

It's time to abolish the Electoral College

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Executive Summary

For years when I taught campaigns and elections at Brown University, I defended the Electoral College as an important part of American democracy. I said the founders created the institution to make sure that large states did not dominate small ones in presidential elections, that power between Congress and state legislatures was balanced, and that there would be checks and balances in the constitutional system.

In recent years, though, I have changed my view and concluded it is time to get rid of the Electoral College. In this paper, I explain the history of the Electoral College, why it no longer is a constructive force in American politics, and why it is time to move to the direct popular election of presidents. Several developments have led me to alter my opinion on this institution: income inequality, geographic disparities, and how discrepancies between the popular vote and Electoral College are likely to become more commonplace given economic and geographic inequities. The remainder of this essay outlines why it is crucial to abolish the Electoral College.

The original rationale for the Electoral College

The framers of the Constitution set up the Electoral College for a number of different reasons. According to Alexander Hamilton in Federalist Paper Number 68, the body was a compromise at the Constitutional Convention in Philadelphia between large and small states. Many of the latter worried that states such as Massachusetts, New York, Pennsylvania, and Virginia would dominate the presidency so they devised an institution where each state had Electoral College

votes in proportion to the number of its senators and House members. The former advantaged small states since each state had two senators regardless of its size, while the latter aided large states because the number of House members was based on the state's population.

In addition, there was considerable discussion regarding whether Congress or state legislatures should choose the chief executive. Those wanting a stronger national government tended to favor Congress, while states' rights adherents preferred state legislatures. In the end, there was a compromise establishing an independent group chosen by the states with the power to choose the president.

But delegates also had an anti-majoritarian concern in mind. At a time when many people were not well-educated, they wanted a body of wise men (women lacked the franchise) who would deliberate over leading contenders and choose the best man for the presidency. They explicitly rejected a popular vote for president because they did not trust voters to make a wise choice.

How it has functioned in practice

In most elections, the Electoral College has operated smoothly. State voters have cast their ballots and the presidential candidate with the most votes in a particular state has received all the Electoral College votes of that state, except for Maine and Nebraska which allocate votes at the congressional district level within their states.

But there have been several contested elections. The 1800 election deadlocked because presidential candidate Thomas Jefferson received the same number of Electoral College votes as his vice presidential candidate Aaron Burr. At that time, the ballot did not distinguish between Electoral College votes for president and vice president. On the 36th ballot, the House chose Jefferson as the new president. Congress later amended the Constitution to prevent that ballot confusion from happening again.

Just over two decades later, Congress had an opportunity to [test the newly established 12th Amendment](#). All four 1824 presidential aspirants belonged to the same party, the Democratic-Republicans, and although each had local and regional popularity, none of them attained the majority of their party's Electoral College votes. Andrew Jackson came the closest, with 99 Electoral College votes, followed by John Quincy Adams with 84 votes, William Crawford with 41, and Henry Clay with 37.

Because no candidate received the necessary 131 votes to attain the Electoral College majority, the election was thrown into the House of Representatives. As [dictated by the 12th Amendment](#), each state delegation cast one vote among the top three candidates. Since Clay no longer was in the running, he made a deal with Adams to become his secretary of state in return for encouraging congressional support for Adams' candidacy. Even though Jackson had received the largest number of popular votes, he lost the presidency through what he called a "corrupt bargain" between Clay and Adams.

America was still recovering from the Civil War when Republican Rutherford Hayes ran against Democrat Samuel Tilden in the 1876 presidential election. The race was so close that the electoral votes of just four states would determine the presidency. On Election Day, [Tilden picked up the popular vote plurality and 184 electoral votes](#), but fell one vote short of an Electoral College majority. However, Hayes [claimed that his party](#) would have won Florida, Louisiana, and South Carolina if not for voter intimidation against African American voters; and in Oregon, one of Hayes' three electoral votes was in dispute.

Instead of allowing the House to decide the presidential winner, as prescribed by the 12th Amendment, Congress passed a new law to [create a bipartisan Electoral Commission](#). Through this commission, five members each from the House, Senate, and Supreme Court would assign the 20 contested electoral votes from Louisiana,

Florida, South Carolina, and Oregon to either Hayes or Tilden. Hayes became president when this Electoral Commission ultimately gave the votes of the four contested states to him. The decision would have far-reaching consequences because in return for securing the votes of the Southern states, Hayes agreed to withdraw federal troops from the South, thereby paving the way for vigilante violence against African Americans and the denial of their civil rights.

