

1 | Introduction

In elections for President and Vice President of the United States, every vote should be equal. The presidential candidate who receives the most popular votes throughout the United States should win the Presidency. Every voter in every state should be politically relevant in every election.

The current system for electing the President and Vice President does not satisfy the three principles above. This book presents a politically practical way—based on powers specifically delegated to the states by the U.S. Constitution—by which presidential elections can be brought into conformity with these three principles.



Figure 1.1 Herb Block cartoon of October 7, 1948¹

¹ The Herb Block Foundation is gratefully acknowledged for permission to use the copyrighted Herb Block cartoon in Figure 1.1.

This chapter

- describes what the U.S. Constitution says—and, more important, *does not say*—about how presidential elections are to be run (section 1.1),
- highlights three significant shortcomings of the current system for electing the President and identifies their common cause, namely state-by-state winner-take-all statutes (section 1.2),
- identifies nationwide popular election as a remedy for the current system’s three shortcomings (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 politically most important aspects of the system for electing the President of the United States are not established by the U.S. Constitution. Instead, the Constitution delegates the power to make those decisions to the states.

The Constitution specifies that the President and Vice President are to be chosen every four years by a small group of people (currently 538²) who are individually referred to as “presidential electors.” The presidential electors are collectively referred to as the “Electoral College” (although this term does not appear in the Constitution).

The U.S. Constitution delegates the power to choose the method of appointing presidential electors to the states. Section 1 of Article II states:

“The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, 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.”³ [Emphasis added]

² 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 as a result of 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 (currently 435) is set by federal statute.

³ U.S. Constitution, Article II, section 1, clauses 1 and 2.

The U.S. Constitution also contains procedural and administrative provisions concerning various aspects of presidential elections,⁴ including

- the establishment of the date for appointing presidential electors and the meeting date for the Electoral College,⁵
- the majority required in the Electoral College to elect the President and Vice President,⁶
- the conduct of the “contingent election” in the event that no candidate receives the required majority in the Electoral College,⁷
- the procedure by which presidential electors cast their votes,⁸ and
- the procedures for communicating each state’s votes to Congress and the procedures by which Congress counts the electoral votes.⁹

The U.S. Constitution is silent about the two politically most important aspects of modern-day presidential elections, namely

- whether voters have any direct voice in electing presidential electors, and
- whether votes for the office of presidential elector should be counted using the winner-take-all rule (that is, all of a state’s electoral votes are awarded to the presidential candidate who receives the most popular votes in each separate state).

⁴ For the reader’s convenience, appendix A contains all the provisions of the U.S. Constitution relating to presidential elections. Appendix B contains the federal statutes governing presidential elections.

⁵ Article II, section 1, clause 4 of the U.S. Constitution states, “The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

⁶ In order to be elected, a presidential candidate must win the votes of an absolute majority of the presidential electors who have been “appointed” (See U.S. Constitution, Article II, section 1, clause 3 and the 12th Amendment). Assuming that all states appoint their presidential electors, that requirement currently means winning 270 of the 538 electoral votes. In 1789, New York failed to appoint its electors for the nation’s first presidential election because of a disagreement between the two houses of the legislature as to procedure (joint convention versus concurrent resolution) by which the legislature would appoint the state’s presidential electors. During the Civil War, the 11 Southern states failed to appoint their electors for the 1864 election because they claimed to be outside of the Union.

⁷ According to Article II, section 1, clause 3 of the U.S. Constitution (restated in the 12th Amendment), if no presidential candidate receives an absolute majority of the electors “appointed,” the U.S. House of Representatives chooses the President in a “contingent election” (with each state casting one vote regardless of the size of its congressional delegation). In the contingent election for President under the original Constitution, the House had to choose among the top five candidates, but under the 12th Amendment, the House chooses among the top three. Under the original Constitution, the second-place candidate (even if he lacked an absolute majority, as John Adams did in 1789) became Vice President, with the U.S. Senate breaking a tie for second place. Under the 12th Amendment, if no vice-presidential candidate receives an absolute majority of the electors “appointed,” the U.S. Senate chooses the Vice President between the top two candidates (with each Senator casting one vote).

⁸ Under the original Constitution, each presidential elector cast two votes, with the leading candidate becoming President, and the second-place candidate becoming Vice President. The 12th Amendment to the Constitution (ratified in 1804) changed this procedure so that each presidential elector casts a separate vote for President and Vice President.

⁹ The 12th Amendment (ratified in 1804) modified and restated certain aspects of the casting, recording, and counting of electoral votes.

Specifically, the U.S. Constitution says nothing about issues such as:

(1) Who Votes for Presidential Electors?

- Should the nation’s voters have a direct voice in choosing the presidential electors (as they did in only six states in the nation’s first presidential election in 1789)?
- Or should the state legislature appoint the presidential electors (as they did in three states in 1789)?
- Or should the governor and his cabinet appoint the state’s presidential electors (as was the case in New Jersey in 1789)?

(2) What Is the Method for Counting the Votes Cast for Presidential Electors?

- If the nation’s voters are permitted to vote directly for the presidential electors, are their votes counted on a statewide winner-take-all basis (as they were in only three states in 1789)?
- Should the voters choose presidential electors from specially created presidential-electors districts (as was the case in Virginia in 1789)?
- Or from each state’s congressional districts?
- Or from regional multi-member districts?
- Or should they be elected in proportion to the statewide division of the popular vote?
- Is an absolute majority of the popular vote necessary to choose presidential electors (and, if so, what happens if a candidate receives only a plurality)?
- If the legislature is to appoint the presidential electors, should it meet in a joint convention of its two houses, or should the appointment require approval of each house separately (a concurrent resolution)?

The U.S. Constitution’s 17-word delegation of power to the states does not provide any guidance concerning these politically important questions. It simply states:

“Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors . . . ”¹⁰ [Emphasis added]

The Constitution’s delegation of power to the states concerning the conduct of presidential elections differs significantly from the Constitution’s delegation of power to the states concerning the conduct of congressional elections.

“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. . . .**”¹¹ [Emphasis added]

¹⁰ U.S. Constitution, Article II, section 1, clause 2.

¹¹ U.S. Constitution, Article I, section 4, clause 1.

State power over congressional elections is subject to congressional veto, whereas state power over presidential elections is complete (plenary).

The U.S. Supreme Court has characterized state power concerning the choice of manner of appointing presidential electors as “exclusive” and “plenary.” As the Court wrote in the 1892 case of *McPherson v. Blacker*—the leading case on the manner of appointing presidential electors:

“[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.”^{12,13}

“In short, the appointment and mode of appointment of electors belong **exclusively** to the states under the constitution of the United States.”¹⁴
[Emphasis added]

In the only decision on this subject at the state level, the Maine Supreme Judicial Court wrote in a 1919 case involving a state statute entitled “An act granting to women the right to vote for presidential electors”:

“[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. . . .”¹⁵ [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 (notably, voting by the people and the state-by-state winner-take-all rule) did not come into widespread use until decades after the Founders died.

