

# 1 Introduction

In elections for President and Vice President of the United States, every vote should be equal. Every person's vote should be equally important, regardless of the state in which the vote is cast. The presidential and vice-presidential candidate who receive the most popular votes throughout the United States should win those offices. The current system for electing the President and Vice President does not satisfy these principles. This book presents a politically practical way by which action at the state level can bring presidential elections into conformity with these principles.

This chapter

- describes what the U.S. Constitution says—and does not say—about presidential elections (section 1.1),
- highlights three significant shortcomings of the current system for electing the President and Vice President of the United States and identifies the common cause of all three problems (section 1.2),
- identifies nationwide popular election as a remedy for the shortcomings of the current system (section 1.3),
- notes the fortuitous convergence of factors favoring reform at the present time (section 1.4),
- provides a roadmap to the remainder of this book (section 1.5), and
- identifies additional sources of information (section 1.6).

## **1.1 WHAT THE U.S. CONSTITUTION SAYS—AND DOES NOT SAY—ABOUT PRESIDENTIAL ELECTIONS**

The method of selecting the President and Vice President of the United States is not set forth in detail in the U.S. Constitution. In fact, the Founding Fathers never reached agreement on a complete system for selecting the President. Aside from scheduling and administrative provi-

sions,<sup>1</sup> the U.S. Constitution specifies only four aspects of presidential elections:

- **Indirect Election:** The Constitution specifies that the President and Vice President are to be chosen every four years by a small group of people who are individually referred to as presidential “electors.” The electors are often collectively referred to as the “Electoral College,” although this term does not appear in the Constitution.
- **Allocation of Electoral Votes to the States:** The Constitution specifies that each state is entitled to one presidential elector for each of its U.S. Representatives and Senators. Today, there are a total of 538 electoral votes.<sup>2</sup>
- **Majority of Electoral College Required for Election:** The Constitution specifies that a presidential or vice-presidential candidate must win a majority of the electoral votes in order to be elected to office (that is, 270 of the 538 electoral votes). In the absence of such a majority, the U.S. House of Representatives chooses the President, and the U.S. Senate chooses the Vice President.<sup>3</sup>

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<sup>1</sup> The Constitution contains provisions concerning setting the date for appointing presidential electors, setting the date for the meeting of presidential electors, recording the electoral votes, and counting the electoral votes by Congress. For the reader’s convenience, appendix A contains the provisions of the U.S. Constitution relating to presidential elections.

<sup>2</sup> The total of 538 electoral votes corresponds to the 435 U.S. Representatives from the 50 states *plus* the 100 U.S. Senators from the 50 states *plus* the three electoral votes that the District of Columbia received under the 23rd Amendment to the Constitution (ratified in 1961). Every 10 years, the 435 U.S. Representatives are reapportioned among the states in accordance with the latest federal census, thereby automatically reapportioning the electoral votes among the states. The number of U.S. Representatives is set by federal statute.

<sup>3</sup> More precisely, a majority of the presidential electors “appointed” are required for election. There have been several occasions when a state has failed to appoint its presidential electors. For example, New York failed to appoint its electors for the nation’s first presidential election in 1789, and 11 southern states failed to appoint their electors for the 1864 election during the Civil War. In the event that no candidate receives an absolute majority of the number of presidential electors who are “appointed” for a particular presidential election, the Constitution provides that the House of Representatives chooses the President (with each state casting one vote regardless of the size of its congressional delegation) and that the Senate chooses the Vice President (with each Senator casting one vote).

- **The Way That the Presidential Electors Cast Their Votes:** Under the original Constitution, each presidential elector cast two votes. The leading candidate became President, and the second-place candidate became Vice President. Under the 12th Amendment to the Constitution (ratified in 1804), each presidential elector casts a separate vote for President and Vice President.

As can be seen from the above, the U.S. Constitution is silent about many of the most politically important features of presidential elections, most notably including:

- (1) **Who Votes for the Presidential Electors?** Do the nation’s voters, for example, have any direct voice in choosing the presidential electors?
- (2) **How Are Votes Counted for Presidential Electors?** Regardless of who may be entitled to vote for the presidential electors, are the votes to be counted on a statewide basis? By congressional district? In regional multi-member districts? In specially created presidential elector districts? In a proportional way? In some other way?

The Constitution does not answer these (and other politically important) questions about the conduct of presidential elections. Instead, the Founding Fathers created a system with considerable built-in flexibility. The Constitution leaves these questions to be decided by the individual states. It provides:

“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...”<sup>4</sup>  
[Emphasis added]

The above delegation of power to the states concerning presidential elections is unusually unconstrained. It contrasts significantly with the limitations contained in the Constitution on state power over congressional elections.

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<sup>4</sup> U.S. Constitution. Article II, section 1, clause 2.

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; **but the Congress may at any time by Law make or alter such Regulations....**”<sup>5</sup>  
[Emphasis added]

Accordingly, the U.S. Supreme Court has characterized state power concerning the manner of appointing presidential electors as “supreme,” “plenary,”<sup>6,7</sup> and exclusive. As the Court wrote in 1892:

“In short, the appointment and mode of appointment of electors belong **exclusively** to the states under the constitution of the United States.”<sup>8</sup>

In a 1919 case involving a state statute entitled “An act granting to women the right to vote for presidential electors,” the Maine Supreme Judicial Court wrote:

“[E]ach state is thereby clothed with the **absolute power to appoint electors in such manner as it may see fit, without any interference or control on the part of the federal government**, except, of course, in case of attempted discrimination as to race, color, or previous condition of servitude....”<sup>9</sup> [Emphasis added]

Over the years, the states have used the Constitution’s built-in flexibility concerning presidential elections in a remarkable variety of ways. Many of the most familiar features of present-day presidential elections

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<sup>5</sup> U.S. Constitution. Article II, section 4, clause 1.

<sup>6</sup> In the 1892 case of *McPherson v. Blacker*, the U.S. Supreme Court wrote, “[F]rom the formation of the government until now the practical construction of the clause has conceded **plenary** power to the state legislatures in the matter of the appointment of electors” (146 U.S. 1 at 36) [Emphasis added].

<sup>7</sup> In the 2000 case of *Bush v. Gore*, the U.S. Supreme Court wrote, “The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College. U.S. Const., Art. II, §1. This is the source for the statement in *McPherson v. Blacker*, 146 U.S. 1, 35 (1892), that the State legislature’s power to select the manner for appointing electors is **plenary**; it may, if it so chooses, select the electors itself, which indeed was the manner used by State legislatures in several States for many years after the Framing of our Constitution. *Id.*, at 28–33.” (531 U.S. 98. 2000) [Emphasis added].

<sup>8</sup> *McPherson v. Blacker*. 146 U.S. 1 at 29. 1892.

<sup>9</sup> *In re Opinion of the Justices*. 107 A. 705. 1919.

were not in widespread use immediately after ratification of the Constitution.

- (1) **Who Votes for the Presidential Electors?** In the nation's first presidential election in 1789, only four states gave the voters a direct voice in electing the presidential electors. In most states, there was no election at all, and the legislature simply "appointed" the presidential electors. By 1836, the voters elected the presidential electors in all states except South Carolina. No state legislature has appointed presidential electors since Colorado did so in 1876.<sup>10</sup>
- (2) **How Are Votes Counted for Presidential Electors?** In 1789, only three states awarded their electoral votes using the system that is now in almost universal use throughout the United States—that is, the statewide "winner-take-all" rule. Under this rule, a majority (or, nowadays, a plurality) of each state's voters controls the election of 100% of the state's presidential electors. In 1789, Virginia permitted the voters to elect presidential electors in specially created presidential elector districts, thereby creating the possibility that minority sentiment within the state would control some of the state's electoral votes. At various times in other states, voters elected presidential electors from congressional districts or from multi-member regional districts. Various indirect methods have been used occasionally, including a miniature state-level electoral college in Tennessee to choose the state's members of the national Electoral College.<sup>11</sup> Today, the voters in Maine and Nebraska elect presidential electors by congressional district.

