

The Electoral College 2020
Research Paper for March 20, 2020 Topic
Current Issues Club Meeting

The Mechanics of the Electoral College

The operation of the Electoral College system is governed chiefly by the 12th Amendment to the U.S. Constitution, ratified in 1804. The 12th Amendment replaced the original 1787 procedure provided in Article II, Section 1, Clause 3, where Electors cast votes and the winner was President and the second-finisher was Vice President. The 12th Amendment provided for separate votes for President and for Vice President and required the elected President and Vice President to receive a majority of the total electoral votes. The total number of Electors is 538, based on 435 Representatives, 100 Senators, and 3 for the District of Columbia, thus a majority of 538 is 270 required for election. The only significant exclusion from who can serve as Electors is that members of the U.S. House and Senate are prohibited from serving as Electors.

Should any candidate fail to win 270 electoral votes, such as elections with three or more major candidates, the 12th Amendment specifies that the House of Representatives, with each state with one vote, chooses the President. The 12th Amendment requires the House to choose from the three highest receivers of electoral votes, compared to five under the original procedure. If no candidate for Vice President receives 270 electoral votes, the Senate chooses the Vice President, with each Senator having one vote.

Nomination of Electors is left to states and to state political parties. Most states prescribe one of two methods: 34 states require that candidates for the office of Presidential Elector be nominated by state party conventions, while a further ten mandate nomination by the state party's central committee. The remaining states use a variety of methods, including nomination by the Governor (on recommendation of party committees), by primary election, or designation by the party's presidential nominee. Only two states, Maine and Nebraska, allow for proportional assignment of Electors, although any state Elector could actually vote as he chooses despite results from the state election.

Presidential Electors never meet as a national group, the Electors meet in their respective states where they cast their votes for President and Vice President on separate ballots, meeting on the first Monday after the second Wednesday in December after the general election. The Electors almost always meet in their state capital. Each state's electoral votes are counted in a joint session of Congress on January 6 in the year following the meeting of the Electors. Members of the House and Senate meet in the House Chamber to conduct the official count of electoral votes. The Vice President, as President of the Senate, presides over the count and announces the results of the vote and declares which candidates have been elected President and Vice President of the United States, and these are inaugurated on January 20.

Why we should preserve the Electoral College

The establishment of the Electoral College (EC) reflects the intent of our founders to establish a Republican form of government and protect the rights of small states and their citizens. This intent is also revealed in the establishment of the US Senate, whereby each state no matter how small and “insignificant” receives two seats, the same representation awarded to more populous states. In short, the EC system helps to maintain the intended federal character of the nation.

In 2020, the existence of the EC has been demonstrated to encourage presidential candidates to campaign in mid-sized states. Candidates who neglect such states imperil their candidacy, as arguably demonstrated in the 2016 election. The Electoral College can clarify seemingly inconclusive results and provide reasonable outcomes, especially when the popular vote is fragmented. In 1860 Abraham Lincoln received 39.82 percent of the popular vote (the balance split between three major rivals), but won the EC balloting handily with 180 electoral votes, 28 votes more than needed. The Democratic Party was badly split in 1860 and was forced to have multiple conventions before finally splitting into a northern and southern wing. It is a matter of conjecture whether Lincoln, not receiving a majority of the vote, would have been popularly accepted as President, however the EC translated his narrow direct vote plurality into a decisive victory.

Why the Electoral College Needs To Be Reformed

Over the past 50 years or more, numerous proposals have been suggested to reform and/or to abolish the EC system mandated in the U.S. Constitution. Three primary criticisms of the current EC system are often made: It is “undemocratic;” It permits the election of a candidate who does not win the most votes, and It's a winner-takes-all approach that is prone to manipulations in campaign financing and limitations with two-party candidates. Some also claim the EC system is an idiosyncratic and out-dated election process that is fraught with uneven administrative problems at the state level. According to the Congressional Research Service, there have been at least 752 known proposals to change the electoral system from 1789 to 2017. Proposals for abolishing the EC and/or overturning the Supreme Court ruling on *Citizens United vs. FEC* would require an amendment to the U.S. Constitution that would be extremely challenging in today's polarized party politics.

