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## The Electoral College and the Winner Takes All System

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# THE ELECTORAL COLLEGE AND THE WINNER TAKES ALL SYSTEM

by

CHEYENNE ALYSSE YOUNG

A thesis submitted in partial fulfillment of the requirements  
for the Honors in the Major Program in Political Science  
in the College of Sciences  
and in the Burnett Honors College  
at the University of Central Florida

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## ABSTRACT

The intent of this thesis is to evaluate the Electoral College, and the Winner Takes All System in the United States of America. In order to understand how the Electoral College works, we need to go back to the Constitutional Convention in Philadelphia in 1787 and discuss the reasoning of the founders, along with outlining the changes to the Electoral College after the Constitutional Convention. We will also discuss the five occasions where the Electoral College and the popular vote clashed. Then we will discuss the arguments for keeping the Electoral College the same, the arguments for the establishment of the Popular Vote, and outline other alternatives to the Electoral College, along with the potential pros and cons of each of these proposed solutions. Lastly, we will reflect on what we know now, and outline the uncertain future of the Electoral College and the Winner Takes All System.

## AWKNOWLEDGEMENTS

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## INTRODUCTION

To determine the winner of the presidency, this entails a process full of intricacy, and the Electoral College is a major aspect that changes the lives of Americans across the country every four years and deserves recognition. Its complexity can undo the people's will, and many Americans do not fully understand the process of the Electoral College. There exists an unwillingness by both political parties to hear both sides. This results in groupthink among both the Republican and Democratic parties. The Electoral College has "survived not because it makes sense, but because one party or the other thinks it gives them an advantage" (Fix the Electoral College or Scrap It, 2019). Some people believe that reform is needed, while others hold strong beliefs that it is an effective system and is necessary to protect small states' rights. Understanding the Electoral College requires looking at both sides and outlining both its strengths and weaknesses. Due to the recent outcry of many Americans by the result of the 2016 elections, and the calls for potentially abolishing the Electoral College, it only seems fitting to address and uncover the myths and realities of this system.

The election in 2016 took the world by surprise, as the predictions for the Electoral College initially suggested that Hillary Clinton would be victorious. After the results of the 2016 election, opponents of the Electoral College called for its abolition, believing that all citizens should have an equal voice in determining the outcome of the Presidency and Vice-Presidency. Donald Trump received 2.8 million less popular votes than Hillary Clinton. What is also important to note is that many Americans disliked both the Democratic and Republican

nominees, as we saw a significant increase in the number of votes for third-party candidates. In fact, the American people were so divided that “it was an improbable impact for Libertarian Party nominee Gary Johnson and Green Party nominee Jill Stein, neither of whom cracked double digits in public polling or made it into the general election debates — and a sign of just how dissatisfied Americans were with their options for President” (Jaffe, 2016).

By considering both sides and discovering the truth of the Electoral College, this will enable us able to make an informed decision for the next steps or plans of action. Our current Senators and Representatives face popular vote elections and serve their constituents. Even after being elected, they face their constituents at all points, and especially when it becomes time for them to run for re-election. This is not the same process for the President and the Vice President. The logistics behind who wins and who does not is extremely controversial because American voters do not regulate them to the level at which other elected officials are controlled. Their main burden includes getting past the Electoral College, and the popular vote is seemingly becoming more of a guideline than a rule. So, what exactly is the Electoral College? Furthermore, what is a winner takes all system?

In order to answer these questions, we need to uncover the truth behind the Electoral College and outline its historical origins and significance. The 12<sup>th</sup> amendment of the Constitution changed the process for the Electoral College and permitted the use of separate ballots for determining who wins the Presidency and the Vice Presidency. It also takes into consideration the winner takes all system, which is based on who ultimately wins the most votes in a plurality count. The Electoral College today is comprised of 538 electors, and in order to win the Presidency, the candidate is required to win a majority of 270 electoral votes. The number of



Electors varies by state, one for each member in the House of Representatives, and two for a state's number of Senators.

Who chooses the electors? This process includes the political parties in each state choosing potential electors before the general election. Then on election day, “the voters in each state choose their electors by casting ballots for the President” (U.S Electoral College, 2019). Many voters do not know who their state electors are, and this results in a significant level of mistrust between the voters and the political parties who choose the electors. Critics of the Electoral College see the presidency as a lottery, and that instead of potential candidates focusing on generating support within the public sphere, they instead focus on forming a coalition of states that will allow them to acquire a majority of votes. Proponents see the elector selection process as fair because it is “rare for electors to disregard the popular vote, as more than 99% of electors have voted as pledged” (U.S Electoral College, 2019).

Throughout our journey, we will continue to discuss the Electoral College and provide the reasoning by the founding fathers for its creation. Disagreements exist upon the decisions of the framers and how they constructed the Constitution. Some believe that the compromises made on the Electoral College were hastily decided. In contrast, others believe that they did the best that they could under the time constraints and the circumstances presented to them. There is no wrong or right answer because ultimately, no one truly understands how the framers felt at that time, but we can look further into their perceived motivations and how their individual beliefs played a role in the creation of the Electoral College.

In Chapter one, we will discuss the historical origins of the Constitutional Convention in 1787, and what the founding fathers knew and what they could not know. Then the motivations of the founding fathers will come into play, and this will shed some light on why the Electoral College was chosen in the first place. To be discussed next is the early mistakes of the Electoral College. Thus, leading to reforms in 1804 including the ratification of the 12<sup>th</sup> amendment to fix the problems outlined in the 1800 election. In order to understand what the founding fathers were thinking, we must take into consideration their beliefs and how society functioned at that time. This will increase our understanding on the founding fathers reasoning behind the Electoral College and will aid us in discovering the perceived pros and cons of this system after its formation.

Moving into chapter two, we will discuss the evolution of the Electoral College after the Constitutional Convention in 1787. Then we will discuss the elections of 1800, 1876 and the finally the Electoral Count Act of 1887. The Electoral College was not flawless upon its creation, and we will discuss its shortcomings along with explanations as to how the founders decided to resolve these discrepancies. Then we will outline issues with the Electoral College today that remain unfixed leading into chapter three.

Included in chapter three are the five elections in which there is a misalignment between voters' intent and outcome. Specifically, we will outline the popular vote for each of these elections and discuss what occurred in 1824, 1876, 1888, 2000, and 2016. We will also discuss the possibility of a presidential candidate winning the presidency again while not winning the popular vote in the 2020 election.

Once we have outlined these principles, we can then move on to the perceptions of individuals who argue to keep the Electoral College as it is in chapter four. Specifically, we will discuss the protection of small states' rights, which will be at the forefront of this chapter. Proponents of the Electoral College believe that it is necessary to protect the smaller states, for fears that they may not have a voice. Next, we will get into the roles of political parties and how this shapes the Electoral College while protecting the two major parties from the influence of third parties.

Leading into chapter five will be a detailed analysis of individuals who believe that the Electoral College needs to be abolished and call for the establishment of the popular vote solely. The American Presidential system of votes is disproportionate, and "every person should have an equal say in choosing his or her representatives" (Ansolabehere, 2008, Pg. 25). Opponents of the Electoral College outline disparities and desire a system where all votes are counted the same. Of special significance is the belief that the Electoral College is "a dangerous game to play that may eventually destroy us as a nation" (Michener, 2016, Pg. 1). Included in this dangerous game is the importance of understanding the difference between the Electoral system and the Electoral College. The phrase Electoral College is "not found in the Constitution at all, nor in any enabling legislation" (Michener, 2016, Pg. 45), and the distinction between the two is essential to evaluate whether the Electoral College needs reform.

Following the discussion of the opponents of the Electoral College is a set of alternatives or reforms to the current Electoral College system in chapter six. While including possible alternative plans such as; the Automatic Plan, the Proportional Plan, and the District Plan. Once we outline these potential alternatives to the Electoral College, we will look at the pros and cons

of each of these. Then we can decide which solutions are ultimately realistic in implementation in our current political atmosphere as a nation based upon each of the requirements necessary to enact these changes.

At the very end of it all, we will reflect on the beginning of the Electoral College and outline what we know now. Included in chapter seven is my opinion on the Electoral College and what factors have led to my beliefs on this system. By looking at the past of the Electoral College, we can formulate our own conclusions in the 21<sup>st</sup> century. The elections of 1824, 1876, 1888, 2000, and 2016 provide lessons from the past that help us to determine the relevance of the Electoral College in the 21<sup>st</sup> century. To conclude our findings, each of these factors will be outlined once more to wrap up our findings on the Electoral College.

## CHAPTER 1

To begin, we will outline the history of the Electoral College in the Constitutional Convention, and to do so, we must look back on September 17, 1787. Behind closed doors, the mood was heated, as 55 delegates prepared to sign the most essential document in American history. After long deliberation, the time had finally come. Signed in a place called Independence Hall, all eyes were on the delegates who would shape American politics for years to come. Taking up to four pieces of parchment and consisting of a preamble and seven articles, it must surely have been a sight to behold.

At the convention itself, many plans were proposed including; “the Virginia Plan, the New Jersey Plan, Charles Pinckney’s Plan, the British Plan by Alexander Hamilton, and the Connecticut Compromise by Roger Sherman” (Lumen Learning, 2020). The Virginia Plan was proposed by James Madison and supported a bicameral legislative branch. It contained two chambers, and each state would be represented according to population. Thus, larger populations would have more representatives than smaller states. The New Jersey plan was established by William Paterson and equated one vote per state according to the Articles of Confederation, so that each state had equal representation. Alexander Hamilton’s British Plan supported eliminating much of a state’s sovereignty while “consolidating the states into a single nation” (Lumen Learning, 2020).

This also included a bicameral legislature, where the lower house would be elected by the people for three years. Electors would be chosen by the people and served for life. Charles Pinckney’s plan closely resembled the Virginia Plan, but he did not “reduce it to writing, so the

only evidence is found in James Madison's notes" (Lumen Learning, 2020). This plan included a bicameral legislature made up of a Senate and a House of Delegates. The House had one "member per one thousand inhabitants and the House would elect Senators who would rotate and serve for four years" (Lumen Learning, 2020). The last plan was proposed by Roger Sherman and was known as the Connecticut Compromise. It blended both the Virginia and New Jersey plan and it "determined the method for apportionment of the Senate and retaining a federal character in the Constitution" (Lumen Learning, 2020). Ultimately, the Connecticut Compromise was chosen but was modified in order to provide compromises to ensure that both the concerns of larger and smaller states were addressed. It aligned with the Virginia Plan as a bicameral legislature with a U.S House of Representatives determined by population, and it granted equal votes per state to address the desires of the New Jersey Plan.