In short, there was no consensus among the Founding Fathers in favor of two of the most politically salient features of present-day

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<sup>10</sup> Section 2.2 covers the history of methods of selecting presidential electors.

<sup>11</sup> As detailed in section 2.2.2, in 1796, in Tennessee, specific citizens from various groups of counties were named in the state law establishing this system. The specifically named individuals then chose the presidential electors for their part of the state. In 1828, the New York legislature created an indirect system in which the presidential electors who were elected by the voters from each of the state's congressional districts selected the state's two senatorial presidential electors (section 2.2.4).

presidential elections—namely voting by the people and the statewide winner-take-all rule. These features are not mandated by the U.S. Constitution. These features were not implemented by amending the U.S. Constitution. Instead, these now-familiar features came into existence because the states used the flexibility that the Founders built into the Constitution to make these features part of our political landscape. These features are strictly a matter of state law.

The piecemeal adoption by the states of the winner-take-all rule is particularly instructive. As the U.S. Supreme Court noted in 1892, many of the Founding Fathers considered the district system (such as that used by Virginia in the nation’s first presidential election) to be “the most equitable.”<sup>12</sup> However, as early as the nation’s first competitive presidential election (1796), it had become clear to political observers that the district system diminished a state’s political influence because it fragmented the state’s electoral votes. As historian Noble Cunningham wrote:

“The presidential election of 1796 had been extremely close, and in examining the results of that contest Republican Party managers had been struck by the fact that **Adams’ 3-vote margin of victory in the electoral college could be attributed to 1 vote from Pennsylvania, 1 from Virginia, and 1 from North Carolina.** In each of these states, the Republicans had won an impressive victory, amassing in the three states a total of 45 electoral votes. The loss of 3 votes in these strongly Jeffersonian states was due to the district method of electing presidential electors. **In looking for ways to improve their chances for victory in the next presidential election, Republican managers thus turned their attention to state election laws.**”<sup>13</sup> [Emphasis added]

On January 12, 1800, Thomas Jefferson (the losing Republican<sup>14</sup> candidate from the 1796 election) wrote James Monroe (then a member of the legislature in Jefferson’s home state of Virginia):

<sup>12</sup> *McPherson v. Blacker*: 146 U.S. 1 at 29. 1892.

<sup>13</sup> Cunningham, Noble E., Jr. In Schlesinger, Arthur M., Jr. and Israel, Fred L. (editors). 2002. *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. Pages 104–105. See section 2.2.3 for additional details on the 1796 election.

<sup>14</sup> Jeffersonians were originally called Anti-Federalists, later Republicans or Democratic-Republicans, and eventually Democrats.

“On the subject of an election by a general ticket [the statewide winner-take-all rule], or by districts, most persons here seem to have made up their minds. All agree that an **election by districts would be best, if it could be general; but while 10 states chuse either by their legislatures or by a general ticket, it is folly & worse than folly** for the other 6. not to do it.”<sup>15</sup> [Emphasis added; spelling and punctuation as per original]

Thus, although the statewide winner-take-all system may not have been “best,” Virginia changed from its original district system to the winner-take-all system, thereby ensuring Jefferson 100% of his home state’s electoral votes in the 1800 elections.

Over a period of years, more and more states gravitated to the statewide winner-take-all rule to avoid the “folly” of fragmenting their electoral votes. By 1836, all but one state had adopted the statewide winner-take-all rule.<sup>16</sup> Except for Florida in 1868, Colorado in 1876, and Michigan in 1892, all states used the statewide winner-take-all rule between 1860 and 1972.

More recently, Maine (since 1972) and Nebraska (since 1992) have awarded one electoral vote to the candidate who carries each congressional district in the state and two electoral votes to the presidential candidate carrying the state.<sup>17</sup> The present-day state laws in Maine and Nebraska are reminders of the flexibility that the Founders built into the U.S. Constitution. They are reminders that the manner of conducting presidential elections is strictly a matter of state law. Most importantly,

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<sup>15</sup> The January 12, 1800 letter is discussed in greater detail and quoted in its entirety in section 2.2.3. Ford, Paul Leicester. 1905. *The Works of Thomas Jefferson*. New York: G. P. Putnam’s Sons. 9:90.

<sup>16</sup> The South Carolina legislature elected the state’s presidential electors until 1860, so South Carolina’s electoral votes were also cast as a solid bloc. See chapter 2 for a detailed history of the proliferation of the statewide winner-take-all rule.

<sup>17</sup> In all 13 presidential elections in which the district system has been used by Maine and Nebraska, the presidential candidate carrying the state has carried all of the state’s congressional districts. The reason why the congressional district system has not produced a division of the electoral votes in Maine and Nebraska is that Maine has only two congressional districts and Nebraska has only three. The presidential candidate carrying a state with only a few districts is apt to carry each of the state’s individual districts. Thus, in terms of the practical political outcome, the statewide “winner take all” rule is universal throughout the United States despite the Maine and Nebraska laws.

they are reminders that the now-prevailing statewide winner-take-all rule may be changed, at any time, by the states—merely by passage of a state law.

## 1.2 SHORTCOMINGS OF THE CURRENT SYSTEM

The current system for electing the President and Vice President of the United States has three major shortcomings:

- **Voters Are Effectively Disenfranchised in Two Thirds of the States in Presidential Elections.** Under the now-prevailing statewide winner-take-all rule, presidential candidates do not campaign in states in which they are far ahead because they do not receive any additional electoral votes by winning such states by a larger margin. Similarly, candidates ignore states where they are far behind because they have nothing to gain by losing those states by a smaller margin. Instead, presidential candidates concentrate their public appearances, organizational efforts, advertising, polling, and policy attention on states where the outcome of the popular vote is not a foregone conclusion. In practical political terms, a vote matters in presidential politics only if it is cast in a closely divided battleground state. To put it another way, the question of whether a voter matters in presidential politics depends on whether *other* voters in the voter's own state happen to be closely divided. In the five most recent presidential elections (1988–2004), about two thirds of the states have been non-competitive, including six of the nation's 10 most populous states (California, Texas, New York, Illinois, New Jersey, and North Carolina), 12 of the 13 least populous states,<sup>18</sup> and the vast majority of medium-sized states.
- **The Current System Does Not Reliably Reflect the Nationwide Popular Vote.** The statewide winner-take-all

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<sup>18</sup> There are 13 states with just one or two U.S. House members (and hence three or four electoral votes). Of the 13 smallest states, only New Hampshire has been competitive in recent presidential elections (having gone Republican in 1988, 1992, and 2000 and having gone Democratic in 1996 and 2004). The small states tend to be non-competitive in presidential elections because they are apt to be one-party states.

rule makes it possible for a candidate to win the Presidency without winning the most popular votes nationwide. This has occurred in one of every 14 presidential elections (as detailed in section 1.2.2). In the past six decades, there have been six presidential elections in which a shift of a relatively small number of votes in one or two states would have elected (and, of course, in 2000, did elect) a presidential candidate who lost the popular vote nationwide.

