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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 election of the President and Vice President.

The 2016 presidential contest was noteworthy for the first *simultaneous* occurrence in presidential election history of four rarely occurring electoral college eventualities. These included (1) the election of a President and Vice President who received fewer popular votes than their major opponents; (2) the actions of seven “faithless electors,” who voted for candidates other than those to whom they were pledged; (3) the split allocation of electoral votes in Maine, which uses the district system to allocate electors; and (4) objections to electoral votes at the joint session of Congress to count the votes. These events are examined in detail in the body of this report.

Article II, Section 1 of the Constitution, as modified 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. For over 150 years, the states have universally required that electors be chosen by the voters. 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 independent candidacies 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 that is equal in number to the electoral votes to which the state is entitled.

On election day, Tuesday after the first Monday in November (November 3 in 2020), when voters cast a single vote for their preferred candidates, 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 14 in 2020). 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*, and CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*.

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Introduction

The President and Vice President of the United States are chosen indirectly by a group of persons elected by America’s voters. These officials are known as electors, and the institution is referred to collectively as the electoral college. Article II, Section 1 of the Constitution (1787), as modified by the Twelfth Amendment (1804), provides the constitutional framework for the process, which, together with an array of subsequent federal and state laws and political party practices, comprises the electoral college system as it exists today. It has been criticized by some as an undemocratic anachronism, but praised by others as a pillar of political stability and American federalism.

This report focuses on the institutions and procedures associated with the contemporary electoral college system. It opens by noting four rarely occurring electoral college eventualities that took place in connection with the 2016 presidential election. These included the election of a President and Vice President who received fewer popular votes than their major opponents; the actions of seven “faithless electors,” who voted for candidates other than those to whom they were pledged; the split allocation of electoral votes in Maine, which uses the district system to choose its electors; and challenges to electoral votes in the joint session of Congress at which they are counted.

The report also examines the constitutional origins of the electoral college system and identifies the additional components and processes that are the product of federal and state law, party requirements, and political tradition, explaining their role in presidential elections. It provides a timeline for operation of the electoral college system for the 2020 presidential election, a brief examination of alternative reform measures, including constitutional amendment proposals and non-governmental initiatives, such as the National Popular Vote initiative¹ (NPV), and closes with concluding observations on the state of the electoral college system and prospects for change.

Most Recent Developments: The Electoral College and the 2016 Presidential Election

The 2016 presidential election will be recorded as the first in modern history in which four electoral college eventualities that have occurred separately in the past occurred during the same election cycle.

The Electoral and Popular Votes: Different Results

The President and Vice President were elected with a majority of electoral votes, but fewer popular votes than their major party opponents.² The 2016 election marked the fourth occurrence

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 Republican Party nominees Donald Trump and Mike Pence won 304 electoral votes, a majority of 56.5%, while Democratic Party nominees Hillary Clinton and Tim Kaine won 227 electoral votes, 42.2% of the total. Conversely, Clinton and Kaine won 65,853,516 popular votes, a plurality of 48.18% of the popular vote total, while Trump and Pence won 62,984,825 popular votes, 46.09% of the total. Other candidates won seven electoral votes, 1.3% of the electoral vote total, and 7,830,896 popular votes, 5.73% of the total. Source: U.S. Federal Election Commission, *Official 2016 Presidential Election Results*, January 30, 2017, at <http://www.fec.gov/pubrec/fe2016/2016presgeresults.pdf>.

of this eventuality, which occurred previously in 1876, 1888, and 2000. This election result is sometimes referred to, particularly by proponents of electoral college reform, as a “wrong winner” election or an “electoral college misfire.”³ This eventuality stemmed directly from the constitutional structure of the electoral college system. Article II, Section 1 of the Constitution and its Twelfth Amendment require a majority of electoral votes to elect the President and Vice President, but they contain no reference at all to popular votes.

Faithless Electors

Seven electors—five Democrats and two Republicans—cast votes for candidates other than those to whom they were pledged.⁴ This phenomenon, generally referred to as “faithless” or “unfaithful” electors, also derives directly from the Constitution, which in the Twelfth Amendment, instructs electors to “vote by ballot for President and Vice President.” While tradition that electors reflect the popular vote exerts a strong influence, there is no constitutional requirement that they vote for the candidates to whom they are pledged.

