

CRS Report for Congress

The Electoral College: How It Works in Contemporary Presidential Elections

Updated October 8, 2008

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**Prepared for Members and
Committees of Congress**

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Summary

When Americans vote in presidential elections, they actually vote for electors, known collectively as the electoral college. These electors, chosen by the people, elect the President and Vice President. The Constitution assigns each state a number of electors equal to the combined total of its Senate and House of Representatives delegations, for a total of 538, including three electors for the District of Columbia. Anyone may serve as an elector, except Members of Congress, and persons holding offices of “Trust or Profit” under the Constitution. In each presidential election year, a slate or ticket of candidates for elector is nominated by political parties and other groups in each state. In November (November 4 in 2008), citizens cast one vote for the entire slate of electors pledged to their favored candidates. All the electors of the slate winning the most popular votes in the state are elected, except in Maine and Nebraska which use the district system. The district system awards two electors on an at-large basis, and one in each congressional district. Electors assemble in their respective states on Monday after the second Wednesday in December (December 15 in 2008). They are expected to vote for the candidates they represent. Separate ballots are cast for President and Vice President, after which the electoral college ceases to exist for another four years. The electoral vote results are counted and declared at a joint session of Congress, usually held on January 6 of the year succeeding the election, but alterable by legislation. For the 2008 election only, Congress set January 8, 2009 as the date on which the joint session would be held. A majority of electoral votes (currently 270 of 538) is required to win. For information on contemporary proposals to reform or eliminate the electoral college, please consult CRS Report RL34604, *Electoral College Reform: 110th Congress Proposals, the National Popular Vote Campaign, and Other Alternatives*, by Thomas H. Neale.

The complex elements comprising the electoral college system are responsible for one of the most important state functions in the American political and constitutional system: the election of the President and Vice President. A failure to elect, or worse, the choice of a chief executive whose legitimacy might be open to question, could precipitate a profound constitutional crisis that would require prompt, judicious and well-informed action by Congress.

This report will be updated as events warrant.

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The Electoral College: How It Works in Contemporary Presidential Elections

Introduction

The President and Vice President of the United States are chosen indirectly by a group of persons elected by American voters. These people are known collectively as the electoral college. A tie vote in the college, the failure of any candidate to receive a majority of electoral votes, or an extremely close election — in popular or electoral votes — could lead to an acrimonious and protracted political struggle, or even a constitutional crisis that might threaten to destabilize the United States Government. Those who doubt might wish to consult the historical record, in particular the elections of 1800 and 1876, for examples. More recently, the controversial presidential election of 2000, in which George W. Bush narrowly won the electoral vote and the presidency over Al Gore, Jr., who had gained more popular votes, continues to influence the tone and content of American political discourse. The potential for a similar or even more bitterly contested struggle in the future argues for a reasonable level of familiarity with the various components of this complex institution.

Constitutional Origins

The Constitutional Convention of 1787 considered several methods of electing the President, including selection by Congress, by the governors of the states, by the state legislatures, by a special group of Members of Congress chosen by lot, and by direct popular election. Late in the convention, the matter was referred to the Committee of Eleven on Postponed Matters, which devised the electoral college system in its original form.¹ This plan, which met with widespread approval by the delegates, was incorporated into the final document with only minor changes. It sought to reconcile differing state and federal interests, provide a degree of popular participation in the election, give the less populous states some additional leverage in the process, preserve the presidency as independent of Congress for election and reelection, and generally insulate the election process from political manipulation.

In the final analysis, the electoral college method of electing the President and Vice President was arguably the best deal the delegates felt they could get — one of many compromises that contributed to the convention's success. Alexander

¹ Although the term is not found in the Constitution, the electors have been known collectively as the electoral college since the early days of the republic, an expression that may be misleading, since the college has no continuing existence, never meets in plenary session, and ceases to exist immediately after the electors have performed their function.

Hamilton expressed the convention's satisfaction, and perhaps the delegates' relief at the solution they had crafted, when he wrote this of the electoral college in *The Federalist*:

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.... I venture somewhat further, and hesitate not to affirm that if the manner of it be not perfect, it is at least excellent. It united in an eminent degree all the advantages the union of which was to be wished for.²

The Constitution gave each state a number of electors equal to the combined total of its Senate and House of Representatives membership. The electors were to be chosen by the states “in such Manner as the Legislature thereof may direct....” (Article II, section 1). Qualifications for the office were broad: the only persons prohibited from serving as electors are Senators, Representatives, and persons “holding an Office of Trust or Profit under the United States.”³

In order to forestall partisan intrigue and manipulation, the electors were required to assemble as separate groups in their respective states and cast their ballots as separate delegations in their respective states, rather than meet as a body in a single location.