Upon looking closer at Article II, Section 1, it states that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector" (The Constitution of the United States, Article II, Section 1). How many electors does each state receive? Moreover, how are the electors chosen? This depends on the number of Senators or Representatives that are in each state. Each state is guaranteed a minimum of three electoral votes, two including its U.S Senators and one or multiple that depend on the number of Representatives that state has.

As for how the electors are chosen, this also varies by a state's discretion. Both the Constitution and the 12th amendment leave this choice to the states. So, who is not able to be an

elector? This includes U.S Senators or Representatives, or individuals who are at the time holding an elected position that holds a position of trust or profit in the United States. The names of the Electors are available to the public, and they typically consist of “party loyalists and donors” (Edwards, 2011, Pg. 15). The electors did not have a timeline until 1845, and for multiple reasons. Firstly, they did not want to overburden the legislature, and the electors would need more time to be prepared to debate, and states’ rights supporters did not want Congress to create any restrictions in which they deemed were not necessary.

However, in 1845, Congress created a uniform date on the first Tuesday after the first Monday in November, and this became the regular timeline throughout the United States. How has the elector selection process changed throughout history? Before 1920, each elector would appear by ballot, and voters could choose their electors. In the 21<sup>st</sup> century, Electors are chosen by short ballot and are included within the names of the Presidential and Vice-Presidential candidates. Unfortunately, due to this method, many voters have “no way of knowing that they are voting for Presidential electors rather than directly for President and Vice President” (Edwards, 2011, Pg. 19). Thus, the voters may be under the assumption that they are voting for the President and Vice President, but they are voting for the electors chosen by the political parties of their state and their names do not appear on the short ballot. However, six states do not use the short ballot method, and this includes; North Dakota, South Dakota, Arizona, Idaho, Oklahoma, and Louisiana as they list their electors by ballot.

At the opposite spectrum, some believe that the framers intended to take the election away from the people. This viewpoint is shared among individuals such as Chief Justice Earl Warren, who stated that “the Electoral College was designed by men who did not want the

election of the President to be left to the people” (Ross 2012, Pg. 25). During the Constitutional Convention, it was evident that contentions were occurring within the larger and smaller states. In order to appease both, they created what is best known as the Great Compromise.

Additionally, the delegates at the Constitutional Convention strived to strike a balance between both government involvement and the individual rights of the thirteen states. Multiple delegates expressed concerns on the potential negative influence of political parties on Congress and the Legislature. Presently, many voters are only aware of the framers considering selecting the President and Vice President by the popular vote. The discussion included many different options, and this resulted in disagreements between the framers. Based on the information available to the delegates at that time, and the culture and society that existed, this was reflected in their decisions. The only way for a consensus to be made was in the form of a compromise.

However, there is a significant amount of disagreement when it comes to whether the Great Compromise was hastily decided, or whether it was carefully thought out. Small states feared that they would be left out, whereas larger states wanted their concerns heard as well. Opponents of the Electoral College contend that individuals believe that the delegates were tired, and ultimately had to make decisions quickly. At the other spectrum, supporters believe that it is not that simple, and the importance of their tasks should not be understated. However, even James Madison admitted to the fatigue he felt during the ending of the Convention when he stated that the decision was “not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such bodies” (Ross 2012, Pg. 32).

In addition, four different ideas were presented and proposed for the selection of the President and Vice President. One route included Congress deciding the Presidency, and that



idea was dismissed due to potential corruption. Another idea permitted the State Legislatures to choose, but this plan also had faults as the President could attempt to undermine federalist principles. A third route consisted of the direct popular vote and was labeled as being too risky. The delegates feared that a President may not win a majority under this system, and small states feared that it would abridge upon their rights. The final idea was the use of electors, and this option was chosen by the delegates.

However, it is important to outline the potential reasons surrounding the delegates decision to vote down the option of the popular vote. One reason may have been the lack of travel opportunity that was available. Individuals could not travel broadly in order to promote their campaigns. The level of communication available at that time period was limited as well. What problem did this then pose to the framers? People may not know whom they are voting for, and this was likely a major problem that the framers faced with the proposal of a popular vote at the Constitutional Convention.

On the other hand, a nationwide popular vote was supported by James Madison, James Wilson, and Gouverneur Morris. However, when the possibility of a popular vote for the President was voted on, it was defeated with “nine states to two” (Bennett, 2006, Pg. 16). Once the delegates decided on the elector option, according to the framers the electors would meet in their states and submit the results to the President of the Senate. It is ironic that the founders called for the selection of an option without the interference of political parties or national campaigns, as the opposite effect would result due to the use of electors. The founding fathers could not have foreseen the amount of reliance that the government would have on political parties today. Something else that is important to note is that only landowning men could vote at

this time. This undoubtedly influenced the delegates decision to implement the Great Compromise. The delegates were also aware of how the three-fifths compromise impact the number of representatives each territory would receive, and this additionally played a role in their decision making at the Constitutional Convention.

Likewise, the framers could not know the full extent of how impactful their decisions would be on future elections. They were limited to considering only a republican form of government and believed that this is what their citizens wanted. The delegates faced another constraint, by only having thirteen states. Finding a solution that would lead to a unitary system in each state with sovereignty to one government was not possible at that time, and that made a federal system inevitable. Due to the previously mentioned contentions and disagreements, a unified system was also unable to occur. Regardless of the outcome, it was evident that whatever decision made would have to be a compromise if they wanted to finish the Constitutional Convention efficiently and quickly.

In addition, the framers intended not to interfere with the selection of electors. Instead, they left decisions to the discretion of each individual state. Due to the lack of travel during that era in time, this decision made sense due to these barriers. However, factions and political parties became an unintended consequence of this system. Electors “came to think of themselves as agents of political parties rather than as engaged in deliberation about who in the nation might best serve as a wise President above factional politics” (Bennett, 2006, Pg. 20). The framers had several motivations and intentions in mind during the Constitutional Convention. However, the framers did not anticipate the emergence and influence of political parties. We know that the framers believed in the establishment of a republic, and not a democracy. By a Republic, the

framers desired “a government in which the scheme of representation takes place” (Dahl, 2003, Pg. 179). Regarding a democracy, this would include “a society consisting of a small number of persons, who assemble and administer the government in person” (Dahl, 2003, Pg. 179).

Ultimately, the founders decided to guarantee small states at least three electors and determined that bigger states would receive electoral votes based on population. The framer’s motivations may have been influenced by multiple factors including; the concerns of the Federalists and the Antifederalists, a rush to finish the convention, the fear of the direct election of the President, the belief that voters would make poor choices, the ideals of protecting federalism, etc. Although these motivations and more are plausible, by taking into consideration the beliefs of the founders, we gain greater knowledge into their decision-making process during the Constitutional Convention.

Consequently, the first big test for the founders and their decisions within the Great Compromise occurred within the election of 1800, as the limitations of an elector-oriented system began to unveil. A major hiccup within the elector process led to an unforeseen tie, as what would become known as the Revolution of 1800, pinned Thomas Jefferson against incumbent John Adams. No candidate received a majority of the electoral votes. Another problem was that Thomas Jefferson received the same number of electoral votes as Aaron Burr up until the votes casted by South Carolina. This resulted in proposals to change the Constitution, and additional alterations would be implemented in the years that followed.

## CHAPTER 2

As we are switching gears, a few Constitutional changes are significant to mention after the Constitutional Convention in Philadelphia, as they have reformed the Electoral College. Regarding the 12th amendment, it created a procedure for the appointment of the President and Vice President. It was ratified on June 5th, 1804, due to the tie that occurred within the 1800 election. Additionally, another change took place on January 23, 1933, as the the 20th amendment was ratified. This change implemented a procedure in the case of a Presidential death between an election and inauguration. It also established a timeline for session within the Senate and the House of Representatives, as the prior dates created during the Constitution's ratification became problematic.

The election of 1800 is significant in that it led to a tie due to a flaw that neglected to distinguish between the President and Vice President in votes cast by each state's electors in the Electoral College. Due to this, the House of Representatives decided the presidency in the 1800 election. By ratifying the 12<sup>th</sup> amendment, this created the use of separate ballots for President and Vice President, and candidates with a plurality of votes would be elected if it was a majority of the total votes. The House of Representatives would decide if no candidate received a majority of votes for the President, and if no majority existed for the Vice President, then the Senate would choose from among the two highest-scoring candidates. Figure 2.1 depicts the 16 states, and the electoral votes that contributed to this issue.

Why did this problem exist, and why did the delegates miss this during the Constitutional Convention? A major issue was that during the election in 1800, each state could choose their voting day. This meant that the election lasted a long time, specifically from April through October. The most important issue at hand was the failure of the Constitution to distinguish between the President and Vice-President in the ballots that were casted by each state's electors. The state contended in the 1800 election was South Carolina, as it awarded votes to Thomas Jefferson, but a lot of the votes had disputed returns. The framers of the Constitution never considered the possibility of a tie, and they did not anticipate a factional difference between a President and Vice President.

In 1804, the 12<sup>th</sup> amendment was ratified, and fundamentally changed the process of winning both the Presidency and the Vice Presidency. This is where the winner takes all system comes into play because the person having the greatest number of electoral votes, would become President. The 12<sup>th</sup> amendment also established the Electoral College and the founders had many reasons for proposing this amendment including; breaking ties between candidates for the Presidency, protecting small states' rights, and protecting majority interests. However, even the establishment of the 12<sup>th</sup> amendment did not solve the final, fatal flaw of the Electoral College. Thus, it failed to establish an "independent body free of the supposed vices of popular election" (Dahl, 2003, Pg. 78).

Additionally, different circumstances could occur, which would lead to a deadlock in the electoral vote counts. If an election is highly controversial, this could lead to a tied vote. Another situation that could occur is that multiple candidates could receive electoral votes, thus leading to no candidate receiving a majority of the votes. Or finally, a "number of electors sufficient to

deny a majority to any candidate votes against the candidates to whom they are pledged” (Neale, 2016). In the election in 1800 all three instances played a role and resulted in electoral gridlock.

So, what could be done in order to resolve this issue? A Constitutional amendment was proposed in 1800. However, there was no way for this to be implemented at this time. At least not until a winner was deemed for the Presidency and Vice Presidency. It was decided that the best course of action was to allow the House of Representatives to choose the winner of the Presidency. The election of 1800 was difficult and contentious, and pitted two different political groups; the Federalist party and the Democratic-Republicans against one another. Both had very different viewpoints, and the fight continued even after the results of the elections, as Vice-President John Adams refused to shake Thomas Jefferson’s hand at the inauguration. In the end, the final tally was ten states for Thomas Jefferson and four for Aaron Burr.