- (1) **Who Votes for Presidential Electors?** In the nation’s first presidential election in 1789, only six states permitted the voters to elect the state’s presidential electors. In many states, there was no election for President at all. In New Jersey, the Governor and his Council appointed the state’s presidential electors. In many states, the legislature appointed the presi-

¹² *McPherson v. Blacker*. 146 U.S. 1 at 36. 1892.

¹³ 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).

¹⁴ *McPherson v. Blacker*. 146 U.S. 1 at 29. 1892.

¹⁵ In re *Opinion of the Justices*, 107 A. 705. 1919.

dential electors. In the nation’s second presidential election in 1792, the Vermont Governor and his Council and the state House of Representatives appointed the presidential electors.¹⁶ Over a period of decades, the state legislatures gradually empowered their voters to vote directly for presidential electors. By 1836, the voters elected the presidential electors in all states except South Carolina. Between 1836 and 1876, there was never more than one state in any given presidential election where the voters did not elect the state’s presidential electors. No state legislature has appointed presidential electors since Colorado did so in 1876.¹⁷

- (2) **What Is the Method for Counting the Votes Cast for Presidential Electors?** In 1789, only three states awarded their electoral votes using a method that resembles the system that is now used by 48 states, namely the statewide “winner-take-all” rule (also called the “unit rule” or “general ticket”). In 1789, Virginia elected presidential electors in specially created presidential elector districts, thereby creating the possibility that minority sentiment within the state could win some of the state’s electoral votes. At various times in other states, voters elected presidential electors from congressional districts, by county, or from multi-member regional districts. Several states occasionally used indirect methods. In 1828, some of New York’s presidential electors were chosen by other presidential electors.¹⁸ In Tennessee in 1796, a miniature state-level Electoral College chose the state’s national members of the Electoral College.¹⁹ Today, the voters in Maine and Nebraska elect presidential electors by congressional district.

Neither popular voting for presidential electors nor the state-by-state winner-take-all rule came into existence by amending the U.S. Constitution. Instead, these now-familiar features came into existence on a piecemeal basis as a result of states using the flexibility that the Founders built into the Constitution. In particular, the winner-take-all rule was created by state law and, therefore, may be repealed by state law.

The politics behind the adoption by the states of the winner-take-all rule is instructive. As the U.S. Supreme Court noted in its historical review of presidential elections in *McPherson v. Blacker*, many of the Founding Fathers considered the district system (such as that used by Virginia in the nation’s first presidential election in 1789) to be “the most equitable.”²⁰

¹⁶ There was no Vermont Senate until 1836.

¹⁷ Section 2.2 provides additional details on the history of methods of selecting presidential electors.

¹⁸ In 1828, the New York legislature created an indirect system in which the state’s two senatorial presidential electors were elected by the presidential electors chosen by the voters from each of the state’s congressional districts. See section 2.2.4.

¹⁹ As detailed in section 2.2.2, in 1796 in Tennessee, specific citizens from various groups of counties were named in a state law, and those specifically named individuals then chose the state’s presidential electors.

²⁰ *McPherson v. Blacker*, 146 U.S. 1 at 29. 1892.

The three states that used the winner-take-all rule in the nation's first presidential election in 1789 had abandoned it by 1800.²¹

However, a counter-trend developed in favor of the winner-take-all rule.

As early as the nation's first competitive presidential election (1796), it had become clear to political observers that the district system divided a state's electoral votes and thereby diminished the influence of the state's dominant political party. 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.**”²² [Emphasis added]

In 1798, Virginia Republicans became further alarmed by the fact that the Federalists won eight of Virginia's 19 congressional races.²³

On January 12, 1800, Thomas Jefferson (the losing Republican²⁴ candidate from the 1796 presidential election) wrote James Monroe (then a member of the legislature in Jefferson's home state of Virginia):

“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.”^{25,26} [Emphasis added; spelling and punctuation per original]

²¹ Maryland, Pennsylvania, and New Hampshire.

²² Cunningham, Noble E., Jr. 2002. In Schlesinger, Arthur M., Jr. and Israel, Fred L. (editors). *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. Pages 104–105. See section 2.2.2 for additional details on the 1796 election.

²³ Ferling, John. 2004. *Adams vs. Jefferson: The Tumultuous Election of 1800*. Oxford, UK: Oxford University Press. Page 156.

²⁴ Jeffersonians were known as “Republicans” or “Democratic-Republicans,” and eventually “Democrats.”

²⁵ 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.

²⁶ In an August 23, 1823, letter from James Madison to George Hay, Madison referred to the winner-take-all rule as “the only expedient for baffling the policy of the particular States which had set the example.” Madison wrote, “I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of

The result, as described by Cunningham was that:

“In January 1800, the Republican-controlled legislature of Virginia passed an act providing for the election of presidential electors on a **general ticket instead of by districts** as in previous elections. By changing the election law, Republicans in Virginia, confident of carrying a majority of the popular vote throughout the state but fearful of losing one or two districts to the Federalists, ensured the entire electoral vote of the Union’s largest state for the Republican candidate.”²⁷ [Emphasis added]

This politically motivated change ensured Jefferson 100% of his home state’s electoral votes in the 1800 election.

Of course, the Republicans were not the only politicians who had a keen eye for political advantage. The Federalists unexpectedly lost control of the New York legislature in April 1800. Under New York’s existing law, the legislature had empowered itself to appoint all of the state’s presidential electors. The loss of control of the legislature meant that the Federalists would lose all 12 of New York’s electoral votes when the new legislature was scheduled to meet later in the year to choose the state’s presidential electors.²⁸ As John Ferling wrote in *Adams vs. Jefferson: The Tumultuous Election of 1800*:

“Jarred by the specter of defeat in the autumn [Federalist Alexander] Hamilton importuned Governor John Jay to call a special session of the Federalist-dominated New York legislature so that it might act before the newly elected assemblymen took their seats [on July 1]. Hamilton’s plan was for the outgoing assembly to enact legislation providing for the popular election—in districts—of the state’s presidential electors, a ploy virtually guaranteed to ensure that the Federalists would capture nine or ten of the twelve electoral college slots.”²⁹

As Alexander Hamilton put it in his letter to Governor John Jay on May 7, 1800:

“The moral certainty therefore is, that there will be an anti-federal majority in the ensuing legislature; and the very high probability is, that this will

President by the H. of Reps. The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative election, as the only expedient for baffling the policy of the particular States which had set the example.” From Kurland, Philip B., and Lehner, Edward. *The Founder’s Constitution*. Published on the web at http://press-pubs.uchicago.edu/founders/documents/a2_1_2-3s10.html.