At least one of the candidates for whom the electors voted was required to be an inhabitant of another state. This was intended to counter what the framers feared would be a provincial insularity once Washington, the indispensable figure, had left the political scene. By requiring one of the candidates to be from somewhere else, the convention delegates hoped to prod the electors to look beyond the borders of their own state or region in search of presidential timber.

A number of votes equal to a majority of the whole number of electors was necessary to elect. This requirement was intended to insure that the winning candidate enjoyed broad support, while election by the House was provided as a default method in the event of electoral college deadlock. Finally, Congress was empowered to set nationwide dates for choice and meeting of electors.

The original method of electing the President and Vice President, however, proved unworkable. Under this system, each elector cast two votes for two different candidates for the office of *President*, but no votes for *Vice President*. The candidate who received the most electoral votes was elected, provided he received a majority of the whole number of electors — not a majority of electoral votes; the runner-up was elected Vice President. This system, which was intended to bring the two best qualified candidates to office, never anticipated the early growth of political parties and factions, each of which offered two candidates — one for President and one for Vice President. By the third election, in 1796, Federalists and anti-Federalists, or

² Alexander Hamilton, “The Method of Electing the President,” in *The Federalist*, number 68 (Cambridge, MA: Belknap Press of Harvard U. Press, 1966), p. 440.

³ U.S. Constitution, Article II, Section 1, clause 2.

Jeffersonians, each offered a joint ticket. Under the original arrangement, the only way to make the system work was for all of the party's electors to cast one vote for the recognized presidential candidate, while one elector withheld his vote for the designated vice presidential candidate, in order to avoid a tie. This cumbersome system broke down almost immediately, in 1800, when a Republican elector failed to withhold his second vote from the acknowledged vice presidential candidate. This led to a tie between presidential candidate Thomas Jefferson and his running mate, Aaron Burr, and the election was decided in the House of Representatives. The constitutional crisis resulting from the election of 1800 led to the 12th Amendment, which was proposed by Congress and speedily ratified by the states, as noted later in this report.

The Electoral College Today⁴

Notwithstanding the founders' efforts, the electoral college system almost never functioned as they intended, but, as with so many constitutional provisions, the document prescribed only the system's basic elements, leaving ample room for development. As the republic evolved, so did the electoral college system, and, by the late 19th century, the following range of constitutional, federal and state legal, and political elements of the contemporary system were in place.

Who Are the Electors?⁵ The Constitution, as noted earlier in this report, states what the electors *may not be*; that is, it prohibits Senators, Representatives, and persons holding an "Office of Trust or Profit under the United States" from serving. In effect, this language bars not only Members of the two houses of Congress, but any person who is an employee of the United States Government — justices, judges, and staff of the U.S. Courts and the federal judiciary; all political employees of the legislative and executive branches; federal professional civilian employees — "civil servants;" and U.S. military and law enforcement personnel.

In practice, the two major political parties tend to nominate a mixture of well-known figures such as governors and other state and local elected officials, party activists, local and state celebrities, and "ordinary" citizens for the office of elector.

While they may be well known persons, such as governors, state legislators, or other state and local officials, electors generally receive little recognition as such. In fact, in most states, the names of individual elector-candidates do not appear anywhere on the ballot; instead only those of the presidential and vice presidential candidates appear, often prefaced by the words "electors for." Moreover, electoral

⁴ For information on proposals to reform the electoral college, see CRS Report RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*, by L. Paige Whitaker and Thomas H. Neale; and CRS Report RL34604, *Electoral College Reform: 110th Congress Proposals, the National Popular Vote Campaign, and Other Alternatives*, by Thomas H. Neale.

⁵ For a list of electors in the presidential election of 2004, consult the National Archives at [http://www.archives.gov/federal-register/electoral-college/2004_certificates/index.html].

votes are commonly referred to as having “been awarded” to the winning candidate, as if no human beings were involved in the process.

