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The Electoral College: How It Works in Contemporary Presidential Elections

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Summary

When Americans vote for a President and Vice President, they are actually choosing presidential electors, known collectively as the electoral college. It is these officials who choose the President and Vice President of the United States. The complex elements comprising the electoral college system are responsible for one of the most important processes of the American political and constitutional system: election of the President and Vice President. A failure to elect a President, or worse, the choice of a chief executive whose legitimacy might be open to question, could precipitate a constitutional crisis that would require prompt, judicious, and well-informed action by Congress.

Article II, Section 1 of the Constitution, as amended in 1804 by the Twelfth Amendment, sets the requirements for election of the President and Vice President. It authorizes each state to appoint, by whatever means the legislature chooses, a number of electors equal to the combined total of its Senate and House of Representatives delegations, for a contemporary total of 538, including 3 electors for the District of Columbia. Since the Civil War, the states have universally provided for popular election of the presidential electors. Anyone may serve as an elector, except Members of Congress and persons holding offices of “Trust or Profit” under the Constitution. Every presidential election year, political parties and other political groups nominate their national candidates for President and Vice President. In each state where they are entitled to be on the ballot, they also nominate a group (a “slate” or “ticket”) of candidates for the office of elector equal in number to the electoral votes to which the state is entitled and who are committed to the presidential and vice presidential candidates they were nominated to support.

On election day, Tuesday after the first Monday in November (November 8 in 2016), voters cast a single vote for their preferred candidates for President and Vice President. They are actually voting for the slate of electors in their state pledged to those candidates. In 48 states and the District of Columbia, the entire slate of electors winning the most popular votes in the state is elected, a practice known as “winner-take-all” or “the general ticket” system. Maine and Nebraska use an alternative method, the “district system,” which awards two electors to the popular vote winners statewide, and one to the popular vote winners in each congressional district. Electors assemble in their respective states on the Monday after the second Wednesday in December (December 19 in 2016). They are expected, but not constitutionally bound, to vote for the candidates they represent. The electors cast separate ballots for President and Vice President, after which the electoral college ceases to exist until the next presidential election. State electoral vote results are reported to Congress and other designated authorities; they are then counted and declared at a joint session of Congress held on January 6 of the year after the election; Congress may, however, change this date by joint resolution. A majority of electoral votes (currently 270 of 538) is required to win, but the results submitted by any state are open to challenge at the joint session, as provided by law.

Past proposals for change by constitutional amendment have included various reform options and direct popular election, which would eliminate the electoral college system, but no substantive action on this issue has been taken in Congress for more than 20 years. At present, however, a non-governmental organization, the National Popular Vote (NPV) campaign, proposes to reform the electoral college by action taken at the state level through an interstate compact; 10 states and the District of Columbia have approved the NPV compact to date.

For further information on contemporary proposals to reform or eliminate the electoral college, please consult CRS Report R43824, *Electoral College Reform: Contemporary Issues for Congress*, by (name redacted) , and CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*, by (na me redacted) and (name redacted)

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Introduction

The President and Vice President of the United States are chosen indirectly by a group of persons elected by American voters. These officials are known as electors, and the institution is referred to collectively as the electoral college. Established in 1787 as one of several compromises in the Constitution, the electoral college and an array of subsequent federal and state laws and political party practices together comprise the electoral college system. It has been criticized by some as an undemocratic anachronism, but praised by others as a pillar of political stability and American federalism. Absent a constitutional amendment, or the success of non-governmental initiatives, such as National Popular Vote,¹ this system will likely continue to govern U.S. presidential elections for the foreseeable future.

While the electoral college has delivered “the people’s choice” in 53 of 57 elections under the Constitution, in four instances it has chosen Presidents who received fewer popular votes than their major opponents. Three occurred in the 19th century, in the elections of 1824, 1876, and 1888. The elections in 1824² and 1876³ of candidates who received fewer popular votes than their leading opponents revealed the weaknesses of the system and led to constitutional crises in both instances and brought the nation to the brink of civil disturbance.⁴ Most recently, in the presidential election of 2000, George W. Bush narrowly won the electoral vote and the presidency but with fewer popular votes than his major opponent, Al Gore, Jr. This event, sometimes referred to as an electoral college “misfire,” or “wrong winner,” continues to influence American political discourse more than a decade later. In the contentious political atmosphere of contemporary presidential elections, another misfire, a tie vote in the electoral college, the failure of any candidate to receive a majority of electoral votes, or an extremely close election—in either popular or electoral votes—could arguably lead to an acrimonious and protracted political struggle, or even a constitutional crisis. As James Madison wrote, “a people who mean to be their own governours, must arm themselves with the power which knowledge gives.”⁵ This report seeks to arm Members of Congress and congressional staff with knowledge of and familiarity with the various components and functions of this complex institution.

¹ The National Popular Vote initiative is examined later in this report, under “Criticisms and Reform Proposals in Brief.” It is also the subject of CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*, by (name redacted) and (name redacted).

² With the electoral vote split between four candidates in 1824, the House of Representatives chose the President in a contingent election conducted in early 1825. The House picked the runner-up candidate, John Quincy Adams, who had received fewer electoral and popular votes (84 and 108,740) than front-runner Andrew Jackson (99 and 153,544).