²⁷ Cunningham, Noble E., Jr. 2002. In Schlesinger, Arthur M., Jr. and Israel, Fred L. (editors). *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. Page 105.

²⁸ Weisberger, Bernard A. 2001. *America Afire: Jefferson, Adams, and the First Contested Election*. New York, NY: William Morrow. Page 238.

²⁹ Ferling, John. 2004. *Adams vs. Jefferson: The Tumultuous Election of 1800*. Oxford, UK: Oxford University Press. Page 131.

bring Jefferson into the chief magistracy, unless it be prevented by the measure which I now submit to your consideration, namely, the immediate calling together of the existing legislature.

“I am aware that there are weighty objections to the measure; but the reasons for it appear to me to outweigh the objections. And in times like these in which we live, **it will not do to be over-scrupulous.** It is easy to sacrifice the substantial interests of society by a strict adherence to ordinary rules.

“In observing this, I shall not be supposed to mean that anything ought to be done which integrity will forbid; but merely that the **scruples of delicacy and propriety**, as relative to a common course of things, **ought to yield to the extraordinary nature of the crisis.** They ought not to hinder the taking of a legal and constitutional step to prevent an atheist in religion, and a fanatic in politics, from getting possession of the helm of State.”³⁰ [Emphasis added]

Hamilton did not get his way. Governor Jay (a former Chief Justice of the United States) wrote the following notation on Hamilton’s letter:

“Proposing a measure for party purposes which it would not become me to adopt.”³¹

Ironically, *prior* to the April 1800 legislative elections, New York Republicans—believing that the district system would be advantageous for them—had unsuccessfully urged the Federalist-controlled legislature to switch from legislative appointment of presidential electors to popular election using districts. As it turned out, a shift of only five electoral votes from Jefferson to Adams in the 1800 election would have resulted in Adams’ re-election. Had the Federalists agreed to the Republican’s earlier proposal, “an atheist in religion, and a fanatic in politics” (namely Thomas Jefferson) would not have won all 12 of New York’s electoral votes (and, ultimately, the presidency) in the 1800 election.

Over a period of years, the states—one by one—gravitated to the statewide winner-take-all rule to avoid the “folly” of fragmenting their electoral votes. The compelling reason for this change was that the political party that controlled the governorship and legislature in a particular state was generally confident of winning the statewide vote for President (but almost never confident of winning every single dis-

³⁰ The complete letter can be found in *Brief of F.A. Baker for Plaintiffs in Error in McPherson v. Blacker*. 1892. Pages 30–31. See also Cunningham, Noble E., Jr. 1957. *Jeffersonian Republicans: The Formation of Party Organizations*. Chapel Hill, NC: University of North Carolina Press. Page 185. See also Weisberger, Bernard A. 2001. *America Afire: Jefferson, Adams, and the First Contested Election*. William Morrow. Page 239.

³¹ *Brief of F.A. Baker for Plaintiffs in Error in McPherson v. Blacker*. 1892. Page 31.

trict within the state). As more and more states adopted the winner-take-all rule, the winner-take-all rule seemed to make more and more sense to the remaining states.

As James Madison wrote to George Hay in 1823:

“The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & **was exchanged for the general ticket & the legislative election, as the only expedient for baffling the policy of the particular States which had set the example.**”³² [Emphasis added]

It can be seen, in retrospect, that the emergence of national political parties in 1796, in conjunction with the Constitution’s 17-word delegation of power to the states, made it almost inevitable that the statewide winner-take-all rule would become the predominant method of choosing presidential electors.

Thus, by 1836, all but one state had adopted the concept of popular election of presidential electors using the statewide winner-take-all rule.³³

All the states used the statewide winner-take-all rule in the lengthy period between 1868 and 1968 with three isolated exceptions (namely legislative appointment in Florida in 1868 and Colorado in 1876 and district-level elections in Michigan in 1892).

Maine (in 1969) and Nebraska (in 1992) broke this pattern and adopted laws that awarded one electoral vote to the presidential candidate carrying each congressional district (and two electoral votes to the candidate carrying the state). In the 11 presidential elections in which the congressional-district approach has been used in Maine, the presidential candidate carrying the state also carried both of the state’s two districts. In the six elections in which the congressional-district approach has been used in Nebraska, there has been one occasion where one of Nebraska’s three districts was won by a candidate who did not carry the state (namely, Barack Obama in 2008).

The present-day state laws in Maine and Nebraska are reminders of the flexibility that the Founders built into the U.S. Constitution. These laws are reminders that the manner of awarding electoral votes is strictly a matter of state law. They are also reminders that a federal constitutional amendment is not necessary to change the way states award their electoral votes. Most importantly, they are reminders that the winner-take-all rule may be repealed by any state in the same manner as it was originally enacted, namely by passage of a different 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:

³² Letter from James Madison to George Hay on August 23, 1823. http://press-pubs.uchicago.edu/founders/documents/a2_1_2-3s10.html.

³³ The South Carolina legislature continued to elect the state’s presidential electors until 1860. See chapter 2 for a detailed history of the proliferation of the statewide winner-take-all rule.

- **Voters Are Effectively Disenfranchised in Four-Fifths of the States in Presidential Elections.** One of the consequences of the statewide winner-take-all rule (i.e., awarding all of a state’s electoral votes to the presidential candidate who receives the most popular votes in each separate state) is that presidential candidates do not campaign in states in which they are comfortably ahead or hopelessly behind. Presidential candidates ignore such states because they do not receive additional or fewer electoral votes based on the margin by which they win or lose those states. The result is that 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 value of a vote in presidential elections depends on whether *other* voters in the voter’s state happen to be closely divided. Between 1988 and 2008, about two-thirds of the states were ignored by presidential campaigns. Four-fifths of the states were ignored in 2012. Twelve of the 13 least-populous states are spectator states,³⁴ including six that have regularly gone Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota) and six that have regularly gone Democratic (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia).³⁵
- **The Current System Does Not Reliably Reflect the Nationwide Popular Vote.** The statewide winner-take-all rule makes it possible for a candidate to win the presidency without winning the most popular votes nationwide. This has occurred in four of the nation’s 56 presidential elections—1 in 14 (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 1,000-to-1 and more in the weight of a vote (as detailed in section 1.2.3).

³⁴ The non-battleground states are sometimes called “spectator” states, “fly-over” states, “wall flower” states, “dark” states (in reference to the absence of TV advertising), “orphan” states, or simply “dead” states.