Maine Splits Its Electoral Vote

For the first time since it adopted the “district system” to award electors, the electoral vote in Maine was split between the two major party tickets—Republican nominees Trump and Pence received one vote for the district they carried and Democratic nominees Clinton and Kaine received three, one for the district they won and two at-large electors for winning the statewide popular vote.⁵ This eventuality also has constitutional origins, since Article II, Section 1 authorizes the states to appoint their electors “in such Manner as the legislature thereof may direct.” The only other modern instance of the district system producing split electoral votes occurred in Nebraska in 2008.⁶

Unsuccessful Objection in the Joint Electoral Vote Count Session

Title 3, Section 15 of the U.S. Code, which includes procedures for the counting of electoral votes in Congress, provides for objections to state certificates of electoral votes at the joint session of Congress at which electoral votes are counted. Several Members of the House of Representatives raised objections to electoral votes at the January 6, 2017, joint session of Congress at which the votes were counted. These objections were not considered, however, because they did not meet the legal requirements, which include signatures from at least one Senator and one Representative.⁷

³ See, for instance, David W. Abbott and James P. Levine, *Wrong Winner, The Coming Debacle in the Electoral College* (New York, Praeger, 1991), 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, 1980), “Chances of a Misfire,” pp. 116-119.

⁴ Federal Election Commission, *Official 2016 Presidential Election Results*, January 30, 2017, at <http://www.fec.gov/pubrec/fe2016/2016presgeresults.pdf>.

⁵ Maine, Secretary of State, *Tabulations for Elections Held in 2016*, at <http://maine.gov/sos/cec/elec/results/results16-17.html#tally>.

⁶ At present, Maine and Nebraska are the only two states that award electoral votes by the district system. For further information, see in this report “The District System,” pp. 11-12.

⁷ 3 U.S.C. §15. For proceedings at the joint count session of January 6, 2017, please consult *Congressional Record*, daily edition, volume 163, number 4, pp. H185-H190.

Public Opinion and the Electoral College: Post-2016 Election Developments

In addition to these eventualities, the Gallup Organization measured a change in public support for the electoral college system—versus direct popular election—immediately following the 2016 presidential election.

Public opinion has consistently and historically favored direct popular election over retention of the electoral college, with support for direct popular election never previously falling below 58%, as measured by Gallup since 1967. In January 2013, for instance, the Gallup Poll reported that 63% of respondents favored a constitutional amendment providing for direct popular election, while 29% favored retention of the electoral college.⁸

Following the 2016 election, however, the Gallup Poll reported a rise in support levels for the electoral college; according to poll results published on December 2, 2016, 49% of respondents favored an amendment providing for direct popular election, while 47% favored retention of the electoral college.⁹ According to Gallup, this change was due to the fact that “[i]n the aftermath of this year’s election, the percentage of Republicans wanting to replace the Electoral College with the popular vote has fallen significantly.”¹⁰ Specifically, support for direct election by respondents who identified themselves as “Republican” or “Republican-leaning Independents” fell from 54% in 2012 to 19% following the 2016 election. Conversely, levels of support for direct popular election among “Democratic or Democratic-leaning” respondents rose to new heights, from 69% in 2012 to 81% in 2016.¹¹

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.¹² 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;

⁸ 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>.

⁹ Art Swift, “Americans’ Support for Electoral College Rises Sharply,” *The Gallup Poll*, December 2, 2016, at <http://www.gallup.com/poll/198917/americans-support-electoral-college-rises-sharply.aspx>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² 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.

- 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 the electoral college method, and perhaps reflected their relief at reaching an acceptable solution, 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.¹³

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.¹⁴ 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.”¹⁵

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.¹⁶

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.

¹³ Alexander Hamilton, “The Method of Electing the President,” in *The Federalist*, number 68 (Cambridge, MA: Belknap Press of Harvard U. Press, 1966), p. 440.

¹⁴ 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 22-23.

¹⁵ U.S. Constitution, Article II, Section 1, clause 2.

¹⁶ Hamilton, “The Method of Electing the President,” p. 440.

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),¹⁷ 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 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.¹⁸

The Electoral College Today¹⁹

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; by the late 19th century the following range of constitutional requirements, federal and state legal provisions, and political party practices that make up the contemporary system were in place.

