



# The Electoral College vs. The Popular Vote

How fundamental is the right of every citizen to vote?

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# The Electoral College

## Background

- Article II of the Constitution defines and instantiates the electoral college as follows:
  - 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 Electoral College

## Background

- Amendment 12 (1804) requires electors to vote separately for the president and the vice-president, rather than issuing two votes for the president. This amendment was passed to accommodate the rise of political parties.
- Amendment 23 (1960) approved three additional electors for the District of Columbia.
- The Electoral Reform Act (2022) prevents states from changing electors after Election Day. It also clarifies that the “executive” certifying the election results is the state’s governor or legal representative. It further clarifies that the vice-president has only ministerial duties and cannot determine the validity of electoral votes.



# The Electoral College

## The National Popular Vote Interstate Compact (NPV)

- The National Popular Vote Interstate Compact (NPV) currently includes 18 states and currently includes jurisdictions that have 209 of the 270 needed to elect a president. The NPV does not abolish the electoral college. Instead, it seeks to ensure that the winner of the electoral college vote and the popular vote are the same. It works by Compact member-states agreeing that the president shall be winner of the national (not state) popular vote. Once enough jurisdictions join the Compact to tally 270 electoral votes, then the Compact can guarantee that in an election, the winner of the popular vote will prevail



# The Electoral College

## Concerning the Question

- The question of democracy has always been about individual rights.
  - How much can they be overridden for supervenient reasons?
  - How important is consensus to governance?
- The ability to preserve individual rights raises a community above mob rule; at the same time, the selfishness associated with certain forms of individualism erodes and even destroys community coherence
- One approach to this question is to consider the validity of the Electoral College concept. Below, the pro argument is an attempted justification for limiting the popular vote. The con argument attempts to justify the popular vote over the electoral vote. Deciding the merits of these arguments serves to clarify the status of individual rights in our time



# The Electoral College

## Pro Argument

- The Electoral College determines who wins the presidency, and this has placed it at odds with the national popular vote in some elections:
  - 1824 [John Quincy Adams v. Jackson, Crawford, and Clay]
  - 1876 [Hayes v. Tilden]
  - 1888 [Benjamin Harrison v. Cleveland]
  - 2000 [Gore v. Bush]
- But this does not invalidate the concept of the College. Consider the following...





# The Electoral College

## Pro Argument (con't)

- 270 votes in the Electoral College are needed to win the presidency. This provides structure in the following ways:
  - It virtually eliminates third parties.
  - It functions as the terminus of a two-step voting process. States elect their preferred candidates by a pluralist method and the Electoral College elects the president from these, by a method of simple majority. These are the two most democratic methods of voting
  - Proportional representation in the pluralist method levels the playing field between large and small states. It enables all jurisdictions, however small, a voice in who gets elected
  - Decision by simple majority enables consensus among differences to develop



# The Electoral College

## Pro Argument (con't)

- As a result, the Electoral College gives the president the mandate to govern the federation of jurisdictions that comprise the USA and preserve its unity. Arguably this is its most important contribution: it creates an architecture for federalism that balances national powers and states' rights
- N.B. Failure to respect this architecture risks reinventing the debate between the Federalists and Anti-Federalists which resulted in a strong constitution plus a bill of rights





# The Electoral College

## Con Argument

- In a democracy, each citizen should have the right to have his/her vote counted
- The Electoral College displaces the popular vote. It has a conflicted history of doing so for ulterior motives, such as racism and class privilege. Even though it elects by simple majority, strategic voting can produce the paradox of voting for a second choice to prevent a first choice from winning



# The Electoral College

## Con Argument (con't)

- The Electoral College does eliminate third party viability but it also inhibits change where change should be addressed:
  - specifically in the disproportionate influence of the big states and “swing” states
    - In 1912 Woodrow Wilson won 82% of the electoral votes with less than 42% of the popular vote
    - In 1980 Ronald Reagan won 91% of the electoral votes with just under 51% of the popular vote
  - These are notable exceptions, both of which involved third parties which diluted the actual outcomes. Two-candidate elections often resulted in much closer outcomes. Nevertheless, mathematically it would be possible to bring a candidate to victory by gaining pluralities in the 11 biggest states



# The Electoral College

## Con Argument (con't)

- According to a PEW Research Report, 58% of U.S. adults favor amending the Constitution to allow popular voting to replace the electoral college
- Clearly, the Electoral College will not be abandoned as long as the dominant political party is in office because of it
- However, combining the College with the NPV is the best practical solution. It acknowledges the role of the electoral college in enabling state-wide voting and state rights to have its place. But also requires that all jurisdictions must yield to the popular majority



# The Electoral College

## References

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