

Exploring the Electoral College

Overview

In this lesson, students will learn about the history and structure of the Electoral College. Students will view a video about the structure of the Electoral College, learn about North Carolina's importance in the 2016 presidential election, and participate in an Electoral College simulation. The lesson will culminate with students thinking critically about the merits and drawbacks of the Electoral College as members of the Congressional Committee to Study the Electoral College, where they decide whether to keep, modify, or abolish and replace the system.

Materials

- TED Ed video "Does Your Vote Count? The Electoral College Explained" by Christina Greer (duration 5:21), available at <https://www.youtube.com/watch?v=W9H3gvnN468>
- Key Facts About the Electoral College, handout attached
- *Boston Globe* article on North Carolina as a key battleground state, attached or available at <https://www.bostonglobe.com/news/politics/2016/06/16/will-north-carolina-become-new-florida/Ollswvx29EkloAmuAY3hJl/story.html>
- Design Your Own Electoral System, worksheet attached.
- Excerpt from a Congressional Research Service report entitled "The Electoral College: How it Works in Contemporary Presidential Elections" by Thomas H. Neale, published April 13, 2016. Excerpt is attached, and full PDF is available at <https://fas.org/sgp/crs/misc/RL32611.pdf>
- Marquette University Law School faculty blog post "A Different Way to Run the Electoral College," attached or available at <http://law.marquette.edu/facultyblog/2010/02/28/a-different-way-to-run-the-electoral-college/>
- Common Cause memo "Competing Plans to 'Fix' the Electoral College Show Need for National Popular Vote," attached or available at <http://www.commoncause.org/press/press-releases/competing-plans-to-fix-electoral-college-show-need-for-national-popular-vote.html>
- Optional Resource: What Does the Electoral College Do?, story from NPR's Here and Now: <http://www.wbur.org/hereandnow/2016/09/13/2016-electoral-college>
 - Teachers might consider instructing students to listen to this brief 9 minute story the evening before implementing this lesson.

Duration

60-90 minutes

Procedure

Introduction to the Electoral College

1. As a warm up, ask students to answer a seemingly simple question: How is the President of the United States selected? Collect student responses on a piece of chart paper.
2. Hopefully a student references the Electoral College during the warm up brainstorm. Tell students that many people find the Electoral College very confusing, and that the purpose of today's lesson is to try and make a bit of sense of it. Play the TED Ed video about the Electoral College at <https://www.youtube.com/watch?v=W9H3gvnN468> and tell students to write down any questions or comments while they watch. Afterwards, review some major points about the Electoral College using the "Key Facts About the Electoral College" handout, attached, and allow students to ask any questions they wrote down. Discuss:
 - What is the purpose of the Electoral College and how does it function? How does this method of voting differ from popular elections?

- What are some advantages and disadvantages of the Electoral College?
- What is the difference between safe and swing states?
- How does the structure of the Electoral College affect a candidate's campaign strategy?
- What recent controversies have resulted based on the Electoral College?
 - Students may want to discuss the 2000 Presidential Election, which was the most recent election where the popular vote winner was not elected. Republican George W. Bush ran against Democrat and the sitting Vice President, Al Gore. Though Gore held a slim popular vote victory of 543,895 (0.5%), Bush won the Electoral College 271-266, with one Gore Elector abstaining.
 - Read about other controversial elections at http://archive.fairvote.org/e_college/controversial.htm.
- Based on what you've learned, do you feel that the Electoral College a fair way to select the President? Why or why not?

3. Students might wonder where North Carolina stands in the Electoral College. Remind them that North Carolina has fifteen electors – one for each of the thirteen Congressional districts and two for the number of senators. Distribute the attached Boston Globe article analyzing North Carolina's position in the 2016 campaign. Discuss:
- How is North Carolina's electorate changing?
 - The article notes that North Carolina is proving to be very close in its presidential results: "A statewide win by either party here that is more than 1.5 percent is considered a landslide." What do you think this means for you as a voter?
 - President Obama and Secretary Clinton's first joint rally of the campaign occurred in July in Charlotte. What does this say about how candidates view North Carolina's role in the presidential election?
 - Why do you think the article says that North Carolina is a "must win" for Trump, but not necessarily Clinton? Do you agree with this logic? Explain.
 - How do you think North Carolina will affect the ultimate electoral outcome?