¹⁷ 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.

¹⁸ For further information on the election of 1800 and the Twelfth Amendment, see Peirce and Longley, *The People’s President*, revised edition, pp. 36-44.

¹⁹ 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).

Who Are the Electors?²⁰

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.²¹

In practice, the two major political parties in each state 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 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. In some states, the presidential and vice-presidential nominees’ names are preceded on the ballot by the words “electors for.” The usual anonymity of presidential electors is such that electoral votes are commonly referred to as having “been awarded” to the winning candidates, 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 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 remaining states use a variety of methods; for instance, some make no provision for nomination of elector-candidates, leaving the decision to party authorities. Others provide for 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.²²

²⁰ For Certificates of Ascertainment that include names of each state’s 2016 presidential electors, please consult the National Archives and Records Administration’s website at <https://www.archives.gov/federal-register/electoral-college/2016/certificates-of-ascertainment.html>.

²¹ 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.

²² 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 (continued...)

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).²³ 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 to 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.²⁴ 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 previously, 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.²⁵

In the early days of the republic, the legislatures themselves 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”²⁶ 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.²⁷

Today, while the citizens vote for the presidential electors, the constitutional authority of the state legislatures to decide how they will be chosen as set forth in Article II, Section 1 continues to be in effect.²⁸ This was illustrated as recently as 2000. During the political controversy connected

(...continued)

(Washington: GPO, 2010), pp. 346-428. This is the most recent edition available in 2017.

²³ U.S. Constitution, Article II, Section 1, clause 2.

²⁴ 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)

²⁵ U.S. Constitution, Article II, Section 1, clause 2.

²⁶ Peirce and Longley, *The People's President*, revised edition, p. 45.

²⁷ *Ibid.*, pp. 44-47. Today, 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).

²⁸ The legislature's power is, however, subject to certain constitutional constraints, particularly if state procedures are (continued...)

with 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.²⁹

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.³⁰ 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: Disregarding the Voters' Choice

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 variety of methods, including pledges and the threat of fines or criminal action,³¹ 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.³² Faithless electors have been few in number prior to 2016: since 1900, there have been eight, one each in the elections of 1948, 1956, 1960, 1968, 1972, 1976, 1988 and 2004,³³ and one

(...continued)

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>.

²⁹ 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.

³⁰ Peirce and Longley, *The People's President*, revised edition, pp. 24, 96-101.

³¹ 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 2017.

³² 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>.

³³ 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>.

blank ballot cast in 2000.³⁴ They have never influenced the outcome of a presidential election, however, but prior to 2016, their “faithless” votes, or failure to vote, were all duly recorded.³⁵

2016: Faithless Electors—Ten Attempted, Seven Successful

Following the 2016 presidential election, 10 electors attempted to cast ballots for candidates other than those to whom they were pledged; seven succeeded. Three Clinton-Kaine electors—from Colorado, Maine, and Minnesota—attempted to vote for other candidates, but they were replaced by alternates who cast their ballots as electors according to the voters’ preference.³⁶ Seven electors, however, successfully cast votes for candidates other than those chosen by their state’s voters in the popular election. These included electors from three states:

- **Hawaii**—one Clinton-Kaine elector voted for Bernie Sanders for President and Elizabeth Warren for Vice President;
- **Texas**—two Trump-Pence electors cast one vote each for President for John Kasich and Ron Paul, one vote for Vice President for Carly Fiorina, but one of these electors cast no ballot for Vice President; and
- **Washington**—four Clinton-Kaine electors cast three votes for President for Colin Powell and one vote for President for Faith Spotted Eagle, and one vote each for Vice President for Elizabeth Warren, Maria Cantwell, Susan Collins, and Winona LaDuke.³⁷

This was the largest number since 1836 of electors who voted for candidates other than those for whom the voters in their states cast ballots.³⁸ In December 2016, as provided by Washington law, the Secretary of State of that state fined the four electors who had voted against the popular vote winners. The fines were subsequently upheld by a state administrative law judge.³⁹

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.

³⁴ 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.

³⁵ National Archives and Records Administration website, “Who Are the Electors?” at <http://www.archives.gov/federal-register/electoral-college/electors.html#restrictions>.