³ In the 1876 presidential election, the political parties in three southern states both claimed victory and submitted competing slates of electors. A constitutional crisis and potential civil violence were averted by the so-called Compromise of 1877, in which Republican electors for Rutherford B. Hayes were accepted and Hayes was elected (185 electoral and 4,034,311 popular votes) over Samuel Tilden (184 electoral and 4,288,586 popular votes). In exchange, Federal troops were withdrawn from states of the former Confederacy, leading to the restoration of conservative Democratic state governments and disenfranchisement of African Americans.

⁴ In contrast, the electoral college “misfire” of 1888 generated little controversy. One analysis, noting the misfires of 1876 and 1888, and that the election of 1884 came within 600 votes of being a “misfire,” speculates that “shock and popular outrage ... in 1888 must have been tempered by the fact that such events were not unheard of ...” during this period of extremely close presidential contests. See: David W. Abbott and James P. Levine, *Wrong Winner, The Coming Debacle in the Electoral College* (New York: Praeger Publishers, 1991), p. 26.

⁵ “Letter to W.T. Barry,” August 4, 1822. in James Madison, *The Writings of James Madison* (New York: G.P. Putnam’s Sons, 1900-1910), vol. 9, p. 103.

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. None of these alternatives, however, proved satisfactory to the convention delegates. 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.⁶ This plan, which met with widespread approval by the delegates, was incorporated into the final document with only minor changes. As devised by the committee, the electoral college met several standards. It sought to

- reconcile and balance differing state and federal interests;
- give the state legislatures the authority to provide their preferred means of choosing the electors, including by popular vote, selection by the legislature itself, or any other method;
- by providing the “constant two” “senatorial” or at-large electors, afford the “smaller” states some additional leverage, so the election process would not be totally dominated by the more populous states;
- 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 perhaps the best deal the delegates felt they could get—seemingly the only one on which a consensus could be formed—and one of many compromises that contributed to the convention’s success. Alexander Hamilton expressed the delegates’ satisfaction with, and perhaps their relief concerning, 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.⁷

The Original Constitutional System

The Constitution gave each state a number of electors equal to the combined total of its Senate and House of Representatives membership.⁸ 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

⁶ 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.

⁷ Alexander Hamilton, “The Method of Electing the President,” in *The Federalist*, number 68 (Cambridge, MA: Belknap Press of Harvard U. Press, 1966), p. 440.

⁸ A map and table portraying the current allocation of electoral votes among the states may be found in the **Appendix** to this report, on pages 14-15.

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.”⁹

In order to forestall partisan intrigue and manipulation, each state’s electors were required to assemble separately in their respective states to cast their ballots rather than meet as a body in a single location.¹⁰

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 George Washington, the indispensable figure who was universally expected to be the first President, 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 national candidates qualified and fit to serve as President.

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 of Representatives 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 Twelfth Amendment Repairs Flaws in the Original System

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 number of votes equal to a majority of the whole number of *electors*—not a majority of *electoral votes*. Nobody actually ran for Vice President—the runner-up in the presidential contest was elected to the second office. 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 a joint ticket of two candidates—one for President and one for Vice President.

By the third election, in 1796, the nascent political parties of the day, Federalists and anti-Federalists (also known as Jeffersonians or Republicans),¹¹ 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 of their two votes for the recognized presidential candidate, and all *but one* of the electors cast their second votes for the vice presidential candidate. One elector would be instructed to withhold his second vote for the designated vice presidential candidate, so that the two candidates would not tie the vote and throw the election to the House.

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, leaving the election to be decided in the House of Representatives. The constitutional crisis resulting from

⁹ U.S. Constitution, Article II, Section 1, clause 2.

¹⁰ Hamilton, “The Method of Electing the President,” p. 440.

¹¹ To avoid confusion, it should be noted that the “Jeffersonian” or “Republican” proto-party of the 1790s was the ancestor of the modern Democratic Party. The modern Republican Party, which also claimed descent from the Jeffersonians, emerged in the 1850s.

the election of 1800 led to the Twelfth Amendment, which was proposed by Congress and speedily ratified by the states, as noted later in this report.¹²

The Electoral College Today¹³

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?¹⁴

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; civilian employees of the U.S. Government, that is, "civil servants"; and U.S. military and law enforcement personnel.¹⁵

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 in their states, 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 of the parties or other groups that nominated the elector-candidates appear, sometimes prefaced by the words "electors for." Moreover, electoral votes are commonly referred to as having "been awarded" to the winning candidates, as if no human beings were involved in the process.

¹² For further information on the election of 1800 and the Twelfth Amendment, consult Neal R. Peirce and Lawrence D. Longley, *The People's President, The Electoral College in American History and the Direct Vote Alternative*, revised edition (New Haven, CT: Yale University Press, 1981), pp.36-44.

¹³ For information on electoral college reform, please consult CRS Report R43824, *Electoral College Reform: Contemporary Issues for Congress*, by (name redacted), and CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*, by (name redacted) and (name redacted).

¹⁴ For a list of electors in the presidential election of 2012, please consult the National Archives and Records Administration's website at <http://www.archives.gov/federal-register/electoral-college/2012-certificates/>.