Regardless of their differences, this became the first time in history that there was a non-violent transfer of power from one party to another. The Democratic-Republicans became the dominant party and were aided by the three-fifths system in place, as it gave them more votes and greater representation in the House of Representatives. As they overwhelmingly had a huge majority over the Federalists, it comes as no surprise that Thomas Jefferson won the presidency. After winning the election, Thomas Jefferson wanted to put party affiliations behind him and stated that “We are all Republicans, we are all federalists” (Jefferson, 2001).

Despite an interest in passing a Constitutional amendment to resolve the discrepancy of the 1800 Election, it took a significant amount of time for the amendment to be implemented. The minority party, that being the Federalist party, was vehemently against the proposal of the 12<sup>th</sup> amendment. They believed that “the election process, as it stood, made it possible for the

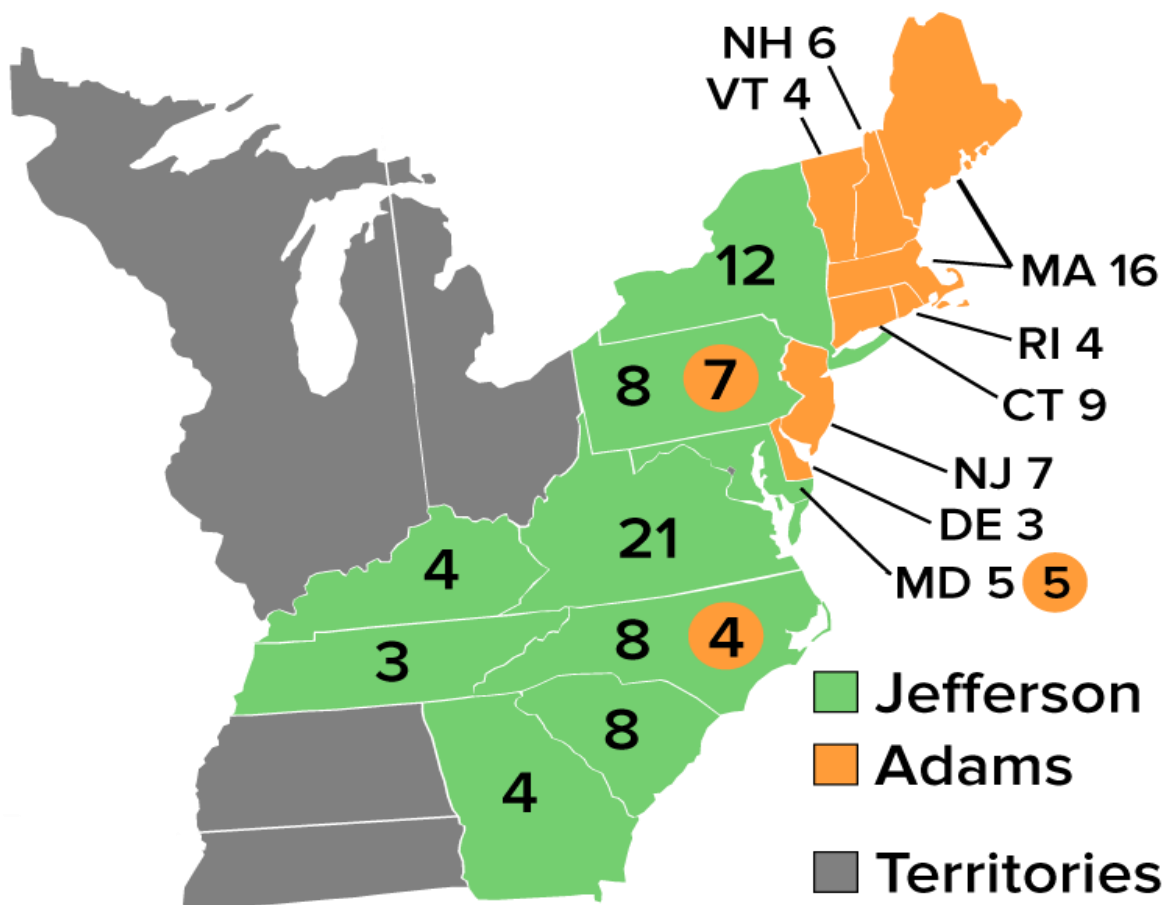
minority party to have a representative in the executive branch” (Ross 2012, Pg. 45). They did not want the Democratic-Republicans to take this advantage away from them. Some Democratic-Republicans were a bit apprehensive about the amendment as well, as they believed that they could be in the minority again at some point.

Unsurprisingly, due to the initial hesitance of both entities, the amendment did not pass the Senate in 1801. It was not until 1803 that the states and Congress changed their minds upon reflection of the 1800 election. The significance of the 12<sup>th</sup> amendment is that it finally set a procedure for the establishment of separate voting ballots for the President and Vice President. Although it still has flaws, it has guaranteed that there will never be “an exact repeat of 1800 Election” (Neale, 2016). Another consequence of the 12<sup>th</sup> amendment is that it generally determines a winner for the Electoral College. However, it has resulted in a winner takes all system, making it virtually impossible for a third-party candidate to win the Presidency. With the execution of the 12<sup>th</sup> amendment, came the destruction of third parties. This amendment is not without its limitations as there can still be electoral gridlock.

Even with the ratification of the 12<sup>th</sup> amendment, there still can be contested elections. If a few or more candidates split the electoral vote, this could result in no candidate receiving a majority of votes. Another problem is faithless electors, who can “either cast blank ballots or vote for candidates other than those to whom they are pledged to deny a majority to any ticket or candidate” (Neale, 2016). The most unlikely but still plausible situation is that the Electoral College ties for both candidates. Although these circumstances are not all likely to occur, it is important to note that the 12<sup>th</sup> amendment is still imperfect.

The election in 1800 additionally resulted in the establishment of the Electoral Count Act of 1887. This law found that the states would determine electoral disputes as conclusive in most situations. If electors are decided under specific state rules, these rules persist for federal electoral situations. This became especially important in the 2000 election, as Florida needed to meet the deadline if they wanted their twenty-nine Electoral Votes to be counted. The time constraints brought the recount to a halt and led to the appointment of George W. Bush. As for our current number of electors in 2020, there are 538 electors spread among the 50 states in the U.S and for a President to be elected, they need to win 270 votes, but currently it is not a requirement for victors to win the popular vote. Figure 2 Depicts our current number of electoral votes for each state. The 1876 election outlined an additional glitch within the Electoral College. A disparity existed between disputed electoral votes, as Tilden won the popular vote and led in the Electoral College but had nineteen Electoral College votes that hung in the balance. Congress responded by creating a special electoral committee considering these circumstances and ultimately decided to award the disputed electoral votes to Rutherford B. Hayes.

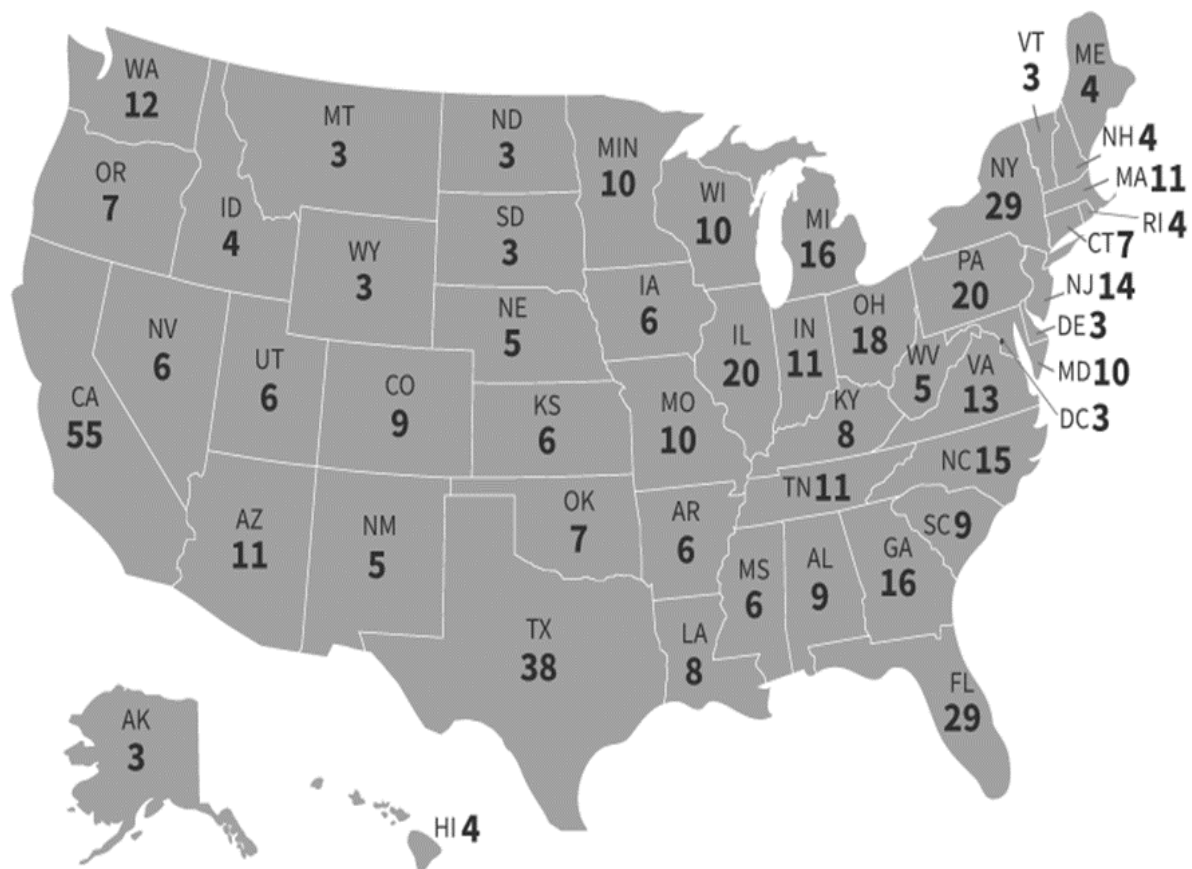




**Figure 2.1: Map of the 16 States and Number of Electoral Votes**

Source: Khan Academy

<https://www.khanacademy.org/humanities/us-history/the-early-republic/politics-society-early-19th-c/a/election-of-1800>