- **Not Every Vote Is Equal.** The statewide winner-take-all rule creates variations of 1000-to-1 and more in the weight of a vote (as illustrated in section 1.2.3).

### **1.2.1 Voters in Two Thirds of the States Are Effectively Disenfranchised**

Most people who follow political news are aware of the fact that presidential campaigns are concentrated on a tiny handful of battleground states; however, few are aware of the extreme degree of this concentration.

Although there is no single definition of a “battleground” state, these states can be readily identified by examining where presidential campaigns pay close attention to public opinion, where they spend their advertising money, and where they campaign.

In terms of polling, presidential candidates pay hardly any attention to the concerns of voters in states that are not closely divided in presidential elections. As Charlie Cook reported in 2004:

“Senior Bush campaign strategist Matthew Dowd pointed out yesterday that the Bush campaign hadn’t taken a national poll in almost two years; instead, it has been polling 18 battleground states.”<sup>19</sup>

Kerry similarly pursued an 18-state strategy in 2004.

Battleground states can be readily identified by “following the money.” Fully 99% of the \$237,423,744 reported advertising expenditures in the last month of the 2004 presidential campaign was spent in only 17

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<sup>19</sup> Cook, Charlie. 2004. Convention dispatches—As the nation goes, so do swing states. Charlie Cook’s Political Report. August 31, 2004.

**Table 1.1 THE 17 STATES RECEIVING 99% OF THE ADVERTISING MONEY**

PER CAPITA AD SPENDING	STATE	AD SPENDING
\$4.45	New Mexico	\$8,096,270
\$4.30	Nevada	\$8,596,795
\$4.16	Ohio	\$47,258,386
\$4.02	Florida	\$64,280,557
\$3.73	New Hampshire	\$4,608,200
\$3.22	Iowa	\$9,412,462
\$3.00	Pennsylvania	\$36,813,492
\$2.70	Wisconsin	\$14,468,062
\$2.18	Minnesota	\$10,734,683
\$1.70	Maine	\$2,171,101
\$1.63	Colorado	\$7,015,486
\$1.36	Michigan	\$13,518,566
\$1.22	West Virginia	\$2,213,110
\$0.67	Oregon	\$2,280,367
\$0.42	Missouri	\$2,361,944
\$0.32	Hawaii	\$388,095
\$0.20	Washington	\$1,198,882
	<b>Total</b>	<b>\$235,416,458</b>

states. Table 1.1 lists the 17 states in order of per capita spending.<sup>20</sup> The nine states where per capita spending exceeded \$2.00 correspond to the top-tier battleground states and account for seven eighths (87%) of the \$237,423,744. Five states (Florida, Iowa, Ohio, Pennsylvania, and Wisconsin) account for three quarters (72%) of the money.

A mere 1% of the money was spent in the remaining 34 of the 51 jurisdictions entitled to vote in presidential elections. The 1% was split among 11 jurisdictions, while nothing at all was spent in 23 states.

Advertising expenditures were similarly concentrated during the earlier part of the presidential campaign period.<sup>21</sup>

Candidate travel is another way to identify battleground states. The major-party presidential or vice-presidential candidates appeared at 307

<sup>20</sup> The period covered was October 2 to November 4, 2004. See FairVote. 2005. *Who Picks the President?* Takoma Park, MD: The Center for Voting and Democracy. [www.fairvote.org/whopicks](http://www.fairvote.org/whopicks). See also <http://www.cnn.com/ELECTION/2004/special/president/campaign.ads/>.

<sup>21</sup> An article by Chuck Todd in the *New York Times* (November 3, 2004) reported that five states accounted for 66% of the TV ad spending over the entire campaign period (\$380 million of the \$575 million spent).

**Table 1.2 THE 16 STATES RECEIVING 92% OF THE VISITS BY THE PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES**

STATE	CAMPAIGN EVENTS
Florida	61
Ohio	48
Iowa	37
Wisconsin	31
Pennsylvania	23
Michigan	19
Minnesota	14
Colorado	10
Nevada	7
New Hampshire	6
New Mexico	6
Oregon	5
Missouri	5
Arizona	4
New Jersey	4
California	2
<b>Total</b>	<b>282</b>

campaign events in the last month of the 2004 campaign. These 307 events were concentrated in 27 states.<sup>22</sup> If one excludes from consideration the six states receiving only one visit,<sup>23</sup> the home states of the four candidates,<sup>24</sup> and the District of Columbia (where all four candidates had day jobs),<sup>25</sup> 92% of the 307 campaign events were concentrated in just 16 states (as shown in table 1.2). Two thirds (200 of the 307) of the events were concentrated in Florida, Ohio, Iowa, Wisconsin, and Pennsylvania (the same five states that accounted for three quarters of the money).

As can be seen from table 1.2, 35 (over two thirds) of the 51 jurisdictions entitled to vote in presidential elections cumulatively received

<sup>22</sup> For simplicity, we often refer to the District of Columbia as a “state” in this book. The 23rd Amendment provides that the District of Columbia’s three electoral votes “shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state.”

<sup>23</sup> Hawaii, Kansas, Maine, Maryland, West Virginia, and New York.

<sup>24</sup> There were four events in Texas (Bush’s home state) and Massachusetts (Kerry), three in Wyoming (Cheney), and two in North Carolina (Edwards).

<sup>25</sup> There were six events in the District of Columbia.

**Table 1.3 NINETEEN CLOSE STATES IN THE 2000 PRESIDENTIAL ELECTION**

STATE	ELECTORAL VOTES	DEMOCRATIC PERCENTAGE
Louisiana	9	46.06%
Arizona	8	46.72%
West Virginia	5	46.76%
Arkansas	6	47.20%
Tennessee	11	48.04%
Nevada	4	48.14%
Ohio	21	48.18%
Missouri	11	48.29%
New Hampshire	4	49.33%
Florida	25	50.00%
New Mexico	5	50.03%
Wisconsin	11	50.12%
Iowa	7	50.16%
Oregon	7	50.24%
Minnesota	10	51.29%
Pennsylvania	23	52.15%
Michigan	18	52.63%
Maine	4	52.75%
Washington	11	52.94%
<b>Total</b>	<b>200</b>	

only 8% of the campaign visits. Almost half of the states received no visits at all.

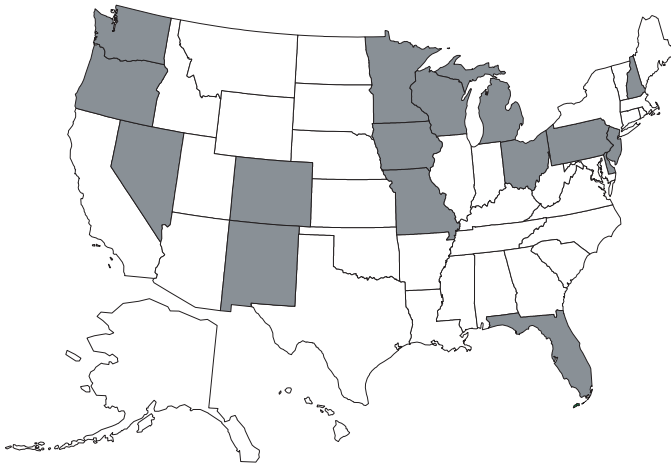
In short, polling, advertising, and campaigning are not merely skewed toward about a dozen and a half states in presidential campaigns, but the remaining two thirds of the states are, for all practical purposes, *excluded* from the campaign. They are mere spectators in the election process.