¹⁵ It is unclear whether the constitutional prohibition covers persons who serve without compensation on federal executive or congressional advisory boards and commissions. A 2007 opinion for the General Counsel of the Federal Bureau of Investigation (FBI) held that members of the FBI Director's Advisory Board should not be considered to hold an "Office of Profit or Trust" under the United States, as described in the Constitution's so-called emoluments clause (Article I, Section 9, clause 8). From this opinion, it could be inferred that members of the said boards and commissions would not be covered by the Article II, Section 1, clause 2 prohibiting persons holding "an Office of Trust or Profit" from serving as presidential electors. For further information, consult "Application of the Emoluments Clause to a Member of the Federal Bureau of Investigation Director's Advisory Board," Memorandum Opinion for the General Counsel, Federal Bureau of Investigation, June 15, 2007, at http://www.justice.gov/sites/default/files/olc/opinions/2007/06/31/fbi_advisory_board_opinion_061507_0.pdf.

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 aspects of this system left to state and political party preferences. Most states prescribe one of two methods: 32 states and the District of Columbia provide by law that major party candidates for presidential elector be nominated by state party conventions, while five states provide by law for nomination by the state party's central committee. The remainder use a variety of methods, including unspecified party option, 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.¹⁶

How Are Electoral Votes Allocated Among the States?

The Constitution, as noted previously, gives each state a number of electors equal to the combined total of its Senate membership (2 for each state) and House of Representatives delegation (currently ranging from 1 to 53, depending on population).¹⁷ The Twenty-third Amendment provides an additional 3 electors to the District of Columbia. The total number of electoral votes per state, based on the most recent (2010) census, ranges from 3, for seven states and the District of Columbia, to 55 for California, the most populous state. **Figure A-1** and **Table A-1** in the appendix of this report provide current electoral vote allocations by state and the District of Columbia for the elections of 2012, 2016, and 2020.

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.¹⁸ Thus, a state may gain or lose electors following reapportionment, as it gains or loses Representatives, but it always retains its two senatorial or at-large electors, and at least one more reflecting its House delegation. As noted earlier, the current allocation among the states is in effect for the presidential elections of 2012, 2016, and 2020; electoral votes will next be reallocated following the 2020 census, an alignment that will be in effect for the 2024 and 2028 elections.

How Are the Electors Chosen?

As also noted previously, 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.¹⁹

¹⁶ 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, 2008*, 111th Congress 2nd sess., S. Doc. 111-15 (Washington: GPO, 2010), pp. 346-428. This is the most recent edition available in 2016.

¹⁷ U.S. Constitution, Article II, Section 1, clause 2.

¹⁸ For additional information on the apportionment process, please consult CRS Report R41357, *The U.S. House of Representatives Apportionment Formula in Theory and Practice*, by (name redacted)

¹⁹ U.S. Constitution, Article II, Section 1, clause 2.

In the early days of the republic, the legislatures chose presidential electors in more than half the states, which meant that the voters in those states had no direct involvement in the election. This practice changed rapidly, however, as “the rise of democratic sentiment in the early nineteenth century”²⁰ led to the steady expansion of voting rights to include all white males 21 years of age or older. By 1832, choice of presidential electors had changed from the legislatures to the voters in every state but one, and since 1864 the voters have chosen electors in all states, a tradition that has become a permanent feature of the electoral college system.²¹

Today, while the citizens vote for the presidential electors, the constitutional authority of the state legislatures to decide how they will be chosen continues to be an effective part of the Constitution.²² This was illustrated as recently as 2000. During the political struggle 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 (this so-called “Safe Harbor” provision is examined later in this report). 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.²³

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 intended that 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.²⁴ They are expected to vote for the candidates of the party that nominated them. “Faithless” electors provide an occasional exception to that accepted rule.

Disregarding the Voters’ Choice: 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 for 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

²⁰ Peirce and Longley, *The People’s President*, revised edition, p.45.

²¹ *Ibid.*, pp. 44-47. The right to vote is guaranteed to all qualified persons eighteen years of age or older by the Fourteenth, Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments to the Constitution, and legislation such as the Voting Rights Act as Amended (52 U.S.C. §10101-10702).

²² 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 Fourteenth Amendment. For additional information, please consult U.S. Congress, Senate, *The Constitution of the United States, Analysis and Interpretation*, “Article II, Section 1, clauses 2-4,” 108th Cong., 2nd sess., Sen. Doc. 108-17 (Washington: GPO, 2004), pp. 450-452. Also available online at <http://www.gpo.gov/fdsys/search/pagedetails.action?granuleId=GPO-CONAN-2002-8-3&packageId=GPO-CONAN-2002&fromBrowse=true>.

²³ Jim Saunders and Randolph Pendleton, “Legislators Poised to Pick Bush Electors,” *Florida Times Union/Jacksonville.com*, December 12, 2000, available at http://jacksonville.com/tu-online/stories/121200/met_4857971.html; and John C. Fortier, ed., *After the People Vote, A Guide to the Electoral College*, third edition, (Washington: AEI Press, 2005), p. 45.

