



## Electoral College—Should it be Dismantled?

Many trying to reform the U.S. political system are focusing on dismantling the Electoral College and seeking the election of the President by direct popular vote. The Electoral College was written into the Constitution and modified by the 12<sup>th</sup> Amendment in order as a compromise between having Congress and the voters elect the President and the Vice President.

There are currently two major issues with the Electoral College. It gives added power to smaller states, which disenfranchises voters in larger states. More significantly, its winner-take-all nature means that a candidate that wins a state receives the same number of Electoral Vote whether that candidate wins by 5,000 or 5,000,000 votes. This has worked against states with large urban and minority populations. Given current demographic trends, it is likely the results in two of the past five elections, where the Democrats won the popular vote but lost the electoral vote, could reoccur.

There are good reasons to get rid of the Electoral College and adopt a popular vote for President. The problem is that getting rid of the Electoral College could be extremely difficult, and trying to do so could increase, not limit, political polarization.

### Why Was the Electoral College Created?

The Electoral College was as a compromise between having Congress and the voters elect the President and Vice President. While most people now believe the electorate is capable of selecting the top officeholders, the biggest problem with the Electoral College is not that it protects small states, which it does, but rather that its winner-take-all system works against large populations in urban areas, especially minorities.

### **The Electoral College is not Rigged Against Democrats Because of Small States. It Is Rigged Against Them Because of Winner-Take-All and Demographics.**

Because of their losses in 2000 and 2016, many Democrats think the Electoral College is rigged against them. It is, but not for the reasons most think.

- It is not the small states that work against the Democrats.
- In 2016, Democrats actually won more electoral votes in jurisdictions with 3 and 4 votes than did the Republicans.
- It is the winner-take-all nature of the vote.
- Democrats lost because they won a few states by huge margins and swing states by small margins.

- In the 10 largest states, Clinton won the popular vote by 4,178,401, but Trump won the electoral vote 152-104.
- Clinton won three states (California, New York, and Illinois) by 6,951,282 votes.
- Trump won 7 of the 10 largest states by 1,806,857 votes.
- If Clinton had received 78,000 more votes in Pennsylvania, Michigan, and Wisconsin, she would have won the Electoral College.

The real problem with the imbalance between the Electoral College and the popular vote has to do with the winner-take-all nature of the system and the margins Democrats build up in cities. This applies not just to the Electoral College, but to all forms of elections. In many cases, the Democrats can win the popular vote, but lose the Electoral vote, or win the popular vote but lose a majority of the seats.

- In 1996 and 2012, Democrats won a plurality of the votes, but held a minority of the seats in Congress.
- In 2018, Democrats won the popular vote in state elections in North Carolina, Pennsylvania, Michigan, Wisconsin, and Arizona, but secured a minority of the seats
- In the 2000 and 2016 Presidential elections, the Democrats won the popular but lost the electoral vote.

Many Democrats would like to get rid of the Electoral College but eliminating it will not solve this basic demographic imbalance.

## Reasons for Dismantling the Electoral College

- **The Electoral College violates one-man-one-vote by giving much greater weight to voters in smaller states.**
  - Wyoming has 573,720 people and 3 electoral votes, one for every 191,240 people. California has 39,776,830 people and 55 electoral votes, one for every 723,000 people. This gives a citizen of Wyoming 3.8x the voting power of a citizen from California in the election of a President.
- **People in solidly Red or Blue states feel their vote is irrelevant.**
  - Since they know their state will vote in the Electoral College and feel their votes are meaningless, turnout is often much lower.
- **Politicians understand this reality, which is why they focus on swing states.**
  - Swing states receive much more money in political advertising and more government support than do states that fall into one camp or the other. As a result, more partisan states tend to suffer under both parties.
- **In 5 Presidential elections, the winner of the popular vote has lost the electoral vote. 2 of these instances have occurred in the last 5 Presidential elections.**

	<u>Winner of Electoral Vote</u>	<u>Winner of Popular Vote</u>
1828	John Quincy Adams	Andrew Jackson
1876	Rutherford B. Hayes	Samuel Tilden
1888	Benjamin Harrison	Grover Cleveland
2000	George W. Bush	Al Gore
2016	Donald Trump	Hillary Clinton

- Some of the impact of the first three of these elections was minimized because Jackson and Cleveland both won the next election, while Hayes was given disputed votes in exchange for the Republicans agreeing to withdraw Federal troops from the south.

- Because the Democrats lost in 2000 and 2016, this issue is becoming more partisan.
- With continuing demographic trends, it seems likely to reoccur.
- **The Electoral College discourages third party candidates because all votes are winner-take-all, and most third-party candidates are not in a position to carry an entire state.**
  - The last third-party candidate to finish ahead of a major party candidate was Theodore Roosevelt in 1912.
  - The last third-party candidate to win a state was George Wallace in 1968.
  - The last third-party candidate to win 20% in multiple states was H. Ross Perot in 1992.
  - The last third-party candidate to win 20% in one state was Evan McMullin, who won 21.5% of the vote in Utah in 2016.