Not surprisingly, this concentration of polling, advertising, and travel corresponds closely to the states where the presidential election was close. Table 1.3 shows the 19 states in which the two-party vote for President was between 46% and 54% in the 2000 presidential election, starting with the least Democratic state.<sup>26</sup>

<sup>26</sup> Not all of the states in the tables are full-fledged battleground states. The 2004 Kerry campaign made efforts to pick up three states that Bush had carried in 2000 (Missouri, Colorado, and Nevada), and the 2004 Bush campaign made similar efforts to reverse the 2000 results in Delaware, Washington, New Jersey, and Oregon. Nonetheless, as the 2004 campaign progressed, it became apparent that none of these states would actually change hands. By the end of the campaign, there were few actual battleground states.

**Table 1.4 SIXTEEN CLOSE STATES IN THE 2004 PRESIDENTIAL ELECTION**

STATE	ELECTORAL VOTES <sup>27</sup>	DEMOCRATIC PERCENTAGE
Missouri	11	46.33%
Colorado	9	47.35%
Florida	27	47.47%
Nevada	5	48.67%
Ohio	20	48.75%
New Mexico	5	49.42%
Iowa	7	49.54%
Wisconsin	10	50.20%
New Hampshire	4	50.68%
Pennsylvania	21	51.13%
Michigan	17	51.73%
Minnesota	10	51.76%
Oregon	7	51.97%
New Jersey	15	53.13%
Washington	11	53.60%
Delaware	3	53.82%
<b>Total</b>	<b>182</b>	

**Figure 1.1** Sixteen close states in the 2004 presidential election

<sup>27</sup> Some states in tables 1.3 and 1.4 have a different number of electoral votes because of the reallocation of electoral votes resulting from the 2000 federal census.

Table 1.4 and figure 1.1 show the 16 states in which the two-party vote for President was between 46% and 54% in the 2004 presidential election, starting with the least Democratic state.

The 16 states in table 1.4 and figure 1.1 together represent 182 electoral votes—34% of the total (538).

Because each state receives one electoral vote for each of its U.S. Representatives, the Founding Fathers expected that the Constitution's formula for allocating electoral votes would give the most populous states the greatest amount of influence in presidential elections. Glances at tables 1.1 through 1.4 and figure 1.1 show that the Founders did not achieve this objective. Large states are not necessarily important in presidential elections. Six of the nation's 10 most populous states (California, Texas, New York, Illinois, New Jersey, and North Carolina) are non-competitive in presidential elections. Non-competitive states—regardless of their size or number of electoral votes—simply do not matter in presidential elections.

The Founders' intended allocation of political influence in favor of the most populous states was not achieved because of the cumulative effect of the nearly universal adoption by the states of the winner-take-all rule. Political power resides in the scattered collection of states of various sizes where the popular vote happens to be closely divided—that is, the battleground states. In short, the Founders' attempt to allocate political influence was trumped by the decisions—taken separately by the individual states—to adopt the winner-take-all rule.

The less populous states are similarly affected by the statewide winner-take-all rule. As part of the political compromise that led to the Constitution, the Founding Fathers intended to confer a certain amount of extra influence on the less populous states by giving every state a bonus of two electoral votes corresponding to its two U.S. Senators.<sup>28</sup> Again, tables 1.1 through 1.4 and figure 1.1 show that the Founding Fathers did not achieve their objective. Because small states are apt to be one-party states, 12 of the 13 (92%) least populous states are non-competitive in presidential elections. Non-competitive states—with or without a bonus of two extra electoral votes—simply do not matter in

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<sup>28</sup> In present-day terms, about 81% of the current pool of 538 electoral votes are allocated according to population. The 13 smallest states collectively possess about 4% of the nation's population and have 8% of the electoral votes (44 of 538).

presidential politics. The Founders' intended allocation of political influence was not achieved because the political effect of the mathematical bonus provided by the Constitution was trumped by the nearly universal adoption by the states of the winner-take-all rule.

The effective disenfranchisement of voters in two thirds of the states has additional negative effects.

First, the absence of a meaningful presidential campaign in two thirds of the states diminishes voter turnout in those states. A 2005 Brookings Institution report entitled *Thinking About Political Polarization* pointed out:

“The electoral college can depress voter participation in much of the nation. Overall, the percentage of voters who participated in last fall’s election was almost 5 percent higher than the turnout in 2000. Yet, most of the increase was limited to the battleground states. Because the electoral college has effectively narrowed elections like the last one to a quadrennial contest for the votes of a relatively small number of states, people elsewhere are likely to feel that their votes don’t matter.”<sup>29,30</sup>

Second, diminished voter turnout in presidential races in non-competitive states weakens the candidates of the state’s minority party for state and local offices, thereby making the state even less competitive in the future. In turn, political divisiveness may be increased because a lack of competition may increase the influence of each party’s fringe elements.

The number of battleground states has been declining for many decades, and this decline appears to be continuing, as detailed in *The Shrinking Battleground* by the Center for Voting and Democracy.<sup>31</sup>

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<sup>29</sup> Nivola, Pietro S. 2005. *Thinking About Political Polarization*. Washington, DC: The Brookings Institution. Policy Brief 139. January 2005.

<sup>30</sup> Voter turnout is adversely affected in non-competitive states because voters of both parties in non-competitive states realize that their votes do not matter in presidential elections. As reported by the Committee for the Study of the American Electorate, “Turnout in battleground states increased by 6.3 percentage points, while turnout in the other states (and the District of Columbia) increased by only 3.8 percentage points.” Committee for the Study of the American Electorate (2004). “President Bush, Mobilization Drives Propel Turnout to Post-1968 High.” November 4, 2004.

<sup>31</sup> FairVote. 2005. *The Shrinking Battleground: The 2008 Presidential Election and Beyond*. Takoma Park, MD: The Center for Voting and Democracy. [www.fairvote.org/shrinking](http://www.fairvote.org/shrinking).

**Table 1.5 PRESIDENTIAL ELECTIONS IN WHICH THE CANDIDATE WITH MOST POPULAR VOTES DID NOT WIN THE PRESIDENCY**

YEAR	CANDIDATE WITH THE MOST POPULAR VOTES NATIONWIDE	CANDIDATE WITH THE MOST ELECTORAL VOTES	POPULAR VOTES FOR THE CANDIDATE WITH THE MOST POPULAR VOTES	POPULAR VOTES FOR THE CANDIDATE WHO PLACED SECOND IN THE POPULAR VOTE	POPULAR VOTE DIFFERENCE
1824	Andrew Jackson	John Q. Adams	151,271	113,122	38,149
1876	Samuel J. Tilden	Rutherford B. Hayes	4,288,191	4,033,497	254,694
1888	Grover Cleveland	Benjamin Harrison	5,539,118	5,449,825	89,293
2000	Al Gore	George W. Bush	50,992,335	50,455,156	537,179

### 1.2.2 The Current System Does Not Accurately Reflect the Nationwide Popular Vote

Of the 55 presidential elections between 1789 and 2004, there have been four elections—approximately once every five decades—in which the candidate with the most popular votes nationwide did not win the Presidency (table 1.5).<sup>32</sup>

In the past six decades, there have been six presidential elections in which a shift of a relatively small number of votes in one or two states would have elected a presidential candidate who lost the popular vote nationwide. In 1976, for example, Jimmy Carter led Gerald Ford by 1,682,970 votes nationwide; however, a shift of 3,687 votes in Hawaii and 5,559 votes in Ohio would have elected Ford. As shown in table 1.6, there has been an average of one problematic election each decade.<sup>33</sup>

In 2004, President George W. Bush was ahead by about 3,500,000 popular votes nationwide on election night; however, the outcome of the election remained in doubt until Wednesday morning because it was not clear which candidate was going to win Ohio's 20 electoral votes. In the end, Bush received 118,785 more popular votes than Kerry in Ohio,<sup>34</sup> thus winning all of the state's 20 electoral votes and ensuring his reelection.