Nominating Elector-Candidates: Diverse State Procedures. The Constitution and federal law are silent on nomination procedures for elector-candidates, so the process of nominating elector-candidates is another of the many aspects of this system left to state and political party preferences. Most states prescribe one of two methods: in 34 states, major party candidates for presidential elector are nominated by state party conventions, while 10 states mandate nomination by the state party’s central committee. The remainder use a variety of methods, including nomination by the governor (on recommendation of party committees), by primary election, and by the party’s presidential nominee. Provisions governing new and minor political parties, as well as independent candidacies, are generally prescribed in state law, and are even more widely varied.⁶

How Are Electoral Votes Allocated Among the States? The Constitution gives each state a number of electors equal to the combined total of its Senate membership (two for each state) and House of Representatives delegation (currently ranging from one to 53, depending on population). The 23rd Amendment provides an additional three electors to the District of Columbia. The total number of electoral votes per state, based on the most recent (2000) census, ranges from three, for seven states and the District of Columbia, to 55 for California, the most populous state. **Table 1** in the appendix of this report (see page 15), provides current electoral vote allocations by state and D.C.

These totals are adjusted following each decennial census in a process called reapportionment, which reallocates the number of Members of the House of Representatives to reflect changing rates of population growth (or decline) among the states. Thus, a state may gain or lose electors following reapportionment, as it gains or loses Representatives, but it always retains its two “senatorial” electors, and at least one more reflecting its House delegation. The current allocation among the states is in effect for the presidential elections of 2004 and 2008; electoral votes are to next be reallocated following the 2010 census, and would be in effect for the 2012, 2016 and 2020 elections.

How Are the Electors Chosen? The Constitution specifically grants the right to decide how electors will be chosen — as opposed to being nominated — to the legislatures of the several states:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress....⁷

⁶ For information on elector-nomination procedures in the individual states, please consult: U.S. Congress, *Nomination and Election of the President and Vice President of the United States, 2000*, 106th Congress 2nd sess., S. Doc. 106-16 (Washington: GPO, 2000), pp. 313-394.

⁷ Ibid.

Today, all presidential electors are chosen by the voters, but, in the early Republic, more than half the states chose electors by votes of the legislators in their legislatures, thus eliminating any direct involvement by the voting public in the election. This practice changed rapidly after the turn of the 19th century, however, as the right to vote was extended to an ever-wider segment of the population, culminating in the extension of the franchise to all eligible citizens 18 years of age or older. The tradition that the voters choose the presidential electors thus became a permanent feature of the electoral college system.

While the vote for electors has devolved to individuals, the constitutional power of the state legislatures to decide how the electors will be chosen remains essentially unimpaired.⁸ This was illustrated as recently as 2000. During the bitter political strife that followed that year's presidential election in Florida, it was suggested that the state's legislature might step in to appoint electors if local election authorities and state courts were unable to determine who had won its 25 electoral votes by the deadline required by federal law. Although many commentators asserted that a return to selection of electors by the state legislature would be an unacceptable retreat from democratic practices, no serious arguments were raised against the constitutional right of the Florida legislature to do so.⁹

The Electors' Task: Ratifying the Voters' Choice. Presidential electors in contemporary elections are expected, and, in many cases pledged, to vote for the candidates of the party that nominated them. While there is considerable evidence that the founders assumed they would be independent, weighing the merits of competing presidential candidates, the electors have been regarded as agents of the public will since the first decade under the Constitution.¹⁰ They are expected to vote for the candidates of the party that nominated them. "Faithless" electors provide an occasional exception to that accepted rule.

Faithless Electors. Notwithstanding the tradition that electors are bound to vote for the candidates of the party that nominated them, individual electors have sometimes broken their commitment, voting for a different candidate or candidates other than those to whom they were pledged; they are known as "faithless" or "unfaithful" electors. Although 24 states seek to prohibit faithless electors by a

⁸ The legislature's power is, however, subject to certain constitutional constraints, particularly if state procedures are found to have violated the equal protection clause of the 14th Amendment. For additional information, please consult U.S. Congress, Senate, *The Constitution of the United States, Analysis and Interpretation*, 108th Cong., 2nd sess., Sen. Doc. 108-17 (Washington: GPO, 2004), pp. 450-452. Also available at [<http://www.gpoaccess.gov/constitution/pdf2002/012.pdf>].

⁹ "Florida House Poised to Appoint Electoral College Delegates," CNN.com, December 11, 2000, available at [<http://archives.cnn.com/2000/ALLPOLITICS/stories/12/11/election.wrap/>].

¹⁰ Neal Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative*, rev. ed. (New Haven, CT, 1981: Yale U. Press), pp. 24, 96-101.

variety of methods, including pledges and the threat of fines or criminal action,¹¹ most constitutional scholars believe that electors, once chosen, remain constitutionally free agents, able to vote for any candidate who meets the requirements for President and Vice President.¹² Faithless electors have been few in number (since the 20th century, one each in 1948, 1956, 1960, 1968, 1972, 1976¹³, and 1988¹⁴, one blank ballot cast in 2000¹⁵, and one in 2004¹⁶), and have never influenced the outcome of a presidential election.