²⁴ Peirce and Longley, *The People’s President*, revised edition, pp. 24, 96-101.

variety of methods, including pledges and the threat of fines or criminal action,²⁵ most constitutional scholars believe that once electors have been chosen, they remain constitutionally free agents, able to vote for any candidate who meets the requirements for President and Vice President.²⁶ Faithless electors have been few in number: since 1900, there have been eight, one each in the elections of 1948, 1956, 1960, 1968, 1972, 1976, 1988 and 2004,²⁷ and one blank ballot cast in 2000.²⁸ They have never influenced the outcome of a presidential election, however, but their “faithless” votes, or failure to vote, were all duly recorded, and none of these faithless electors was prosecuted for this action.²⁹

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 on the ballot. 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 eliminates the possibility that voters could pick and choose among electors from different parties. The joint ticket also ensures that the President and Vice President will represent the same party.

Most states do not print the names of individual elector-candidates on the general election ballot. The most common practice is that only the names of the presidential and vice presidential nominees and their party identification 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 their party or political group.³⁰

The General Ticket and District Systems: How the States Award Their Electoral Votes

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, while Maine and Nebraska use the “district” system.

²⁵ For information on these restrictions, please consult: U.S. Congress, *Nomination and Election of the President and Vice President of the United States, 2008*, pp. 346-428. This is the most recent edition available in 2016.

²⁶ U.S. Congress, Senate, *The Constitution of the United States of America, Analysis and Interpretation*, pp. 453-455. Also available in PDF format at <https://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002.pdf>.

²⁷ 1948-1988: FairVote website, “Faithless Electors,” This source provided the names of faithless electors, where available, and the circumstances under which they cast their votes, at http://www.fairvote.org/faithless_electors. 2004: 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, “Historical Election Results,” at <http://www.archives.gov/federal-register/electoral-college/scores2.html#2004>.

²⁸ For the name of the elector and the circumstances under which this elector cast a blank electoral vote ballot in 2000, see *ibid.*, at http://www.fairvote.org/faithless_electors.

²⁹ National Archives and Records Administration website, “Who Are the Electors?” at <http://www.archives.gov/federal-register/electoral-college/electors.html#restrictions>.

³⁰ 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, 2008*, pp. 346-428. This is the most recent edition available in 2016.

The General Ticket System

Under the general ticket system, also referred to as the winner-take-all system, each political party 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. The number of candidates for the office of elector nominated by each party on its ticket equals the state’s total number of electors. As noted previously, the voters then cast a single vote for the presidential and vice presidential candidates of their choice; when they do, they actually cast a vote for the entire ticket of electors pledged to the party and candidates of their choice. Again, under the general ticket/winner-take all system, all the elector-candidates on the ticket receiving the most votes statewide³¹ are elected as presidential and vice presidential electors for that state.

This is how the general ticket system would work in hypothetical “State A.” State A currently has 10 electoral votes, reflecting its 2 Senators and 8 Representatives. Assume that two parties are eligible to appear on the ballot, “Party X” and “Party Y”; each nominates 10 persons for the office of elector, pledged to the presidential and vice presidential candidates nominated by their party. Voters go to the polls and cast *a single vote* for the “general ticket” of electors pledged to the candidates they support, although as noted previously, only the names of the presidential and vice presidential candidates are likely to appear on the ballot. Assuming that Party X’s ticket of elector-candidates receives 51% of the popular vote, and Party Y’s ticket receives 49%, *then all 10 of Party X’s electors are chosen*—“winner-take-all”—and Party Y wins *no* electoral votes in the state. 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 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.³²

The District System

The district system is a variation that has been adopted by Maine and Nebraska. Under this arrangement, the voters in each state choose:

- two electors on a statewide, at-large basis (representing the two senatorial or at-large electors allotted to each state regardless of population); and
- one elector in each congressional district.³³

Each voter still casts a single vote for President and Vice President, but the votes are counted twice: first on a statewide basis, where the two at-large elector-candidates who win the most votes (a plurality is sufficient) are both elected, and then again in each district, where the district elector-candidate who receives the most votes in each district (again, a plurality is sufficient) is elected.

³¹ A plurality of the plurality of the popular vote is sufficient to win the electoral votes.

³² For instance, in the 2012 presidential election, President Obama won 51.06% of the popular vote, compared to 47.20% for Governor Romney, a margin of 3.86%. The President’s margin was greatly magnified in the electoral college, however, where he won 332 electoral votes to Governor Romney’s 206, a margin of 23.43%. Computed by CRS from *Federal Election Commission 2012: Election Results for the U.S. President, the U.S. Senate, and the U.S. House of Representatives*, at <http://www.fec.gov/pubrec/fe2012/federalections2012.shtml>.

³³ Some proposed versions of the district system would use ad hoc presidential election districts to award these votes, rather than congressional districts, but both Maine and Nebraska tally their votes by congressional district.

This is how the district system might work in the same hypothetical State A, which, as noted previously is apportioned 8 Representatives in Congress, and thus, when its 2 senatorial or at-large electors are added, has 10 electors. In this scenario, Party X receives 51% of the statewide vote, and Party Y receives 49%. Under the district system, therefore, Party X's candidates for the two statewide senatorial or at-large candidates for elector are elected. The remaining electors are chosen on a district basis. Assume that Party X receives a plurality or majority of the popular vote in five of State A's eight congressional districts, while Party Y wins in the other three districts. Under the district system, these electors are awarded to the popular vote winners in each particular district, so that Party X, having won five districts, would receive five district votes, which, when added to the senatorial or at-large electors, would total seven electors, while Party Y, having won three districts, would receive the three electors that reflected its congressional district victories.