³⁶ Scott Detrow, “Donald Trump Secures Electoral Win with Few Surprises,” NPR (National Public Radio), December 19, 2016, at <http://www.npr.org/2016/12/19/506188169/donald-trump-poised-to-secure-electoral-college-win-with-few-surprises>.

³⁷ *Congressional Record*, daily edition, volume 163, number 4, January 6, 2017, p. H-189.

³⁸ In 1836, all 23 Virginia electors voted against instructions in the vice presidential contest. For information on faithless electors in earlier elections, see Fairvote, “Faithless Electors,” at http://www.fairvote.org/faithless_electors.

³⁹ Reid Wilson, “Washington Judge Upholds Fine for Faithless Electors,” *The Hill*, March 9, 2017, at <http://thehill.com/homenews/state-watch/323124-wash-judge-upholds-fines-for-faithless-electors>.

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.⁴⁰

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.

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 statewide⁴¹ are elected as presidential and vice presidential electors for that state.

The general ticket system has been favored since the 19th century, because it awards all the state’s electors to one party’s nominees, thus tending to magnify the winning candidates’ victory margin within states and across the nation. Historically, it has usually produced an electoral college majority for the winners greater than the percentage of their popular vote margin of victory. This recurring development is sometimes referred to as a “multiplier effect.” As Neal Peirce and Lawrence Longley wrote in *The People’s President*:

... the general ticket system suited the purposes of the ruling political faction in any state. No longer would it be necessary (as under the district system) to share the state’s electoral votes with the opposing party. By the general ticket system, the ruling party could deliver an absolutely solid electoral vote majority to its national candidates.⁴²

The 1960 presidential election offers a notable example of the general ticket multiplier effect. In that election, Democratic nominees John F. Kennedy and Lyndon B. Johnson won 49.72% of the popular vote, compared to 49.56% for Republican nominees Richard M. Nixon and Henry C. Lodge, a popular vote victory margin of 0.18%. This margin, however, was expanded in the electoral college by the effect of the general ticket system multiplier. The Democratic nominees thus gained 303 electoral votes, 56.42% of the total, to the Republican ticket’s 219 electoral

⁴⁰ 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 2017.

⁴¹ A plurality of the popular vote is sufficient win all electoral votes in general ticket states, and the at-large electoral votes in district system states.

⁴² Peirce and Longley, *The People’s President*, revised edition, pp. 110-112.

votes, 40.78% of the total, an electoral college victory margin of 15.64%, or 86 times larger than the margin separating their respective popular vote totals.⁴³

How Does the General Ticket System Work?

This is how the general ticket system would work in hypothetical “State A” in a contemporary presidential election. 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 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.⁴⁴

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.

How Does the District System Work?

This is how the district system might work in the same hypothetical State A, which, as noted previously is apportioned 8 Representatives in Congress; when its 2 senatorial or at-large electors are added, it has 10 electors. In this scenario, Party X again receives 51% of the statewide vote, and Party Y receives 49%. Under the district system, therefore, Party X’s candidates for the two senatorial or at-large electors are elected, because Party X won the statewide popular vote. The remaining electors are chosen on a district basis. For the district electors, 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

⁴³ Computed by CRS from Rhodes Cook et al., *America Votes 28, Election Returns by State, 2007-2008* (Washington, CQ Press: 2010), pp. 41-42. In 1960, six Democratic electors in Alabama and one in Oklahoma voted for candidates other than those to whom they were pledged, while eight “unpledged Democratic” electors in Mississippi cast their votes for persons other than their party’s nominees.

⁴⁴ 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.

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. The total allocation of electoral votes would thus be two at-large electors and five district electors for Party X, a total of seven, and three district electors for Party Y, a total of three.

2016: The District System Produces a Divided Result in Maine

In the 2016 presidential election campaign, Democratic nominees Clinton and Kaine won the Maine statewide popular vote 48% to 45% over Republican nominees Trump and Pence, *and* the vote in the First Congressional District by 54% to 40%. Trump and Pence won the Second Congressional District by 51% to 41%. As the district system provides, Clinton and Kaine received three electors: two for their statewide total and one for winning the First District. Trump and Pence received one elector, representing their victory in the Second District.⁴⁵ Although the district system was more widely used in the early 19th century, at present, only Maine, since the 1972 election, and Nebraska, since 1992, award their electoral votes on this basis. The only other split in electoral votes in modern times occurred in Nebraska in 2008, when four votes were awarded to Republican nominees McCain and Palin, who won two congressional districts and the statewide vote, and one was awarded to Democratic nominees Obama and Biden, who won a single congressional district.⁴⁶