The variety of “reforms” to the EC system can be divided into structural change proposals and indirect change proposals. The most frequently suggested structural change proposals include (a) changing the election process from the current majority vote in the Electoral College to a national majority vote for President and Vice President via a vehicle like the National Popular Vote Interstate Compact or (b) utilizing Instant Run-Off Voting (IRV) – which derives its name from the way the ballot count simulates a series of runoffs between qualified candidates, similar to a two-round system, except that voter preferences do not change between rounds. This voting method is sometime referred to as ranked-choice voting (RCV), the alternative vote, the

transferable vote, single-seat ranked-choice voting, or preferential voting. The IRV method has been promoted in the U.S. by numerous individuals and organizations like *FairVote* (www.fairvote.org) and is currently being used in some elections in the U.S., including the state of Maine for President. The rationales given for these structural reforms to the current EC system reside in the belief that voters should determine directly who is elected as President and Vice President and the idea that having more choices in candidates to vote for would curb the forced choices in the current dominant two-party system. Both the National Popular Vote and the different variations of the Instant Run-off Vote would also require Presidential candidates to compete for votes in all 50 states, not just campaigning heavily for EC votes in one of the swing states, typically less than a dozen of the 50.

The other indirect reforms proposals to the Electoral College system have a more limited focus or are intended to address perceived internal problems with the election process for selecting a President and Vice President for the U.S. Some of these more indirect reforms include (a) addressing the corrupting effect of money in Presidential campaigns via federal financing procedures and campaign finance reforms and limitations, (b) seeking to mitigate against the gerrymandering of congressional districts that favor one political party, and (d) getting states to pass compulsory voting laws. None of these suggested changes have received enough support at the political party or state level in order to be seriously considered in Congress.

Appendix

The Electoral College system most often functions as a mere formality, the election having been clearly decided on election day or immediately after, but there are several historical examples where the function of the EC has had a crucial role in the outcome of national elections. These examples illustrate some of the advantages and disadvantages of the system, and provide precedents for any similar occurrences in the future.

The 12th Amendment (1804) specified that if no presidential candidate wins a majority of electoral votes, then one of the top three finishers from the election is to be elected by the House of Representatives, with each state, regardless of population, having one equal vote. This provision has only operated once, in 1824. By 1820 the Federalist Party had faded away and only the Democrat-Republican Party remained. President James Monroe of the Democrat-Republican Party was re-elected to a second term in 1820 with no opposition. He retired at the end of his term and left the field open in 1824 for several candidates within the Democrat-Republican Party. Senator Andrew Jackson of Tennessee, Secretary of State John Quincy Adams of Massachusetts, Secretary of the Treasury William Crawford of Georgia, and Speaker of the House Henry Clay of Kentucky were each nominated by at least one state legislature and each ran for President. The nation had 24 states with 261 electoral votes total, with 131 needed to win. Andrew Jackson won 99 electoral votes, John Quincy Adams won 84 electoral votes, William Crawford won 41 electoral votes, and Henry Clay won 37 electoral votes. Under the

12th Amendment, Clay was eliminated and the House voted on the remaining three candidates. Clay used his influence within the House to steer the vote to Adams, with the result of the votes by states Adams 13, Jackson 7, and Crawford 4, making Adams the sixth President. Jackson was understandably outraged, because he had led both the popular vote and the electoral vote from the 1824 election. Interestingly Senator John Calhoun of South Carolina easily bested five opponents for Vice President in the general election, with 72% of the popular vote and 182 electoral votes. Jackson ran again in 1828 and defeated Adams 178 to 83 in electoral votes, and Calhoun was re-elected as Vice President.

In the 53 Presidential elections since the enactment of the 12th Amendment, a candidate with a lower popular vote than an opponent has won the Presidential election due to the Electoral College five times: Adams 1824, Hayes 1876, Harrison 1888, G.W. Bush 2000, and Trump 2016. Eleven Presidents have won the Presidency with less than 50% of the popular vote, sometimes due to having more than just two major candidates: 1824 Adams 31%, 1848 Taylor 48%, 1856 Buchanan 45%, 1860 Lincoln 40%, 1888 Harrison 48%, 1892 Cleveland 46%, 1912 Wilson 42%, 1968 Nixon 43%, 1992 Clinton 42%, 2000 G.W. Bush 48%, 2016 Trump 46%.