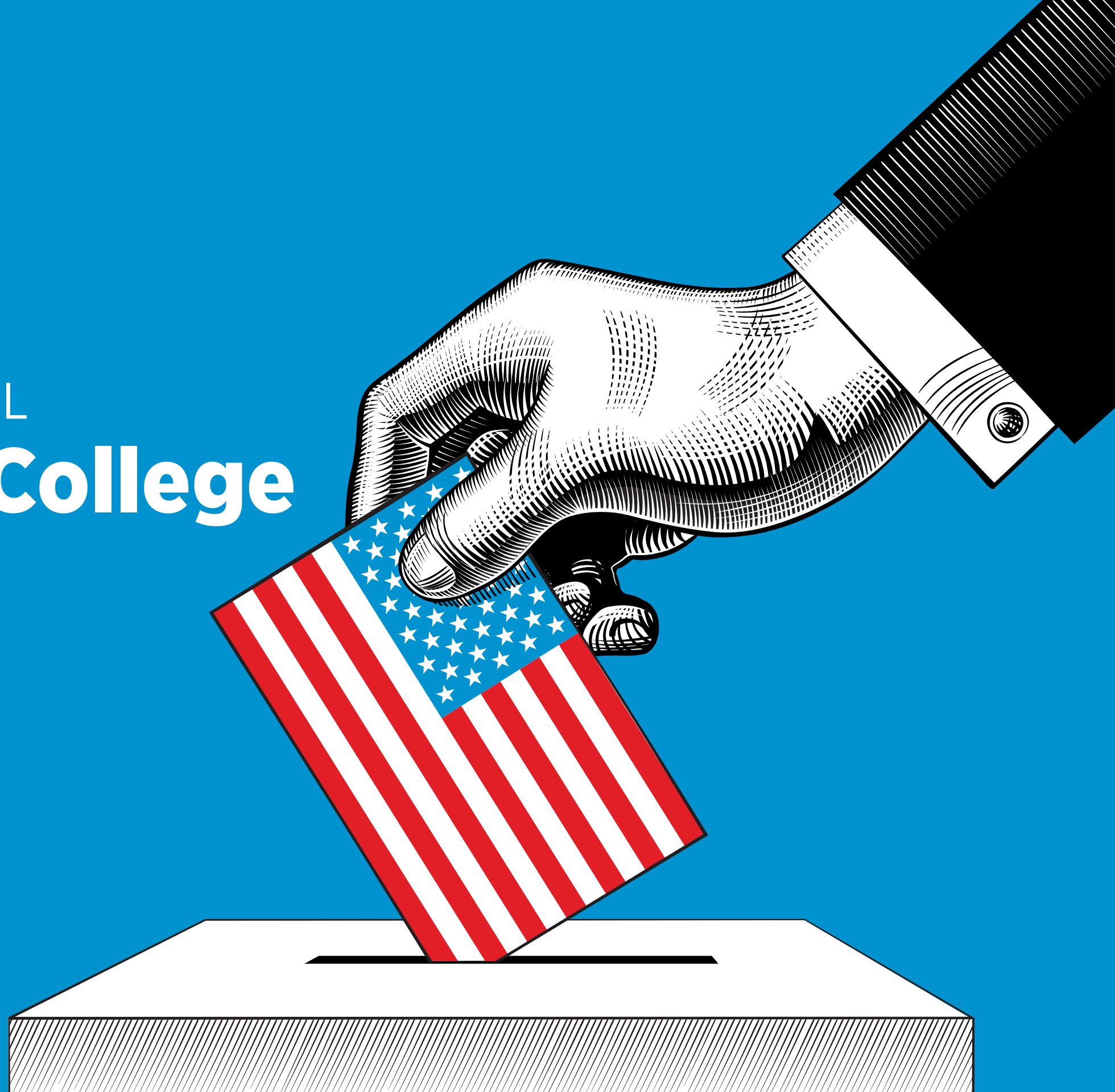


THE ESSENTIAL
Electoral College



THE ESSENTIAL **Electoral College**

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The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system . . . which has escaped without severe censure . . . I venture somewhat further, and hesitate not to affirm that if the manner of it be **not perfect, it is at least excellent.**

— ALEXANDER HAMILTON,
*Federalist No. 68*¹

Origins of the Electoral College: The Founders' Design

The manner of electing the President was one of the most contentious issues at the Constitutional Convention held in 1787.