<sup>32</sup> Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press.

<sup>33</sup> Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press.

<sup>34</sup> Ohio Certificate of Ascertainment, December 6, 2004.

**Table 1.6 SIX PROBLEMATIC PRESIDENTIAL ELECTIONS IN THE PAST SIX DECADES**

YEAR	POPULAR VOTE WINNER	ELECTORAL VOTE WINNER	NATIONWIDE POPULAR VOTE LEAD	NATIONWIDE POPULAR VOTE WINNER	ELECTORAL VOTES RECEIVED BY NATIONWIDE POPULAR VOTE WINNER	POPULAR VOTE SWITCH THAT WOULD HAVE CHANGED THE OUTCOME
2004	Bush	Bush	3,319,608	286	286	59,393 in Ohio
2000	Gore	Bush	537,179	267	271	269 in Florida
1976	Carter	Carter	1,682,970	297	297	5,559 in Ohio and 3,687 in Hawaii
1968	Nixon	Nixon	510,645	301	301	10,245 in Missouri and 67,481 in Illinois
1960	Kennedy	Kennedy	114,673	303	303	4,430 in Illinois and 4,782 in South Carolina
1948	Truman	Truman	2,135,570	303	303	3,554 in Ohio and 42,835 in New Jersey

However, if 59,393 Bush voters in Ohio had switched in 2004, Kerry would have ended up with 272 electoral votes (two more than the 270 required to be elected to the Presidency). The 59,393 Bush voters in Ohio were decisive, whereas Bush's 3,500,000-vote nationwide lead was irrelevant.<sup>35</sup> The illusion of closeness in 2004 resulted from the statewide winner-take-all system used in Ohio—not because the election was genuinely close on the basis of the nationwide popular vote.

Given the relative closeness of the five most recent presidential elections and the current closely divided political environment, additional problems with the electoral system should be considered probable.

<sup>35</sup> Ohio was not the only key state in the Electoral College in 2004. A switch of 6,743 votes in Iowa (with 7 electoral votes), 4,295 in New Mexico (with 5 electoral votes), and 10,784 in Nevada (with 5 electoral votes) would have given George W. Bush and John Kerry each 269 electoral votes. If this switch of 21,822 popular votes had occurred, the presidential election would have been thrown into the House of Representatives (with each state casting one vote and states with an equal division casting no vote), and the vice-presidential election would have thrown into the Senate (with each Senator having one vote).

Interestingly, the 1991 book *Wrong Winner: The Coming Debacle in the Electoral College* by David Abbott and James P. Levine<sup>36</sup> predicted that emerging political and demographic trends would lead to an increasing number of elections in which the candidate with the most popular votes nationwide would not win a majority in the Electoral College.

### 1.2.3 Not Every Vote Is Equal

There are numerous examples of large disparities in the value of votes under the statewide winner-take-all system. For example, Gore won five electoral votes by carrying New Mexico by 365 popular votes in the 2000 presidential election, whereas Bush won five electoral votes by carrying Utah by 312,043 popular votes—an 855-to-1 disparity in the importance of a vote.

In 2000, George W. Bush received 2,912,790 popular votes in Florida, whereas Al Gore received 2,912,353—a difference of 537 popular votes. Meanwhile, Gore had a nationwide lead of 537,179 popular votes. Gore's shortfall of 537 votes in Florida was less than 1/1000th of Gore's nationwide lead of 537,179 votes. However, under the winner-take-all rule in effect in Florida, Bush's 537-vote lead in Florida entitled him to all of Florida's 25 electoral votes, thereby giving him the Presidency.<sup>37</sup>

The large differences in the value of a vote in various states in presidential elections has the additional negative side effect of increasing the likelihood of contested presidential elections and recounts. Because the statewide winner-take-all system divides the nation's 122,000,000 popular votes into 51 separate pools, it regularly manufactures artificial crises even when the nationwide popular vote is not particularly close. There are fewer opportunities for razor-thin outcomes when there is one single large pool of votes than when there are 51 separate smaller pools.

The 2000 presidential election is remembered as having been close because George W. Bush's popular vote in Florida was a mere 537 more than Gore's statewide total. There was, however, nothing particularly close about the 2000 election on the basis of the nationwide popular vote. Al Gore's nationwide lead of 537,179 popular votes was larger than, for

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<sup>36</sup> Abbott, David W. and Levine, James P. 1991. *Wrong Winner: The Coming Debacle in the Electoral College*. Westport, CT: Praeger.

<sup>37</sup> George W. Bush received 271 electoral votes when the Electoral College met in December 2000—one more than the minimum required for election.

example, Nixon's lead of 510,314 in 1968 and Kennedy's lead of 118,574 in 1960.<sup>38</sup> The closeness of the 2000 presidential election was an artificial crisis manufactured by Florida's use of the statewide winner-take-all system.

In the controversial 1876 presidential election, Democrat Samuel J. Tilden received 4,288,191 popular votes—254,694 more than the 4,033,497 popular votes received by Rutherford B. Hayes. Tilden's lead of 3.05% was substantial. It was, for example, greater than George W. Bush's popular vote lead of 2.8% in 2004. The 1876 election is remembered as having been close because Hayes's one-vote lead in the Electoral College resulted from his winning several states by extremely narrow margins:

- 889 votes in South Carolina,
- 922 votes in Florida,
- 1,050 votes in Oregon,
- 1,075 votes in Nevada, and
- 2,798 votes in California.<sup>39</sup>

The closeness of the 1876 election was an artificial crisis created by the statewide winner-take-all system—it was not due to anything particularly close about the nationwide popular vote for President.

The six problematic presidential elections in the past six decades (table 1.6) are reminders that the operation of the winner-take-all system in 51 separate jurisdictions makes razor-thin margins more likely and electoral fraud more rewarding. As Senator Birch Bayh said in a Senate speech in 1979:

“[O]ne of the things we can do to limit fraud is to limit the benefits to be gained by fraud.

“Under a direct popular vote system, one fraudulent vote wins one vote in the return. In the electoral college system, one fraudulent vote could mean 45 electoral votes, 28 electoral votes.”<sup>40</sup>

<sup>38</sup> Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press. Pages 146 and 148.

<sup>39</sup> Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press. Page 125.

<sup>40</sup> *Congressional Record*. March 14, 1979. Page 5000.

### **1.3 NATIONWIDE POPULAR ELECTION AS A REMEDY FOR THE SHORTCOMINGS OF THE CURRENT SYSTEM**

Nationwide popular election of the President is the only system that

- makes all states competitive,
- guarantees that the candidate with the most popular votes nationwide wins the Presidency, and
- makes every vote equal.

The authors of this book believe that George W. Bush's lead of 3.5 million popular votes in 2004 should alone have guaranteed him the Presidency in 2004—regardless of who ended up carrying Ohio. Similarly, Al Gore's lead of 537,179 alone should have been sufficient to elect him as President in 2000—regardless of whether one candidate or the other carried Florida by 537 votes.