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. In 2016, general election day falls on November 8.³⁴ Congress selected this day in 1845;³⁵ 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's choice of a November election day. By tradition, November was chosen because the harvest would have been gathered, and the nation's predominantly rural farm population could spare the time for a day-long trip to the county seat, where voting was usually conducted. The choice of Tuesday provided a full day's travel time between Sunday, which was widely observed as a day of worship and rest, and election day. The choice of Tuesday *after the first Monday* also avoided potential congestion at the county seat on the first day of the month, which was generally the day on which local courts convened, or on Wednesday, which was often market day. Finally, travel was also easier during this season of the year, before winter had set in, especially in northern states.³⁶

The Electors Convene and Vote

The Twelfth Amendment requires electors to meet "in their respective states." As noted previously, this provision was intended by the founders to deter "intrigue" and manipulation of the election, by having the state electoral college delegations meet simultaneously, but in separate locations. Federal law sets the first Monday after the second Wednesday in December as the date on which the electors meet. In 2016, the electors will convene on December 19.³⁷

The same law set the "safe harbor" provision to govern disputed popular election returns in any state. When presidential election returns are disputed in any state, if that state, prior to election day, has established procedures to resolve such disputes, and if it has used these procedures to

³⁴ 3 U.S.C. §1.

³⁵ *Statutes at Large*, 5 Stat. 721.

³⁶ Lily Rothman, "The Reason Election Day Is Tuesday," *Time*, November 2, 2015, at <http://time.com/4089657/history-election-day/>.

³⁷ 3 U.S.C. §7.

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.³⁸

The electors almost always meet in the state capital, usually in the capitol building or state house itself. They vote “by ballot”—paper ballot³⁹—separately for President and Vice President. At least one of the candidates must be from another state, a provision retained from the original constitutional requirement; as noted previously, this was intended by the founders to promote the selection of nationally renowned candidates, and to prevent the electors from selecting exclusively “native sons.”

The results are then endorsed, and copies are sent to the following officials:

- the Vice President of the United States (in the Vice President’s capacity of President of the Senate);
- the state secretary of state or the comparable state officer;
- the Archivist of the United States; and
- the judge of the federal district court of the district in which the electors met.⁴⁰

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

Congress Counts, Ascertains, and Declares the Vote

Aside from the presidential inauguration on January 20, the final step in the presidential election process is the counting, ascertainment, and declaration of the electoral votes in Congress.⁴¹ Federal law directs the House of Representatives and the Senate to meet in joint session in the House chamber on January 6 of the year following the presidential election. For the 2016 presidential election, this day falls on Friday, January 6, 2017. Congress may, however, provide by law for a different date, a practice it traditionally follows when January 6 falls on a Sunday. This occurred most recently in 2013.⁴²

No debate is allowed in the joint session. The Vice President, who presides as President of the Senate, opens the electoral vote certificates from each state, in alphabetical order. The Vice President then passes the certificates to four tellers (vote counters), two appointed by the House, and two by the Senate, who announce the results. The votes are then counted, and the results are announced by the Vice President. The candidates who receive a majority of electoral votes,

³⁸ This requirement, found at 3 U.S.C. §5, was crucial in decisive allocation of Florida’s electors in the 2000 presidential election.

³⁹ Twelfth Amendment. This provision has historically been interpreted to require paper ballots for President and Vice President.

⁴⁰ 3 U.S.C. §11.

⁴¹ 3 U.S.C. §15-18.

⁴² 3 U.S.C. §15. The action of scheduling or rescheduling an electoral count joint session is customarily accomplished by a joint resolution originating in the House. For example, the 2009 session was set by H.J.Res. 100, 110th Congress, P.L. 110-430, 122 Stat. 4846. In 2013, January 6 fell on a Sunday, and the joint session was scheduled for Friday, January 4 by H.J.Res. 122, 112th Congress, P.L. 112-228, 126 Stat. 1610. January 6 will not fall again on a Sunday in a post-presidential election year until 2041. At the time of this writing, a date has yet to be set for the joint session to count electoral votes cast in the 2016 election.

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.”⁴³

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 in the joint session, and is 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. Under federal law,⁴⁴ 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.⁴⁵

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. The objection 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 duly recorded.⁴⁶

A Tie or Failure to Win a Majority in the Electoral College: Contingent Election by Congress

The Twelfth Amendment, as noted earlier in this report, requires that candidates receive a majority of electoral votes, that is, 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 for either of both offices receives a majority, then choice of the President and Vice President “defaults” to Congress in a procedure known as contingent election.⁴⁷ In a contingent election, the House of Representatives elects the President, choosing from among the *three* candidates who received the most electoral votes. The House votes by state: each state delegation votes internally to decide for whom the state’s vote shall be cast.⁴⁸ The Senate elects the Vice President in a contingent election, choosing between the *two* candidates who received the largest number of electoral votes. Unlike the House, each Senator casts an

⁴³ 3 U.S.C. §15.