General Election Ballots. General election ballots, which are regulated by state election laws and authorities, offer voters joint candidacies for President and Vice President for each political party or other group. That is, voters cast a single vote for electors pledged to the joint ticket of the presidential and vice presidential nominees of the party they represent. This practice conforms to the Constitution, which provides for only one set of electors, although the electors vote separately for President and Vice President. This practice also eliminates the possibility that voters could pick and choose among electors from different parties.

Most states do not print the names of individual elector-candidates on the general election ballot. The most common variants are for only the names and party identification of the presidential and vice presidential nominees to appear on the ballot, in some cases preceded by the phrase “Electors for.” Some states further specify in law that a vote for these candidates is a vote for the elector-candidates of that party or other political group.¹⁷

Winner Take All: How the General Ticket System Awards the Electoral Vote in Most States. While the Constitution is silent on the exact procedure for awarding each state’s electoral votes, 48 states and the District of Columbia currently use the “general ticket” or “winner-take-all” system. The sole exceptions to this practice, Maine and Nebraska, use the “district” system, which is

¹¹ For information on these restrictions, please consult: U.S. Congress, *Nomination and Election of the President and Vice President of the United States*, 2000, pp. 313-394.

¹² U.S. Congress, Senate, *The Constitution of the United States of America, Analysis and Interpretation*, pp. 453-455. Also available at [\[http://www.gpoaccess.gov/constitution/pdf2002/012.pdf\]](http://www.gpoaccess.gov/constitution/pdf2002/012.pdf).

¹³ Peirce and Longley, *The People’s President*, rev. ed., pp. 97-99.

¹⁴ 1988 faithless elector:
[\[http://www.archives.gov/federal-register/electoral-college/scores.html#1988\]](http://www.archives.gov/federal-register/electoral-college/scores.html#1988).

¹⁵ 2000 blank electoral vote ballot:
[\[http://www.archives.gov/federal-register/electoral-college/scores2.html#2000\]](http://www.archives.gov/federal-register/electoral-college/scores2.html#2000).

¹⁶ In 2004, one Minnesota elector cast votes for John Edwards for both President and Vice President. No objection was raised in the January 6, 2005, joint session at which electoral votes were counted, and the vote was recorded as cast. See National Archives and Records Administration website at [\[http://www.archives.gov/federal-register/electoral-college/2004/election_results.html\]](http://www.archives.gov/federal-register/electoral-college/2004/election_results.html).

¹⁷ For information on individual state ballot format, please consult: U.S. Congress, *Nomination and Election of the President and Vice President of the United States*, 2000, pp. 313-394.

examined later in this report. Under the general ticket system, each political party or group or independent candidacy that is eligible to be placed on the ballot nominates a group (also known as “ticket” or “slate”) of candidates for the office of elector that is equal in number to the state’s total number of electors. As noted previously, voters then cast a single vote for the entire ticket of electors pledged to the presidential and vice presidential candidates of their choice; the ticket receiving the most votes statewide (a plurality is sufficient) is elected. These people become the electors for that state.

As an illustration, this is how the general ticket system would work in a hypothetical state, State A. State A currently has 10 electoral votes, reflecting its two Senators and eight Representatives. The two equally hypothetical major parties, “Party X” and “Party Y” each nominate 10 persons for the office of presidential elector, pledged to the presidential and vice presidential candidates of their party. Voters go to the polls and cast a single vote for the ticket of party electors of their choice, although as noted previously, only the names of the presidential and vice presidential candidates are likely to appear on the ballot. Party X’s slate of elector-candidates receives 51% of the popular vote; Party Y’s slate receives 49%. Notwithstanding the closeness of the results, all 10 of Party X’s electors are chosen, and Party Y wins no electoral votes in State A. The Party X electors are pledged to their party’s presidential and vice presidential candidates, and they normally vote to confirm the choice of the citizens who elected them (the exception, as noted previously, would be the infrequent faithless elector).

The general ticket system has been favored since the 19th century, as it tends to magnify the winning candidates’ victory margin within states and across the nation, and generally guarantees a national electoral college majority for the winners. It has, however, been criticized on the grounds that it effectively negates the votes for the runners-up. Returning to State A, some critics suggest that it would be more equitable, given the state of the popular vote, if a number of electors supporting Party Y’s candidate were chosen. Alternative methods of allocating electors are examined in a later section of this report, under “Mending the Electoral College.”