The Founders struggled to satisfy each state's demand for greater representation, while attempting to balance popular sovereignty against the risk posed to the minority from majoritarian rule. Smaller states, in particular, worried that a system that apportioned representatives based on population would underrepresent their interests in the federal structure. This concern, that either the big states, or the small states, would have too much influence over the choice of the President, was voiced by many of the delegates at the Convention. They understood the dangers that a direct democracy, with the potential for mob rule, brings to elections. James Madison warned that:

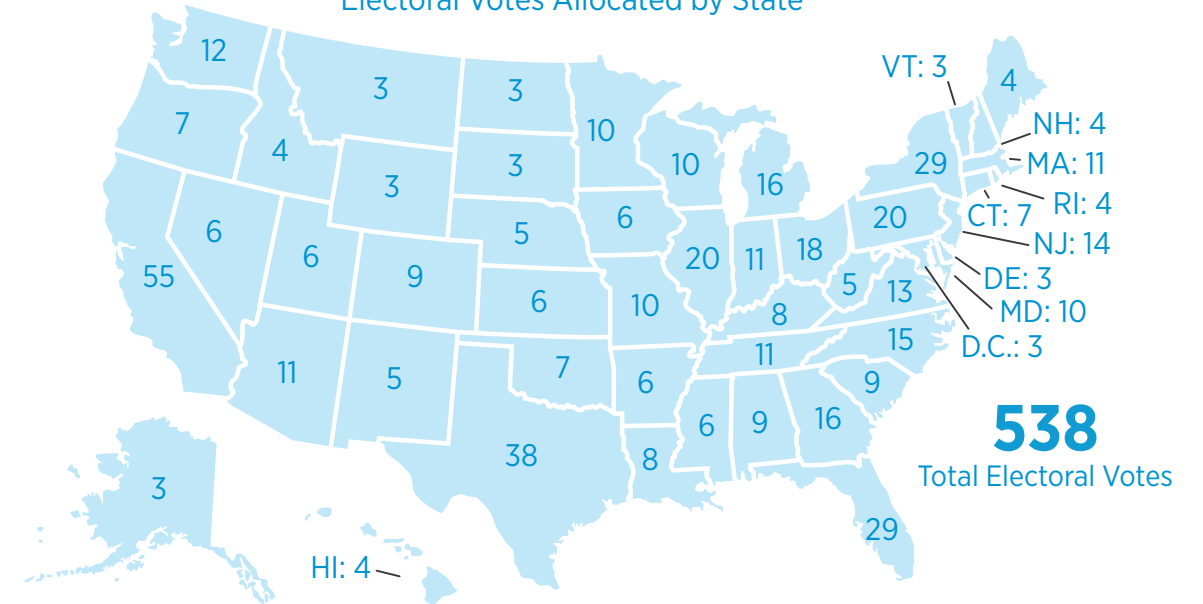
[In a direct democracy], [a] common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.²

After long and serious debate, they arrived at an intentional design for electing the President that would incorporate the will of the people, but still safeguard against faction and tyranny. That system, the Electoral College, balances the competing interests of large states with those of smaller states. By allocating electors based on a state's cumulative representation in the House and Senate, the Electoral College system avoids purely population-based representation, while still giving larger states greater electoral weight. This design incorporates the “genius of a popular democracy organized on the federal principle,”³ and has been our electoral system that has operated successfully for over 200 years.

How Does the Electoral College **Actually** Work?

2020 ELECTORAL MAP: HOW MANY ELECTORS?

Electoral Votes Allocated by State



STEP 1: DETERMINE NUMBER OF ELECTORS

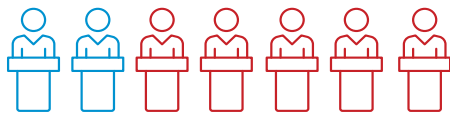
Each state has the number of electors equal to its representation in Congress: two Senators, plus one or more Representatives proportional to population. The District of Columbia has three electoral votes, the same number as the least populous state, as stipulated in the 23rd Amendment.

Example (Oregon):

2 U.S. Senators +

5 Members of the U.S. House of Representatives

= 7 Electors for that state

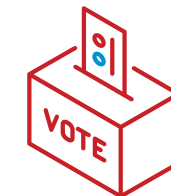


STEP 2: SELECT ELECTORS

Article II, Section 1 of the U.S. Constitution leaves the selection of electors to the states. In most states, this process is controlled by state political parties, under rules approved by state legislatures. Electors are often chosen at state party conventions or by a state party committee, and include individuals who have a dedicated history of service to the political party.

STEP 3: ELECTION DAY

Every four years, the presidential election is held on the first Tuesday following the first Monday in November. When voters cast their ballot for a presidential ticket, they are actually voting for their candidate's slate of chosen electors.



STEP 7: INAUGURATION DAY

The President-elect takes the oath of office and is sworn in as President of the United States on January 20th.