Electoral College Simulation

4. Tell students to help solidify their understanding of a potentially complicated and confusing concept, they will now participate in an electoral college simulation:
- Divide students into unevenly-sized groups (to represent states with different populations).
 - Select a few electors per group, including one or two as a baseline regardless of the group's size (mirroring how each state has two electors regardless of population) and additional electors (reflecting how states have one additional elector per Congressional district depending on population).
 - For example, if you chose to allocate one baseline elector per group plus an additional elector per three students, a group of fifteen students would have six electors. Exact calculations will depend on class and group sizes.
5. Announce that students will vote between two candidates (to represent two major political parties). Select topics that would appeal to high school students, for example:
- Favorite North Carolina college (i.e. UNC-Chapel Hill vs. Duke)
 - Favorite candy or snack food (i.e. M&Ms vs. Skittles or cookies vs. brownies)
6. Within each group, students should discuss the two candidates and hold an informal vote (to represent the popular vote on Election Day.) Electors may participate in this process. After each group deliberates, ask only the electors from each group to vote by secret ballot on a sheet of scrap paper (to represent the Electoral College voting in November). Be intentionally vague when instructing electors to vote, even if students ask whether they should vote based on their group's opinion or their individual preference. After tabulating and announcing the results, consider again the initial questions posed after the video and discuss the following as a class:
- How does the set-up of each group (i.e. size and method of calculating number of electors) mirror the real Electoral College?

- Did electors vote based on group preference or individual opinion? Why?
- How might a student’s voting pattern demonstrate the concept of faithless electors?
- Have your opinions on the Electoral College changed after this exercise or what you have learned thus far?

Culminating Activity: Congressional Committee to Study the Electoral College

7. Divide students into small groups (ideally of three students) and distribute the “Congressional Committee to Study the Electoral College” worksheet as well as the Congressional Research Service excerpt, the Marquette University Law School blog post, and the Common Cause memo, all attached. Three students in each group should assume the following rolls:
 - Committee Head – facilitates the discussion and keeps the group on track; communicates with the teacher if questions arise or assistance is needed
 - Secretary – takes detailed notes regarding the Committee’s conversation and final recommendation regarding the Electoral College
 - Speaker – presents the Committee’s recommendation to Congress (meaning, the remainder of class)
8. Explain to students that their group represents members of the House of Representatives who have been assigned to a Congressional Committee to examine the Electoral College and determine whether or not the system should remain or be replaced with alternative procedures. Students should consider the information you’ve learned about the Electoral College, including the pros and cons to the system. Is this the best method of electing the President of the United States? Students should skim the texts provided and complete the graphic organizer in order to gather evidence. (To quicken this activity, teachers can have students in each group split the readings, with one or two students focusing on each and teaching the remainder of their group mates about the points from the article.) Using the texts as a starting point, they should then create their own recommended electoral system for the presidency.
8. After students have read, discussed and made a decision regarding the Electoral College (approximately 18 minutes), each Speaker should report back to Congress (i.e., the rest of the class) regarding their Committee’s recommendation. The teacher should keep notes on the board regarding each Committee’s recommendation. If any Committee recommends an alternative, allow others to ask questions for clarification. Once all groups have shared, review the tally of how many Committees decided in favor of the Electoral College, and how many posed an alternative. Allow the class to then vote on which alternative they think would be the best replacement and discuss the results.
9. As a closing question discuss, “So, does your vote *really* count?”

Key Facts About the Electoral College

- ❖ The Electoral College was established by Article II, Section I of the Constitution. While the Constitution originally stated that electors would cast votes for two candidates, with the first place winner becoming President and the runner-up becoming Vice President, this created problems as the two winners might represent different parties, as was the case in 1796 and 1800. Ratified in 1804, the Twelfth Amendment stipulated that electors would cast separate votes for President and Vice President.
- ❖ While Election Day occurs on the Tuesday after the first Monday in November (November 8, 2016), electors meet in their state (typically in the state capital) to vote for the President and Vice President on the Monday after the second Wednesday in December (December 19, 2016). After each state reports the results, Congress counts and declares the results on January 6 of the following year. The President and Vice President are then inaugurated on January 20.
- ❖ The total number of electors in a state is equivalent to its number of United States Representatives (varies in each state according to population) plus its number of United States Senators (two in every state). North Carolina has fifteen electors. While Washington DC does not have a United States Representative, it is awarded three electors, the same number as the least populous state. There are a total of 538 electors, 270 of which a candidate needs to win.
- ❖ Most states allocate all of their electors to the Election Day winner of the popular vote within the state, but Maine and Nebraska allocate one elector to the winner of each Congressional district and two electors to the statewide winner.
- ❖ If no candidate for President wins a majority of the vote, the House of Representative selects the President. If no candidate for Vice President wins a majority of the vote, the Senate selects the Vice President.
- ❖ Electors are typically state elected officials, party activists, and ordinary citizens. The Constitution prohibits federal office holders – and federal employees, by extension – from being electors. States have different procedures for choosing electors, from party conventions to gubernatorial appointments.
- ❖ Twenty-four states have faithless elector laws designed to prohibit electors from voting differently than the people, either through penalties or criminal penalties.
- ❖ Out of 57 elections in United States history, the candidate who won the nationwide popular vote has also won the Electoral College. The four exceptions occurred in 1824, 1876, 1888, and 2000.