⁴⁴ 3 U.S.C. §17.

⁴⁵ 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 (name redacted) and (name redacted)

⁴⁶ For the proceedings at the joint count session of January 6, 2005, please consult *Congressional Record*, volume 151, part 1, January 6, 2005, pp. 157-173, 197-243.

⁴⁷ For further information, see CRS Report R40504, *Contingent Election of the President and Vice President by Congress: Perspectives and Contemporary Analysis*, by (name redacted) .

⁴⁸ In states represented by a single at-large Representative (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming), that Member would cast the state’s vote for President in a contingent election.

individual vote. For both offices, a majority is required to elect in a contingent election: 26 or more votes of individual states for President and 51 or more Senators' votes for Vice President. It should be noted that although the District of Columbia participates in presidential elections by choosing three electors, it would not participate in a contingent election for President or Vice President.⁴⁹

Perhaps the most notable feature of contingent election is that each state casts an equal 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.

Under the Twentieth Amendment, if the House of Representatives has been unable to elect a President prior to January 20 in a contingent election, then the Vice President-elect serves as acting President until the deadlock has been resolved. Congress may provide by law who will act as President if neither a President-elect nor a Vice President-elect has been chosen prior to January 20 in a contingent election procedure.

2016 Presidential Election: An Electoral College Timeline

May-August 2016—In each state, party organizations and other groups that are eligible to be included on the general election ballot, including minor parties and independent candidacies, nominate a ticket of candidates for elector for President and Vice President in their states.

November 8, 2016—General Election Day. Voters cast one ballot for the joint ticket of their preferred candidates for President and Vice President. These are actually votes for the electors committed to those candidates.⁵⁰

December 13, 2016—The “Safe Harbor” deadline. As noted earlier, if, on or before election day, a state has provided by law for determination of controversies or contests over the electors and electoral votes, and if these procedures have been applied, and results have been determined on or before this date, these results are considered to be conclusive, and will govern in the counting of the electoral votes.⁵¹

December 19, 2016—The electoral college meets. State delegations of electors meet separately in their respective states at a place designated by the state legislature. In practice, the electors usually meet in the state capital, often in the state house or capitol building. The electors vote “by ballot”—paper ballot—separately for President and Vice President. Certificates of the results are then transmitted to the President of the U.S. Senate (one copy), the Archivist of the United States (two copies), the secretary of state or equivalent officer of the state in which the electors met (two copies), and the judge of the U.S. district court of the district in which the electors met (one copy).⁵²

⁴⁹ For further information, see Congressional Research Service Memorandum, *Would the District of Columbia Be Allowed to Vote in the Selection of the President by the House of Representatives?* by (name redacted), July 7, 1980. Available to Members of Congress and congressional staff from the author of this report.

⁵⁰ 3 U.S.C. §1.

⁵¹ 3 U.S.C. §5.

⁵² 3 U.S.C. §6-11.

December 28, 2016—Certificates must be delivered to the officers specified above not later than this date.⁵³

January 6, 2017—On this date, or another date designated by Congress, the Senate and House of Representatives assemble in joint session to count the electoral votes. The announcement of the state of the vote is deemed sufficient declaration of the persons elected President and Vice president.⁵⁴

January 20, 2017—The President and Vice President are inaugurated.⁵⁵

Criticisms and Reform Proposals in Brief

The electoral college and the various federal and state laws and political party practices that comprise the nation’s presidential election system have been criticized from the earliest days under the Constitution. In the modern era, these criticisms center on various characteristics of the system, including, among others, the facts that

- it provides for indirect election of the President and Vice President by electors allocated by state, rather than by direct nationwide popular vote;
- electors are not constitutionally required to follow the popular vote in their state;
- the general ticket system is said to disenfranchise those who voted for the losing candidates by awarding all the electors in a state to the winners and none to the losers;
- the general ticket system is also said contribute to elections—“electoral college misfires”—in which candidates may be elected with fewer popular votes than their opponents; and
- contingent election further removes the election from the voters by vesting it in the House and Senate and assigning the same vote to each state, notwithstanding differences in population.

Hundreds of constitutional amendments have been proposed to reform or eliminate the electoral college, falling into one of two categories: reform the system, “mend it,” or replace it with direct popular election, “end it.” Three alternative proposals to “mend it” have been the most widely proposed in the past:

- the automatic system; this would establish the general ticket system described earlier and currently used by 48 states and the District of Columbia as the mandatory nationwide system;
- the district system; this would establish the method currently used by Maine and Nebraska that allocates electoral votes on both a statewide and district basis, but as the mandatory nationwide system; and
- the proportional system, which would allocate electoral votes in each state according to the proportion of the popular votes won by each ticket in that state as the mandatory nationwide system.

⁵³ 3 U.S.C. §12, the fourth Wednesday in December

⁵⁴ 3 U.S.C. §15.

⁵⁵ U.S. Constitution, Twentieth Amendment.

All three of these reform proposals would retain electoral votes, but eliminate the office of elector, and thus eliminate the possibility of faithless electors.