STEP 6: MEETING OF ELECTORS

On the Monday after the second Wednesday in December, the electors meet in their respective states to cast their votes for the President and Vice President. Then, in a joint session of Congress on the 6th of January, each state's electoral votes are counted, and the President is officially elected.



STEP 5: WINNER IS DETERMINED

A simple majority of the 538 total electoral votes, or 270, is needed to be elected President. If no candidate wins the majority, the House chooses the President and the Senate chooses the Vice President.



STEP 4: AWARD ELECTORAL VOTES

Winner-Take-All System: 48 States and the District of Columbia award all electors to the presidential candidate who wins the state's popular vote.

District System: Maine and Nebraska are the only states that award two electoral votes to the candidate who wins the statewide popular vote and the remaining electoral votes to the winner in each congressional district.

Contingent and Disputed Elections

Throughout our nation’s history, it has been extremely rare for no candidate to receive the majority of the electoral votes, or for there to be a tie, in a presidential election. **When this does occur, known as a contingent election, the election of the President goes to the House of Representatives.**

ANDREW JACKSON, THE RECENT HERO OF THE WAR OF 1812, WON

99 votes in the Electoral College, which was 32 short of a majority. John Quincy Adams was runner-up with 85, Treasury Secretary William Crawford received 41, and Speaker of the House Henry Clay had 37. With the 12th Amendment stipulating that the House of Representatives only consider the top-three candidates when no one commands an overall majority, the Members voted for Adams over Jackson and Crawford. There was rampant speculation by Jackson and his supporters of what became known as the “Corrupt Bargain.” They accused Speaker Clay of using his influence in the House to guide the outcome of the vote to John Quincy Adams, with the reward of an appointment to be Secretary of State in Adams’ Administration. In reaction, Jackson and his supporters founded the Democratic Party, and he won the presidential election in 1828.



1824

1800

1876

2000

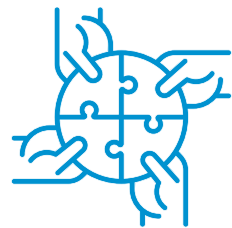
THOMAS JEFFERSON AND Aaron Burr, the Republican candidates for President and Vice President, tied at 73 electoral ballots each. After six days of rigorous debate in the House of Representatives, Jefferson prevailed becoming our third President. In order to prevent this from recurring, in 1804, before the next election, the 12th Amendment was ratified requiring electors to cast distinct ballots for President and Vice President, instead of two votes for President.

THE 1876 ELECTION REMAINS ONE of the most contentious in our nation’s history. Following a confused Electoral College count that included Florida, Louisiana, and South Carolina submitting certificates of elections for both candidates, a bipartisan commission was established to review ballots. The commission, voting along party lines, awarded all contested ballots to Rutherford B. Hayes, securing him the presidency by a single electoral vote: 185-184. The result did not spark protests in the post-Civil War South due to Republicans striking a compromise with Southern Democrats to remove all federal soldiers from the South, marking an end to Reconstruction.

THE PRESIDENTIAL ELECTION IN 2000 WAS ONE OF THE LONGEST and most expensive in modern history. The electoral vote count was so close, it hinged on the outcome of the state of Florida and the winner of its 25 electoral votes. With only several hundred votes separating the winner Governor George Bush from Vice President Al Gore, immediate calls for recounts and dozens of lawyers quickly descended on the state to launch a volley of lawsuits. The recount process dragged on for five excruciating weeks, which involved the now infamous disputes over improperly punched ballots with hanging and dimpled chads. Each vote tabulation yielded George Bush as the clear winner, but the final decision to conclude the never-ending recount was made by the United States Supreme Court, which held that the varying standards being utilized to conduct the recount violated the constitutional principle embodied in the Equal Protection Clause that “all votes must be treated equally.” On November 26, 2000, Florida’s 25 electoral votes were awarded to Governor Bush, which enabled him to cross the 270 vote threshold needed to win the presidency.

The Benefits of the Electoral College

When the Framers drafted the Constitution in 1787, they could not have predicted the many changes and advances that our society has undergone since the 18th Century. However, through their genius and foresight, they designed an electoral system that has the ability to adapt to modern-day America and work even better than they could have anticipated. Below are some of the many benefits of the Electoral College.



PRESERVES FEDERALISM.

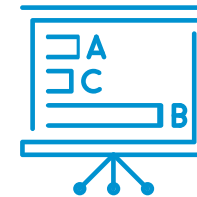
The Electoral College preserves the principles of federalism that are essential to our constitutional republic. The U.S. is a large country made up of people from very different regions and cultures, and federalism is an important way of preserving the differences that make us unique while uniting us behind one common federal government. Since the country is comprised of 50 states coming together to form the federal government, it is important that the system to elect the President fairly represent them.