General Election Day. Elections for all federal elected officials are held on the Tuesday after the first Monday in November in even-numbered years; presidential elections are held in every year divisible by four (November 4, 2008 for the next presidential election). Congress selected this day in 1845;¹⁸ previously, states held elections on different days between September and November, a practice that sometimes led to multiple voting across state lines, and other fraudulent practices. By mandating a single presidential election day, Congress sought to eliminate such irregularities.

Other factors also contributed to Congress’ choice of a November election day. By tradition, November was chosen because the harvest was in, and farmers had some leisure time, and thus were able to take the time needed to vote. Tuesday was selected because it gave a full day’s travel between Sunday, which was widely

¹⁸ Statutes at Large, 5 Stat. 721.

observed as a strict day of rest, and election day.¹⁹ The choice of Tuesday after the first Monday also meant that election day would never fall on the first day of the month, which was generally the day on which local courts convened. This was intended to avoid congestion at the county seat. Finally, travel was also easier throughout the northern states during November, before winter had set in.

The Electors Convene. The 12th Amendment requires electors to meet “in their respective states....” This provision was intended to deter manipulation of the election by having the state electoral colleges meet simultaneously, but in separate locations. Congress by law sets the date on which the electors meet, which is currently the first Monday after the second Wednesday in December (December 15, 2008).²⁰ The same law provides that in cases of disputed state results, if the said state has previously provided a means of resolving disputes, and if this means has been used to reach a decision as to the election result not less than six days before the date on which the electors are scheduled to meet, then that decision is final.²¹ The electors almost always meet in the state capital, usually in the capitol building or state house itself. They vote “by ballot”²² separately for President and Vice President (at least one of the candidates must be from another state, a provision retained from the original practice, which was intended promote the selection of nationally renowned candidates, rather than “native sons” exclusively). The results are then endorsed, and copies are sent to the following officials:

- the Vice President of the United States (in his capacity as President of the Senate);
- the secretary of state or comparable officer of their state;
- the Archivist of the United States; and
- the judge of the federal district court of the district in which the electors met.²³

The electors then adjourn, and the electoral college ceases to exist until the next presidential election.

Congress Counts, Ascertains, and Declares the Vote. The final step in the presidential election process (aside from the presidential inauguration on January 20) is the counting, ascertainment, and declaration of the electoral votes in Congress.²⁴ The House of Representatives and the Senate meet in joint session in the House chamber on January 6 of the year following the presidential election (January

¹⁹ In most rural areas, the only polling place was at the county seat, frequently a journey of many miles on foot or horseback.

²⁰ 3 U.S.C. 7.

²¹ This requirement, found at 3 U.S.C. (5), is referred to as the “safe harbor” provision, and was crucial in decisive allocation of Florida’s electors in the 200 presidential election.

²² 12th Amendment. This provision is interpreted to require paper ballots for President and Vice President.

²³ 3 U.S.C. 11.

²⁴ 3 U.S.C. 15-18.

8 in 2009), at 1:00 P.M.²⁵ No debate is allowed in the joint session. The Vice President, who presides in his capacity as President of the Senate, opens the electoral vote certificates from each state, in alphabetical order. He then passes the certificates to four tellers (vote counters), two appointed by each house, who announce the results. The votes are then counted, and the results are announced by the Vice President. The candidates receiving a majority of electoral votes (currently 270 of 538) are declared the winners by the Vice President, an action that constitutes “a sufficient declaration of the persons, if any, elected President and Vice President of the States.”²⁶

Objections to State Electoral Vote Returns. Objections may be offered to both individual electoral votes and state returns as a whole. Objections must be filed in writing, and be signed by one U.S. Senator and one Representative. If an objection is received, and determined to be valid, then the electoral vote count session is recessed. The Senate returns immediately to its chamber, and the two houses of Congress consider the objections separately. By law,²⁷ these sessions cannot last more than two hours, and no member of either house may speak for more than five minutes. At the end of this period, the houses vote separately to agree or disagree with the objection. The Senate then returns to the House chamber, and the joint session reconvenes. The decisions of the two houses are announced. If both houses agree to the objection, then the electoral vote or votes in question are not counted. Otherwise, the vote or votes stand as submitted, and are counted as such.²⁸

This process was most recently used following the 2004 presidential election. An objection was raised to the certificate of the electoral vote filed by the State of Ohio at the joint electoral count session held on January 6, 2005. It met the required standards, being submitted in writing, and bearing the signatures of one Representative and one Senator. The joint session was duly recessed, and the two houses of Congress reconvened separately to debate and vote on the objection, which they rejected. The certificate of electoral votes submitted by Ohio was accepted, and the vote was recorded.²⁹

²⁵ Congress by statute occasionally sets a different date for the electoral vote count session, particularly in years when January 6 falls on a Sunday. For the 2009 joint session, the date has been set for January 8. See H.J.Res. 100, 110th Congress.