“Will North Carolina Become the New Florida?”

By James Pindell | June 16, 2016

Source: <https://www.bostonglobe.com/news/politics/2016/06/16/will-north-carolina-become-new-florida/Ollswvx29EkloAmuAY3hJI/story.html>

For nearly a generation, those watching presidential election returns on television every four years have been taught to focus on the results in just one state: Florida, Florida, Florida.

But lately, another state has captured the attention of the political class. It may not decide who will become president in 2016 — but it may well in the future.

North Carolina wasn't even considered a swing state until 2008. That year, the state voted for Barack Obama, the first Democrat to win there since 1976.

In 2012, both Obama and Republican nominee Mitt Romney lavished attention and money on the state, hoping to win it. The Democratic National Convention even chose Charlotte as the host city, hoping to give Obama a boost there. In the end, it was the one swing state that Romney won — with just 50.1 percent of the vote.

In the past 20 years, the state has undergone a dramatic demographic transformation. What's left is essentially every group being fought over in 2016: the white working class, who saw their once stable textile jobs disappear; a growing minority population; and a young professional class living in more urban areas. The state has been at the forefront nationally in terms of the banking industry, the cost of education, and the fight over rights for transgendered individuals.

“The North Carolina electorate is looking more like the national electorate than it did a generation ago,” said Eric Heberlig, a political science professor at the University of North Carolina Charlotte. “The state is increasingly becoming more diverse, and the dynamics of urban versus rural drives politics here like it does in the rest of the country.”

Presidential candidates Donald Trump and Hillary Clinton have noticed. Trump was in Greensboro on Tuesday. Clinton makes a swing through the state next week. Both campaigns have staff on the ground, though Trump is relying mainly on the Republican National Committee in North Carolina, as he is in most other states, to do the leg work. Clinton began airing television ads in the state on Thursday.

“Hillary Clinton does have a sizable operation here,” Dee Stewart, a North Carolina Republican consultant, conceded.

“But at the end of the day, this will likely be a very close election,” Stewart said. “A statewide win by either party here that is more than 1.5 percent is considered a landslide.”

Still, North Carolina doesn't hold the keys to the White House like other states. Florida still matters more, given its sheer size — 29 electoral voters compared to North Carolina's 15. If Clinton wins every state that Democrats have carried in the past six elections and then wins Florida, she becomes president. As 2012 demonstrated, a Democrat can lose North Carolina and still win the election.

The opposite is not true for a Republican candidates.

“North Carolina is a must-win for Trump,” said Nathan Gonzalez, editor and publisher of The Rothenberg & Gonzales Political Report, a nonpartisan newsletter.

The latest polls in North Carolina show Trump with a slight lead over Clinton. The Democratic-leaning Public Policy Poll, for example, gives Trump a 47-to-43 percent lead over Clinton, which is just outside of the poll's margin of error.

Courtney Crowder, a Democratic consultant who served as the state's senior adviser to Obama's campaign in 2012, said the challenge for Clinton is to drive up turnout among young people and minority groups.

"What Obama did here was unlike anything I have ever seen," said Crowder. "Clinton does have the organization in place to replicate it, but she needs to bring some of the enthusiasm — or hope that the opposition to Trump does it for her."

Indeed, there seems to be bipartisan consensus on two things.

First, Obama essentially stole the state in 2008 because he had an operation he built upon after the extended presidential primary there and because his Republican opponent, John McCain, put nearly no resources there.

Second, while North Carolina is no longer considered a Republican state, it's unclear whether 2008 and 2012 were an aberration (one Democratic win and one razor-thin Republican victory) — or the new norm.