By allocating electoral votes by the total number of representatives in a given state, the Electoral College allows more states to have an impact on the choice of the President.



ENCOURAGES BROAD COALITION BUILDING AND MODERATION.

The Electoral College prevents presidential candidates from winning an election by focusing solely on high-population urban centers and dense media markets, forcing them to seek the support of a larger cross-section of the American electorate. This addresses the Founders' fears of a "tyranny of the majority," which has the potential to marginalize sizeable portions of the population, particularly in rural and more remote areas of the country.



Large cities like New York City and Los Angeles should not get to unilaterally dictate policies that affect more rural states, like North Dakota and Indiana, which have very different needs. These states may be smaller, but their values still matter—they should have a say in who becomes President. By forcing presidential candidates to address all Americans during their campaigns, not just those in large cities, the Electoral College has the added benefit of eschewing radical candidates for more moderate ones.

PROMOTES LEGITIMACY OF ELECTION OUTCOMES.

The Electoral College increases the legitimacy and certainty of elections by magnifying the margin of victory, thereby diminishing the value of contentious recounts and providing a demonstrable election outcome and a mandate to govern. Since 1900, 17 out of 29 presidential elections have been decided by 200 or more electoral votes.⁴

In contrast, a popular vote system with just a plurality requirement could lead to the election of presidential candidates by unprecedented, small margins. These smaller victory margins, combined with the overall decrease in popular support for a single candidate, could trigger chaotic and contested elections. Furthermore, a President elected by only 25 percent or 35 percent of the American people would not have a mandate to govern, and questions about his or her legitimacy could pose grave consequences both for the nation and for any actions he or she took as President.



A MECHANISM FOR STABLE ELECTIONS.

The Electoral College makes elections more stable, and less likely to trigger contentious recounts. Every state has different procedural rules for the administration of elections, including how recounts are triggered and conducted and how provisional ballots are counted. The 2000 presidential election saw an unprecedented vote recount in Florida that was a belabored, emotional, and costly process, even though it was limited to only one state. With a national popular vote, every additional vote a presidential candidate could obtain anywhere in the country could make the difference between winning or losing a national election. This provides a strong added incentive for recounts, even on a full national level, any time suspicious activities occur in even a single district.



DISCOURAGES VOTER FRAUD.

While no system can completely eliminate the risk of individuals trying to cheat the system, the Electoral College minimizes the incentives for **voter fraud** because the system isolates the impact of stolen votes. Under the current system, stolen votes only affect the outcome of one state rather than the national outcome. This is because fraudulent votes may win the state, securing the electoral votes, but it would make no difference for the candidate to win that state with 100 stolen votes or 100,000 since the candidate would secure the same electoral votes regardless.⁵ Under a national popular vote system, though, votes stolen in one state would have an impact beyond that state's border, since those illegitimate votes would be added to the national vote total.

Debunking Myths and Misinformation

FALSE CLAIM #1: SWING STATES HOLD ALL THE POWER

Opponents of the Electoral College argue that swing states garner all of the attention of candidates and that would change with a popular vote system. But swing states can change from election to election, and many states that are today considered reliably “blue” or “red” in the presidential race were recently unpredictable or have otherwise changed in their political makeup. Since 1968, 34 out of 50 states have been labeled as swing states at one time or another.⁶

However, with rare exceptions, established urban centers like Chicago, New York City, and Los Angeles will always have large populations that vote in a predictable fashion. By forcing candidates to travel outside of these urban centers and coalesce a majority of voters in their favor, the Electoral College assures that minority interests in a variety of geographic regions are protected. In stark contrast, a national popular vote system would help to protect only select urban interests. A majority of states would see their influence over the presidential election decrease.

Did You Know?

Since 1968, 34 out of 50 states have been labeled as swing states at one time or another.

FALSE CLAIM #2: THE ELECTORAL COLLEGE WAS DESIGNED TO PROTECT SLAVERY

Some have made the false historical claim that the Electoral College was enacted to protect slavery. Critics charge that because three-fifths of the slave population was included in the representation tabulation, it supposedly gave Southern states a political advantage with more Electoral College votes. Significantly, though, when the proposal for the Electoral College was voted on during the Constitutional Convention, Northern states with a lower slave population, unanimously voted for the proposal; yet, with the exception of Virginia, the Southern states, with a higher population of slaves, voted against it.⁷

Moreover, when the Constitution was drafted, slavery was practiced in every state, and the number of slaves did not give the Southern states a particular advantage. According to the 1790 Census, New York and Virginia were the largest slave-holding states north and south of the Mason-Dixon Line.⁸ If you subtracted the entire slave populations present in each state, Virginia still had a larger population of free people (over 136,000 more) than New York and still would have had more representatives in Congress and a larger electoral vote.