²⁶ 3 U.S.C. 15. If there is no majority, due to a tie or division of the electoral vote among three or more candidates, the President is elected in the House of Representatives, and the Vice President in the Senate by the contingent election process. For further information, see CRS Report RL32695, *Election of the President and Vice President by Congress: Contingent Election*, by Thomas H. Neale.

²⁷ 3 U.S.C. 17.

²⁸ For further information on proceedings at joint electoral vote counting sessions of Congress, please consult CRS Report RL32717, *Counting Electoral Votes: An Overview of Procedures at the Joint Session, Including Objections by Members of Congress*, by Paul Rundquist and Jack Maskell.

²⁹ For the proceedings at the joint count session of January 6, 2005, please consult *Congressional Record*, daily ed., vol. 151, January 6, 2005, pp. S41-S56, H84-H129.

A Tie or Failure to Win a Majority in the Electoral College: Contingent Election by Congress. The 12th Amendment, as noted earlier in this report, requires that candidates receive a majority of electoral votes, at least 270 of the current total of 538, in order to be elected President or Vice President. In the event of a tie, or if no candidate receives a majority, then choice of the President and Vice President “defaults” to Congress in a procedure known as contingent election. In a contingent election, the House of Representatives elects the President, choosing from among the three candidates who received the most electoral votes. The Senate elects the Vice President in a contingent election, choosing between the two candidates who received the largest number of electoral votes.

Perhaps the most remarkable feature of contingent election is that each state has the same vote, regardless of population. In the House, each state delegation casts a single vote for President, while in the vice presidential election, each Senator casts a single vote.³⁰

“Mending” the Electoral College: Reform Proposals

Two alternative methods for awarding electoral votes which pass the test of constitutionality have long been available to the states, the District and Proportional Plans. They have historically been promoted as avoiding the alleged failings of the general ticket system, and, according to their advocates, they have an added virtue in that they would not require a constitutional amendment.³¹ A third reform option, the Automatic Plan, would, however, require a constitutional amendment.

The District Plan. The first is the district plan or system, which, as noted in the summary of this report, has been adopted by Maine and Nebraska. Under the district system, two electors are chosen on a statewide, at-large basis (representing the two “senatorial electors” allotted to each state regardless of population), and one is elected in each congressional district.³² Each voter still casts a single vote for President and Vice President, but the votes are counted twice: first on a statewide basis, with the two at-large elector-candidates who win the most votes (a plurality) elected en bloc, and then again in each district, where the district elector-candidate winning the most votes in each district (again, a plurality is sufficient) is elected.

³⁰ For further information on the various aspects of the contingent election process, please consult CRS Report RL32695, *Election of the President and Vice President by Congress: Contingent Election*, by Thomas H. Neale.

³¹ For information on how electoral votes would have been allocated under the district and proportional plans in the presidential elections of 1992, 1996, and 2000, please consult CRS congressional distribution memorandum *Alternative Methods to Allocate the Electoral Vote: The Winner Take All, Proportional, and District Systems Compared Using 1992, 1996, and 2000 Data*, by David C. Huckabee. Available to Members of Congress and congressional staff from the author.

³² Some versions of the district plan would use ad hoc presidential election districts to award these votes, rather than congressional districts, but both Maine and Nebraska, which use the district system, tally their votes by congressional district.

This is how the district system might work in State A, which is apportioned eight Representatives in Congress, and thus, when its two “senatorial” electors are added, has a 10-member electoral college delegation.. Assume that Party X receives 51% of the statewide vote, and Party Y, 49%. Party X’s candidates for the two statewide (or senatorial) elector offices are thus elected. Assume also that Party X receives a plurality or majority of the popular vote in five of State A’s congressional districts, while Party Y wins three of the districts. Under the district plan, the “district” electoral votes would be similarly awarded, so that Party X would receive seven electoral votes — five district electors, and the two statewide electors, while Party Y would receive the three electors that reflected its congressional district majorities.

