added three for the District of Columbia-the same number of electors as the least populous state-bringing the total of the college to 538 members.

The Constitution is silent on how a state is to choose its electors. In the early years, legislatures adopted several methods: appointment by legislature, election by the people on the statewide basis, or a combination of these methods. But by 1836, almost every state was using a popular vote system.

On election day, when voters in each state go to the polls, each one casts a ballot for the slate of presidential electors who are pledged to support the candidate the voter prefers. These slates have been selected by political parties, through conventions, committees or primaries. When a candidate is not a nominee of a party, the slate is named through a petition filed with the required number of signatures.

In some states, only the names of the presidential and vice-presidential candidates appear on the ballot, masking the fact that voters are choosing electors rather than voting directly for the candidates. In the other states, both candidates and electors are identified.

The winning slate of electors meets in the each state on the Monday following second Wednesday in December, a date set by federal statute. Two ballots are taken, with each elector casting one vote for the President and one for the Vice-President. Electors almost always vote for the candidates to whom they have been pledged. The Constitution, however, does not bind them to do so, and in fact an independent elector is what the Framers had in mind when they first designed the college (see below: Why the Framers Set Up the Electoral College). Since 1789, there have been few so-called "faithless" electors who have not cast their ballots for the

candidates they were expected to support. To date, the vote of a faithless elector has never changed the outcome of an election; but concern about the possibility has led more than half of the states to enact laws binding electors. Congress, however, has not acted to restrict electors' freedom to vote as they please; some observers believe Congress does not have the power to do so.

Results of the mid-December vote in each state are sent to Congress to be counted on January 6, in the presence of the newly elected Senate and House of Representatives. If one candidate for the office of President (and one candidate for the office of Vice-President) gets 270 votes—a majority of the total numbers of 538 electors—a President has been elected. If it is apparent after the November election that no candidate is assured of a majority of electors' votes, the period from the general election to the December vote of the Electoral College may become a time of intense political horse-trading. A candidate who has only a few electoral votes may use those votes as bargaining chips with other candidates in exchange for influence over their policies and appointments. George Wallace's, running for President in 1968, expected to play that role, but when Richard Nixon, the Republican candidate, won a clear-cut electoral majority, Wallace's bargaining power was lost.

Election in the House and Senate

The Twelfth Amendment clarifies the procedures for so-called "contingent elections"—those that are thrown into the House and Senate for lack of an Electoral College majority.

The following rules regulate the House's choice of the President:

- Only the top *three* vote getters in the electoral college are to be considered.
- Regardless of its population and number of representatives, each state delegation in the House has only one vote, for a total of 50 votes. The District of Columbia, which sends a nonvoting delegate to the House, has no vote.
- The state's choice is determined by a vote within its delegation. If that vote is a tie, the state loses its vote.
- A winning candidate must receive the votes of a majority—26—of states.

- There is no limit to the number of ballots in the House. If the House fails to choose a President by Inauguration Day, January 20, the Twentieth Amendment requires that the Vice-President-elect, provided that the Senate has chosen one, serves as President until the House makes its choice. The Senate follows these rules in its selection of the Vice-President:
- The choice is between the top *two* vice-presidential vote-getters in the Electoral College.
- Each senator has one vote, for a total of 100 votes (no vote for the District of Columbia).
- A Vice-President must be elected by a majority-51-of the whole Senate.

If the Senate also fails to elect a Vice-President, the Succession Act of 1948 provides that the Speaker of the House shall act as President until a President is chosen. The law was enacted under authority given to the Congress by the Twentieth Amendment.

Although the *procedures* for the way the House and Senate vote are set by the Constitution, there are no rules governing how individual members of Congress vote in such contingent elections in the House and Senate. Members are free to vote as they please within their state's delegation. It is conceivable, under these circumstances that the House might select a President of one party and the Senate, a Vice-President of the other.

The Electoral College: Pros and Cons

The Electoral College has been the subject of much discussion over the years. It lacks neither supporters nor critics. Opponents of the college call it undemocratic. They say it functions in contradiction to the one-person, one-vote principle, by giving each state at least three votes, even though on a straight population basis, some states might be entitled to only one or two. If the choice of President goes to the House of Representatives, where each state has only one vote, the election becomes even further removed from the equality-of-population principle. These critics point out that in a contingent election, the single representative from the least populous state has a vote that carries 54 times more weight than that of a representative from the state of California,

the most populous state, with the largest number of representatives. There are seven states with only one representative.

Supporters argue that the principle of one-person, one-vote should not pertain to the Electoral College, just as it does not pertain to the U.S. Senate. They point out that the college was designed to underscore the federal nature of the U.S. government. The college, they argue, recognizes and embodies the delicate balance between the powers of the states and the powers of the central government. Other supporters believe that the apparent bias toward the small states may not be real. Because of the winner-take-all rule, a small margin of victory in California, New York, Illinois or Texas gets a much larger block of electoral votes than could be won by a large popular majorities in any number of small states.

Critics charge that the Electoral College allows a dangerous possibility: the election of a President who has not won in the popular vote. The possibility became fact in the 1888 election. Grover Cleveland received 48.7 percent of the popular vote to Benjamin Harrison's 47.9 percent, but Harrison carried New York state and therefore outpolled Cleveland by 233 to 168 in the Electoral College. In the 1976 election, a switch of 9,245 votes in Ohio and Hawaii would have denied an electoral majority to President Carter despite his 1.5 million-vote plurality. The election of a President who received less than a popular vote plurality is perceived by some critics as a potential constitutional crisis of the first magnitude, an outcome that would not be acceptable to the American people.

On the other hand, supporters of the college assert that it has worked well over the last 53 presidential elections. "If it ain't broke, don't fix it" is the rallying cry of opponents. Those who think the college has function well and will continue to do so assert that the election of 1888, often used as a horrible example by those who seek change, was a statistical anomaly that is unlikely to occur again.

Over the years, some of those who basically support the Electoral College system, as well as those who think it works badly, have suggested changes in the system by which Americans elect their President. A direct election amendment has been regularly introduced in the Senate.

Why the Framers Set Up the Electoral College

It was desirable that the sense of the people should operate in the choice of [the President]. This end will be answered by committing the right of making [the choice] not to any pre-established body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable that the immediate election should be made by men most capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of person, selected by their fellow citizens from the general mass, will be most likely to possess the information ad discernment requisite to so complicated an investigation."

Alexander Hamilton, The Federalist, No. 68

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<https://www.lwv.org>

link to this excerpt on the LWVUS website:

<https://www.lwv.org/educating-voters/who-will-elect-president-electoral-college-system>