

Summary of the Electoral College system

Presidential electors are selected on a state-by-state basis, as determined by the laws of each state. Generally (with Maine and Nebraska being the exceptions) each state appoints its electors on a winner-take-all basis, based on the statewide popular vote on Election Day. Although ballots list the names of the presidential candidates, voters within the 50 states and Washington, DC actually choose electors for their state when they vote for President and Vice President. These electors in turn cast electoral votes for those two offices.

A candidate must receive an absolute majority of electoral votes (currently 270) to win the Presidency. If no candidate receives a majority in the election for President, or Vice President, that election is determined via a contingency procedure in the Twelfth Amendment,

Electors chosen on Election Day meet in their respective state capitals (or in the case of Washington, DC, within the District) on the Monday after the second Wednesday in December, at which time they cast their electoral votes on separate ballots for President and Vice President. The Electoral College members never meet as one body.

The Electoral College System

538 total electors (270 needed to win Presidential Election)

Number of electors per state is specified in Article II, Section 1, Clause 2; each state's Legislature's decide how their electors are chosen.

12th Amendment replaced system outlined in Article 2, Section 1, Clause 3.

The 12th Amendment holds that each elector casts 1 vote for President and 1 vote for Vice President.

23rd Amendment gives Washington DC the number of electors equal to the smallest state.

What if no one receives 270 electoral votes?

In accordance with the 12th Amendment, if no one receives 270 electoral votes the matter is handed to Congress.

- The House votes for President from among the top three electoral vote getters.
 - Each state delegation votes collectively as one vote, and Washington DC does not have a vote. Simple majority needed
 - The House has chosen the president only twice, in 1801 (under Article II, Sec.1, Clause 3) and 1825 (under the 12th Amendment)
- The Senate votes for Vice President from among the top two electoral vote getters
 - Each Senator has their own vote, but two-third of the Senate must be in attendance for voting to take place. Simple majority needed.
 - The Senate has chosen the Vice President only in 1837
- If the House has not chosen a winner by inauguration, then Section 3 of the 12th Amendment specifies the Senate-selected Vice President becomes acting president until the House acts.

All states employ a winner-take all format for candidates to obtain electoral votes, except for Nebraska and Maine, which allocate electors reflecting the congressional districts won by the candidates.

Disqualification of electors possible in two circumstances:

- Article II, Section 1, Clause 2 – no person holding federal office may become an elector
- 14th Amendment, Section 3 – any person who has sworn an oath to support the Constitution, and later rebelled against the US, is bared from serving as an elector.
 - ↳ However, Congress may remove this disability by a two-thirds vote in each chamber

Qualification: with the exception of the above, there are no restrictions of eligibility for who may become an elector. No minimum age, citizen test nor residency requirement. In reality, however, these individuals are chosen at State Conventions by party higher-ups.

Philosophical foundations from the nations' Founders

- Federalist Nr. 39 – James Madison argued that the Constitution was designed to be a mixture of state-based and population-based government. The Congress would have two houses: the state-based Senate and the population-based House. Meanwhile, the President would be elected by a mixture of the two modes. He further postulated that the greater the population and expanse of the Republic, the more difficulty factions would face in organizing due to such issues as sectionalism.
- Federalist Nr. 10 – James Madison argued against "an interested and overbearing majority" and the "mischief's of faction" in an electoral system. He defined a faction as "a number of citizens ... who are united by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Republican government (i.e., federalism, as opposed to direct democracy), with its varied distribution of voter rights and powers, would countervail against factions.

On the issue of "Faithless Elector's"

A faithless elector is one who casts an electoral vote for someone other than the person pledged, including one who refuses to vote for any candidate. There are laws to punish faithless electors in 24 states.

- In 2001, an elector refused to cast a vote in protest of Washington DC not having voting representation in Congress.
- Ray v. Blair, 1952 – the Supreme Court ruled in support of state laws which required electors to vote as the majority of their state did. "Electors serve as functionaries of the state, so states can govern their responsibilities."
- The constitutionality of state laws punishing electors for actually casting a faithless vote, rather than refusing to pledge, has never been decided by the Supreme Court.
 - While many states may only punish a faithless elector after-the-fact, some such as Michigan specify that his or her vote shall be canceled.

The Electoral College system remains controversial.