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 2020, general election day will fall on November 3.⁴⁷ Congress selected the Tuesday after the second Monday in November in 1845;⁴⁸ 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.⁴⁹

⁴⁵ Edward D. Murphy, "Trump Takes 1 of Maine's 4 Electoral Votes, in a First for the State," *Portland (ME) Press Herald*, November 9, 2016, at <http://www.pressherald.com/2016/11/08/mainers-take-matters-into-their-own-hands-after-bitter-presidential-campaign/>.

⁴⁶ Nebraska, Secretary of State, *Official Results of the Nebraska General Election, November 4, 2008*, at <http://www.sos.ne.gov/elec/pdf/2008%20General%20Canvass%20Book.pdf>.

⁴⁷ 3 U.S.C. §1.

⁴⁸ *Statutes at Large*, 5 Stat. 721.

⁴⁹ Lily Rothman, "The Reason Election Day Is Tuesday," *Time*, November 2, 2015, at <http://time.com/4089657/history-election-day/>.

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 2020, the electors will convene on December 14.⁵⁰

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 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.⁵¹

The electors almost always meet in the state capital, usually in the capitol building or state house itself. They vote “by ballot”—paper ballot⁵²—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.⁵³

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.⁵⁴ 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 2020 presidential election, this day falls on Wednesday, January 6, 2021. 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 2013.⁵⁵

⁵⁰ 3 U.S.C. §7.

⁵¹ This requirement, found at 3 U.S.C. §5, was crucial in decisive allocation of Florida’s electors in the 2000 presidential election.

⁵² Twelfth Amendment. This provision has historically been interpreted to require paper ballots for President and Vice President.

⁵³ 3 U.S.C. §11.

⁵⁴ 3 U.S.C. §15-18.

⁵⁵ 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, (continued...)

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, 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.”⁵⁶

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, “state clearly and concisely, without argument, the ground thereof,”⁵⁷ and be signed by one U.S. Senator and one Representative. If an objection is received in the joint session, and is signed by one Senator and one Representative, 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,⁵⁸ 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.⁵⁹

An objection that met the aforesaid criteria was filed most recently following the 2004 presidential election. The objection was made against 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 duly recorded.⁶⁰

2016: Attempted Objections in the Joint Session to Count Electoral Votes

Following the 2016 presidential election, several Representatives attempted to file objections during the January 6, 2017, joint session to count electoral votes and declare the election results.

(...continued)

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. A date for the joint session to count electoral votes cast in the 2020 election will be set late in that year.

⁵⁶ 3 U.S.C. §15.

⁵⁷ Ibid.

⁵⁸ 3 U.S.C. §17.

⁵⁹ 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)

⁶⁰ 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.

These were ruled out of order, however, because no Senator had signed the objection, and signatures of at least one Member of both chambers are required by the U.S. Code.⁶¹

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 or both offices receives a majority, then choice of the President and Vice President “defaults” to Congress in a procedure known as contingent election.⁶² 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.⁶³ 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 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.⁶⁴

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.

2020 Presidential Election: An Electoral College Timeline

This timeline for the 2020 presidential election relies on existing procedures governing the election process. It does not anticipate any major changes that might be effected between this time of this writing (May 2017) and then.

⁶¹ For proceedings at the joint count session of January 6, 2017, please consult *Congressional Record*, daily edition, volume 163, number 4, pp. H185-H190.

⁶² For further information, please consult CRS Report R40504, *Contingent Election of the President and Vice President by Congress: Perspectives and Contemporary Analysis*, by (name redacted) .

⁶³ 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.

⁶⁴ For further information, please consult 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.

May-August 2020—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, will nominate a ticket of candidates for elector for President and Vice President in their states, following procedures outlined earlier in this report at “Nominating Elector-Candidates: Diverse State Procedures.”