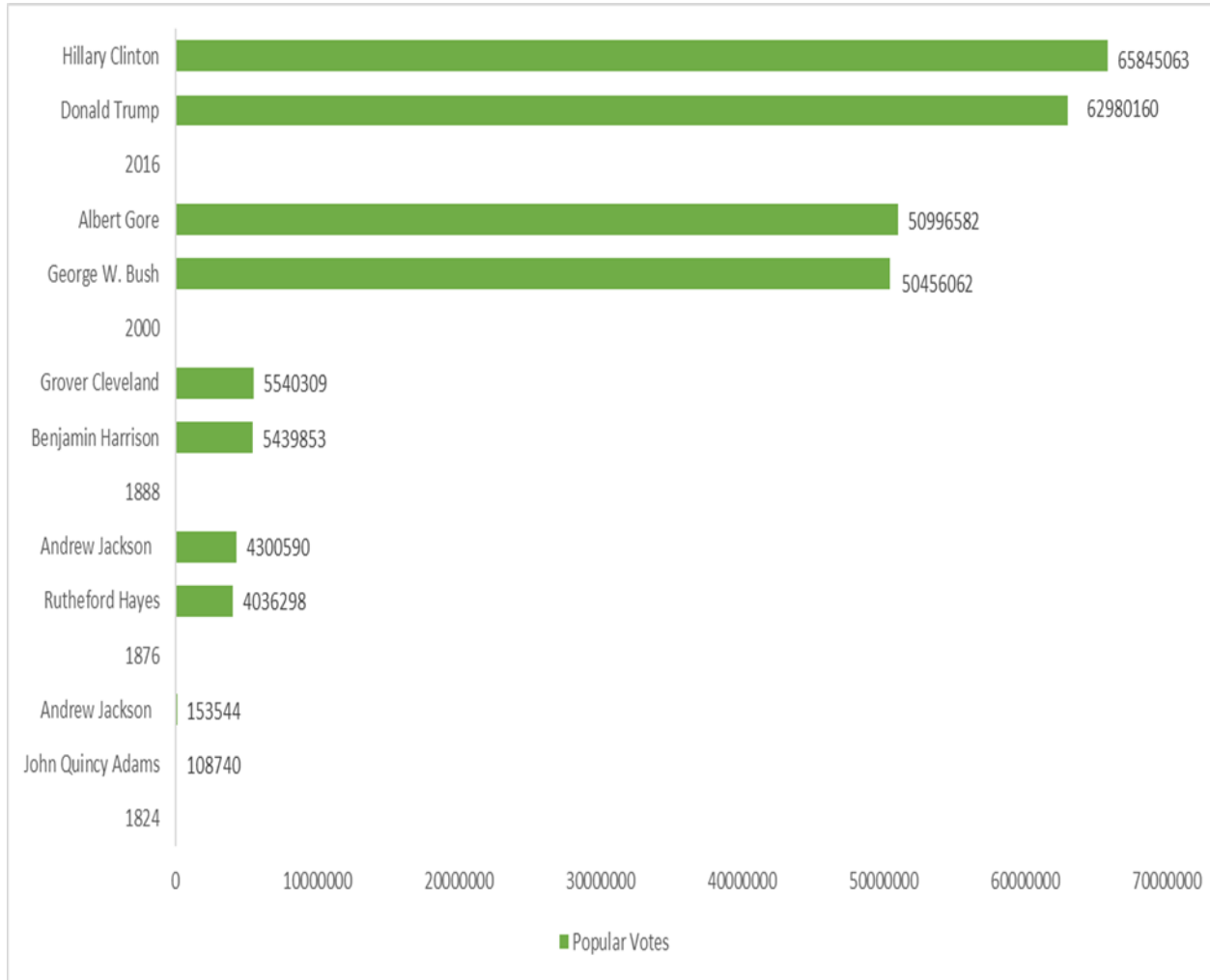


**Figure 2.2: Map of the United States and Number of Electoral Votes 2020**

Source: World Atlas

<https://www.usa.gov/election>

## CHAPTER 3



**Figure 3.1: Amount of Popular Vote for Elections 1824, 1876, 1888, 2000, 2016**

Source: 270 to Win

<https://www.270towin.com/>

Moreover, the elections that represent a misalignment between the plurality or majority of voters' intent and the outcome of election includes; 1824, 1876, 1888, 2000, and 2016. Figure 3.1 outlines the popular vote for each of these elections. As we have mentioned previously, the American people have a say in elections outside of the Presidency. They vote for their State Representatives and Senators, judges, and city councils. The one element that each official has in common is a dependency on their voters. For officials to be elected and reelected, they must face the judgment of their constituents.

However, voting for the Presidency and Vice-Presidency are not the same process as the voters do not have determinative influence on the outcome. The reason being is that the Electoral College has a greater determination on who will ultimately win. The choice of the electors tends to be left to the states. Voters have little influence on the electors chosen in their state. Thus, creating a disconnect between the American voters' preferences and the Electoral College. This can result in individuals voting less, as they feel that their vote is not taken seriously due to the great influence of electoral votes. Five separate occasions have contributed to higher levels of distrust within our political system, and the American voters deserve to choose who best represents the American people. In the elections of 1824, 1876, 1888, 2000, and 2016, each of the victors of the Presidency lost the popular vote.

The first election in which a President has failed to obtain the popular vote was in 1824, where John Quincy Adams was determined to be the winner. Other contenders for the presidency included; Andrew Jackson, Henry Clay, and William Crawford. This election was also the first time since the 12<sup>th</sup> amendment, that the House of Representatives chose the Presidency. According to the popular vote, the winner would have been Andrew Jackson as he received

153,544 votes, in comparison to John Quincy Adams's 108,740 votes. Andrew Jackson also received the most electoral votes, as he received 99 electoral votes to John Quincy Adams's 84 electoral votes. No one received a majority of electoral votes, as Henry Clay received 41 electoral votes and William Crawford obtained 37 electoral votes. Even though John Quincy Adams failed to win both the Electoral College and the popular vote, he was still elected as the President.

The second election in 1876 placed Rutherford Hayes and Samuel Tilden against one another and was disputed as twenty electoral votes were in question and given to Rutherford Hayes after a substantial amount of disagreement. Rutherford Hayes ultimately won the election with 185 electoral votes and 4,036,298 popular votes. Samuel Tilden received 184 electoral votes but obtained 4,300,590 popular votes. The Compromise of 1877 resolved the discrepancies as Southern Democrats permitted Congress to award the contested electoral votes to Rutherford B. Hayes. The Republicans in return removed federal troops in Louisiana and South Carolina. Thus, marking the end of reconstruction in the South.

Another misaligned election in 1888, placed Benjamin Harrison against Grover Cleveland. Although neither had a significantly stronger campaign, Grover Cleveland's opinions towards the spoils system did anger voters. He was opposed to tariff reduction, and this also created a significant amount of contention with the voters. Despite this, he still had 168 electoral votes and 5,540,309 popular votes. Benjamin Harrison won the presidency with 233 electoral votes and a smaller number of 5,439,853 popular votes.

Additionally, the election in 2000 created a substantial amount of controversy. Not only in terms of the popular vote but also due to the involvement of the Supreme Court. George W. Bush competed against Albert Gore, and there were contested ballots in Miami Dade, and under-votes were challenged. This led to the landmark case *Bush V. Gore* 531 US 98 (2000). Ultimately, the Supreme Court decided 7-2 that “the Florida’s Supreme Court’s Scheme for recounting ballots was unconstitutional, and unfair in practice as the record suggested that different standards were applied from ballot to ballot, precinct to precinct, and county to county” (Oyez, 2020). In order to account for these procedural difficulties, the court held 5-4 that no Constitutional recount “could be fashioned within the time remaining” (Oyez, 2020). George W. Bush received 271 electoral votes and 50,456,062 popular votes. Albert Gore lost with a close margin of 266 electoral votes and 50,996,582 popular votes. The disagreement in the election of 2000 primarily consisted of disparities within votes from Florida. Twenty-five electoral votes hung in the balance. Bringing into question many what if’s including; what if Gore won the Presidency instead of Bush? Although it is mere speculation, it is irrefutable that it would have been quite a different presidency. In summary, a Florida recount was in question, and they did not have enough time to recount the votes Constitutionally, thus leading to the election of George W Bush.

The last and most contentious election revolving around the popular vote is the election in 2016 between Donald Trump and Hillary Clinton. Despite the electoral map initial forecasts of a win for Hillary Clinton, Donald Trump defeated her in the Electoral College with 304 votes and 62,980,160 popular votes. Hillary Clinton lost with 227 electoral votes and 65,845,063 popular votes. Due to the Presidential outcome of the 2016 election, many voters are looking

away from the Electoral College system. Many voters now question the intentions of the Electoral College and whether it is still the proper process to elect the President and the Vice President of the United States.

Based on these five elections, what can we determine? That the Electoral College system is flawed and may no longer represent the will of the American voters and requires reform in some capacity. According to Politico, more voters are leaning towards the popular vote and less on the Electoral College. According to a recent poll, “half of the voters, 50 percent, say the national popular vote should be used for Presidential elections, the poll shows — more than the 34 percent who think Presidential elections should be based on the Electoral College. Sixteen percent of voters have no opinion” (Shepard, 2019). Proponents of this system still believe in defending the rights of smaller states, and opponents believe that small states do not need special treatment.

So, the question thus arises. Can a President be elected again without obtaining the popular vote? The short answer to this is yes. The election of 2016 brings the Electoral College into severe scrutiny. Donald Trump did not win the popular vote, and yet still was declared as the victor and the President of the United States. Hillary Clinton won “2.9 million more popular votes than Donald Trump” (Wasserman, 2019). In the elections coming up in 2020, this could happen again, and Trump could win with “less than 47% of the popular vote that a Democratic nominee might need” (Wasserman, 2019).

## CHAPTER 4

Now that we understand how the electoral system works and its influence in the 21<sup>st</sup> century, we can investigate the argument of individuals who support the Electoral College system today as it is and the reasonings that they provide for their insights. One major concern for the proponents of the Electoral College is federalism and the protection of states' rights. They believe that the 12<sup>th</sup> amendment is key to the protection of the rights of the state vs. the intrusions of the federal government. Particularly of concern is the Constitution's Commerce Clause as it has been "grossly expanded to justify the federal government's intrusion into many matters that should remain the responsibility of individuals or the states" (Ross 2017, Pgs. 56-57). Since the federal government has a substantial amount of control over commerce within states, the Electoral College protests the states from further intrusion of the federal government regarding the election of the President and Vice President.

Additionally, for those who may not know what the Commerce Clause is, it is a provision within the Constitution that allows the federal government to regulate commerce within states and with foreign nations. This permits the federal government access to greater influence when it comes to state commerce. One court case where this was heavily disputed is Wichard v. Fiburn 317 US 111 (1942). The case involved a farmer in Ohio who harvested 12 acres of wheat above the allotted amount permitted by the federal government. He claimed that since it was for personal use and not for market sales, that this did not apply to the Commerce Clause.