"North Carolina could become like Ohio and Florida as a top swing state," said Gonzalez. "With Trump running such an unconventional campaign I am not sure if the 2016 election will actually tell us that, but it is a fascinating place to watch right now."

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Group members: _____

Congressional Committee to Study the Electoral College

Annoyed by the Electoral College? Think your vote doesn't matter? Or is it a breathtaking work of Constitutional genius? You have been assigned to a special Congressional Committee charged with determining whether the Electoral College is the best method of electing America's president. Should it stay the same, be amended, or be completely thrown out and a new process put in place?



Consider the information you've learned about the Electoral College, including the pros and cons to the system. Together, deliberate if this or something else is the fairest method for elections. Be prepared to summarize your decision to the remainder of Congress (i.e., the class.) If you propose an alternative, be prepared to explain your idea in detail.

1. One student should assume each of the following rolls and responsibilities in your group:
 - Committee Head – facilitates the discussion and keeps the group on track; communicates with the teacher if questions arise or assistance is needed
 - Secretary – takes detailed notes regarding the Committee's conversation and final recommendation regarding the Electoral College
 - Speaker – presents the Committee's recommendation to Congress (meaning, the remainder of class)
2. Do your research. Carefully read and use the following articles to guide your discussion. Recreate the graphic organizer below on notebook paper and fill it in as you read the articles:
 - Excerpt from "The Electoral College: How It Works in Contemporary Presidential Elections," by Thomas H. Neale
 - "A Different Way to Run the Electoral College," by J. Gordon Hylton
 - "Competing Plans to 'Fix' the Electoral College Show Need for National Popular Vote," by Pam Wilmot

Article Title:
Main Points
Advantages of Proposed Reform(s)
Disadvantages of Proposed Reform(s)

3. After conducting your research, discuss the pros and cons of the Electoral College and brainstorm potentially better ways to elect the president. Remember, you have the option of arguing to keep the Electoral College, keeping but amending the Electoral College, or coming up with a completely new idea.
4. Be prepared to present your final plan and defend it against questions from your classmates.

Excerpt from “The Electoral College: How It Works in Contemporary Presidential Elections”

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.

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.

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. 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, while no proposed amendment to

establish direct popular election has been introduced since the 112th Congress. 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 nongovernmental initiative. NPV seeks to establish direct popular election of the President and Vice President through an interstate compact, rather than by constitutional amendment. 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. 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. 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 is currently under consideration in nine states that are allocated a total 104 electoral votes.

Note: This text is an excerpt from the Congressional Research Service report "The Electoral College: How It Works in Contemporary Presidential Elections," authored by Thomas H. Neale on April 13, 2016. Please see the full report for original formatting and full footnotes/citation information. The excerpt can be found on pages 13-14 of the report. The report is available online at: <https://fas.org/sgp/crs/misc/RL32611.pdf>

“A Different Way to Run the Electoral College”

By J. Gordon Hylton

Posted February 28, 2010 on the Marquette University Law School Faculty Blog

Source: <http://law.marquette.edu/facultyblog/2010/02/28/a-different-way-to-run-the-electoral-college/>

In an earlier posting, Rick Esenberg expressed his opposition to recent George Soros-sponsored efforts to devise a plan to circumvent the operation of the Constitution’s venerable Electoral College.

The “problems” with the Electoral College are well-known. Its “winner-take-all” feature supposedly distorts the electoral process, and on four occasions (1824, 1876, 1888, and 2000), it has chosen a president who received fewer popular votes than one of his opponents.

Debates over the future of the Electoral College often assume that there are only two options: scrap the institution altogether or else accept that it will continue to operate as it has in the past. Scraping the Electoral College is usually assumed to require a constitutional amendment, although the Soros plan would actually leave the Constitution unchanged but seek to bind electors to cast their votes for the candidate with the largest national popular vote regardless of the results in their particular state.

There is an alternative, however, that would make the results of the Electoral College more democratic but would leave the Constitution unchanged.

Although it has long been the practice that individual states award their entire electoral vote allotment to the candidate receiving the largest number of popular votes in the state, there is no constitutional requirement that states follow this approach. In the first part of the 19th century, many states split their electoral votes, and today two states, Maine and Nebraska, have abandoned the “winner take all” rule. (In 2008, Nebraska split its electoral votes between McCain and Obama.)