Arguments in favor of the Electoral College system

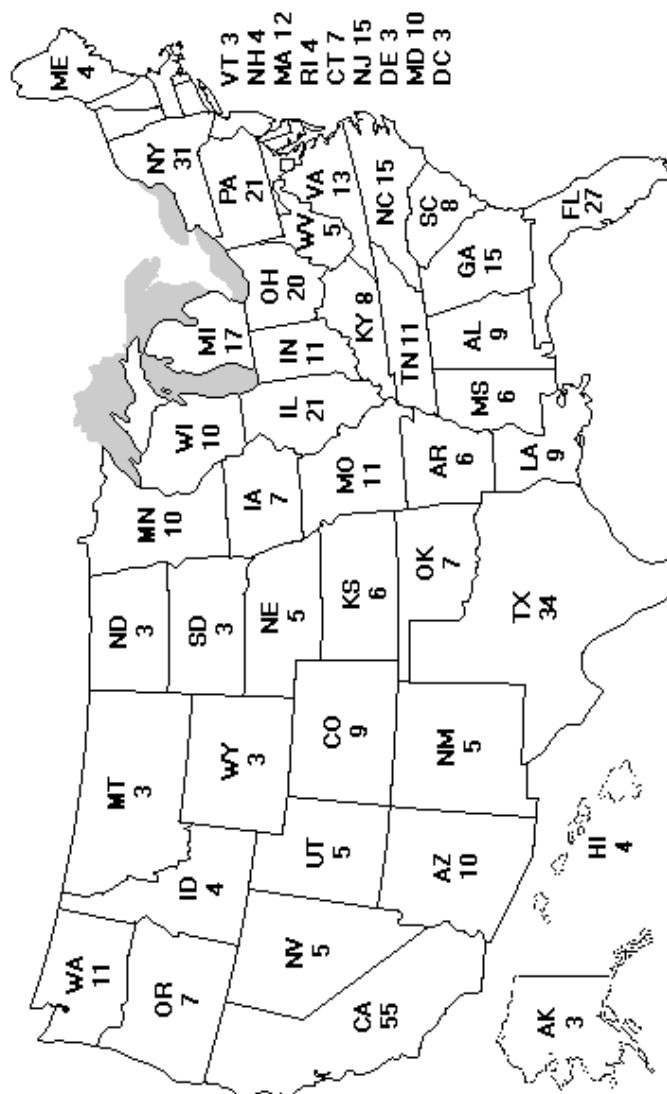
1. Maintains the federal character of the nation (ie, example of Federalism!)
2. Honors rights of small states
3. Enhances the status of minority groups
4. Prevents an urban-centric victory
5. Encourages stability through the two-party system
6. In the event of the death or disqualification of a candidate, the electors are in a position to choose a replacement
7. Isolation of election-day problems (fraud)
 - ↳ Which allows for state-by-state, not national, recounts
8. Encapsulation of the election system.
 - ↳ Allows each state to conduct elections in their own manner; by contrast, a national popular vote would require all states to use the same voting methodology
9. Neutralized disparities between states (voter participation, weather)
10. Maintains separation of powers
 - ↳ Under the original framework, only members of the House of Representatives were directly elected by the people, with members of the Senate chosen by state legislatures, the President by the Electoral College, and the judiciary by the President and the Senate. The President was not directly elected in part due to fears that he could assert a national popular mandate that would undermine the legitimacy of the other branches, and potentially result in tyranny.

Criticism of the Electoral College system

1. Undemocratic
2. Gives smaller states too much clout
3. Makes the national popular vote irrelevant
 - ↳ In the 1876, 1888 and 2000 elections, the winner in the Electoral College did not receive the plurality of the nationwide popular vote.
4. Encourages a focus on large swing states
5. Discourages turnout and participation
6. Allows states to disenfranchise citizens without penalty.
 - ↳ If a state makes it harder for its citizens to vote, whether by making voting more difficult, or by legally disenfranchising some citizens (such as those convicted of felonies) from voting, and turnout in the state is reduced as a result, the Electoral College insulates the state from being penalized.
7. Favors less populous states.
8. Disadvantages Third Parties
9. While there is no record of anyone trying to influence an electors vote, such lobbying efforts might be hard to prevent.

Alternative proposals

1. National vote where the majority population rules
2. Congressional District Method (aka. Maine-Nebraska Method)
 - ↳ This would allocate electoral votes by whomever wins the congressional district (with two electoral votes to the statewide winner), abandoning the winner-take all approach.
3. Bayh-Celler Amendment
 - ↳ The closest the US has come to abolishing the Electoral College system. A system where a pair of candidates who won at least 40% of the national popular vote would become President and Vice President; if no pair received 40% of the popular vote, a runoff election between the two would be held. Filibuster by Southern states prevented it from leaving the Senate.



Electoral College map, 2004 and 2008 presidential elections