Under direct popular election, the candidates winning the most popular votes nationwide would be elected. Under most direct election proposals a simple plurality of the nationwide popular vote total would be sufficient to elect the President and Vice President, but some versions would set the plurality threshold at 40% of the popular vote, while others would require a majority to elect.⁵⁶

From the late 1940s through 1979, Congress considered numerous electoral college reform measures. Constitutional amendments that proposed to reform or eliminate the system were the subject of hearings in the Senate and House Judiciary Committees on 17 different occasions during this period, while such proposals were debated in the full Senate on five occasions and twice in the House in these years. Electoral college-related amendments were approved by the necessary two-thirds majority twice in the Senate and once in the House, but never in the same Congress.⁵⁷ Since that time, legislative interest in electoral college reform has waned: no amendment to reform the electoral college has been introduced since the 107th Congress,⁵⁸ while no proposed amendment to establish direct popular election has been introduced since the 112th Congress.⁵⁹ In recent years, reform efforts have tended to originate on the state level. Proposals introduced in several state legislatures over the past decade would have substituted one of two versions of the district system or a proportional system in those states. None of these measures, however, has been implemented.

Another contemporary effort centers on the National Popular Vote campaign (NPV), a non-governmental initiative. NPV seeks to establish direct popular election of the President and Vice President through an interstate compact, rather than by constitutional amendment.⁶⁰ Under the compact's provisions, the electoral college would remain, but the NPV members pledge to use their authority to appoint electors "in such manner as the Legislature thereof may direct" to choose in their states the ticket of electors committed to the candidates that gain *the most votes nationwide regardless of the popular vote results in their state*. Assuming all 50 states joined the NPV compact, this would arguably deliver a unanimous electoral college decision for the candidates winning the most popular votes.⁶¹ The compact, however, would take effect only when states controlling a majority of the college, that is, 270 or more electoral votes, approve the plan. Between 2007 and 2014, 10 states and the District of Columbia joined the compact. They are allocated a total of 165 electoral votes, 61% of the 270 vote majority that would be required for the compact to be implemented.⁶² According to National Popular Vote, Inc., the national

⁵⁶ For additional information on reform proposals, please consult CRS Report R43824, *Electoral College Reform: Contemporary Issues for Congress*, by (name redacted) .

⁵⁷ For a detailed examination and analysis of these efforts, see Peirce and Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative*, rev. ed. pp. 131-206.

⁵⁸ In the 107th Congress: H.J.Res. 1, 107th Congress, introduced by Rep. Clyburn, proposed a district system reform. H.J.Res. 17 and H.J.Res 18, introduced by Rep. Engel, proposed a proportional system reform.

⁵⁹ In the 112th Congress, H.J.Res. 36, introduced by Rep. Jesse Jackson, Jr., proposed direct popular election.

⁶⁰ For more detailed information and analysis of the National Popular Vote Initiative, please consult CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*, by (name redacted) and (name redacted)

⁶¹ The potential for faithless electors would, however, continue.

⁶² "61% of the Way to Activating the National Popular Vote Bill," National Popular Vote website, at <http://www.nationalpopularvote.com/status>. The following states, listed in chronological order of their accession, are current signatories of the National Popular Vote Interstate Compact: Hawaii (4 electoral votes), 2008; Illinois (20 electoral votes), 2008; Maryland (10 electoral votes), 2008; New Jersey (14 electoral votes), 2008; Washington (12 (continued...))

advocacy group for the NPV initiative, the compact has been introduced in all 50 states and the District of Columbia, and is currently under consideration in nine states that are allocated a total 104 electoral votes.⁶³

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 constitutional elements have remained largely unchanged since ratification of the Twelfth Amendment, the electoral college has never worked as the founders planned. The historical record reveals that they intended it to be an indirect, deliberative selection process, carefully filtered from political considerations, with the degree of voter participation left to the discretion of the state legislatures. Instead, it accommodated the demands of an increasingly democratic and political party-dominated presidential election system, ultimately evolving into an improvised yet enduring assemblage of constitutional provisions, state laws, political party practices, and traditions.

The Constitution sets the size of the electoral college, the allocation of electors among the states, the margin of votes needed to win, and procedures for contingent election. Federal law establishes the quadrennial schedule that prescribes the times when presidential elections are held, and when electoral votes are cast in the states and then counted and recorded in Congress. It also sets procedures for each of these stages in the election process. State law provides who shall vote for electors, how elector-candidates shall be nominated, how electoral votes shall be awarded, and, in some states, seeks to prohibit or discourage faithless electors.

While this arrangement may not work as the founders intended, it has elected the presidential candidate who arguably enjoyed the greatest public support in 53 of 57 elections under the Constitution—a “success rate” of 92.8%. While public opinion has consistently and historically favored direct popular election,⁶⁴ electoral college reform does not appear to be an urgent public issue at present. Given the stringent requirements faced by all proposed constitutional amendments, the decline in congressional proposals for reform, and the slow progress of the National Popular Vote Initiative, the electoral college system seems likely to remain in place unless or until its alleged failings become so compelling that a broad consensus in favor of reform or abolition emerges among the public and in Congress and the states.