Allegations of election unfairness also clouded the 2000 race. The contest between Republican George Bush and Democrat Al Gore was extremely close, ultimately [resting on the fate](#) of Florida's 25 electoral votes. Ballot controversies in Palm Beach County complicated vote tabulation. It [used the "butterfly ballot" design](#), which some decried as visually confusing. Additionally, other Florida counties that [required voters to punch perforated paper ballots](#) had difficulty discerning the voters' choices if they did not fully detach the appropriate section of the perforated paper.

Accordingly, on December 8, 2000, the Florida Supreme Court ordered manual recounts in counties that reported statistically significant numbers of undervotes. The Bush campaign immediately filed suit, and in response, the U.S. Supreme Court paused manual recounts to hear oral arguments from candidates. On December 10, in a landmark 7-2 decision, the Supreme Court struck down the Florida Supreme Court's recount decision, ruling that a manual recount would violate the 14th Amendment's Equal Protection Clause. Bush won Florida's Electoral College votes and thus the presidency even though Gore had won the popular vote by almost half a million votes.

The latest controversy arose when Donald Trump [lost the popular vote](#) by almost three million ballots yet won the Electoral College by 74 votes. That made him [the fifth U.S. chief executive](#) to become president without winning the popular vote. This discrepancy between the Electoral College and the popular vote created considerable contentiousness about the

electoral system. It set the Trump presidency off on a rough start and generated a critical tone regarding his administration.

The faithless elector problem

In addition to the problems noted above, the Electoral College suffers from another difficulty known as the "faithless elector" issue in which that body's electors cast their ballot in opposition to the dictates of their state's popular vote. Samuel Miles, a Federalist from Pennsylvania, was the first of this genre as for unknown reasons, he [cast his vote](#) in 1796 for the Democratic-Republican candidate, Thomas Jefferson, even though his own Federalist party candidate John Adams had won Pennsylvania's popular vote.

Miles turned out to be the first of many. Throughout American history, [157 electors](#) have voted contrary to their state's chosen winner. Some of these individuals dissented for idiosyncratic reasons, but others did so because they preferred the losing party's candidate. The precedent set by these people creates uncertainty about how future Electoral College votes could proceed.

This possibility became even more likely after a recent court decision. In the 2016 election, [seven electors defected](#) from the dictates of their state's popular vote. This was the highest number in any modern election. A Colorado lawsuit challenged the legality of state requirements that electors follow the vote of their states, something which is on the books in 29 states plus the District of Columbia. In the *Baca v. Hickenlooper* case, a federal court ruled that states cannot penalize faithless electors, no matter the intent of the elector or the outcome of the state vote.

Bret Chifalo and plaintiff Michael Baca were state electors who [began the self-named "Hamilton Electors" movement](#) in which they announced their desire to stop Trump from winning the presidency. Deriving their name from Founding Father Alexander Hamilton, they convinced a few members of the Electoral College to cast their

votes for other Republican candidates, such as John Kasich or Mitt Romney. When Colorado decided to nullify Baca's vote, he sued. A three-judge panel on the U.S. Court of Appeals for the Tenth Circuit [ruled that Colorado's decision](#) to remove Baca's vote was unconstitutional since the founders were explicit about the constitutional rights of electors to vote independently. Based on this legal ruling and in a highly polarized political environment where people have strong feelings about various candidates, it is possible that future faithless electors could tip the presidency one way or another, thereby nullifying the popular vote.

Why the Electoral College is poorly suited for an era of high income inequality and widespread geographic disparities

The problems outlined above illustrate the serious issues facing the Electoral College. Having a president who loses the popular vote undermines electoral legitimacy. Putting an election into the House of Representatives where each state delegation has one vote increases the odds of insider dealings and corrupt decisions. Allegations of balloting irregularities that require an Electoral Commission to decide the votes of contested states do not make the general public feel very confident about the integrity of the process. And faithless electors could render the popular vote moot in particular states.

Yet there is a far more fundamental threat facing the Electoral College. At a time of high income inequality and substantial geographical disparities across states, there is a risk that the Electoral College will systematically overrepresent the views of relatively small numbers of people due to the structure of the Electoral College. As currently constituted, each state has two Electoral College votes regardless of population size, plus additional votes to match its number of House members. That format overrepresents small- and medium-sized states at the expense of large states.

That formula is problematic at a time when a Brookings [Metropolitan Policy Program study](#)

found that 15 percent of American counties generate 64 percent of America's gross domestic product. Most of the country's economic activity is on the East Coast, West Coast, and a few metropolitan areas in between. The prosperous parts of America include about 15 states having 30 senators while the less prosperous areas encapsulate 35 states having 70 senators.