The claimed advantage of the district system is that it is said to more accurately reflect differences in support in various parts of a state, and does not necessarily “disenfranchise” voters who picked the losing ticket. For instance, a state that has one or more large cities and a large rural and suburban population with differing political preferences and voting patterns might well split its electoral vote under the district system. Opponents suggest that the district system, with its division of electoral votes within states, would more frequently lead to deadlocked elections in which no candidate receives a majority of electoral votes. Neither Maine nor Nebraska has split its electoral vote during the time the district system has been in place.³³ In every presidential election, the overall winners also gained the most votes in each congressional district.

The Proportional Plan. The other commonly proposed option is the proportional plan or system, which has never been adopted by a state, but was the subject of a proposed Colorado constitutional amendment that was rejected by that state’s voters in the 2004 general election. The proportional plan allocates electors and electoral votes in direct proportion to the number of votes gained by each state. Unlike the district plan, it does not account for geographical voting patterns, but allocates electors on a purely statewide basis. Two variations of the proportional plan exist: the strict proportional plan, which would allocate electoral votes to thousandths of electoral votes, that is to the third decimal point, and the rounded proportional plan, which would use some method of rounding to allocate only whole electoral votes.

This is how the rounded proportional plan might operate in State A, with its 10 electoral votes. For this case, assume Party X receives 60% of the popular vote, and Party Y receives 40%. When these totals are rounded, Party X would be awarded six electors, and Party Y would gain four.³⁴

³³ The District Plan became operative in Maine for the presidential election of 1972, and in Nebraska, for the election of 1992.

³⁴ Given that the strict proportional plan, by providing for fractions of electoral votes, would almost certainly require a U.S. constitutional amendment, and since the proposed Colorado constitutional amendment proposed a rounded proportional system, the strict proportional plan allocation of electoral votes has not been included in this illustration.

Proponents of the proportional system argue that this is the fairest plan, since it most accurately reflects in its elector/electoral vote allocation the preferences of the voters, acting as a statewide political community. They also note that it would provide recognition for new-party or third-party candidates that achieve a substantial level of support in a state. Opponents suggest that, like the district system, the proportional plan would more frequently lead to deadlocked elections in which no candidate receives a majority of electoral votes nationwide.

The Automatic Plan. The automatic plan comes closest to replicating the current “winner-take-all,” or “general ticket” system by which the winning candidates in a state take all the state’s electors and electoral votes. It would accomplish this goal by eliminating the office of presidential elector, and award electoral votes directly to candidates who won the most popular votes in a particular state. Unlike the district system and the rounded proportional system, however, the automatic plan would likely require a constitutional amendment, because it would abolish the office of presidential elector.

Supporters claim it preserves what they consider to be some of the advantages of the existing system: first, they assert, it would continue to deliver all of a state’s electoral votes to the winning candidates, thus contributing to decisive results in presidential elections and would also help maintain the nation’s current ideologically broad and stable two-party political system. Opponents claim that it would continue to “disenfranchise” voters who picked the losing candidates by using the winner-take-all device, and that, in common with other proposed electoral college reforms, it would not guarantee that the candidates winning the most popular votes would always be elected.

Reform Through State or Private Alternatives. Constitutional amendments that would revise electoral college procedures or eliminate the system altogether are routinely introduced in every Congress. The obstacles faced by would-be constitutional amendments are considerable, however; there has been no floor action in Congress on any of these proposals since 1979, and the most recent hearings were held in 1992. In recent years, measures to change the nation’s presidential election system are increasingly likely to have originated on the state level, or be offered by non-governmental organizations. These have included:

- Colorado Amendment 36, a proportional plan initiative rejected by the voters of that state in 2004;
- the California Presidential Reform Act (California Counts), a district plan proposal that failed to win ballot access in that state in 2008; and
- National Popular Vote, a non-governmental public interest campaign to establish an interstate compact under which participating states would agree to award their electoral votes to the nationwide popular vote winner.

“Ending” the Electoral College: Direct Popular Election by Constitutional Amendment

The most widely-introduced proposal to reform the electoral college system would actually eliminate the current arrangements and replace them with direct popular election of the President and Vice President. Most direct election proposals provide for the election of the joint ticket of candidates for President and Vice President who win a plurality of the popular vote. Some versions have called for a 40% threshold in order to win, with either a runoff or election by Congress if the necessary percentage is not gained.