Upon further consideration, The Supreme Court decided unanimously that it did apply to the Commerce Clause as it would have an aggregate effect and thus have a substantial impact on



interstate commerce. A great problem during this time period was the supply and demand of wheat, and by enforcing the Agricultural Adjustment Act of 1938, this was a way to get the balance back in check. Many individuals to this day dispute this court case and whether it is an infringement of states' rights. The Commerce Clause then becomes an opportunity to abuse power, which is why protecting states' rights in the election process is so heavily relied upon by proponents of the Electoral College.

Another belief of individuals who support the Electoral College is that it made sense due to the lack of available travel upon its creation. This in turn prevented voters from understanding who was running for the Presidency. Communication was difficult to achieve, and this prevented the possibility of a national candidate from succeeding. The Framers used this system because they "could not foresee a world in which truly national candidates would not only be possible, but common" (Ross 2012, Pg. 64). Due to our substantial technological advancements and increase in forms of communication, this has permitted many citizens access to potential candidates for office. Electors are no longer independent and state legislatures no longer have influence in whom is chosen. The claim then is that states' rights are infringed upon as the state's parties chooses the electors and thus ultimately chooses the presidency. These electors are voted in alongside Presidential candidates and whoever wins the most votes ultimately gets the electoral votes.

In addition, supporters of our current electoral system negate that the winner takes all system leads to a waste of a vote. One reason provided is the states themselves decide how to allocate their electoral votes. Thus, the Constitution does not define how the electors will be chosen in each state, and each state ultimately makes their own decision on how votes will be

allocated. One state thus does not need to agree with one another and can make their own decisions. If citizens want change, then they can go to their State Representatives and Senators to ask for change. Votes are not wasted as they are simply cast on “the losing side of a popular vote within the state” (Ross 2012, Pg. 78). For example; votes for Hillary Clinton were not wasted, they were casted in the hopes of allowing her to win. However, these were votes casted for a losing candidate, just like for any other election. Thus, voting is just voting and there’s a chance for each candidate. These votes aren’t wasted, they are just outnumbered by other votes casted.

Additionally, the possibility of a direct popular vote of the Presidency and Vice Presidency is thus a danger to society. With a winner takes all system, candidates who receive 50.1% of a state’s vote are treated identically to candidates who win 100% of a state’s votes” (Ross 2017, Pg. 34). This would be the exact opposite with a direct vote and would provide smaller states with little to no voice. Democrats would stick to large populations in which they would win, and Republicans would do the same. This would result in the Presidency and Vice Presidency of candidates who do not have the interests of all-American citizens at heart.

Thus, the electoral system allows individuals greater protection as a bloc rather than as individuals. Since each candidate must focus on each state in the country, this protects states’ rights and keeps their voices heard. Voters of course will not all get their way, but a state is protected even in their loss. Individuals are better protected when their voices are heard as a whole, and less when they are treated separately. Without the need for a candidate to go to each state, the concerns of the residents in that state may not be heard. The Electoral College than accomplishes a major goal in protecting states’ rights and the interests of the voters while protecting state sovereignty.

Similarly, why is it so important to protect states' rights? And how would a popular vote threaten the influence of individual states. The answer is relatively simple to proponents of this system, as it would lead to chaos. The founders intended to create a compromise in the Constitutional Convention that would provide cons and pros to both smaller and larger states. If anything, the founders were "equal-opportunity skeptics" (Ross 2017, Pg. 7) who mistrusted both the voters and those who are elected to hold office. Power that is not kept in check results in danger and no one is immune to imperfection or the semblance of greed or selfishness. In a democracy that permits a system that allows one person one vote, it creates a gross imbalance. This would lead to "51% of people ruling the other 49% unquestionably" (Ross 2017, Pg. 9). Thus, permitting a mentality that could result in anger or immediate action that leads to tyrannized minorities. Figure 4.1 and Figure 4.2 depict the current population of each state in 2019.

What about the three-fifth's compromise? Is the Electoral College racist, and what did this mean for smaller and larger states? Proponents of this system suggest that the three-fifth's compromise had more to do with "taxation and congressional representation" (Ross 2017, Pg. 15). Both the South and North benefited from this system, although it is highly controversial today. Individuals who support the Electoral System offer an argument that the three-fifth's compromise had more to do with providing the South and North with advantages than with slavery. The North received an advantage in that they received more representation in Congress, and the South got to pay less for federal taxes.

In addition, yet another problem that would occur if the Electoral College is dismantled is a lack of true representation provided by the Presidential and Vice-Presidential nominees. The

President's job is to represent every voter in the entire nation. However, Senators or Representatives only need to meet their own constituents needs. A Presidential candidate would have no use for going to smaller states and would only focus on appealing to the larger states if the popular vote replaced the Electoral College.

Protecting the interests of smaller and larger states also includes protecting the two-party system. It rewards those who practice efficiently at building coalitions and prevents extremist candidates from negatively impacting the political process. Most people would never agree to a candidate if they could choose anyone, and voters tend to support a candidate that identifies with their political affiliation. Not to mention that a third-party candidate has never won the presidency. They can however play an important role in the political process.

Do limited options lead to less freedom for voters in choosing their President or Vice President? Not according to those who support the Electoral College. Instead, it merely makes the chances of a third-party candidate slimmer and protects our system from extremist candidates. If this system is replaced, then it would result in a process that "gives power to the incumbent President and his administration" (Ross 2017, Pg. 47). Power would be unchecked for the Presidency. The Founders wanted the Representatives to be separate from Congress. They wanted the states and the voice of the American people to drive the process of electing the President. They also believed that a body of Electors would have less corruption than other legislative bodies such as Congress or the House of Representatives. Minorities need protection, and some states are still smaller than others. Now more than ever it is important to protect the Electoral College according to its supporters.

The importance of protecting states' rights are unprecedented in these difficult times, and the States still have a significant amount of influence in who they choose to be their electors. The states could rely on their dominant parties to choose electors, they could choose to disclose their elector's information, or they could have a popular vote to determine their electors. An election is truly driven by the power of the States and many individuals are upset with the federal government, when the States have a significant amount of influence on the election of the President and Vice-President.

The States themselves can reject a national party nominee whenever they choose to do so, and this provides states with a significant amount of leverage. They do not have to follow the Democratic Party, the Republican Party, or even the Media. They can decide which electors they want, and the process to elect these electors. Many American's forget that the States still have a significant amount of influence on the Presidential appointment process. There are checks and balances in place in order to prevent abuses of power. If citizens disagree with the method in which their state employs to determine electors, they merely need to reach out to their current State Representatives or Senators in order to try and implement changes. The States do not have absolute authority, but nonetheless do play a huge role in the appointment of the President.

Another issue that tends to frequently come into play is the role of Faithless Electors and what that means for those who approve of the Electoral College. Some proponents believe that it is undemocratic to promise to vote one way and then decide to vote another way. By being nominated by the two major parties, it is assumed that the electors will vote for the candidate in which their party aligns. Due to the recent developments in 2016, the role of faithless electors continues to be discussed as many electors changed their vote.

What happens if someone decides to vote differently than promised, should that be considered criminal? Many proponents of the Electoral System would tend to think so, but the Constitution itself is quite silent on this issue. If someone decides to vote against the candidate whom they pledged, should the votes be counted? The courts have tended to stay outside of the realm of faithless electors, as it may be considered a political question.

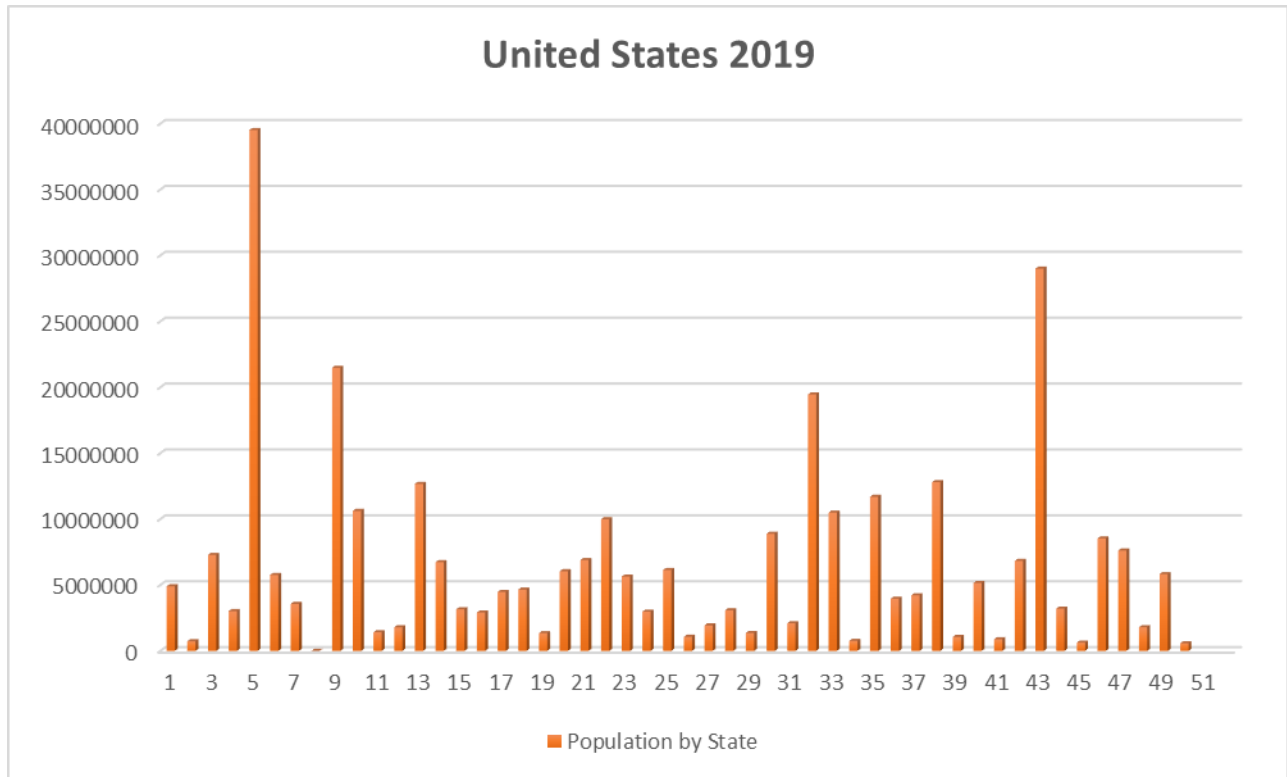
Alexander Hamilton believed that the appointment of electors would prevent “demagogues from taking office” (Ross 2017, Pg. 111). Many of the founders believed that many elections would result in contested elections that would have to be decided by the House of Representatives, which as we know now is simply not the case. Thus, the influence of electors is at an all-time high and at the utmost importance. However, can a state demand a specific pledge before the appointment of an elector? This may be true. In Ray v. Blair 343 U.S. 214 (1952), the court held that the Democratic Party could in fact require this. However, it is silent on the power of the states to implement this, but it wouldn’t be too farfetched as States do have broad authority over their electors. As for if faithless electors can be punished for changing their vote, this is not answered by Ray v. Blair 343 U.S. 214 (1952) either.