³⁵ There are 13 states with just one or two U.S. House members (and hence three or four electoral votes). Of the 13 least populous states, only New Hampshire has been a closely divided battleground state in recent presidential elections (having gone Republican in 1988 and 2000, and Democratic in 1996, 2004, 2008, and 2012). The small states tend to be noncompetitive because they are apt to be one-party states in terms of presidential elections.

1.2.1 VOTERS IN FOUR-FIFTHS OF THE STATES ARE EFFECTIVELY DISENFRANCHISED

Most people who follow politics are aware of the fact that presidential campaigns are concentrated in a handful of closely divided battleground states; however, many people are not aware of the extreme degree of this concentration.

Although there is no precise definition of a “battleground” state, these states can be readily identified in practice by simply observing where presidential candidates campaign, where they spend their money (on advertising and organizational activities), and where they closely watch public opinion (through polls, focus groups, and other means).

Presidential candidates pay almost no attention to the concerns of voters in states that are not closely divided. In fact, they do not even bother to poll public opinion in spectator states. 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.”^{36,37}

2004 Presidential Election

One way to identify battleground states is to “follow the money.”

In 2004, 99% of the \$237,423,744 reported advertising money in the last month of the campaign was spent in only 17 states.

Table 1.1 lists the 17 states in order of per capita spending.³⁸

The nine states where spending exceeded \$2.00 per capita 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 almost three quarters (72%) of the money.

A mere 1% of the money was spent in the remaining states and the District of Columbia. Nothing at all was spent in 23 states.

Advertising expenditures were similarly concentrated during the earlier part of the presidential campaign period.³⁹

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

³⁶ Cook, Charlie. 2004. Convention dispatches—As the nation goes, so do swing states. *Charlie Cook’s Political Report*. August 31, 2004.

³⁷ Kerry similarly pursued an 18-state strategy in 2004.

³⁸ 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. <http://www.fairvote.org/whopicks>. See also <http://www.cnn.com/ELECTION/2004/special/president/campaign.ads/>.

³⁹ 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 1.1 THE 17 STATES RECEIVING 99% OF THE ADVERTISING MONEY AT THE HEIGHT OF THE 2004 PRESIDENTIAL CAMPAIGN

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
	Total	\$235,416,458

last month of the 2004 campaign. These 307 events were concentrated in 27 states.⁴⁰ If one excludes from consideration the six states receiving only one visit,⁴¹ the home states of the four candidates,⁴² and the District of Columbia (where all four candidates had day jobs),⁴³ all the remaining events (92% of the 307) were concentrated in just 16 states (as shown in table 1.2). Two-thirds of the events (200 of 307) were concentrated in Florida, Ohio, Iowa, Wisconsin, and Pennsylvania—the same five states that accounted for three quarters of the money. In general, campaign events and campaign spending are closely correlated in presidential campaigns.

Table 1.2 shows that 35 (over two-thirds) of the 51 jurisdictions entitled to vote in

⁴⁰ For simplicity, we frequently 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.”

⁴¹ Hawaii, Kansas, Maine, Maryland, West Virginia, and New York.

⁴² There were four events in Texas (Bush’s home state) and Massachusetts (Kerry), three in Wyoming (Cheney), and two in North Carolina (Edwards). None of these states was considered to be “in play” in the 2004 presidential election.

⁴³ There were six events in the District of Columbia.

Table 1.2 THE 16 STATES RECEIVING 92% OF THE CANDIDATE VISITS AT THE HEIGHT OF THE 2004 PRESIDENTIAL CAMPAIGN

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
Total	282

presidential elections (that is, the 50 states and the District of Columbia) cumulatively received only 8% of the campaign events. Over half received no campaign events at all.

Not surprisingly, this concentration of polling, advertising, and travel corresponds closely to the states where the presidential election was expected to be 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.⁴⁴

Table 1.4 and figure 1.2 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 1.2 together represent 182 electoral votes—34% of the total (538).

To put it another way, states possessing the remaining 356 electoral votes (66% of the total) received little or no attention in the presidential election.

⁴⁴ 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 Democratic outcome in 2000 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 only a few top-tier battleground states.

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%
Total	200	

The “Electoral College scorecard” periodically published by the *Cook Political Report* provides another way to view presidential races and, in particular, to identify top-tier battleground states and second-tier battleground states.

On July 6, 2004, Charlie Cook listed the following 33 jurisdictions as being safe for one candidate or another. These 33 jurisdictions had 347 electoral votes (64% of the 538 electoral votes). That is, starting right at the beginning of the presidential contest, two-thirds of the states were safe for one candidate or another. Approximately two-thirds of the population of the United States lived in those states.

- **Solid Kerry:** States with 92 electoral votes were rated as “solid Kerry”—Connecticut, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, New York, and Rhode Island.
- **Likely Kerry:** 73 electoral votes were rated as “likely Kerry”—California, New Jersey, and Vermont.
- **Likely Bush:** 72 electoral votes were rated as “likely Bush”—Arizona, Arkansas, Georgia, Kentucky, Louisiana, Tennessee, and Virginia.

Table 1.4 SIXTEEN CLOSE STATES IN THE 2004 PRESIDENTIAL ELECTION

STATE	ELECTORAL VOTES	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%
Total	182	



Figure 1.2 Sixteen close states in the 2004 presidential election

- **Solid Bush:** 110 electoral votes were rated as “solid Bush”—Alabama, Alaska, Idaho, Indiana, Kansas, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming.

It was no surprise that, in November 2004, all 33 of these safe jurisdictions voted precisely as predicted in July.

Table 1.5 shows the remaining 18 states. The *Cook Political Report* listed five of these states as “lean Kerry,” 10 as “toss-up,” and three as “lean Bush.”

The 2004 presidential campaign then played out in these 18 battleground states. There were no surprises in November 2004 in any of the eight states (with 71 electoral votes) that Cook listed as “leaning” to one candidate or the other in table 1.5. All five of the states that Cook listed as “lean Kerry” in July 2004 ended up voting for Kerry in November. Similarly, all three states that Cook listed as “lean Bush” ended up voting for Bush. In other words, the net effect of the campaign in the eight “leaning” states (which were, in effect, “second-tier” battleground states) was to solidify and consolidate initial expectations. In November, the 10 “toss up” states (the “first tier” battleground states) decided the election.

As the 2004 campaign progressed, Cook’s assessment changed slightly from month to month. Cook’s August 16, 2004 scorecard (table 1.6) showed 17 battleground states. The states of Delaware and Washington were deemed safer for Kerry and therefore do not appear in this table. Arizona was deemed less safe for Bush and appeared in the “lean Bush” column. The 10 core battleground states remained the same as the previous (July 6) scorecard.

The September 10, 2004 scorecard (table 1.7) contained the same 17 battleground states as the previous (August 16) table. The only change was that Missouri moved from “toss up” to “lean Bush.”