In the first third of the 19th century the selection by a single state of electors supporting different candidates was a frequent feature of American presidential elections. As late as 1824, five of 24 states did just that. In 1828, three states did so, including New York, which cast 20 votes for Andrew Jackson and 16 for the incumbent John Quincy Adams. By the mid-1830’s, every state appears to have embraced the winner take all system, although in 1860, New Jersey reverted to the older system and ended up dividing its seven electors between the Republican Abraham Lincoln (4) and the Northern Democrat Stephen Douglas (3)

Article II of the United States Constitution makes it clear that each state has the power to adopt a different system of choosing electors, should it choose to do so. There are at least three ways that states could choose to apportion their electors that would produce more equitable allocations of electoral votes.

A state could simply apportion its electors on the basis of the popular vote. For example, in 2008, Wisconsin’s 10 electoral votes could have divided six for Obama and four for McCain based upon Obama’s 56% to 44% margin of victory. On the other hand, such a system can run into problem because of the presence of “third” parties. Like Wisconsin, Minnesota currently has 10 electoral votes. In 2008, Obama and McCain received 54% and 44% of the popular vote, respectively, with 2% going to third parties. The Constitution requires the appointment of actual electors, so it is not obvious as to whom the tenth Minnesota elector would be assigned.

A second possibility would be for a state legislature to divide the state into “electoral districts” with each district choosing one elector. Because each state has two more electors than it has

representatives in Congress, congressional districts could not be used for this purpose. Instead, states would have to create special districts. Wisconsin, for example, would have to be divided into ten districts whose sole function would be the selection of presidential electors. Obviously, this could be done, but the process would involve many of the same difficulties that arise when the state has to redraw the lines of congressional districts.

The third possibility is the approach currently taken in Maine and Nebraska. The presidential candidate receiving the largest number of popular votes in each congressional district receives one elector, and the winner of the statewide popular vote is awarded an additional two electors. In Wisconsin in 2008, Obama received the largest number of popular votes in seven of the state's eight Congressional Districts. Consequently, under the Maine/Nebraska system he would have received nine of the state's ten electoral votes with the other vote going to McCain.

While this approach would have had only a slightly different effect in Wisconsin (where Obama received all ten electoral votes), there are other states where the impact would have been greater. In Ohio, for example, this system would have divided the state's twenty electoral votes evenly between Obama and McCain instead of having all twenty go to Obama. Even in large states won easily by one candidate or the other, the losing candidate would have collected electoral votes. Under this system, McCain would have received eleven electoral votes in California and four in New York, while Obama would have received eleven votes in Texas and five in Georgia.

Obviously, the great advantage of this system is that it does not require the creation of additional electoral districts. It would also create an incentive for candidates to campaign in states even if they perceived that they had no real chance of winning the overall popular vote in that jurisdiction. On the other hand, it is also possible that this system might make third party candidacies more popular since it would not be necessary to carry entire states to have a presence in the Electoral College.

Had the Maine/Nebraska system been in effect in every state in 2008, the final result would have been a 301-237 victory for Barack Obama, compared to the actual margin of 365-173. Very few states under this system would have awarded all of their electoral votes to a single candidate. In fact, if we remove the eight jurisdictions with three electoral votes (where a divided vote was impossible), 32 of 43 jurisdictions would have divided their electoral votes. Of the eleven that would have voted unanimously, only four had more than five electoral votes, and only one (Massachusetts) had more than ten.

Although the allocation of electoral votes would have looked much different, the Maine/Nebraska system would not have produced a different result in any of the last three presidential elections (which are the only ones for which I have recalculated the vote). Obama would have won in 2008, although not by as large a margin. Earlier in the decade, the geographic dispersion of his supporters would have meant that George W. Bush would have twice been elected president under the district system. In fact, he would have won by even larger margins under this system than he did in 2000 and 2004, even though he received fewer popular votes than Al Gore in 2000. Under the Maine/Nebraska system, Bush would have defeated Gore in 2000 by a margin of 288-250 (rather than 271-266), and John Kerry in 2004 by 317-221 (instead of 286-252).

Even though the Maine/Nebraska system would not eliminate the possibility of a "minority" president, it would "decentralize" the electoral process and would better protect the rights of those who reside in less populous parts of the country to participate in the presidential election process in a meaningful way.