Should proponents of the Electoral College be concerned about faithless electors? History tends to say no since electors rarely cast faithless votes. In 2016, there were 10 faithless votes attempts, consisting of Eight democratic electors and two Republican electors. However, “two electors from Minnesota and Colorado were replaced following their deviant votes, so their votes were not reported in the final count. An elector from Maine was ruled out of order and switched his vote back to Clinton/Kaine, so his original deviant vote was also not reported in the final count” (Faithless Electors, 2020). This historically is the most faithless votes ever attempted and

recorded. In the election in 2000, faithless electors had more influence. It would have only taken as “few as two faithless electors to have changed the result, and three to hand the election to Gore” (Ross 2017, Pg. 117). Although the possibilities were high in 2000, ultimately no election to date has been changed by a faithless elector. It is highly unlikely that faithless electors will pose a threat in the next election.

The reason for the absence of worry on the influence of faithless electors to date is included in the appointment of the electors themselves. Those who are appointed as electors are typically grassroots activists who tend to favor a specific party. Before they are even chosen, they have typically already made up their mind on who they would vote for. This decreases the possibility of faithless electors. In 2016, both candidates tended to be unfavored by the public and this is reflected in the higher number of faithless electors. The dangers of faithless electors according to proponents of the Electoral College is minimal at best due to their scarceness in numbers.

In fact, according to Political Scientist Lawrence D. Longley and Neil R. Peirce, “no more than 17 and perhaps as few as nine of the 21,291 electoral votes between 1796 and 1996 were cast faithlessly” (Ross 2017, Pg. 118). According to Electoral College supporters, these faithless electors put the public’s faith in the process of appointment in jeopardy. Faithlessness has never been consistently an issue, but it will continue to be outlined and discussed amid the 2020 election. Until the courts officially decide on the fate of faithless electors, the States themselves will have to figure out how they will ultimately handle these situations.



**Figure 4.1: United States of America Population by State Alphabetical Order A-Z 2019**

Source: Census.gov

<https://www.census.gov/quickfacts/fact/table/US/PST045219>



<b>AL:</b> 4,903,185	<b>CO:</b> 5,758,736	<b>HI:</b> 1,415,872	<b>KS:</b> 2,913,314	<b>MA:</b> 6,892,503	<b>MT:</b> 1,068,778	<b>NM:</b> 2,096,829	<b>OK:</b> 3,956,971	<b>SD:</b> 884,659	<b>VA:</b> 8,535,519
<b>AK:</b> 731,545	<b>CT:</b> 3,565,287	<b>ID:</b> 1,787,065	<b>KY:</b> 4,467,673	<b>MI:</b> 9,986,857	<b>NE:</b> 1,934,408	<b>NY:</b> 19,453,561	<b>OR:</b> 4,217,737	<b>TN:</b> 6,829,174	<b>WA:</b> 7,614,893
<b>AZ:</b> 7,278,717	<b>DE:</b> 973,764	<b>IL:</b> 12,671,821	<b>LA:</b> 4,648,794	<b>MN:</b> 5,639,632	<b>NV:</b> 3,080,156	<b>NC:</b> 10,488,084	<b>PA:</b> 12,801,989	<b>TX:</b> 28,995,881	<b>WV:</b> 1,792,147
<b>AR:</b> 3,017,804	<b>FL:</b> 21,477,737	<b>IN:</b> 6,732,219	<b>ME:</b> 1,344,212	<b>MS:</b> 2,976,149	<b>NH:</b> 1,359,711	<b>ND:</b> 762,062	<b>RI:</b> 1,059,361	<b>UT:</b> 3,205,958	<b>WI:</b> 5,822,434
<b>CA:</b> 39,512,223	<b>GA:</b> 10,617,423	<b>IA:</b> 3,155,070	<b>MD:</b> 6,045,680	<b>MO:</b> 6,137,428	<b>NJ:</b> 8,882,190	<b>OH:</b> 11,689,100	<b>SC:</b> 5,148,714	<b>VT:</b> 623,989	<b>WY:</b> 578,759

**Figure 4.2: United States of America Population by State 2019**

Source: Census.gov

<https://www.census.gov/quickfacts/fact/table/US/PST045219>

## CHAPTER 5

Now that we have outlined the arguments of proponents of the Electoral College, we will look to the arguments against the Electoral College for the adoption of the Popular Vote to determine the Presidency. The ideology of a one-person-one-vote system is not a new concept, but it has been gaining popularity since the 2016 election. Advocates for political equality believe that each vote for each person should count the same. Within our system of the selection of electors, many chosen are party donors or loyalists to a dominant state party. This poses a significant problem. The prevailing political party and this system practically guarantee the electoral votes of that state to the candidate affiliated with that political party.

It is important to describe the outrage of voters in 2016, and to clarify that it was not about Democrats being upset about a Republican candidate winning. It is based on a moral outrage of voters who believed that their votes would count. Voters were under the impression that the winner would represent their interests and not the Electoral College. The outrage of voters is based on the injustices of their individual states trying to make decisions that their voters may or may not agree with. It also led to an increase in third-party candidate votes and demonstrated how divided voters were, thus suggesting that many voters disapproved of their options. The 2016 election opened the eyes of many individuals, leading to an increased emphasis on the Popular Vote.

Proponents of the Electoral College fear the institution of a one person, one vote system, as they feel that smaller states need their common interests protected from larger states. However, opponents suggest that small states have more in common with larger states than they

may think. They also contend that supporters of the Electoral College cannot “identify geographically concentrated rights or interests that require special protection through the Electoral College or that receive it through the Electoral College” (Edwards, 2011, Pg. 119). As such, small states have similar or the same interests as larger states in many ways. For example; rural farmers in small states have similar interests as farmers in California or in Florida. This separation of small state interests vs. bigger states interests is farfetched. According to James Madison, “it was not necessary to protect small states from large ones, because the large ones including; Massachusetts, Virginia, and Pennsylvania, were divided by economic interests, religion, and other circumstances. Thus, their size was not a common interest” (Edwards, 2011, Pg. 119-120). It is hard to identify interests that are singular to small states, but even if we can, should this outweigh the millions of interests in bigger states? There is “simply no evidence that interests like these deserve or require additional protection from the electoral system” (Edwards, 2011, Pg. 121).

In addition, supporters of the Popular Vote believe in political equality and that “no person is intrinsically superior in worth to another; and that the good of interests of each person ought to be given equal consideration” (Dahl, 2003, Pg. 131). Thus, every vote deserves to be considered and no vote should be weighed heavier than another. For a political system to be truly democratic, there must “exist a system that promotes rights, liberties, and opportunities” (Dahl, 2003, Pg. 137). If we are truly committed to embracing democracy than our “political institutions will expand the sphere of fundamental rights, liberties, and opportunities well beyond those strictly necessary for political equality” (Dahl, 2003, Pg. 139). According to proponents of the

Popular Vote the Electoral College fails to achieve political equality and thus fails to embrace true democracy.

Another reason to eliminate the Electoral College in favor of the Popular Vote is based on the sheer inadequacy of the system, and the lack of justification beyond historical significance to keep it. The Framers of the Constitution could not have known how much society would evolve, and just as our laws have changed, it makes no sense why our system of electing the President and Vice-President have not changed. Although the Framers are highly regarded and deserve recognition, history had not “produced relevant models of representative government on the scale the United States had already attained” (Dahl, 2003, Pg. 9). The framers created a plan that they could deliver upon, but is this the best plan for the 21<sup>st</sup> century? The resilience on political parties was never truly considered, and today the two-party system makes a third-party candidate have a slim to nonexistent chance of winning.

The Electoral College has many shortcomings, and many were revealed in the 1800 election. Even though they attempted to fix the problems, that Presidential election “shattered whatever hopes the delegates to the convention may have entertained that the Electoral College would serve as an independent body free of the supposed vices of popular election” (Dahl, 2003, Pg. 78). Now in the 21<sup>st</sup> century more than ever, partisan politics and party politics have transformed the electors into robotic clones of the dominant parties. This is not what the founding fathers would have wanted, and therefore some people are calling for an end to the Electoral College in favor of the Popular Vote.

The problem with party politics is that it has completely taken the value away from having electors. The states merely decide for their citizens and it should be the other way around.

For example; in 2016 the Chairman of Florida's Republican Party Joe Grunter's not only chose the electors for the Republican Party, he also picked himself to be an elector. He is presently serving in Florida's Senate. This is a prime example of why proponents of the Popular Vote believe that the elector process is flawed. Someone should not be able to represent a State as a Senator, represent a political party, and choose themselves to be an elector. This is a conflict of interest and was overlooked. If the voters had known about this, and could vote individually for their electors, then the outcome may have been incredibly different.

Another issue with the elector selection process, is that it is also hindered by the influence of federal politics as well. In 2016, President Donald Trump "criticized Gov. Terry McAuliffe, the Democratic Governor in Virginia for restoring voting rights back to convicted felons who completed their sentences" (Washington Post, 2016). For instance, Amendment 4 in Florida was voted on by Floridians and overwhelmingly passed, yet the Governor Ron DeSantis and the Republican Party of Florida are doing anything in their power to make it more difficult for ex-felons to vote. President Donald Trump has voiced his concerns on restoring felon voting rights in Virginia and Florida's Republican Party is trying to echo his concerns. The reason why? It may shift Florida to a blue state. This could play a role in determining the victor of the Electoral Votes in Florida. The election of the President and Vice-President should be above party politics and the voters in individual states should hold the power to decide who best represents their interests according to opponents of the Electoral College.

Similarly, the use of faithless electors has also become a widespread debate in terms of utilizing the Popular Vote instead of the Electoral College. Faithless electors are electors who vote against the candidate that they pledged to vote for. The fact that this is even an issue

indicates an overreliance on political parties and it is beyond the scope of what is necessary. This only adds evidence to the belief that the elector selection system is flawed and biased. If an elector can't vote for who they want to vote for, and can't change their mind, then they are merely agents of a political party. Electors were intended to be used to make informed decisions on the behalf of their states, not be controlled by their states.