The number of battleground states decreased by three in Cook’s September 27, 2004 scorecard (table 1.8) because Arizona, Missouri, and North Carolina appeared safe for Bush by that point in the campaign. Bush, in fact, carried all three in November. Colorado and West Virginia were moved from “lean Bush” to “toss up.”

In Cook’s October 4, 2004, scorecard (table 1.9), there were 15 battleground states because Washington was considered less safe for Kerry than in the previous (September 27) scorecard.

In the actual election in November, Kerry won all four of “lean Kerry” states as well as four of the 11 “toss up” states (Minnesota, New Hampshire, Pennsylvania, and Wisconsin). Bush won seven of the 11 remaining “toss up” states (Colorado, Florida, Iowa, Nevada, New Mexico, Ohio, and West Virginia). Thus, President Bush won reelection with a total of 286 electoral votes (16 more than the 270 needed for election).

The 41 jurisdictions that the *Cook Political Report* considered “solid,” “likely” or “leaning” to one candidate or other on its original July 6, 2004, scorecard ended up voting for the expected candidate.

Table 1.5 COOK'S 18 BATTLEGROUND STATES AS OF JULY 6, 2004

LEAN KERRY	TOSS UP	LEAN BUSH
Delaware	Florida	Colorado
Maine	Iowa	North Carolina
Michigan	Minnesota	West Virginia
Oregon	Missouri	
Washington	Nevada	
	New Hampshire	
	New Mexico	
	Ohio	
	Pennsylvania	
	Wisconsin	
42 electoral votes	120 electoral votes	29 electoral votes

Table 1.6 COOK'S 17 BATTLEGROUND STATES AS OF AUGUST 16, 2004

LEAN KERRY	TOSS UP	LEAN BUSH
Maine	Florida	Arizona
Michigan	Iowa	Colorado
Oregon	Minnesota	North Carolina
	Missouri	West Virginia
	Nevada	
	New Hampshire	
	New Mexico	
	Ohio	
	Pennsylvania	
	Wisconsin	
28 electoral votes	120 electoral votes	29 electoral votes

Table 1.7 COOK'S 17 BATTLEGROUND STATES AS OF SEPTEMBER 10, 2004

LEAN KERRY	TOSS UP	LEAN BUSH
Maine	Florida	Arizona
Michigan	Iowa	Colorado
Oregon	Minnesota	Missouri
	Nevada	North Carolina
	New Hampshire	West Virginia
	New Mexico	
	Ohio	
	Pennsylvania	
	Wisconsin	
28 electoral votes	109 electoral votes	50 electoral votes

Table 1.8 COOK'S 14 BATTLEGROUND STATES AS OF SEPTEMBER 27, 2004

LEAN KERRY	TOSS UP	LEAN BUSH
Maine	Colorado	
Michigan	Florida	
Oregon	Iowa	
	Minnesota	
	Nevada	
	New Hampshire	
	New Mexico	
	Ohio	
	Pennsylvania	
	West Virginia	
	Wisconsin	
28 electoral votes	123 electoral votes	0 electoral votes

Table 1.9 COOK'S 15 BATTLEGROUND STATES AS OF OCTOBER 4, 2004

LEAN KERRY	TOSS UP	LEAN BUSH
Maine	Colorado	
Michigan	Florida	
Oregon	Iowa	
Washington	Minnesota	
	Nevada	
	New Hampshire	
	New Mexico	
	Ohio	
	Pennsylvania	
	West Virginia	
	Wisconsin	
39 electoral votes	123 electoral votes	0 electoral votes

In short, the outcome of the 2004 presidential campaign was decided by a small number of battleground states (essentially the “first-tier” battleground states).

The Electoral College map for 2004 was strikingly similar to that in 2000. Only three states changed hands between 2000 and 2004. Kerry won New Hampshire in 2004, whereas Bush won it in 2000. Bush won New Mexico and Iowa in 2004, whereas Gore won those states in 2000.

In fact, the electoral map has changed very little in the five presidential elections between 1992 and 2008. In all five elections:

- 19 states with 242 electoral votes have voted Democratic and
- 13 states with 102 electoral votes have voted Republican.

A total of 41 states voted for the same party in four of the five elections. These 41 states possess approximately two-thirds (64%) of the electoral votes.

Forty-one states voted for the same party between 2000 and 2012.

Thirty-two states voted for the same party between 1992 and 2012 (table 9.41).

2008 Presidential Election

The degree of concentration on battleground states intensified in the 2008 presidential election.

As Professor George Edwards pointed out in his book *Why the Electoral College Is Bad for America*:

“Barack Obama campaigned in only fourteen states, representing only 33-percent of the American people, during the entire general election.”⁴⁵
[Emphasis added]

In that same post-convention period, John McCain campaigned in only 19 states.

Table 1.10 shows the states in which the presidential and vice-presidential candidates held their 300 post-convention general election campaign events in 2008. This table is based on the *Washington Post* campaign tracker and covers the period from September 5, 2008, to November 4.⁴⁶ The table is sorted according to the number of campaign events (with Ohio’s 62 events at the top). The same information is presented in table 9.1, where it is sorted according to each jurisdiction’s number of electoral votes. As can be seen from the table, only 19 states received any attention in the post-convention period.

Fourteen states received seven or more of the 300 post-convention general election campaign events in 2008.

- Ohio—62 events,
- Florida—46 events,
- Pennsylvania—40 events,
- Virginia—23 events,
- Missouri—21 events,
- Colorado—20 events,
- North Carolina—15 events,
- Nevada—12 events,
- New Hampshire—12 events,
- Michigan—10 events,⁴⁷
- Indiana—9 events,

⁴⁵ Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press. Second edition. Pages 3–5.

⁴⁶ This count is based on *public* campaign events (e.g., rallies, speeches, town hall meetings). It does not include private fund-raisers, private meetings (e.g., Palin’s meetings with world leaders in New York), non-campaign events (e.g., the Al Smith Dinner in New York City or the Clinton Global Initiative dinner), televised national debates (e.g., flying into Mississippi, New York, Tennessee, and Missouri just to participate in a debate), or interviews in television studios (e.g., flying into New York City to do an interview). A “visit” to a state may consist of one or more individual events held at different places and times within the state. A joint appearance of a presidential and vice-presidential candidate is counted as one event.

⁴⁷ On October 2, 2010, the McCain campaign abruptly pulled out of Michigan after it concluded that McCain could not win Michigan. Thus, Michigan appears on this list even though it was a “jilted battleground” state.