Those numbers demonstrate the fundamental mismatch between economic vitality and political power. Through the Electoral College (and the U.S. Senate), the 35 states with smaller economic activity have disproportionate power to choose presidents and dictate public policy. This institutional relic from two centuries ago likely will fuel continued populism and regular discrepancies between the popular and Electoral College votes. Rather than being a historic aberration, presidents who lose the popular vote could become the norm and thereby usher in an anti-majoritarian era where small numbers of voters in a few states use their institutional clout in "left-behind" states to block candidates and legislation desired by large numbers of people.

Support for direct popular election

For years, [a majority of Americans have opposed the Electoral College](#). For example, in 1967, 58 percent favored its abolition, while in 1981, 75 percent of Americans did so. More recent polling, however, has highlighted a dangerous development in public opinion. Americans by and large still want to do away with the Electoral College, but there now is a partisan divide in views, with Republicans favoring it while Democrats oppose it.

For instance, POLITICO and Morning Consult [conducted a poll](#) in March 2019 that found that 50 percent of respondents wanted a direct popular vote, 34 percent did not, and 16 percent did not demonstrate a preference. Two months later, [NBC News and the Wall Street Journal reported polling](#) that 53 percent of Americans wanted a direct popular vote, while 43 percent wanted to keep the status quo. These sentiments undoubtedly have been reinforced by the fact that in two of the last

five presidential elections, the candidate winning the popular vote lost the Electoral College.

Yet there are clear partisan divisions in these sentiments. In 2000, while the presidential election outcome was still being litigated, a [Gallup survey reported](#) that 73 percent of Democratic respondents supported a constitutional amendment to abolish the Electoral College and move to direct popular voting, but only 46 percent of Republican respondents supported that view. This gap has since widened as after the 2016 election, 81 percent of Democrats and 19 percent of Republicans [affirmatively answered the same question](#).

The March POLITICO and Morning Consult poll also found that 72 percent of Democratic respondents and 30 percent of Republican respondents endorsed a direct popular vote. Likewise, the NBC News and *Wall Street Journal* poll found that 78 percent of Hillary Clinton voters supported a national popular vote, while 74 percent of Trump voters preferred the Electoral College.

Ways to abolish the Electoral College

The U.S. Constitution created the Electoral College but did not spell out how the votes get awarded to presidential candidates. That vagueness has allowed some states such as Maine and Nebraska to reject “winner-take-all” at the state level and instead allocate votes at the congressional district level. However, the Constitution’s lack of specificity also presents the opportunity that states could allocate their Electoral College votes through some other means.

One such mechanism that a number of states already support is an interstate pact that honors the national popular vote. Since 2008, 15 states and the District of Columbia [have passed laws](#) to adopt the National Popular Vote Interstate Compact (NPVIC), which is a multi-state agreement to commit electors to vote for candidates who win the nationwide popular vote, even if that candidate loses the popular vote within their state. The NPVIC

would become effective only if states ratify it to reach an electoral majority of 270 votes.

Right now, the NPVIC is well short of that goal and would require an additional 74 electoral votes to take effect. It also faces some particular challenges. First, it is unclear how voters would respond if their state electors collectively vote against the popular vote of their state. Second, [there are no binding legal repercussions](#) if a state elector decides to defect from the national popular vote. Third, given the Tenth Circuit decision in the *Baca v. Hickenlooper* case described above, the NPVIC is almost certain to face constitutional challenges should it ever gain enough electoral votes to go into effect.

A more permanent solution would be to amend the Constitution itself. That is a laborious process and a constitutional amendment to abolish the Electoral College would require significant consensus—at least two-thirds affirmation from both the House and Senate, and approval from at least 38 out of 50 states. But Congress has nearly reached this threshold in the past. Congress [nearly eradicated the Electoral College](#) in 1934, falling just two Senate votes short of passage.

However, the conversation did not end after the unsuccessful vote, legislators have continued to debate ending or reforming the Electoral College since. In 1979, another Senate vote to establish a direct popular vote failed, this time by just three votes. Nonetheless, conversation continued: the 95th Congress [proposed a total of 41 relevant amendments](#) in 1977 and 1978, and the 116th Congress has already introduced three amendments to end the Electoral College. In total, over the last two centuries, [there have been over 700 proposals](#) to either eradicate or seriously modify the Electoral College. It is time to move ahead with abolishing the Electoral College before its clear failures undermine public confidence in American democracy, distort the popular will, and create a genuine constitutional crisis.

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