Candidates must work for the votes of the larger states and swing states. If there were a one-person-one-vote system, then they would be at the will of all the citizens in the United States. Would this make campaigning more difficult? Not necessarily, although it will make candidates have to branch out to more places in order to attempt to win more votes. Thus, how has this winner take all system affected the will of the American voters? What then is left for the citizens of the individual states to decide? The answer is not the Presidency and Vice Presidency. The framers of the Constitution did not intend to have a reliance on political parties. Many warned against even the establishment of political parties. The distrust of political parties can be traced back to George Washington, who feared that political parties would become too powerful.

With the addition of the Three-Fifth's Clause, this gave the South more representation than the North. The Three-Fifth's Clause permitted states to count three out of every five slaves as persons for the calculations for congressional representatives. With this clause, many opponents of the Electoral College suggest that this was a racist ploy to influence the Presidency and ultimately contributed to Thomas Jefferson's victory in 1800. Others believe that the connection between the Electoral College and slavery was inconsequential and that Thomas Jefferson still would have won without the extra votes.

Regardless of the reasoning behind the Three-Fifth's Clause, it is a grim reminder of our past, and supporters of the Popular Vote call on equal votes to prevent a potential repeat of history. In 2018, Rep. Alexandria Ocasio-Cortez tweeted that the "It is well past time we eliminate the Electoral College, a shadow of slavery's power on America today that undermines our nation as a democratic republic." (@AOC, 2018). Whether or not all supporters for the elimination of the Electoral College believe in this statement is dependent on an individual basis. However, it is integral to remember the Three-Fifth's Compromise's influence in the early stages of the Electoral College.

Additionally, the first two factions to appear were the Federalists and Anti-Federalists, and both disappeared once the Constitution was ratified. Then came the appearance of the Federalists and the Democratic-Republicans, and these were the first two major parties in the United States. As noted previously, with the establishment of a two-party system, this left minor parties with little to no influence. The most notable independent's in 2020 are Bernie Sanders and Angus King, but this is still a rarity as third parties win few seats in state races.

Although third parties have tried to gain influence, there has never been a third-party candidate who has won the presidency. The Prohibition Party and the Equal Rights Party are the most notable successful third parties, but they had their struggles. The Populists and the Greenbackers had little success but arose for a limited time. Despite the inability of third parties to have a major influence in political affairs, they still serve several important functions. For example, for citizens who disagree with the two major parties, Republican and Democrat, the third-party option provides a way for voters to choose someone else. Thus, providing an

opportunity for change and reform, especially if a third candidate can get even a small portion of votes.

What then is the effect of having a winner takes all system? The two dominant political parties try to appeal to the most expansive portions of the electorate. Each party effectively attracts specific groups into a big tent, though the parties do not share the same ideologies. The Democratic party tends to have liberal policies and supports civil rights, pro-choice, and welfare funding. On the opposite spectrum, the Republican party tends to have conservative policies, support low taxes, and are typically pro-life. This would be characteristic of a big tent mentality.

Consequently, due to the reliance on the two-party system, it tends to limit the options available to potential voters. Although not every voter fits into the big tent parties, these are still considered minorities in their parties. Many individuals vote based on political party affiliation, and not on the individual policy preferences a candidate has. This is problematic as a reliance on the two-party system is not the most effective outlet. Due to the winner takes all system, it has created polarization and has led to people becoming violent or overly aggressive with people who merely have a different political opinion. Thus, adding to political gridlock and making compromises harder to achieve. Political affairs are becoming more about the party and less about the American people. Fewer compromises mean more arguing, and more arguing leads to less work ultimately getting done.

Another consequence that has come from the fixation on the winner takes all system is lower voter turnout. The polls indicate lower interest in the participation in politics overall. This trend may have something to do with the frustration of voters with our current two-party system. However, the power of political parties is declining, and more and more people are starting to



become politically independent. Due to this winner takes all system, the losing candidates win nothing, even if they obtain a substantial number of votes. For example, you can win Florida's electoral votes, whether you win by one vote, thousands, or millions of votes. This all or nothing mentality is discouraging for voters, and no one wants to feel like their vote does not count. The emphasis should be on what the voters need in a candidate, and each vote should be important. However, only the swing states tend to get the attention of Presidential candidates, and this is yet another downfall to this winner takes all mentality. The possibility of even promoting the Popular Vote would have been unheard of thirty years ago. However, society has adapted and changed its values, and now the establishment of a Popular Vote is gaining more and more momentum, especially after the results of the 2016 election.

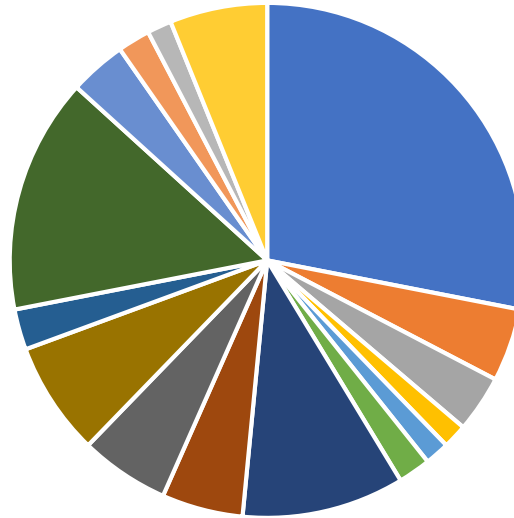
In order to switch to the Popular Vote and resolve the abuses of the Electoral College , there are two options including; the use of a Federal Constitutional Amendment, or an individual state using their plenary power to change their method of awarding their electoral votes. In order to embark upon the route of a Federal Constitutional Amendment, "the Constitution provides that an amendment may be proposed either by Congress with a two-thirds majority vote in both the House of Representatives and the Senate or by a Constitutional convention called for by two-thirds of the State legislatures" (Constitutional Amendment Process, 2020). The possibility of the addition of a Constitutional amendment to abolish the Electoral College is going to take time to become more politically attainable. The abolition of the Popular Vote is the best option according to its proponents to obtain political equality while upholding true democracy.

On the other hand, there is a second-best alternative to a Constitutional amendment that is present which is called the National Popular Vote Bill depicted in Figure 5.1. This bill "would

guarantee the Presidency to the candidate who receives the most popular votes across all 50 states and the District of Columbia. It has been enacted into law in 16 jurisdictions with 196 electoral votes including; CA, CO, CT, DC, DE, HI, IL, MA, MD, NJ, NM, NY, OR, RI, VT, WA” (National Popular Vote, 2020). The bill will go into effect once it obtains 74 more electoral votes. The organization behind the bill is a non-profit and a non-partisan group. The bill allows the states to use a Popular Vote method and other states who disagree can utilize their own method. It is basically a pact of states that “enter into an agreement with like-minded states to award their Presidential electors to the candidate who received a plurality of the national popular vote” (Ross, G, 2012). However, this bill is not without controversy, as some claim that it may violate the Compact Clause, the Guarantee Clause, and the Voting Rights Act of 1965” (Ross, G, 2012).

Another important factor to mention is that two states already use an alternative method to vote for electors. Instead, they split some of the electoral votes by the winner of each congressional district. Two votes are given to the plurality winner of the state’s popular vote, which are allocated from the U.S Senate delegations. The other votes are given to the plurality winner of the popular vote in each separate U.S House of Representatives district. Maine & Nebraska both call this alternative method “The Congressional District Method” (FairVote, 2020). Although this system may seem to be a great alternative to the Electoral College , it still does not resolve the inherent disparities in voters proportions as “it would increase the likelihood of a candidate winning the election without winning a majority of the national popular vote” (FairVote, 2020). Maine and Nebraska do however provide individual states with hope that they can also change their voting methods for the President and Vice-President.

National Popular Vote Bill (196 Total Electoral Votes, 74 Needed)



■ California (2011)  
■ Delaware (2019)  
■ Illinois (2008)  
■ New Jersey (2007)  
■ Oregon (2019)  
■ Washington (2009)

■ Colorado (2019)  
■ District of Columbia (2010)  
■ Maryland (2007)  
■ New Mexico (2019)  
■ Rhode Island (2013)

■ Connecticut (2019)  
■ Hawaii (2008)  
■ Massachusetts (2010)  
■ New York (2014)  
■ Vermont (2011)

**Figure 5.1: National Popular Vote Bill Participating States/Year**

Source: National Conference of State Legislatures

<https://www.ncsl.org/research/elections-and-campaigns/national-popular-vote.aspx>

## CHAPTER 6

As we have already discussed replacing the Electoral College with the adoption of a popular vote, we will now outline other potential alternatives. Three other plans exist that could ease the limitations of the Electoral College. This includes; The Automatic Plan, The District Plan, and the Proportional Plan. Each would require the use of a Constitutional amendment but are plans that deserve recognition as each provide a reformed way of electing the President and Vice President.

To begin, the Automatic Plan would effectively amend the present Electoral College system by terminating the use of electors but keeping the Electoral College practically the same. The candidate who receives the highest number of popular votes within a state are given the electoral votes from that state. In the event of no candidate receiving a majority of electoral votes, “most versions of the automatic plan provide some form of contingent election in Congress” (Whitaker, 2004, Pg. 20). The Automatic Plan would provide the least amount of drastic change from our present election system.

For the Automatic Plan, it would maintain the Electoral College’s balance between the powers of national and state powers especially between large and small states. The automatic plan would also remove the existence of faithless electors. Our current two-party system would remain in place along with the winner takes all method of allocating electoral votes. Although this would remedy a few problems present within the Electoral College, it is not without its criticisms. For example; opponents argue that Congress could still decide the Presidency and Vice-Presidency if a majority of electoral votes are not obtained. This plan also “perpetuates

many of the perceived inequities inherent in the present Electoral College system of electing the President and the Vice President” (Whitaker, 2004, Pg. 21). The last criticism of the Automatic Plan is that a candidate could still obtain the Presidency without winning the popular vote overall.

Another plan of action includes the Proportional Plan, and it would keep electoral votes, but the allocation changes as they are “awarded the votes in each state based on the percentage of votes received in each state regardless of the districts from which the voters come by the competing candidates” (Whitaker, 2004, Pg. 19). There are two variations of the proportional plan including rounded and strict. For a strict proportional plan, electoral votes are divided into thousandths of votes in order to achieve impartiality and exactness. As for the rounded proportional plan, this would entail “some form of rounding to retain whole electoral votes” (Whitaker, 2004, Pg. 19).

Included in many of the proposals that rely on the proportional plan, is that the candidates who receive “40% of the electoral votes, would be elected” (Whitaker, 2004, Pg. 19). If candidates fail to meet this margin “most proportional plan proposals provide that the Senate and the House of Representatives would meet and vote in joint session to choose from the candidates having the two highest numbers of electoral vote” (Whitaker, 2004, Pg. 19). Individuals in favor of the proportional plan believe that it is the closest to the direct popular vote while preserving states’ rights. This plan eliminates the winner-takes-all system and provides losers with the electoral votes in proportion to the votes that they ultimately received. Proponents also believe that this plan would force presidential campaigns to become more “national in scope, with

candidates gearing their efforts to nationwide popular and electoral vote totals, rather than concentrating on electoral vote-rich populous states” (Whitaker, 2004, Pg. 20).