In fact, the Electoral College “contributed to *ending* slavery, since Abraham Lincoln, having only earned 39.9% of the popular vote in 1860, nevertheless won a crushing victory in the Electoral College—leading many Southern slaveholders to stampede to secession in 1860 and 1861. They could run the numbers as well as anyone, and realized that the Electoral College would only produce more anti-slavery Northern presidents.”⁹ The Electoral College requires candidates to appeal to a broad cross-section of the American people, which in turn moderates and combats extremism and passions harmful to the country as a whole.

Did You Know?

The Electoral College contributed to President Lincoln’s election and the ending of slavery. Lincoln only earned 39.9% of the popular vote in 1860.

Current Threat: National Popular Vote Movement

Changing or eliminating the Electoral College can be accomplished only by an amendment to the Constitution, which requires the consent of two-thirds of Congress and three-fourths of the states. Throughout our nation's history there have been many unwise attempts to abolish the Electoral College, but these proposed constitutional amendments saw little success and unsurprisingly failed to gain traction.

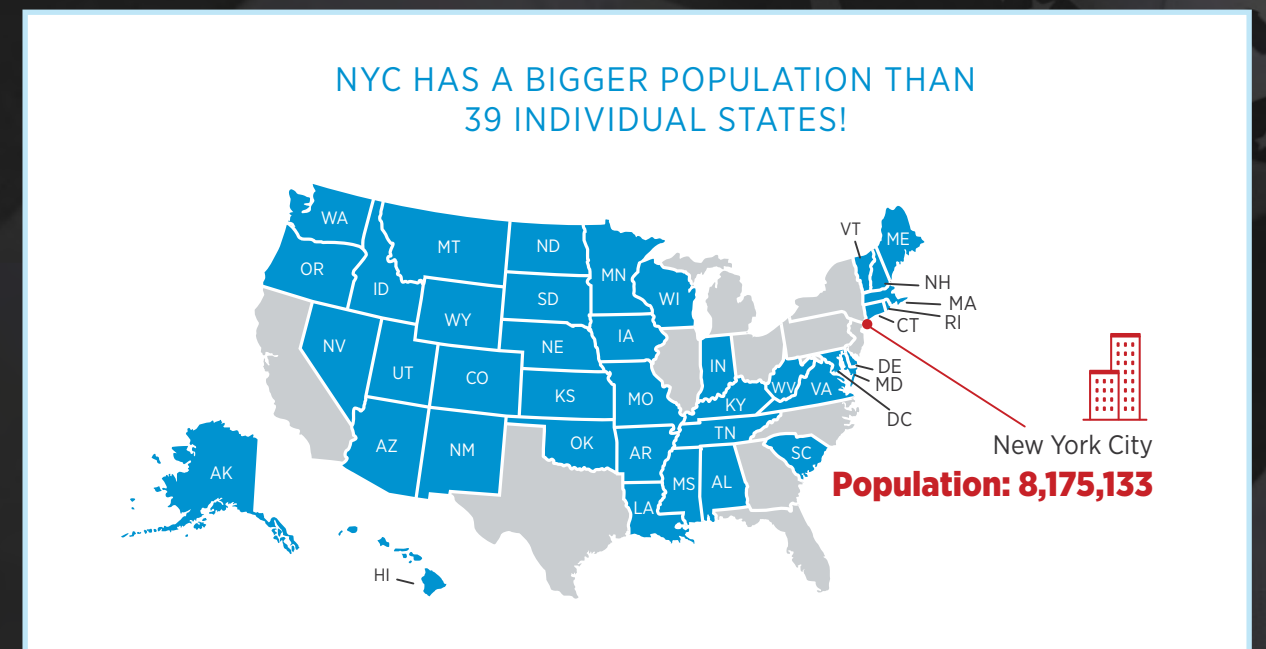
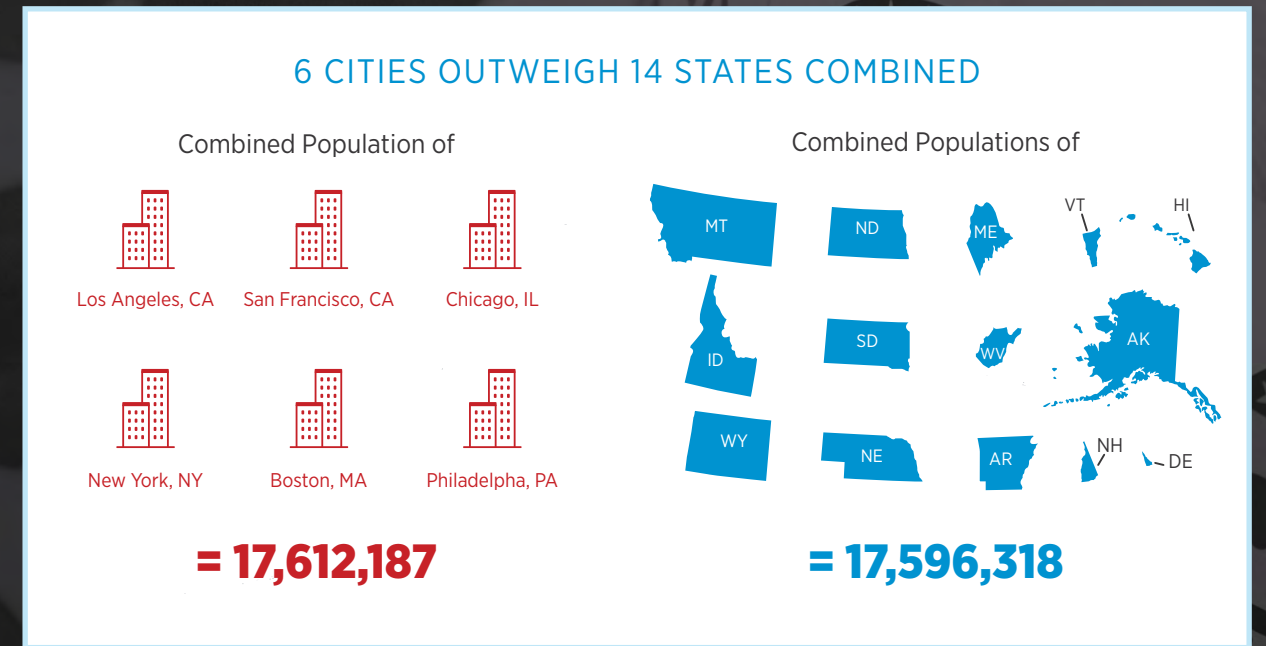
In recent years, a new scheme has emerged that claims it can bypass the seemingly insurmountable impediment of a constitutional amendment process but have the same result of nullifying the Electoral College: The National Popular Vote Compact (NPV). Activists, with the aid of misguided state legislators, have begun to gain ground in the states, with NPV arising as a serious threat to the stability of our presidential election process.