November 3, 2020—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.⁶⁵

December 8, 2020—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.⁶⁶

December 14, 2020—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).⁶⁷

December 23, 2020—Certificates must be delivered to the officers specified earlier in this report (see under “The Electors Convene and Vote”) not later than the fourth Wednesday in December.⁶⁸

January 6, 2021—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.⁶⁹

January 20, 2021—The President and Vice President are inaugurated.⁷⁰

Criticism and Defense of the Electoral College 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 subject to controversy from the earliest days under the Constitution.

⁶⁵ 3 U.S.C. §1.

⁶⁶ 3 U.S.C. §5.

⁶⁷ 3 U.S.C. §6-11.

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

⁶⁹ 3 U.S.C. §15. In 2021, Since January 6, 2021, falls on a Wednesday, rather than a Sunday, Congress is less likely to reschedule the joint session to count electoral votes for another day.

⁷⁰ U.S. Constitution, Twentieth Amendment.

Criticisms

In the modern era, criticisms of the electoral college system center on various characteristics of the system, including, among others, the following:

- 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.

Defense

Electoral college supporters cite a number of factors in their defense of the system, including the following:

- they reject the claim that it is undemocratic, noting that electors are chosen by the voters in free elections;
- the electoral college system, they assert, is a major component of American federalism, maintaining the Constitution prescribes a federal election by which votes are tallied in each state, and in which the voters act both as citizens of the United States, and members of their state communities;
- they also cite federalism in defense of the allocation of electors among the states, and call into question the validity of claims that various groups or political parties are advantaged under the system;
- defenders further maintain the electoral college has historically promoted broad-based electoral coalitions and moderate political parties; and
- they reject the faithless elector argument, noting that faithless electors have never influenced the outcome of an election.

Proposals for Change

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.”

Electoral College Reform

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.

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

Direct Popular Election

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.⁷¹

Action in Congress on Electoral College Reform, 1940s-Present

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.⁷²

For some years after that time, legislative interest in electoral college reform waned: no amendment to *reform* the electoral college has been introduced since the 107th Congress,⁷³ while no amendments to *replace* it with direct popular election were introduced between February 2011⁷⁴ and November 2016. Late in the 114th Congress, following the 2016 presidential election, four proposals to replace the electoral college with direct popular election were introduced,⁷⁵ but no action beyond committee referral was taken on them. Two resolutions proposing a constitutional amendment to establish direct popular vote have been introduced to date in the 115th Congress.⁷⁶

⁷¹ For additional information on reform proposals, please consult CRS Report R43824, *Electoral College Reform: Contemporary Issues for Congress*, by (name redacted) .

⁷² For a detailed examination and analysis of these efforts, please consult Peirce and Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative*, rev. ed. pp. 131-206.

⁷³ 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.

⁷⁴ In the 112th Congress, H.J.Res. 36, introduced by Rep. Jesse Jackson, Jr., proposed direct popular election.

⁷⁵ H.J.Res. 102, H.J.Res. 103, H.J.Res. 104, and S.J.Res. 41 in the 114th Congress.

⁷⁶ H.J.Res 19 and H.J.Res. 65.

Action at the State Level Since 2008

While Congress has not taken significant action on the question of electoral college reform in recent years, there has been considerable activity in the states.

Only an amendment can alter the constitutional structure of the electoral college, but the states retain considerable authority concerning various aspects of the system. For instance, as noted elsewhere in this report, Article II, Section 1, clause 2 gives the state legislature broad authority to “appoint” electors in any way they choose.

In practice, this appointment has been by popular election for 150 years. States also have authority over the formula by which electors are elected; as noted, 48 states and the District of Columbia use the general ticket system, but Maine and Nebraska adopted the district system or plan decades ago, an example of the states acting in their classic role as “laboratories of democracy.”

In other words, the states are free to experiment with systems of elector selection and electoral vote allocation, up to a point. Over the past decade, both proportional and congressional district plan proposals have been advanced in the states, as identified in the following section, but none has been successful to date. These have included efforts in the following states:

- **California**—Ballot initiative campaigns in 2008 (the California Presidential Reform Act) and 2012 (the California Electoral College Reform Act) sought to establish a district system of electoral vote distribution and in 2014 (the California Split Electoral College Vote Distribution Initiative) to establish a proportional system by popular vote, but all three failed to gain ballot access.⁷⁷
- **Colorado**—On November 2, 2004, Colorado voters rejected a state constitutional amendment, Amendment 36, which would have provided a rounded proportional allocation of electoral votes.⁷⁸ After a contentious campaign that gained a degree of national interest, the proposal was ultimately defeated by the voters.⁷⁹
- **Michigan**—In 2011 and 2014, bills were introduced in the legislature to change electoral vote allocation in Michigan from the general ticket to the district system. No action beyond hearings was taken on either proposal.⁸⁰
- **Nebraska**—Bills to return Nebraska from the district system to the general ticket allocation of electoral votes were introduced in the state’s unicameral legislature