### **1.4 FORTUITOUS CONVERGENCE OF FACTORS FAVORING REFORM AT THE PRESENT TIME**

There is, at the present time, a fortuitous convergence of factors favoring reform of the current system.

First, the public has come to realize that voters are effectively disenfranchised in presidential elections in about two thirds of the states. Because of the closeness of the last five presidential elections, the media has spotlighted the operation of the winner-take-all rule and the notion of reliably “red” states, reliably “blue” states, and battleground states. In addition, the six problematic presidential elections in the past six decades (table 1.6) have further focused public attention on the mechanics of the Electoral College.

Second, neither major political party gains a partisan advantage from the small states. The small states have been equally divided between the major political parties in the five most recent presidential elections (1988 through 2004).

- Six of the 13 smallest states (Alaska, Idaho, Montana, North Dakota, South Dakota, and Wyoming) have almost always given their combined 19 electoral votes to the Republican presidential candidate.<sup>41</sup>

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<sup>41</sup> Among the six Republican-leaning small states, the one exception was that Clinton carried Montana in 1992.

- Six other small jurisdictions (Delaware, the District of Columbia, Hawaii, Maine, Rhode Island, and Vermont) have almost always given their combined 21 electoral votes to the Democratic presidential candidate.<sup>42</sup>
- One small state (New Hampshire) is a battleground state that has gone Republican three times and Democratic twice.

As it happens, the small states are disadvantaged by the statewide winner-take-all rule to a considerably greater degree than the larger ones. Overall, two thirds of the states have been politically non-competitive in the last five presidential elections, whereas 92% (12 of the 13) of the smallest states have been non-competitive.

The 13 smallest states have a combined population of 11,448,957.<sup>43</sup> Coincidentally, Ohio has almost the same population (11,353,140) as the 13 smallest states combined. Excluding the one competitive small state (New Hampshire) from consideration, the Constitution gives 40 electoral votes to the 12 non-competitive small states (16 electoral votes warranted by population and 24 bonus electoral votes). The Constitution gives Ohio only 20 electoral votes—half as many as the 12 non-competitive small states. If it were true that the two-vote bonus enhanced the influence of small states, the 12 small states should exert considerably more influence than Ohio in presidential elections. This is not, of course, the case. The battleground state of Ohio (with its “mere” 20 electoral votes) is very important in presidential elections, whereas the 12 non-competitive small states (with their seemingly hefty cache of 40 electoral votes) are irrelevant.<sup>44</sup> Table 1.2 (on 2004 campaign events) dramatically shows the irrelevance of the 12 non-competitive small states in presidential elections—there was not one visit by any major-party presidential or vice-presidential candidate to those states. Almost none of the \$237,423,744 in table 1.1 was spent in the 12 non-competitive small states.

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<sup>42</sup> Among the six Democratic-leaning small states, the three exceptions were that, in 1988, George H. W. Bush carried Delaware, Maine, and Vermont.

<sup>43</sup> Unless otherwise stated, population figures in this book refer to the 2000 federal census.

<sup>44</sup> The 12 non-competitive small states have 16 electoral votes warranted by population plus 24 bonus electoral votes, for a total of 40.

The nearly universal use by *other* states of the winner-take-all rule has trumped the voices of the 11 million people in the 12 non-competitive small states and has also trumped the potential benefit of the two-vote bonus that each state receives in the Electoral College.

In short, the two-vote bonus established by the Constitution to enhance the influence of the small states exists today in *form*; however, the nearly unanimous use by the states of the winner-take-all rule robs these bonus electoral votes of any political *substance*. If, hypothetically, the Constitution had given each state a bonus of *four* electoral votes (instead of just two), the 12 non-competitive small states would then collectively have 64 electoral votes (16 warranted by population plus 48 bonus electoral votes). Even then, these states still would not have any meaningful influence in presidential elections. A competitive state, such as Ohio with only 20 electoral votes, would remain far more important in terms of practical politics than the 12 non-competitive small states. Political power in a system based on the statewide winner-take-all rule comes from being a closely divided battleground state—not from mathematical bonuses.

The argument that the Electoral College confers an enormous amount of influence on the most populous states is another superficially plausible and arithmetically correct argument that simply does not reflect political reality. A large state (such as California, Texas, or New York) receives electoral votes approximately in direct proportion to its population. The Constitution allocates 81% of the electoral votes according to population.<sup>45</sup> If size mattered, the nation's three most populous states (California, Texas, and New York) would be at center stage in presidential elections. But this is not the case. The political reality is that these three largest states suffer from the same spectator status as the 12 non-competitive small states—none has mattered in presidential elections for decades. If, hypothetically, California, Texas, and New York were to suddenly each acquire 10 extra electoral votes, they still would not matter in presidential elections. Presidential candidates would continue to take the

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<sup>45</sup> Out of the 538 electoral votes, the 435 corresponding to the 435 U.S. Representatives are allocated according to population.

non-competitive states for granted and to concentrate on the closely divided battleground states.

Civics books often recite the argument that a vote in a small state is worth more than a vote in a large state because of the bonus of two electoral votes that each state receives in the Electoral College. The argument is that a Wyoming vote is worth 3.74 times that of a California vote because one electoral vote corresponds to 164,594 people in Wyoming, compared to 615,848 people in California.<sup>46</sup> This argument is arithmetically and legally correct, but it does not reflect political reality. A vote in a small state such as Wyoming and a vote in a large state such as California simply do not matter because everyone knows, well in advance of the voting in November, which candidate will win the electoral votes from those states. From the perspective of presidential candidates operating under the winner-take-all system, a vote in Wyoming is equal to a vote in California in presidential elections—*both are equally worthless*.

Third, there has been long-standing support for nationwide popular election among the public and from members of Congress in both political parties from small, medium, and large states in all parts of the country. As shown in appendix S of this book, there has been at least one Senator or Representative in each of the 50 states who has either sponsored a bill for nationwide popular election or voted for nationwide popular election of the President in a roll call vote in Congress.

## 1.5 ROADMAP OF THIS BOOK

Chapter 2 of this book describes the current system of electing the President, including the federal constitutional and statutory provisions that govern presidential elections (section 2.1). Section 2.2 reviews the history of the various methods that the states have used over the years to elect their presidential electors, and section 2.3 discusses present-day methods.

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<sup>46</sup> Wyoming has a population of 493,782 (according to the 2000 federal census) and has three electoral votes (one warranted by population plus its two-vote bonus). California (with a population of 33,871,648) has 55 electoral votes (53 warranted by population plus its two-vote bonus). Thus, one electoral vote corresponds to 164,594 people in Wyoming, compared to 615,848 people in California.

The chapter also discusses the certification of the popular vote for President by the states (section 2.4), the meeting of the Electoral College in mid-December (section 2.5), the certification of the votes cast by the presidential electors (section 2.6), and the counting of the electoral votes in Congress (section 2.7). The chapter also covers write-in voting for President (section 2.8), voting for individual presidential electors (section 2.9), fusion voting in presidential races (section 2.10), unpledged presidential electors (section 2.11), and faithless presidential electors (section 2.12).

Chapter 2 identifies five salient features of present-day presidential elections that did not exist or that were not prominent at the time of ratification of the U.S. Constitution, namely

- popular voting for presidential electors,
- the non-deliberative nature of the Electoral College,
- the statewide winner-take-all rule,
- nomination of presidential candidates by political parties,
- and
- the short presidential ballot.