Like the Automatic Plan, the Proportional Plan is also not without its criticisms, the biggest being that it may eliminate the two-party system by making it easier for third parties to be able to complete and win electoral votes. Another criticism includes the possibility that states will have less importance, since winner-takes-all would be eliminated under this plan. The last belief of opponents to the proportional plan is that it could lead to more electoral vote gridlock and the 40% plurality threshold has been questioned as to why it is not 50%. Some believe that candidates should be required to gain at least a majority in order to prevent a runoff election of ultimately an election that is dependent on Congress.

The last alternative plan includes the District Plan, which preserves the Electoral College method of electing the President and Vice-President but eliminates the winner-takes-all allocation of a state’s electoral vote. Instead, the allocation of electoral votes is dependent on the candidate who receives the statewide vote. For example, “one elector would be chosen by the voters for each congressional district, while an additional two, representing the two "senatorial" electors allocated to each state regardless of population, would be chosen by the voters at large” (Whitaker, 2004, Pg. 17). If this seems familiar, that is because it is the method that Nebraska and Maine currently use. Although it does not remedy the Electoral College as well as the popular vote, it can be adopted by a state at their discretion without the use of a Constitutional amendment, but for this chapter’s purposes we will outline a national implementation of the District Plan which would require a Constitutional amendment.

Under the District Plan, the candidates who win a simple majority of electoral votes will be elected as President and Vice-President. In the event of a tie, the candidates who win a plurality of the district's electoral votes would be deemed as the winners. If the electoral vote count still results in no winner, then the Senate and House of Representatives would be required to meet in a joint session to elect the President and Vice-President. Proponents of the District Plan believe that it would more effectively reflect the popular vote results than our current Electoral College does. Also, by preserving the Electoral College, small states would not be in jeopardy.

Each state regardless of population under the District Plan will still receive three electoral votes dependent on its two Senators and its one Representative. Some believe that it “reflects political diversity within different regions of states, while still providing a two-vote bonus for statewide vote winners” (Whitaker, 2004, Pg. 18). Another benefit according to proponents of the District Plan is that it could provide an incentive for higher voter turnout as it may be probable for “less dominant political party candidates to carry certain congressional districts” (Whitaker, 2004, Pg. 19).

The District Plan also has its opponents as many proponents of a nationwide popular vote believe that it does not reform the Electoral College enough as the weight of smaller states will still be higher than the weight of votes in more populated states. Candidates also could still win the Presidency and Vice-Presidency while losing the overall popular vote. The last contention of opponents of the district plan is that it could weaken the two-party system by leading to the creation of parties that “cater to narrow geographical interests or ideological interests that may be concentrated in certain areas” (Whitaker, 2004, Pg. 19).

## CHAPTER 7

Based on the information provided throughout this thesis and throughout my time spent researching, my insight is that the Electoral College no longer serves its intended purposes. I am a proponent for the abolition of the Electoral College and for the direct election of the President and Vice-President. As a voter, it is essential to keep your politicians in check in terms of what they provide and what they intend to do for your district. The election of every other position including; state representatives, senators, judges, etc. are all determined by the voters. They serve their constituents and ultimately are held accountable by their voters.

Why then is this not the same for the election of the President and Vice-President? It simply does not make sense. The Electoral College was established in order to prevent demagogues from obtaining the Presidency and the Vice-Presidency. According to Alexander Hamilton “while talents for low intrigue and the little arts of popularity could win over a single state, a candidate would need other talents and a different kind of merit to win over the electors from many states at once” (Sabl, 2016). However, the current political atmosphere promotes demagogues by virtue of an overreliance on political parties and the unprecedented growth of mass communication.

This has resulted in an Electoral System that no longer serves the United States citizens. Political affairs result in a battleground, and everyone has their own opinion, but it always tends to be conservatives vs. republicans. The past four years of Donald Trump’s presidency have consisted primarily of division and an unwillingness to be honest and open about the United States problems while keeping the American people in the dark. Although the definition of a



demagogue is left up to individual interpretation, we have had many circumstances that have challenged Donald Trump throughout his years in office including; the accusations that Russia interfered in the 2016 election, a refusal to hand over tax information, hurricanes Maria and Irma, an inability to end Obamacare, disagreements over border protection, an inability to remove DACA, the longest government shutdown in American history, and now an economic crisis from COVID-19 and extremely high racial tensions in 2020. Based on the President's reactions and lack of transparency on many major political issues, these examples go above and beyond in providing instances of demagogue presidential behavior.

Met with these challenges and the belief that many who did not vote for Donald Trump still do not consider him their president, this year's election will result in tremendous changes for the United States. Although it is not possible to abolish the Electoral College in time for the 2020 election, I have hope that this election regardless of its outcome will result in a change of mindset within the American voters. This change will lead to better representation for the American People, and with the establishment of the Popular Vote, will give the Presidency and Vice-Presidency back to the voter's will where it belongs.

As this is my opinion on this matter, I am aware that there are individuals who disagree with my viewpoint and that is what makes America the greatest country to live in. We need to remember that our disagreements lead to different viewpoints and result in changes and the development of society. We need to embrace other ideas, in order to keep in mind alternatives to the Electoral College. It is time for the voters to take back the Presidency and Vice-Presidency and choose who best reflects our values, and not the values of an outdated system that no longer serves us.

## CONCLUSION

After discussing the origins, the framers' intentions, and the effects of having the Electoral College, why does this matter and where do we go from here? While the Electoral College was designed to prevent the establishment of demagogues, in the 21<sup>st</sup> century, its validity again has come into question after the results of the 2016 election. The framers intended to protect federalism and create a Republic. They put their trust into the electors who they believed would represent the best interests of their states. The Philadelphia Convention included a series of compromises and the framers could not know just how much society would transform.

However, society has changed substantially, and the Electoral College has not adapted to meet these changes. Thus, we have seen instances where the Electoral College downplays the influence of the voter's while resulting in a winner takes all system. Thus, increasing our dependency on a two-party system that prevents third-party candidates from having a chance. This overreliance has resulted in groupthink along with a competition to out compete the other parties. The two-parties are constantly battling one another, instead of focusing on what is truly important, which is representing the voters. The Electoral College has only increased political gridlock within the parties and needs substantial reform.

The framers believed in the establishment of the Electoral College as they thought that the popular vote was an impossibility due to the lack of travel available and they believed that the House of Representatives would have to determine the outcome of many elections. They were also warned about political parties and the dangers that they could pose. The Electoral College has not

been without its faults, as demonstrated by the 1800 election and the establishment of the 12<sup>th</sup> amendment to resolve its discrepancies. The Electoral College is not perfect but at the time of its creation, it was the only outcome that made sense.

Now within our current Electoral College, we have a total of 538 electors spread around all 50 states, and the winner of the Presidency must meet a threshold of 270 votes in the Electoral College to win. However, a candidate can win the Presidency without winning the popular vote, which has resulted in a misalignment between the plurality or majority of voters' intent and the outcome of five elections. In particular, the election in 2000 and in 2016 resulted in a significant amount of backlash among voters. Especially with the voter recount in Florida, which made voters question how different it would have been if Gore would have won the presidency. The election of 2016 shocked the nation and ultimately the entire world.

Whether or not it still makes sense depends on who you ask, but the 2016 election has revitalized the debate on the Electoral College while bringing its faults into light. The elections of 1824, 1876, 1888, 2000, and 2016 each resulted in the confusion of voters upon how a presidential candidate can win without winning the popular vote. The likelihood of a candidate winning again while not winning the popular vote is still probable until there are major reforms to the Electoral College, or until the Electoral College is abolished. Proponents and opponents of the Electoral College disagree on many elements, but it is important to recognize both in order to prevent groupthink.

As for proponents of the Electoral College, they believe that we should keep it the same as it protects small states' rights while preventing the establishment of dangerous third parties.

Proponents believe that faithless electors are a problem, and whether they should be held

criminally liable is up to debate. They also fear that a president would only focus on representing the larger states if the popular vote replaced the Electoral College. Our two-party systems protects states from third parties that could pose a threat. Votes are also not wasted, as they are just casted in the hopes of having a candidate win, and if they don't, that just means that they did not have broad based support. The states themselves have a significant impact determining the presidency by having plenary power over the method used to allocate electoral votes. If a voter is unhappy with how their state allocates electoral votes, then they should simply go to their elected State Representatives and Senators and call for changes.

However, opponents believe that populations have increased dramatically, and that smaller states no longer need protection. Faithless electors are individuals who should be allowed to change their vote to meet the needs of their individual states but ultimately the electoral system should be revised or abolished. Each vote should count the same, and a one person one vote mentality should replace our current electoral system. They also believe that third parties are not detrimental and that they outline other options for the voters to choose between. The wasted vote theory according to supporters of the popular vote is understandable. Voters want to know that their votes count, and due to the Electoral College, their votes have the potential to be overshadowed by the Electoral College. The establishment of the popular vote would require the use of a Constitutional amendment, and that is politically difficult to obtain.

An alternative to a Constitutional amendment is the use of the national popular vote bill. This bill includes pledges by states to guarantee the electoral votes to the candidate who receives the highest number of popular votes within a state. As of today, sixteen jurisdictions have pledged but they still need 74 more electoral vote pledges for this bill to go into effect. If a state does not

want to participate, then they do not have to, which gives individual states a choice to decide what they want in each state. The popular vote is the best alternative to the Electoral College, but other plans have merit as well.

Three alternative plans include the Automatic Plan, the Proportional Plan, and the District Plan. The Automatic Plan removes the existence of electors but keeps the Electoral College practically the same. The candidate who obtains the most popular votes within an individual state is ultimately given the electoral votes. The Proportional plan changes the allocation of electoral votes thus changes to be awarded in each state based on the percentage of votes received in that state. This plan would eliminate the winner-takes-all system and provides the losers with the electoral votes that are in proportion to the votes that they obtained.

As for the last plan of action, the District plan changes the allocation of electoral votes as well, while giving the votes in each state to the candidate who receives the statewide vote. As we mentioned previously, it is currently being used in Nebraska and Maine. This plan would be the closest to the popular vote, while still preserving the Electoral College. The election in 2020 is going to be closely monitored and dependent on the outcome, this could result in demands by the voters to pick an alternative method or to abolish the Electoral College. All in all, the Electoral College is ticking time bomb, and its fate will be decided in due time.

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