HOW DOES NPV WORK?

When a state passes legislation to join the National Popular Vote Compact, it compels the state to award its electoral votes to whomever wins the national popular vote, regardless of which candidate won in that state. NPV would reshape our political landscape by concentrating power in our largest states and cities. The tribalism and mob rule, of which the Founders warned would be realized, and the voices of smaller states would become marginalized.

There is a trigger for NPV to go into effect, and we are creeping ever closer toward it.¹⁰ When enough states have entered the compact to reach a majority of the electoral votes—270 out of 538—the compact will then kick in. The NPV would effectively abolish the Electoral College and co-opt even those states who did not join the compact into accepting an electoral regime they never agreed to or approved. The supporters of the NPV are not hiding their goal: They are trying to circumvent the constitutional amendment process and manipulate the Electoral College out of existence.¹¹

If the Electoral College was eliminated, the power to elect the President would rest solely in the hands of a few of our largest states and cities, greatly diminishing the voice of smaller populated states.





A Constitutional System Worth Preserving

The Electoral College helps preserve our constitutional system. It has been used to successfully elect Presidents throughout this nation's history in a way that best represents the diverse and varied interests of Americans across the country. A popular vote system would devalue the minority interests that the Founders sought to protect, create electoral administrative problems, and radicalize the U.S. political system.

America's election systems have operated smoothly for more than 200 years because the Electoral College accomplishes its intended purposes. America's presidential election process preserves federalism, prevents chaos, grants definitive electoral outcomes, and prevents tyrannical or unreasonable rule. The Founding Fathers created a stable, well-planned and carefully designed system—and it works.¹²

In an age of perceived political dysfunction, effective policies that are already in place—especially successful policies established by this nation's Founders, such as the Electoral College—should be preserved, not undermined.