As chapter 2 demonstrates, these present-day features of the system evolved over a period of many decades as a result of the piecemeal passage of laws by individual states and the emergence of political parties. As summarized in section 2.13, none of these features is contained in the U.S. Constitution or any federal law. None reflects a consensus of the Founding Fathers. None came into being because of the adoption of any federal constitutional amendment. Instead, these features came into existence because the states used the built-in flexibility of the Constitution to make them part of our present-day political landscape.

Chapter 3 examines the three most prominent approaches to presidential election reform that have been proposed in the form of a federal constitutional amendment, including

- fractional proportional allocation of electoral votes (section 3.1),
- district allocation of electoral votes (section 3.2), and
- nationwide popular election (section 3.3).

Each of these three proposed approaches is examined in light of three criteria:

- whether the proposed approach accurately reflects the nationwide popular vote;
- whether the proposed approach makes every state competitive; and
- whether every vote is equal.

Chapter 4 examines the two most prominent approaches to presidential election reform that can be enacted at the state level (i.e., without a federal constitutional amendment and without action by Congress), namely

- the whole-number proportional approach (section 4.1), and
- the congressional-district approach (section 4.2).

Again, each proposed approach is examined in light of the above three criteria.

Chapter 5 provides background on interstate compacts—the contractual arrangement authorized in the Constitution by which states can act in concert to address an issue that cannot be readily solved by unilateral action. The chapter begins with the constitutional basis for interstate compacts starting with the Articles of Confederation (section 5.1), the legal standing of compacts (section 5.2), and the history of compacts (section 5.3). The chapter then covers the wide variety of subjects addressed by compacts (section 5.4), the variety of parties that may participate in compacts (section 5.5), the procedures for drafting, negotiating, and formulating compacts (section 5.6), the methods by which a state may adopt an interstate compact (section 5.7), and the contingent nature of compacts (section 5.8). Section 5.9 discusses congressional involvement in interstate compacts and the process of congressional consent; section 5.10 discusses the effect of congressional consent; section 5.11 gives examples of compacts that are contingent on the enactment of federal legislation; and section 5.12 gives examples of compacts that do not require congressional consent. Section 5.13 discusses enforcement of compacts; section 5.14 discusses amendments to compacts; section 5.15 discusses the duration of compacts and the process of terminating and withdrawing from compacts; section 5.16 discusses administration of compacts; and section 5.17 discusses the style of drafting compacts. Section 5.18 compares treaties and compacts; section 5.19 compares uni-

form state laws and compacts; and section 5.20 compares federal multi-state commissions and compacts. The future of interstate compacts is discussed in section 5.21.

Chapter 6 presents the authors' proposal to reform the presidential election process—an interstate compact entitled the “Agreement Among the States to Elect the President by National Popular Vote.” The compact is a proposed state law. The compact would not become immediately effective when any one or two states enact it. Instead, the compact would come into effect only after it is enacted by states collectively possessing a majority of the electoral votes (i.e., 270 of the 538 electoral votes).

The proposed compact would not change any state's internal procedures for conducting or counting its presidential vote. After the people cast their ballots in early November of presidential election years, the popular vote counts from all 50 states and the District of Columbia would be added together to obtain a national grand total for each presidential slate. At the present time, the Electoral College reflects the voters' state-by-state choices for President or, in the cases of Maine and Nebraska, the voters' district-wide choices. The compact would change the Electoral College from an institution that reflects the voters' state-by-state choices or district-wide choices into a body that reflects the voters' nationwide choice. Specifically, the proposed compact specifies that each member state will award all of its electoral votes to the presidential candidate who received the largest total number of popular votes in all 50 states and the District of Columbia. Because the compact would become effective only when it encompasses states collectively possessing a majority of the electoral votes, the presidential candidate receiving the most popular votes in all 50 states and the District of Columbia would be guaranteed enough electoral votes in the Electoral College to be elected.

Note that membership in the proposed compact is not required for the popular votes of a state to count. Every state's popular vote is included on an equal footing in the nationwide total regardless of whether the state is a member of the compact. Note also that the political complexion of the states belonging to the compact does not affect the outcome produced by the compact. The presidential candidate receiving the most popular votes in all 50 states and the District of Columbia is ensured enough electoral votes (that is, at least 270 of the 538) to be elected

to the Presidency regardless of what states happen to belong to the compact.

Chapter 7 outlines a possible timeline for securing adoption of the proposed interstate compact.

Chapter 8 addresses several legal questions concerning the proposed interstate compact, namely

- Is the subject matter of the proposed compact appropriate for an interstate compact (section 8.1)?
- May the citizen-initiative process be used to enact interstate compacts in general (section 8.2)?
- May the citizen-initiative process be used to enact a state law concerning the manner of choosing presidential electors (section 8.3)?
- Does the proposed compact encroach on the power of non-member states (section 8.4)?
- Does the proposed compact impermissibly delegate a state's sovereign power (section 8.5)?
- Is the six-month blackout period for withdrawals from the proposed compact enforceable (section 8.6)?

Chapter 9 addresses various administrative aspects of the proposed interstate compact.

- Does the proposed compact impose any significant additional financial cost or administrative burdens on a state's election officials (section 9.1)?
- How would recounts be handled (section 9.2)?

Chapter 10 is the epilogue.

## **1.6 SOURCES OF ADDITIONAL INFORMATION**

There is a large literature analyzing the arguments for and against the current electoral system and possible alternatives. This book limits its discussion of the various possible approaches to three criteria that seem particularly pertinent to the electoral system at the present time—namely whether a particular approach makes every state competitive in presidential elections; whether the approach accurately reflects the nationwide popular vote; and whether the approach makes every vote equal.

Additional information is available from a variety of sources. The congressional hearings held in 1967,<sup>47</sup> 1969,<sup>48,49,50</sup> 1975,<sup>51</sup> 1977,<sup>52</sup> 1979,<sup>53</sup> 1993,<sup>54</sup> and 1999<sup>55</sup> contain numerous detailed discussions of the current system and its alternatives from various experts, members of the public, organizations, and members of Congress. Books on these same subjects include:

<sup>47</sup> U.S. Senate Committee on the Judiciary. 1967. *Election of the President: Hearings on S.J. Res. 4, 7, 11, 12, 28, 58, 62, 138 and 139, 89th Congress; and S.J. Res. 2, 3, 6, 7, 12, 15, 21, 25, 55, 84, and 86.* 89th Congress, 2nd Session and 90th Congress, 1st Session. February 28–August 23, 1967. Washington, DC: U.S. Government Printing Office.

<sup>48</sup> U.S. House of Representatives Committee on the Judiciary. 1969. *Electoral College Reform: Hearings on H.J. Res. 179, H.J. Res. 181, and Similar Proposals to Amend the Constitution Relating to Electoral College Reform.* 91st Congress, 1st Session. February 5, 6, 19, 20, 26, and 27; March 5, 6, 12, and 13, 1969. Washington, DC: U.S. Government Printing Office.

<sup>49</sup> U.S. Senate Committee on the Judiciary. 1969. *Electing the President: Hearings on S.J. Res. 1, S.J. Res. 2, S.J. Res. 4, S.J. Res. 12, S.J. Res. 18, S.J. Res. 20, S.J. Res 25, S.J. Res. 30, S.J. Res 31, S.J. Res 33, S.J. Res 71, and S.J. Res 72 to Amend the Constitution Relating to Electoral College Reform.* 91st Congress, 1st Session. January 23–24, March 10, 11, 12, 13, 20, 21, April 30, May 1–2, 1969. Washington, DC: U.S. Government Printing Office.