Table 1.10 POST-CONVENTION CAMPAIGN EVENTS IN 2008

ELECTORAL VOTES	STATE	CAMPAIGN EVENTS
20	Ohio	62
27	Florida	46
21	Pennsylvania	40
13	Virginia	23
11	Missouri	21
9	Colorado	20
15	North Carolina	15
4	New Hampshire	12
5	Nevada	12
17	Michigan	10
11	Indiana	9
5	New Mexico	8
10	Wisconsin	8
7	Iowa	7
4	Maine	2
10	Minnesota	2
3	D.C.	1
5	West Virginia	1
11	Tennessee	1
3	Wyoming	0
3	Vermont	0
3	North Dakota	0
3	Alaska	0
3	South Dakota	0
3	Delaware	0
3	Montana	0
4	Rhode Island	0
4	Hawaii	0
4	Idaho	0
5	Nebraska	0
5	Utah	0
6	Kansas	0
6	Arkansas	0
6	Mississippi	0
7	Connecticut	0
7	Oklahoma	0
7	Oregon	0
8	Kentucky	0
9	Louisiana	0
8	South Carolina	0
9	Alabama	0
10	Maryland	0
12	Massachusetts	0
10	Arizona	0
11	Washington	0
15	New Jersey	0
15	Georgia	0
21	Illinois	0
31	New York	0
34	Texas	0
55	California	0
538	Total	300

- New Mexico—8 events,
- Wisconsin—8 events, and
- Iowa—7 events.

These 14 closely divided battleground states accounted for 97.7% of the 300 post-convention campaign events in the 2008 general election campaign for President (that is, 293 of the 300 events).⁴⁸

Half of the 300 post-convention campaign events (148 of 300) were in just three states—Ohio (62 events), Florida (46 events), and Pennsylvania (40 events).

Ninety-eight percent of the 300 post-convention campaign events occurred in just 15 states. That is, under the current system, two-thirds of the states were irrelevant spectators in the 2008 presidential election.

The size of a state is not the determining factor for political relevance in presidential elections. There are small, medium, and large battleground states. The spectator states include small, medium, and large states.

Although some people mistakenly think that the current system of electing the President benefits small states, the reality is that campaign events were held in only seven of the 25 least populous states. This is shown in table 1.10 but even more dramatically in table 9.7 (which presents the very same information sorted by state size).

In fact, 39 of the 43 events held in the 25 least populous states took place in just four of these states, namely

- New Hampshire (12 events),
- New Mexico (8 events),
- Nevada (12 events), and
- Iowa (7 events).

The 25 least populous states (with a combined total of 155 electoral votes) received only 43 post-convention campaign events. In contrast, Ohio (with only 20 electoral votes) received 62 of the 300 post-convention campaign events.

In short, a state's size has nothing to do with whether a state receives attention. The controlling factor is whether the state is a closely divided battleground state.

As a general rule, the money that presidential candidates spend in the various states closely parallels the distribution of campaign events.

Table 1.11 shows the states ranked in order of their peak-season candidate advertising expenses (using data compiled by CNN) covering the period from September 24, 2008 (two days before the first debate), to Election Day (using data from the Federal Elections Commission records compiled by FairVote).⁴⁹ Column 3 shows the percentage of total national peak-season candidate advertising expenses for each state.

⁴⁸ The remaining seven of the 300 post-convention events (representing 2% of the events) occurred in five additional places, namely Maine (two events), Minnesota (two events), the District of Columbia (one event), Tennessee (one event), and West Virginia (one event).

⁴⁹ <http://www.fairvote.org/following-the-money-campaign-donations-and-spending-in-the-2008-presidential-race>.

Table 1.11 CAMPAIGN ADVERTISING SPENDING FOR THE 2008 ELECTION

STATE	ADVERTISING EXPENDITURES	PERCENT OF ADVERTISING
Florida	\$29,249,985	18.18%
Pennsylvania	\$24,903,675	15.48%
Ohio	\$16,845,415	10.47%
Virginia	\$16,634,262	10.34%
North Carolina	\$9,556,598	5.94%
Indiana	\$8,964,817	5.57%
Wisconsin	\$8,936,200	5.56%
Missouri	\$7,970,313	4.95%
Colorado	\$7,944,875	4.94%
Nevada	\$7,108,542	4.42%
Michigan	\$5,780,198	3.59%
Minnesota	\$4,262,784	2.65%
Iowa	\$3,713,223	2.31%
New Mexico	\$3,134,146	1.95%
New Hampshire	\$2,924,839	1.82%
Montana	\$971,040	0.60%
Maine	\$832,204	0.52%
West Virginia	\$733,025	0.46%
Georgia	\$177,805	0.11%
Arizona	\$75,042	0.05%
Illinois	\$53,896	0.03%
California	\$28,288	0.02%
North Dakota	\$18,365	0.01%
Tennessee	\$9,955	0.01%
Washington	\$5,062	0%
Texas	\$4,641	0%
Oklahoma	\$4,170	0%
Kansas	\$3,141	0%
Oregon	\$2,754	0%
Louisiana	\$2,279	0%
New York	\$2,235	0%
Arkansas	\$1,897	0%
Mississippi	\$1,731	0%
Alabama	\$1,385	0%
South Dakota	\$980	0%
South Carolina	\$910	0%
Nebraska	\$807	0%
Kentucky	\$635	0%
Idaho	\$368	0%
Alaska	\$310	0%
Utah	\$66	0%
Massachusetts	\$20	0%
D.C.	\$0	0%
Maryland	\$0	0%
New Jersey	\$0	0%
Connecticut	\$0	0%
Hawaii	\$0	0%
Vermont	\$0	0%
Rhode Island	\$0	0%
Delaware	\$0	0%
Wyoming	\$0	0%
Total	\$160,862,883	100.00%

Note that an alternative way of looking at the data in column 2 of this table is available in table 9.2, where the states are ranked in order of campaign contributions.

Table 1.11 shows that 99.75% of all advertising spending was in just 18 states. As can be seen, this allocation closely parallels the allocation of all 300 post-convention campaign events (in just 19 states).

The table also shows that 32 states received a combined total of *one quarter of one percent* (1/4%) of the advertising money.

2012 Presidential Election

The number of battleground states has been declining for many decades, as detailed in FairVote's 2008 report entitled *The Shrinking Battleground*.⁵⁰ The shrinkage accelerated in the 2012 presidential election.

A mere four weeks after the November 2010 congressional elections, a televised debate on C-SPAN among candidates for the chairmanship of the Republican National Committee focused on the question of how the party would conduct the presidential campaign in the 14 states that were expected to matter in 2012.⁵¹

On January 3, 2011—almost two years before the November 2012 election—the *Cook Political Report* issued its first Electoral College scorecard for 2012. The January 3, 2011, scorecard (table 1.12) listed 13 battleground states—four Democratic-leaning states, seven toss-up states, and two Republican-leaning states.