(...continued)

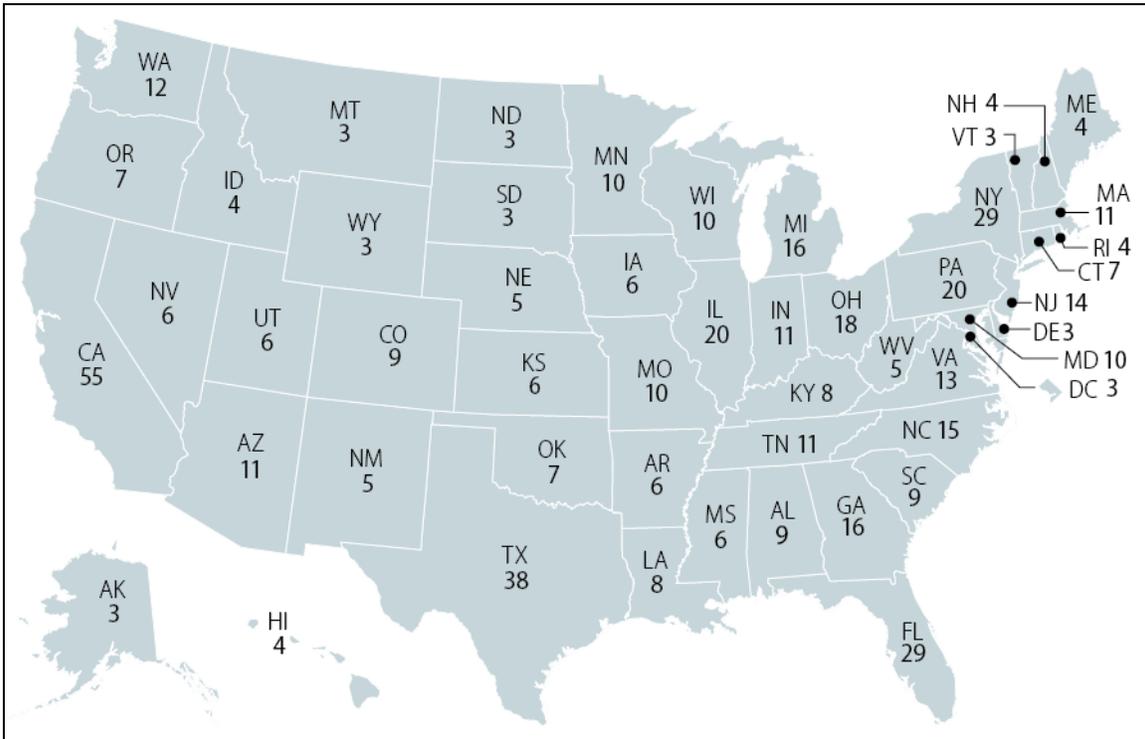
electoral votes), 2009; Massachusetts (11 electoral votes), 2010; District of Columbia (3 electoral votes), 2010; Vermont (3 electoral votes), 2011; California (55 electoral votes), 2011; Rhode Island (four electoral votes), 2013; and New York (29 electoral votes), 2014.

⁶³ The NPV Interstate Compact is currently under consideration in the following states, which are allocated a total of 104 electoral votes: Alaska (three electoral votes), Arizona (11 electoral votes), Georgia (16 electoral votes), Michigan (16 electoral votes), Minnesota (10 electoral votes), Missouri (10 electoral votes), Oklahoma (7 electoral votes), Pennsylvania (20 electoral votes), Tennessee (11 electoral votes). Source: “Progress in the States,” National Popular Vote website, at <http://www.nationalpopularvote.com/states>, and various state legislative websites.

⁶⁴ In January 2013, the Gallup Poll reported that 63% of respondents favored an amendment providing for direct popular election, while 29% favored retention of the electoral college. This finding mirrors those recorded by Gallup as early as 1967. See: Lydia Saad, “Americans Call for Term Limits, End to Electoral College,” *The Gallup Poll*, January 18, 2013, at <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>

Appendix. Electoral Vote Allocation by States and the District of Columbia

Figure A-1. Map of State Electoral Vote Allocations, Presidential Elections of 2012, 2016, and 2020



Source: Compiled by the Congressional Research Service

Table A-1. Electoral Vote Allocation by States and the District of Columbia, Presidential Elections of 2012, 2016, and 2020

State	Electors	State	Electors	State	Electors
Alabama	9	Kentucky	8	North Dakota	3

State	Electors	State	Electors	State	Electors
Alaska	3	Louisiana	8	Ohio	18
Arizona	11	Maine	4	Oklahoma	7
Arkansas	6	Maryland	10	Oregon	7
California	55	Massachusetts	11	Pennsylvania	20
Colorado	9	Michigan	16	Rhode Island	4
Connecticut	7	Minnesota	10	South Carolina	9
Delaware	3	Mississippi	6	South Dakota	3
District of Columbia	3	Missouri	10	Tennessee	11
Florida	29	Montana	3	Texas	38
Georgia	16	Nebraska	5	Utah	6
Hawaii	4	Nevada	6	Vermont	3
Idaho	4	New Hampshire	4	Virginia	13
Illinois	20	New Jersey	14	Washington	12
Indiana	11	New Mexico	5	West Virginia	5
Iowa	6	New York	29	Wisconsin	10
Kansas	6	North Carolina	15	Wyoming	3

Source: Compiled by the Congressional Research Service.

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