<sup>50</sup> U.S. Senate Committee on the Judiciary. 1969. *Direct Popular Election of the President: Report, with Additional Minority, Individual, and Separate Views on H.J. Res. 681, Proposing an Amendment to the Constitution of the United States Relating to the Election of the President and Vice President.* 91st Congress, 1st Session. Washington, DC: U.S. Government Printing Office.

<sup>51</sup> U.S. Senate Committee on the Judiciary. 1975. *Direct Popular Election of the President: Report (to Accompany S.J. Res. 1).* 94th Congress, 1st Session. Washington, DC: U.S. Government Printing Office.

<sup>52</sup> U.S. Senate Committee on the Judiciary. 1977. *The Electoral College and Direct Election: Hearings on the Electoral College and Direct Election of the President and Vice President (S.J. Res. 1, 8, and 18): Supplement.* 95th Congress, 1st Session. July 20, 22, and 28, and August 2, 1977. Washington, DC: U.S. Government Printing Office.

<sup>53</sup> U.S. Senate Committee on the Judiciary. 1979. *Direct Popular Election of the President and Vice President of the United States: Hearings on S.J. Res. 28, Joint Resolution Proposing an Amendment to the Constitution to Provide for the Direct Popular Election of the President and Vice President of the United States.* 96th Congress, 1st Session. March 27 and 30, April 3 and 9, 1979. Washington, DC: U.S. Government Printing Office.

<sup>54</sup> U.S. Senate Committee on the Judiciary. 1993. *The Electoral College and Direct Election of the President: Hearing on S.J. Res. 297, S.J. Res. 302, and S.J. Res 312, Measures Proposing Amendments to the Constitution Relating to the Direct Election of the President and Vice President of the United States.* 102nd Congress, 2nd Session. July 22, 1992. Washington, DC: U.S. Government Printing Office.

<sup>55</sup> U.S. House Committee on the Judiciary. 1999. *Proposals for Electoral College Reform: Hearing on H.J. Res. 28 and H.J. Res. 43.* 105th Congress, 1st Session. September 4, 1997. Washington, DC: U.S. Government Printing Office.

- *Wrong Winner: The Coming Debacle in the Electoral College* by David Abbott and James P. Levine (1991),<sup>56</sup>
- *Choice of the People? Debating the Electoral College* by Judith A. Best (1996),<sup>57</sup>
- *The Case Against Direct Election of the President: A Defense of the Electoral College* by Judith Vairo Best (1975),<sup>58</sup>
- *Why the Electoral College Is Bad for America* by George C. Edwards III (2004),<sup>59</sup>
- *The Importance of the Electoral College* by George Grant (2004),<sup>60</sup>
- *Securing Democracy: Why We Have an Electoral College*, a collection of articles edited by Gary L. Gregg II (2001),<sup>61</sup>
- *The Electoral College* by Suzanne LeVert (2004),<sup>62</sup>
- *The Politics of Electoral College Reform* by Lawrence D. Longley and Alan G. Braun (1972),<sup>63</sup>
- *The People's President: The Electoral College in American History and Direct-Vote Alternative* by Neal R. Peirce (1968),<sup>64</sup>
- *Enlightened Democracy: The Case for the Electoral College* by Tara Ross (2004),<sup>65</sup>

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<sup>56</sup> Abbott, David W. and Levine, James P. 1991. *Wrong Winner: The Coming Debacle in the Electoral College*. Westport, CT: Praeger.

<sup>57</sup> Best, Judith A. 1996. *Choice of the People? Debating the Electoral College*. Lanham, MD: Rowman & Littlefield.

<sup>58</sup> Best, Judith Vairo. 1975. *The Case Against Direct Election of the President: A Defense of the Electoral College*. Ithaca, NY: Cornell University Press.

<sup>59</sup> Edwards, George C. III. 2004. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press.

<sup>60</sup> Grant, George. 2004. *The Importance of the Electoral College*. San Antonio, TX: Vision Forum Ministries.

<sup>61</sup> Gregg, Gary L. II (editor). 2001. *Securing Democracy: Why We Have an Electoral College*. Wilmington, DE: ISI Books.

<sup>62</sup> LeVert, Suzanne. 2004. *The Electoral College*. New York, NY: Franklin Watts.

<sup>63</sup> Longley, Lawrence D. and Braun, Alan G. 1972. *The Politics of Electoral College Reform*. New Haven, CT: Yale University Press.

<sup>64</sup> Peirce, Neal R. 1968. *The People's President: The Electoral College in American History and Direct-Vote Alternative*. New York, NY: Simon and Schuster.

<sup>65</sup> Ross, Tara. 2004. *Enlightened Democracy: The Case for the Electoral College*. Los Angeles, CA: World Ahead Publishing Company.

- *Choosing a President*, a collection of articles edited by Paul D. Schumaker and Burdett A. Loomis (2002),<sup>66</sup>
- *History of American Presidential Elections 1878–2001* an 11-volume collection of articles edited by Arthur M. Schlesinger, Jr. and Fred L. Israel (2002),<sup>67</sup>
- *A History of the Presidency from 1788 to 1897*<sup>68</sup> and *A History of the Presidency from 1897 to 1916* by Edward Stanwood (1924),<sup>69</sup> and
- *The Electoral College* by Lucius Wilmerding (1958).<sup>70</sup>

Among books that have come out since the 2000 presidential election, the 2004 book *Enlightened Democracy: The Case for the Electoral College*<sup>71</sup> contains some of the clearest arguments supporting the existing system. On the other side of the argument, the 2004 book *Why the Electoral College Is Bad for America*<sup>72</sup> is noteworthy because it closely examines and analyzes many of the most commonly invoked arguments in favor of the existing system—such as protection of federalism and protection of state interests.

The Center for Voting and Democracy (FairVote) published two insightful reports on presidential elections in 2005:

- *The Shrinking Battleground: The 2008 Presidential Election and Beyond*<sup>73</sup> and
- *Who Picks the President?*<sup>74</sup>

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<sup>66</sup> Schumaker, Paul D. and Loomis, Burdett A. (editors). 2002. *Choosing a President*. New York, NY: Chatham House Publishers.

<sup>67</sup> Schlesinger, Arthur M., Jr. and Israel, Fred L. (editors). 2002. *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. 11 volumes.

<sup>68</sup> Stanwood, Edward. 1924. *A History of the Presidency from 1788 to 1897*. Boston, MA: Houghton Mifflin Company.

<sup>69</sup> Stanwood, Edward. 1916. *A History of the Presidency from 1897 to 1916*. Boston, MA: Houghton Mifflin Company.

<sup>70</sup> Wilmerding, Lucius, Jr. 1958. *The Electoral College*. Boston, MA: Beacon Press.

<sup>71</sup> Ross, Tara. 2004. *Enlightened Democracy: The Case for the Electoral College*. Los Angeles, CA: World Ahead Publishing Company.

<sup>72</sup> Edwards, George C. III. 2004. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press.

<sup>73</sup> FairVote. 2005. *The Shrinking Battleground: The 2008 Presidential Election and Beyond*. Takoma Park, MD: The Center for Voting and Democracy. [www.fairvote.org/shrinking](http://www.fairvote.org/shrinking).

<sup>74</sup> FairVote. 2005. *Who Picks the President?* Takoma Park, MD: The Center for Voting and Democracy. [www.fairvote.org/whopicks](http://www.fairvote.org/whopicks).

This book's bibliography contains numerous additional references to books about particular problematic elections (e.g., 1800, 1876, and 2000) as well as the history and operation of the present system over the years.