In other words, as early as January 2011, it appeared that the 2012 election would exhibit a dramatic decline in the number of battleground states from 2000, 2004, and 2008.

On June 2, 2011, Cook issued a scorecard (table 1.13) that again had 13 battleground states (five Democratic-leaning states, six toss-up states, and two Republican-leaning states).

On September 15, 2011, Cook issued a scorecard with 13 battleground states—two Democratic-leaning states, 10 toss-up states, and one Republican-leaning state.

On February 3, February 6, and February 23, Cook issued scorecards with 13, 14, and 14 battleground states, respectively.

On April 24, 2012, the *Cook Political Report* issued a scorecard (table 1.14) with 14 battleground states—five Democratic-leaning states, seven toss-up states, and two Republican-leaning states.

On May 10, 2012, Cook's scorecard (table 1.15) showed 13 battleground states—four Democratic-leaning states, seven toss-up states, and two Republican-leaning states.

Six of the toss-up states in May 2012 were among the seven states that appeared on Cook's scorecard 15 months earlier—Colorado, Florida, Iowa, Nevada, Ohio, and

⁵⁰ FairVote. 2005. *The Shrinking Battleground: The 2008 Presidential Election and Beyond*. Takoma Park, MD: The Center for Voting and Democracy. <http://www.fairvote.org/shrinking>.

⁵¹ Freedomworks debate on December 1, 2010, available at <http://www.freedomworks.org/rmc>.

Table 1.12 COOK'S 13 BATTLEGROUND STATES AS OF JANUARY 3, 2011

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Michigan	Colorado	Missouri
Minnesota	Florida	Virginia
New Hampshire	Iowa	
New Mexico	Nevada	
	Ohio	
	Pennsylvania	
	Wisconsin	
35 electoral votes	98 electoral votes	23 electoral votes

Table 1.13 COOK'S 13 BATTLEGROUND STATES AS OF JUNE 2, 2011

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Michigan	Colorado	Missouri
Minnesota	Florida	North Carolina
New Hampshire	Iowa	
Pennsylvania	Nevada	
Wisconsin	Ohio	
	Virginia	
60 electoral votes	81 electoral votes	25 electoral votes

Table 1.14 COOK'S 14 BATTLEGROUND STATES AS OF APRIL 24, 2012

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Maine	Colorado	New Hampshire
Michigan	Florida	North Carolina
Minnesota	Iowa	
New Mexico	Nevada	
Wisconsin	Ohio	
	Pennsylvania	
	Virginia	
45 electoral votes	101 electoral votes	19 electoral votes

Table 1.15 COOK'S 13 BATTLEGROUND STATES AS OF MAY 10, 2012

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Maine	Colorado	New Hampshire
Michigan	Florida	North Carolina
New Mexico	Iowa	
Wisconsin	Nevada	
	Ohio	
	Pennsylvania	
	Virginia	
35 electoral votes	101 electoral votes	19 electoral votes

Pennsylvania. Virginia was listed as the seventh toss-up state in May 2012 (having been classified as a Republican-leaning state 15 months earlier).

As former Massachusetts Governor Mitt Romney emerged in April 2012 as the presumptive Republican nominee, he said:

“I hope that we’re able to resolve our nomination process as soon as possible, of course, **because I’d like to focus time and attention on those key battleground states.**”⁵² [Emphasis added]

On June 6, 2012 (five months before Election Day), the *New York Times* reported on the vigorous early campaign in nine battleground states (Florida, Ohio, Virginia, North Carolina, Iowa, Pennsylvania, Colorado, Nevada, and New Hampshire). The article noted that the number of battleground states was considerably smaller than in 2000, 2004, and 2008.

“The presidential campaigns and their allies are zeroing in mainly on nine swing states, bombarding them with commercials in the earliest concentration of advertising in modern politics.

“With so many resources focused on persuading an ever-shrinking pool of swing voters . . . , the 2012 election is likely to go down in history as the one in which the most money was spent reaching the fewest people.

“Already, ads about President Obama or Mitt Romney have been run nearly 6,000 times in and around Las Vegas since April 11. . . . And the \$5 million spent by both sides during that eight-week stretch translates into the highest rate of spending per electoral vote anywhere by far. Underscoring the state’s importance this year, Mr. Obama campaigned in Las Vegas on Thursday; Mr. Romney visited last week for a rally and a fund-raiser.

“All this effort is to reach just 1.4 million registered voters, a sign of how tight this election is expected to be. And it points to how **the country’s growing partisan divide has redrawn the political geography, with fewer states than ever not firmly designated ‘red’ or ‘blue.’**”

“It is unusual that so few states are in play from an advertising standpoint,” said Will Feltus, senior vice president of National Media, which researches and plans advertising placement.”

“But no recent general election advertising strategy has covered so little ground so early. In the spring of 2000, George W. Bush and Al Gore fought an air war in close to 20 states. In early 2004, there

⁵² Davis, Julie Hirschfeld, and McCormick, John. Romney charges Obama with harming U.S. economy. *POTUS News*. April 5, 2012. <http://potusnews.net/2012/04/romney-charges-obama-with-harming-us-economy/>.

were the ‘Swing Seventeen.’ And in 2008, the Obama campaign included 18 states in its June advertising offensive, its first of the general election.”⁵³ [Emphasis added]

Figure 1.3 shows the nine battleground states as of June 2012 (Florida, Ohio, Virginia, North Carolina, Iowa, Pennsylvania, Colorado, Nevada, and New Hampshire).

Table 1.16 shows the advertising spending expenditures (in millions of dollars) by supporters of Obama and Romney from April 10 to June 28, 2012, as reported in the *New York Times*⁵⁴ using data compiled by the Campaign Media Analysis Group (CMAG) at Kantar Media. The CMAG data start on April 10 because:

“April 10 is considered by many to be the unofficial start of the general election. It was the day former Sen. Rick Santorum of Pennsylvania suspended his presidential campaign. Santorum was former Massachusetts Gov. Mitt Romney’s main rival for the Republican presidential nomination, and when he left the race, Romney became the presumptive GOP nominee.”⁵⁵

The money was spent in the nine battleground states shown in figure 1.3 and two other states (Michigan and Wisconsin). Romney was advertising in Michigan and Wisconsin, but Obama was not.

In an article entitled “Modern Elections Decided by a Few States,” the *Columbus Dispatch* newspaper in Ohio said:

“For President Barack Obama, today it’s visits to Ohio and Virginia. And it’s no coincidence that likely Republican presidential nominee Mitt Romney just visited those two states, and is returning to Ohio on Monday.