## Reasons Against Dismantling the Electoral College

- The United States was established as a Federalist system, with power allocated between the States and the Federal government. The Electoral College and the Senate were created with the idea of giving small states protection against the power of the larger states. Dismantling the Electoral College could be the beginning of the unraveling of the Federal system that has worked very well since the founding of the Republic.
- The dismantling of the Electoral College could create a situation where large numbers of independent candidates could be on the ballot. This could lead to a situation where a candidate representing an extreme position could win with 20% or less of the vote.
  - There are mechanisms for resolving this type of result, such as run-offs or ranked choice voting, but this would create an additional level of complexity.
- Attempting to dismantle the Electoral College could either be impossible, causing people to spend years and large amounts of money chasing a pipe dream, or it could be a political disaster for everyone involved.

## How Could the Electoral College Be Dismantled?

There are three primary ways of dismantling the Electoral College:

- Constitutional amendment
- Compact among states.
- Legislation by individual states to change from winner-take-all

### Dismantling by Constitutional Amendment

Major changes in government come from constitutional amendments which require the support of 2/3 of the members of the House of Representatives and the Senate or a constitutional convention called by 2/3 of the states. It then must be ratified by 3/4 of the states.

There is no way that 3/4 of the states would ever vote for a constitutional amendment to dismantle the Electoral College. In today's polarized world, it is impossible to get 2/3 of the House and the Senate and

3/4 of the States to agree on anything. This means that trying to dismantle the Electoral College by constitutional amendment has no chance of succeeding.

### **Dismantling by Compact**

There is an organization called the National Popular Vote Interstate Compact (NPVIC). It wants to dismantle the Electoral College with a work around in which states would agree to give all their electoral votes to the candidate that won the popular vote nationwide. In other words, if Hillary Clinton won the popular vote, any state signing the compact would give Mrs. Clinton all of its votes, regardless of which candidate won that individual state.

Thirteen jurisdictions with 181 electoral votes have signed this compact, including California, Colorado, Connecticut, D.C, Hawaii, Illinois, Massachusetts, Maryland, New Jersey, New York, Rhode Island, Vermont, and Washington. Not surprisingly, all of these states voted strongly for the Democratic candidate in the 2016 election.

There are several problems with this concept.

- While the compact does have jurisdictions with 181 electoral votes, it is unlikely to get many more.
  - Small states, without a political axe to grind, are unlikely to support the compact because it reduces their power.
  - Swing states are unlikely to support the compact, because they would lose some of their leverage.
  - Republican states will also not support it, because it is a partisan issue.
- Because this is a compact and not a constitutional amendment, there is no guarantee individual electors in each state would abide by it.
  - In 2016, individual electors cast votes for Bernie Sanders, John Kasich, Colin Powell, or Faith Spotted Eagle instead for Trump or Clinton.
  - If such a circumstance occurred, it could precipitate a constitutional crisis.
- The concept of the compact is highly partisan. Almost all its supporters are Democrats, who want a national popular vote because of the results of the 2000 and 2016 elections.
  - Changing the constitution through workarounds leads to increased partisanship.
    - Democrats changed the rules of the Senate under Obama to get some judges appointed. When the Republicans took over, they had the new rules in effect to block Garland and appoint Kavanaugh.
  - If the goal is to reduce partisanship, creating a system that disenfranchises Republicans and enfranchises Democrats will backfire.

### **Dismantling by Having States Change from Winner-Take-All to Awarding Some Votes by Congressional District**

There is another alternative that could resolve the imbalance between the popular and the electoral votes without amending the Constitution or creating a complex workaround. Under this system, states, which have the right to set their own rules, would stop using winner-take-all and would allocate votes for the winner of the state and for the winners of each congressional district.

- Nebraska and Maine currently utilize this system.
  - In 2016, Maine was the only state to cast electoral votes for both Trump and Clinton.

- The benefits of this system is that by moving closer to one-man-one-vote, more voters will believe that their votes matter.
  - With votes by Congressional district, voters in upstate N.Y. or urban Alabama, would feel enfranchised.
- Closely contested states will produce results more consistent with the will of their voters.
- Third party candidates can compete for electoral votes.

The difficulty with this system is that states would be giving up some of the power they have with winner-take-all. Maine and Nebraska are small states with little power. At the present time, there seems relatively little likelihood that larger states would risk limiting their political power.

## **Conclusion**

The popular election of the President and Vice President is also an excellent concept. However, both challenge the Federalist structure that made this country the United States of America.

There are excellent reasons for changing the system. However, we believe there is no chance of a Constitutional Amendment being passed and that the compact, proposed primarily by Democratic states, has little chance of passing and could lead to a potential constitutional crisis. We do not recommend either of these alternatives at this time.

We do believe there is an opportunity for more states to follow the lead of Nebraska and Maine and adopt a system that is fairer than winner-take-all. While there is currently little impetus for states do to this, we believe it is an alternative that would solve many of the current issues and should be considered.

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March 20, 2020