Resources to Learn More

**Enlightened Democracy:
The Case for the Electoral College, 2nd Edition**
Colonial Press L.P. | September 3, 2012
By: Tara Ross

In Defense of the Electoral College
National Affairs | Winter 2018
By: Allen Guelzo

Why We Must Defend the Electoral College
Encounter Broadside No. 62 | May 5, 2020
By: Trent England

**Save our States: Defending the Electoral
College and the Integrity of
Presidential Elections**
www.saveourstates.com

**Destroying the Electoral College: The Anti-
Federalism National Popular Vote Scheme**
Legal Memorandum No. 260 | February 19, 2020
The Heritage Foundation
By: Hans A. von Spakovsky

The Heritage Guide to the Constitution
www.heritage.org/constitution

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- Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. Clinton Rossiter (New York: Penguin, 2003), p. 410.
- The *Federalist*, p. 76.
- U.S. Congress, Senate, Committee on the Judiciary, *Direct Popular Election of the President*, 91st Congress, report prepared by James O. Eastland, et al., 91 Cong., 2 Sess., 1970, Committee Print, <https://teachingamericanhistory.org/library/document/minority-view-on-the-direct-popular-election-of-the-president/> (accessed April 13, 2020).
- Allen Guelzo, "In Defense of the Electoral College" *National Affairs*, Winter 2018, p. 76, <https://www.nationalaffairs.com/publications/detail/in-defense-of-the-electoral-college> (accessed April 13, 2020).
- Tara Ross, "The Electoral College: Enlightened Democracy," *Heritage Foundation Legal Memorandum* No. 15, November 1, 2004, pp. 8-10, <https://www.heritage.org/the-constitution/report/the-electoral-college-enlightened-democracy>.
- John York, "No, the Electoral College Isn't 'Electoral Affirmative Action' For Rural States" *Los Angeles Times*, October 9, 2019, <https://www.latimes.com/opinion/story/2019-10-09/electoral-college-affirmative-action-rural-states> (accessed April 9, 2020).

- Sean Wilentz, "The Electoral College Was Not a Pro-Slavery Ploy," *New York Times*, April 4, 2019, <https://www.nytimes.com/2019/04/04/opinion/the-electoral-college-slavery-myth.html> (accessed April 30, 2020). See also John Yoo, "A Defense of the Electoral College in the Time of Trump," *Pepperdine Law Review* Vol. 46, No. 4 (2019): pp. 123-147.
- "Return of the Whole Number of Persons Within the Several Districts of the United States", 1790 Census, https://www2.census.gov/library/publications/decennial/1790/number_of_persons/1790a-02.pdf? (accessed April 13, 2020).
- Guelzo, "In Defense of the Electoral College," p. 74.
- Save Our States, "The Status of National Popular Vote," <https://saveourstates.com/threats/the-status-of-npv> (accessed April 17, 2020).
- Hans von Spakovsky, "Destroying the Electoral College: The Anti-Federalist National Popular Vote Scheme," *Heritage Legal Memorandum* No. 260, February 19, 2020, p. 9, <https://www.heritage.org/election-integrity/report/destroying-the-electoral-college-the-anti-federalist-national-popular-0>.
- Ross, "The Electoral College: Enlightened Democracy," p. 13.

Endorsements



Alaska Policy Forum empowers and educates Alaskans and policymakers by promoting policies that grow freedom for all.



Founded in 1989, The Buckeye Institute is an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.



It is the Cardinal Institute's mission to remove barriers to opportunity for West Virginians and promote limited government, economic freedom, and personal responsibility.



Center of the American Experiment is a non-profit public policy organization based in Minnesota that advocates for free enterprise, limited government, personal responsibility, and government accountability.



The Civitas Institute fights to remove barriers to freedom so that all North Carolinians can enjoy a better life.



Concerned Women for America is the nation's largest public policy women's organization with a rich 40-year history of helping our members across the country bring Biblical principles into all levels of public policy.



The Commonwealth Foundation transforms free-market ideas into public policies so all Pennsylvanians can flourish.



The Ethan Allen Institute educates Vermonters about the benefits of free market, Constitutionally-based policies.



Family Policy Alliance partners with state-based and national allies to advance pro-family legislation, elect pro-family leaders, mobilize churches on critical issues, and be a voice for families within their states so that we can achieve a common vision of a nation where God is honored, religious freedom flourishes, families thrive, and life is cherished.



First Liberty Institute is the largest legal organization in the nation dedicated exclusively to defending religious liberty for all Americans.



The Freedom Foundation of Minnesota is an independent, non-profit educational and research organization dedicated to supporting free-market principles and liberty-based public policy initiatives for a better Minnesota.



The Garden State Initiative is an independent research and educational organization dedicated to promoting new investment, innovation and economic growth in New Jersey.



Maine Policy Institute advocates public policies in Maine that promote free markets, free people from dependency, and redefine the role of government in our lives.



The Maryland Public Policy Institute is dedicated to advancing freedom and opportunity for every Marylander. We fulfill our mission by developing and promoting policy ideas that enable Maryland citizens and policy makers to chart a path to a freer and more prosperous future.