⁷⁷ 2008: please consult Shane Goldmacher, “Electoral College Measure Falls Short,” *Sacramento Bee Capitol Alert*, February 5, 2008, available at <http://blogs.sacbee.com/capitolalert/latest/2008/02/electoral-colle.html>. 2012: “California Electoral College Reform Act,” *Ballotpedia, an Interactive Almanac of U.S. Politics*, at [http://ballotpedia.org/California_Electoral_College_Reform_Act_\(2012\)](http://ballotpedia.org/California_Electoral_College_Reform_Act_(2012)). 2014: “California Split Electoral College Vote Distribution Initiative (2014), *Ballotpedia, an Interactive Almanac of U.S. Politics*, at [http://ballotpedia.org/California_Split_Electoral_College_Vote_Distribution_Initiative_\(2014\)](http://ballotpedia.org/California_Split_Electoral_College_Vote_Distribution_Initiative_(2014)).

⁷⁸ Amendment 36, available at <http://www.lawanddemocracy.org/pdffiles/COamend36.pdf>. Under the rounded proportional plan, percentages of the popular vote are rounded to whole numbers in determining the number of electoral votes awarded to competing candidates.

⁷⁹ Colorado, Secretary of State, *Official Publication of the Abstract of Votes Cast for the 2003 Coordinated[,] 2005 Primary[,] 2004 General [Elections]* (n.p., n.d.), pp. 138-139.

⁸⁰ Jonathan Oosting, “Michigan Panel Debates Presidential Election System, Electoral College Votes,” *MLive.com*, September 25, 2015, at http://www.mlive.com/lansing-news/index.ssf/2015/09/michigan_2016_electoral_colleg.html

several times after 2011, most recently in 2016. None of these proposals has been successful to date.⁸¹

- **Pennsylvania**—In 2011 and 2012, two proposals were introduced in the Pennsylvania legislature to award the commonwealth’s electoral votes according to the district system, but neither bill was enacted.⁸² In 2013, legislation was introduced to award electoral votes according to the proportional system. As with earlier proposals, no action was taken beyond committee referral.⁸³
- **Virginia**—In 2012, a variant of the district system was introduced in the Virginia General Assembly. In contrast to the system as enacted in Maine and Nebraska, which awards each state’s two senatorial electors to the presidential ticket *winning the most popular votes statewide*, this legislation would have awarded the senatorial electors to the presidential ticket that won the popular vote *in the greatest number of congressional districts statewide*.⁸⁴ The bill was “bypassed indefinitely” in 2013.⁸⁵
- **Wisconsin**—Between 2011 and 2014, press accounts indicated that Wisconsin state legislators would introduce legislation to award the state’s electoral votes according to the district system. The Wisconsin Legislature’s database for this period does not, however, identify any such proposal as having been introduced.⁸⁶

Related activity in state legislatures continues following the 2016 presidential election. According to press reports, bills to change from the general ticket to district systems have been introduced in 2017 in the legislatures of Minnesota and Virginia.⁸⁷

NGO Proposal: The National Popular Vote Initiative

Another contemporary effort centers on the National Popular Vote initiative, (NPV), a non-governmental campaign. NPV seeks to establish direct popular election of the President and Vice

⁸¹ Martha Stoddard, “Bill to Return Nebraska to Winner-Take-All Electoral College Method Comes Up Short,” *Omaha World Herald*, April 13, 2016, at http://www.omaha.com/news/legislature/bill-to-return-nebraska-to-winner-take-all-electoral-college/article_9c08b7c0-00be-11e6-b0fe-77966934ee98.html

⁸² SB 1282, Regular Session, 2011-2012, Pennsylvania General Assembly website, at <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2011&sind=0&body=S&type=B&BN=1282>; HB 94, Regular Session, 2013-2014, Pennsylvania General Assembly website, at http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2013&sind=0&body=H&type=B&bn=94.