Proponents of direct popular election argue that it is simple, democratic, and foolproof: the candidates with the most popular votes win under almost all circumstances.³⁵ Opponents, and defenders of the electoral college, claim that the existing system is an integral and vital element in the U.S. federal system, that it contributes to a stable and ideologically diverse two party system, and that it has delivered the “people’s choice”³⁶ in 47 of 51 presidential elections since the 12th Amendment came into effect in 1804 — what they characterize as an excellent track record.³⁷

For further information on mending or ending the electoral college, please consult CRS Report RL34604, *Electoral College Reform: 110th Congress Proposals, the National Popular Vote Campaign, and Other Alternatives*, by Thomas H. Neale.

Concluding Observations

The electoral college system has demonstrated both durability and adaptability during more than two centuries of government under the U.S. Constitution. Although its structural elements remain largely unchanged, in operation it has never worked in quite the way the founders anticipated, and has evolved into a patchwork assemblage of constitutional provisions, state laws, political party practices, and enduring traditions. The electoral college system has always had flaws and critics, and it has been the subject of controversy in four elections,³⁸ but, as noted earlier, it has delivered a President and Vice President who won both the popular and electoral

³⁵ The only exceptions might occur under variations that call for election by Congress in the event of a tie, or if no candidate receives a requisite minimum of votes, e.g. 40%.

³⁶ In this case, the “people’s choice” is defined as the candidate or candidates who won a majority or plurality of *popular* votes.

³⁷ For more detailed information on reform proposals, please consult CRS Report RL34604, *Electoral College Reform: 110th Congress Proposals, the National Popular Vote Campaign, and Other Alternatives*, by Thomas H. Neale.

³⁸ In 1824, the popular and electoral vote was split among four candidates, leading to election of the President in the House of Representatives, where the runner-up in popular and electoral votes was chosen over the plurality winner in both categories. In 1876, 1888, and 2000, the candidate receiving a majority of electoral votes, but fewer popular votes than his main opponent, was elected.

vote in 47 of 51 elections since the 12th Amendment took effect. Given the high hurdles faced by proposed constitutional amendments, it seems likely to remain in place unless or until its alleged failings become so compelling that large concurrent majorities in the public, Congress, and the states, are prepared to undertake its reform or abolition.

A group of potential alternatives to constitutional change has emerged in recent years, however, and it is arguable that these state and “grass roots” movements may have greater chances for success than a constitutional amendment. As noted earlier in this report, Colorado’s Amendment 36 initiative was rejected at the polls in 2004, and the politically controversial “California Counts” initiative proposal failed to attain ballot access in the latter state in 2008. It is arguable, however, that the interest generated by Colorado Amendment 36 and California Counts may stimulate further experimentation in alternative electoral college plans, in which the states might serve in their classic role as “laboratories” for national policy. Moreover, the most notably successful electoral college reform effort in recent decades has been non-federal and, at least in its origins, non-governmental. The National Popular Vote campaign, cited earlier in this report, has enjoyed a modest degree of success, having been approved in four states with a total of 50 electoral votes. It has also been passed by one or both legislative chambers, but not gained final approval, in seven additional states with a total of 103 electoral votes. Here again, however, the ultimate fate of the electoral college system arguably rests on the results it produces: in modern times, the college is expected to ratify the public choice by delivering the presidency to the candidates who have gained the most popular votes. If the electoral college system meets expectations, these proposals and others like them may languish. If it does not, they or others may attract sufficient popular and political support to become viable alternatives.

Appendix. Electoral Vote Allocation by Jurisdiction

Table 1. Electoral Vote Allocation by Jurisdiction, 2004-2008

State	Electors	State	Electors	State	Electors
Alabama	9	Kentucky	8	North Dakota	3
Alaska	3	Louisiana	9	Ohio	20
Arizona	10	Maine	4	Oklahoma	7
Arkansas	6	Maryland	10	Oregon	7
California	55	Massachusetts	12	Pennsylvania	21
Colorado	9	Michigan	17	Rhode Island	4
Connecticut	7	Minnesota	10	South Carolina	8
Delaware	3	Mississippi	6	South Dakota	3
District of Columbia	3	Missouri	11	Tennessee	11
Florida	27	Montana	3	Texas	34
Georgia	15	Nebraska	5	Utah	5
Hawaii	4	Nevada	5	Vermont	3
Idaho	4	New Hampshire	4	Virginia	13
Illinois	21	New Jersey	15	Washington	11
Indiana	11	New Mexico	5	West Virginia	5
Iowa	7	New York	31	Wisconsin	10
Kansas	6	North Carolina	15	Wyoming	3

Source: Compiled by the Congressional Research Service.