The Mississippi Center for Public Policy seeks to advance the constitutional ideals of liberty and justice for all Mississippians by employing an evidence-based approach to public policy whereby we advocate for and advance conservative ideas through legislation, litigation, and thought leadership.



The Goldwater Institute is dedicated to empowering all Americans to live freer, happier lives by working in state courts, legislatures, and communities nationwide.



Heritage Action turns conservative ideas into reality on Capitol Hill by holding lawmakers accountable to their promises to advance conservative principles.



The Honest Elections Project uses advocacy and litigation to defend the right of every American to vote in a free and fair election.



National Legal Foundation

The National Legal Foundation is a public interest law firm that litigates and educates in defense of religious liberty, the traditional family, and the unborn.



The Nevada Policy Research Institution is a public interest nonprofit, nonpartisan charitable organization whose primary missions are to conduct public policy research and advocate for policies that promote transparency, accountability, and efficiency in government.



As a trusted source for fact-based public policy analysis, the Oklahoma Council of Public Affairs has filled this vital role in the Sooner State for 25 years, watching out for the best interests of Oklahoma families, businesses, children, and taxpayers.



The James Madison Institute seeks to advance public policy solutions which uphold the timeless ideals of limited government, economic freedom, federalism, and individual liberty, coupled with individual responsibility.



The John Locke Foundation envisions a strong North Carolina committed to individual freedom, personal responsibility, and limited, constitutional government, both now and for future generations. We do so through advancing public policy that promotes personal freedom, economic innovation, and opportunity for all.



The mission of the Independence Institute is to empower individuals and to educate citizens, legislators, and opinion makers about public policies that enhance personal and economic freedom.



Palmetto Promise Institute promotes policy solutions to advance a free and flourishing South Carolina, where every individual has the opportunity to reach their full, God-given potential.



Pegasus Institute is a public policy think-tank dedicated to providing data-driven solutions to improve the lives of all Kentuckians.



The Pelican Institute is a nonpartisan research and educational organization and the leading voice for free markets in Louisiana, whose mission is to conduct research and analysis that advances sound policies based on free enterprise, individual liberty, and constitutionally-limited government.

PI LEGAL

The Public Interest Legal Foundation exists to defend the distribution of power over elections to the states in the Constitution, including the Electoral College.



The mission of the Rio Grande Foundation is to increase liberty and prosperity for all of New Mexico by informing citizens of the importance of individual freedom, limited government, and economic opportunity.



The RI Center for Freedom & Prosperity is the Ocean State's premiere free-market research and advocacy organization, seeking to empower residents with increased economic and educational opportunities.



Virginia Institute for Public Policy advances the intellectual foundation for a society dedicated to individual liberty, entrepreneurial capitalism, and a constitutionally-limited government through education of Virginia's policy and activist communities.



Washington Policy Center is an independent, non-profit, non-partisan think tank in Washington State that improves lives through market-driven solutions to make Washington an even better place to raise a family and start and retain a business.



The Wisconsin Institute for Law & Liberty is a state based litigation and policy center and think tank based in Wisconsin, focused on strategic litigation, empirical policy research, and public education, to advance individual liberty, constitutionally limited government, free markets, and a robust civil society.



Save Our States defends the Electoral College in order to protect constitutional federalism and the integrity of presidential elections.



The Show-Me Institute advances liberty with responsibility by promoting market solutions for Missouri public policy.



The Texas Public Policy Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by education and affecting policymakers and the Texas public policy debate with academically sound research and outreach.



*"The Essential Electoral College provides accessible context for this vital pillar of American democracy just when it is under assault—even from some purported conservatives! As the CEO of the American Legislative Exchange Council (ALEC), an organization that considers federalism as foremost among our three guiding principles, I recognize that the Electoral College is a crucial bulwark created by our Founding Fathers to protect federalism against the 'tyranny of the majority.' However, this important institution is at a precarious inflection point where it is poorly understood by many Americans and attacked by others. The Heritage Foundation's *The Essential Electoral College* comes just in time to deepen America's understanding of why this institution is both relevant and more necessary than ever."*

— Lisa B. Nelson, CEO
ALEC

The American Legislative Exchange Council is America's largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets, and federalism.



The Justice Foundation, founded in 1993, seeks to protect the fundamental freedoms and rights essential to the preservation of American society by providing free legal services to promote those rights.



The Thomas Jefferson Institute crafts and promotes public policy solutions that advance prosperity and opportunity for all Virginians.



The Tax Education Foundation of Iowa exists to help every Iowan achieve the American Dream.