The challenge of course is to convince the other 48 states that it would be in their and the nation's best interest to adopt the Maine/ Nebraska approach. Unless all states adopted the "district" approach, states retaining the winner-take-all system might actually become even more important. As critics of this approach have pointed out in the past, the original system of district elections disappeared in the early 19th century because of a perception that the winner-take-all states were able to exercise greater influence.

Of course, states could be required to adopt a district system, but that would require a constitutional amendment.

What follows is a state by state breakdown of electoral votes for the 2008 presidential election, had the Maine/Nebraska system been in effect in each state. The numbers following the name of each state are the electoral votes for Obama and McCain, respectively. In states marked with an * Barack Obama was the recipient of the largest number of popular votes.

2008 Results, Alternative Approach to Choosing Electors.

Alabama 1-8	*Nevada 4-1
Alaska 0-3	*New Hampshire 4-0
Arizona 2-8	*New Jersey 12-3
Arkansas 0-6	*New Mexico 4-1
*California 44-11	*New York 27-4
*Colorado 5-4	*North Carolina 8-7
*Connecticut 7-0	North Dakota 0-3
*Delaware 3-0	*Ohio 10-10
*Florida 12-15	Oklahoma 0-7
Georgia 5-10	*Oregon 6-1
*Hawaii 4-0	*Pennsylvania.. 11-10
Idaho 0-4	*Rhode Island 4-0
*Illinois 18-3	South Carolina 1-7
*Indiana 5-6	South Dakota 0-3
*Iowa 6-1	Tennessee 2-9
Kansas 1-5	Texas 11-23
Kentucky 1-7	Utah 0-5
Louisiana 1-8	*Vermont 3-0
*Maine 4-0	*Virginia 8-5
*Maryland 8-2	*Washington 9-2
*Massachusetts 12-0	West Virginia 0-5
*Michigan 14-3	*Wisconsin 9-1
*Minnesota 7-3	Wyoming 0-3
Mississippi 1-5	District of Columbia 3-0
Missouri 3-8	
Montana 0-3	
Nebraska 1-4	

Presumably the DC election would be on a winner-take-all basis, as it is in other states with three electoral votes.

Memo: "Competing Plans to 'Fix' the Electoral College Show Need for National Popular Vote"

Source: <http://www.commoncause.org/press/press-releases/competing-plans-to-fix-electoral-college-show-need-for-national-popular-vote.html>

Posted on February 6, 2013

TO: Reporters, editors and editorial writers

FROM: Pam Wilmot, director of Electoral College reform, Common Cause

SUBJECT: Allocating electoral votes

Competing plans to 'Fix' the Electoral College show National Popular Vote as only true reform

A Pennsylvania Senate leader plans to introduce legislation this month to change the way the state's 20 electoral votes are allocated in the 2016 presidential campaign and beyond. Senate Majority Leader Dominic Pileggi has indicated his proposal, which is similar to plans being discussed in Florida, Michigan, Ohio, Virginia and Wisconsin, would apportion electors based on the results of the statewide popular vote so that the candidate receiving a popular vote majority or plurality would receive a comparable share of electors. This would be a major departure from the winner-take-all system for awarding electors now in place in Pennsylvania and 47 other states.

The proportional division of electors and the current winner-take-all system share two fundamental flaws: Both would permit the loser of the national popular vote tally to "win" the election and take office as President; both also would push candidates to keep most of their attention focused on just a handful of states, denying voters elsewhere an opportunity to effectively participate in the election.

That's not acceptable.

This memo explores the proportional allocation proposal and two alternatives being offered in debates over the future of the Electoral College around the nation. It demonstrates that only one option, the National Popular Vote plan, would deliver real reform. Only this option will guarantee that the candidate chosen by the people in November is the President taking office in January and that all Americans have a voice in the election.

Proportional allocation of electors: This system would apportion electoral votes in each state based on each candidate's percentage of the popular vote. It appears to be fairer than the current system, but appearances are deceiving. In fact, proportional allocation would distort and perhaps even reverse the judgment voters render on Election Day. Like the current system, it would have elected George W. Bush in 2000, even though he finished about 500,000 votes behind Al Gore in the national popular vote tally.

The problem is part math, part physics. Using Pennsylvania and its 20 electors as an example, each candidate under the proportional plan would be entitled to 1 electoral vote for approximately every 5 percent of the popular vote received. Individual electoral votes can't be divided however, so a candidate winning a 51-49 advantage in the popular vote would be forced into a 10-10 Electoral College tie.