⁸³ Senate Bill 538, Regular Session, 2013, Pennsylvania General Assembly website, at <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2013&sessInd=0&billBody=S&billTyp=B&billNbr=0538&pn=0502>

⁸⁴ Senate Bill SB 723, 2013 session, Virginia General Assembly, at <http://lis.virginia.gov/cgi-bin/legp604.exe?131+sum+SB723>.

⁸⁵ Senate Bill SB 723, 2013 session, Virginia General Assembly, at <http://lis.virginia.gov/cgi-bin/legp604.exe?131+sum+SB723>.

⁸⁶ Wisconsin Legislature, at <https://docs.legis.wisconsin.gov/2015>; <https://docs.legis.wisconsin.gov/2013/>; <http://docs.legis.wisconsin.gov/2011>.

⁸⁷ David Weigel, “Republicans in Virginia and Minnesota Propose Changes to Their Electoral College Rules,” *Washington Post*, January 25, 2017, at https://www.washingtonpost.com/news/post-politics/wp/2017/01/25/republicans-in-minnesota-virginia-propose-changes-to-their-electoral-college-rules/?utm_term=.4370fb44dd49; “Proposals to Change Minnesota’s Votes for President,” Fox 9, January 26, 2017, at <http://www.fox9.com/news/231915607-story>.

President through an interstate compact, rather than by constitutional amendment.⁸⁸ 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.⁸⁹ The compact, however, would take effect only when states controlling a majority of the electoral 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.⁹⁰ According to National Popular Vote, Inc., the national advocacy group for the NPV initiative, the compact has been introduced in all 50 states and the District of Columbia, and in 2017 was under active consideration in the legislatures of 18 states that control 225 electoral votes.⁹¹

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 federal 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.

⁸⁸ For more detailed information and analysis of the National Popular Vote Initiative, including relevant political, legal, and constitutional issues, please consult CRS Report R43823, *The National Popular Vote Initiative: Direct Election of the President by Interstate Compact*, by (name redacted) and (name redacted).

⁸⁹ Even under NPV, however, the potential for faithless electors who vote against instructions would remain.

⁹⁰ "61% of the Way to Activating the National Popular Vote Bill," National Popular Vote website, at <http://www.nationalpopularvote.com/status>. The following states are current signatories of the National Popular Vote Interstate Compact. They are listed in chronological order of their accession, including electoral vote totals, Hawaii (4), 2008; Illinois (20), 2008; Maryland (10), 2008; New Jersey (14), 2008; Washington (12), 2009; Massachusetts (11), 2010; District of Columbia (3), 2010; Vermont (3), 2011; California (55), 2011; Rhode Island (4), 2013; and New York (29), 2014.

⁹¹ In 2017, The NPV Interstate Compact is currently under consideration in the legislatures of following states, which are allocated a total of 225 electoral votes. They are listed in alphabetical order, including electoral vote totals: Alaska (3), Arizona (11), Connecticut (7), Florida (29), Georgia (16), Idaho (4), Indiana (11), Kansas (6), Minnesota (10), Missouri (10), Nevada (6), New Mexico (5), North Carolina (15), Ohio (18), Oregon (7), Pennsylvania (20), South Carolina (9), and Texas (38), National Popular Vote website, at <http://www.nationalpopularvote.com/state-status> and state legislative websites.

While this arrangement may not work as the founders intended, its defenders would note the electoral college system has elected the presidential candidate who arguably enjoyed the greatest public support in 53 of 58 elections under the Constitution—a “success rate” of 91.4%. At the same time, opponents could note the 2016 contest, in which a President was elected with an electoral college majority, but fewer votes than his principal opponent. To this they might add the election was also characterized by the largest number of faithless electors in recent history. The 2016 election has contributed to renewed interest in reform proposals in Congress, particularly direct popular election, but the prospects for legislative action remain uncertain.

Notwithstanding the results of the 2016 presidential contest, however, electoral college reform does not appear to be an urgent public issue at present.

Given the stringent requirements faced by all proposed constitutional amendments, changing opinion of the electoral college system among Republican poll respondents, the slow progress of the National Popular Vote Initiative, and particularly the failure of the reform issue to command the substantial congressional support and attention, 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.

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
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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