In smaller states, things get even crazier. In New Hampshire, with just four electors, even a 60-40 split in the popular vote would produce a 2-2 electoral tie, a huge boost for the popular vote loser. Thirty-four of the 50 states have 10 electors or less. To gain even a 1 vote edge in the electoral tally in any of them, a candidate would have to score a popular vote landslide on Election Day. That reality would drive candidates to focus their attention on just a few, heavily populated states - think California, Texas, New York and Florida - where they could gain additional electors with relatively small increases

in their party's usual popular vote. Because California has 55 electors for example, each is equivalent to only 1.8 percent of the popular vote.

The other major problem with proportional allocation is partisan. The plan's current supporters - all Republicans -- are pushing it only in a few, selected states, where their party's candidates have been unsuccessful in recent presidential elections. They want to retain the winner-take-all system in other states, creating an Electoral College hodge-podge that would tilt elections in their favor. Democrats, it should be noted, have flirted with similar electoral vote-rigging schemes in the past.

Looking again at Pennsylvania, where President Obama outpolled Mitt Romney by 5 percentage points and more than 300,000 votes on Election Day, the proportional plan would have given Romney 9 of the state's 20 electors. But in North Carolina, which is retaining the winner-take-all system, President Obama would walk away with none of the state's 15 electors despite the fact that he came within 100,000 votes - less than 2 percent - of claiming a majority on Election Day.

Allocation by Congressional District: This system would award each candidate 1 elector for each congressional district in which he or she won the most popular votes. Two at-large electors would be awarded to the statewide winner. This system is in use in two states, Maine and Nebraska, and of late has been or is being considered in several others (Virginia, Ohio, Wisconsin, Florida, and Michigan) where Republicans controlling the statehouse have seen their presidential candidates repeatedly lose the statewide popular vote.

Their statehouse advantages allowed Republicans in those states to reshape Congressional districts in 2011 and '12 to benefit GOP candidates. Virginia Republicans, for example, now control 8 of the state's 11 districts, each of which was carried last fall by Mitt Romney even as he ran 140,000 votes behind President Obama statewide. Allocation of Virginia's 13 electors by district would have given Romney 8 votes to just 5 for Obama, effectively stealing the state. In Pennsylvania, where Romney carried 13 of 18 districts while losing statewide by 310,000 votes, district allocation would have given him 13 of the state's 20 electors. Had it been in place nationwide, district allocation would have made Romney President, with 276 electors, even though Obama outpolled him on Election Day by more than 5 million votes. It's not hard to imagine the outrage this kind of rigged outcome would provoke across the country, and justifiably so.

The obvious partisan considerations behind district allocation proposals in these states have driven several of the governors involved to back away. Sen. Pileggi filed a district plan in Pennsylvania last year but apparently has abandoned it as too transparently partisan.

The National Popular Vote Compact. Eight states and the District of Columbia, with a total of 132 electoral votes, have adopted the National Popular Vote Compact. Under its terms, participating states agree that once states with a total of 270 electors - a majority -- have signed on, all will cast their electoral votes for the candidate receiving a majority of the national popular vote, guaranteeing his or her election.

Under the national popular vote plan, votes cast in small states and large states, "red" states and "blue" states, would have equal value. The current incentive for candidates to focus on just a few "swing" states like Florida, Ohio and Virginia would disappear, making presidential campaigns truly national.

The U.S. Constitution gives state governments authority to decide how their electors will be allocated^[1] and permits them to enter into compacts with other states.^[2] There are legal questions over whether implementation of the National Popular Vote Compact also would require

Congressional approval; a detailed study last year by George Mason University law professor Michael Brody concluded that the states could act on their own.[3]

Most importantly, the compact is the only plan that ensures that the candidate chosen by "we the people" will be sworn in as President. As recently as 2000, the candidate finishing second on Election Day - George W. Bush - nevertheless gained an electoral vote majority and the presidency. Four years later, a switch of just 59,393 votes in Ohio would have delivered the state's electors and the White House to John Kerry, with 271 electoral votes, even though Bush outpolled him nationally by more than 3 million.

The National Popular Vote Compact has been endorsed by more than 2,100 state legislators in both major parties. Hundreds of polls taken over the past 70 years across America indicate that about 70 percent of Americans believe our presidential elections should be decided by the outcome of the national popular vote.

[1]Article 2, Section 1

[2]Article 1, Section 10

[3]http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2031752

Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process.

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