“You’d better get used to that kind of schedule. Much like the 2000 and 2004 presidential elections, **this year’s contest is not about the millions of voters in all 50 states. Instead, the outcome will be decided by a slice of swing voters in Ohio and a handful of other states.**

“It’s a small number of people in a small number of states,” said Merle Black, a professor of political science at Emory University in Atlanta.

“That helps explain . . . why both candidates will spend so much time in Florida, Arizona, Colorado, New Hampshire, North Carolina and Virginia.

“**The shrinking pool of competitive states is symbolic of the deep ideological divide among voters.** Unlike the 1960 presidential election, when the margin of victory in 17 states was 3 percentage points or less,

⁵³ Peters, Jeremy W. Campaigns blitz 9 swing states in a battle of ads. *New York Times*. June 8, 2012.

⁵⁴ Who’s running the ads, and where. *New York Times*. June 30, 2012. <http://www.nytimes.com/interactive/2012/06/30/us/election-news/who-s-running-the-ads-and-where.html?ref=politics>.

⁵⁵ Steinhauser, Paul. Nevada number one in ad spending per electoral vote. *CNN Politics*. July 4, 2012.



Figure 1.3 Nine battleground states in June 2012

Table 1.16 ADVERTISING SPENDING FROM APRIL 10 TO JUNE 28, 2012 (IN MILLIONS)

STATE	OBAMA	ROMNEY	TOTAL
Florida	10.0	9.0	19.0
Ohio	8.6	8.8	17.4
North Carolina	3.8	6.4	10.2
Pennsylvania	4.2	4.5	8.7
Nevada	4.4	4.1	8.5
Virginia	3.9	4.1	8.0
Iowa	3.1	4.5	7.6
Colorado	4.8	2.6	7.4
New Hampshire	0.8	0.8	1.6
Michigan	0.0	3.3	3.3
Wisconsin	0.0	0.7	0.7
Total	43.6	48.8	92.4

today's electoral map shows that California, New York, New Jersey and Illinois are solidly Democratic, while Texas and most southern states are securely Republican.

"Gone are the days when John F. Kennedy campaigned in 45 states and Richard Nixon appeared in all 50 in the 1960 race. They maintained such a grueling pace because half the states—ranging from New York to Ohio to Texas to California—were up for grabs.

“In contrast, when Republican George W. Bush won the presidency in 2000 by five electoral votes over Democrat Al Gore, only seven states were decided by margins of 3 percentage points or less. . . .

“**You have your battleground states and your flyover states,**” said David Leland, former chairman of the Ohio Democratic Party.⁵⁶ [Emphasis added]

Mitt Romney’s “Every Town Counts” bus tour in June 2012 illustrates two important aspects of presidential campaigns.

The “Every Town Counts” tour started with campaigning in the battleground state of New Hampshire. It then quickly drove through several non-battleground northeastern states where, manifestly, every town did *not* count. The bus then stopped for campaigning in the battleground states of Pennsylvania and Ohio. The tour went on to Iowa (again speeding through other non-battleground states where no town counted). The first part of the tour illustrated the fact that presidential campaigns simply do not pay attention to any states other than battleground states.

As reported in an article entitled “Romney Bus Tour Will Hit Swing States” in *Politico*:

“Romney’s tour is launching as polls set the stage for an aggressive fight in swing states, with big ad buys from outside groups and heavy investments by both campaigns.

“A number of **the states Romney will visit were identified by Romney pollster Neil Newhouse of Public Opinion Strategies as among the seven key states the campaign needs to pick up to hit 270 electoral votes.**”⁵⁷ [Emphasis added]

The Romney bus tour (figure 1.4) also included Michigan and Wisconsin. This part of the tour illustrated a second aspect of modern-day presidential campaigns, namely an attempt by one campaign to expand the playing field to states in which the opposition is leading (but not spending advertising money). Romney’s efforts to put Michigan and Wisconsin into play involved spending advertising money in those states (as shown in the bottom two rows of table 1.16).⁵⁸

Meanwhile, the July 5, 2012, Cook scorecard (table 1.17) reflected the ongoing shrinkage in the number of battleground states. There were 14 on April 24, 2012, and 13 on May 10, 2012. On July 5, there were only 11—three Democratic-leaning states, seven toss-up states, and one Republican-leaning state.

The focus on just a handful of closely divided battleground states continued in

⁵⁶ Torry, Jack. Modern elections decided by a few states: That’s why Obama visits OSU today to start campaign. *Columbus Dispatch*. May 5, 2012.

⁵⁷ Summers, Juana. Romney bus tour will hit swing states. *Politico*. June 12, 2012.

⁵⁸ Obama also conducted a two-state bus tour in June 2012 (to Ohio and Pennsylvania).



Figure 1.4 The six states visited by the “Every Town Counts” bus tour in June 2012

Table 1.17 COOK’S 11 BATTLEGROUND STATES AS OF JULY 5, 2012

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Michigan	Colorado	North Carolina
Pennsylvania	Florida	
Wisconsin	Iowa	
	Nevada	
	New Hampshire	
	Ohio	
	Virginia	
35 electoral votes	101 electoral votes	19 electoral votes

July 2012, as reported by the *Washington Post* in an article entitled “Campaign Ads Flood into Swing States for a Summertime Blitz.”

“Voters in swing states . . . will be deluged with tens of millions of dollars in political ads over the next month as part of an intensifying broadcast war through the Olympic Games.

“In addition to spots from President Obama and Republican challenger Mitt Romney, many ads will be aired by independent nonprofit groups that are not required to reveal who is funding them. . . .

“Crossroad GPS, a conservative nonprofit group co-founded by former George W. Bush adviser Karl Rove, announced Friday that it was purchasing \$25 million worth of anti-Obama ads in swing states. . . . The campaign starts Tuesday and will run through early August in **nine swing states:**

Colorado, Florida, Iowa, Michigan, North Carolina, New Hampshire, Nevada, Ohio and Virginia.⁵⁹ [Emphasis added]

The existence of the new “Swing States Poll” conducted by *USA Today* is a recognition of the role of the battleground states created by state winner-take-all statutes. A July 8, 2012, article in *USA Today* states:

“When it comes to campaign ads in the presidential race, there are two Americas.

“In a swing state, you’re part of the presidential campaign,’ says political scientist Darrell West, author of *Air Wars*. ‘Everywhere else, you’re outside.’ . . .

“The swing states survey focuses on a dozen states that aren’t firmly aligned with either Democrats or Republicans. That puts them in a position to tip the outcome in the Electoral College. The states: Colorado, Florida, Iowa, Michigan, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Virginia and Wisconsin.”⁶⁰

Political strategist Karl Rove predicted on May 23 that the 2012 election would come down to essentially six states.

“Mr. Romney needs 270 votes in the Electoral College. A ‘3-2-1’ strategy will get him there. . . .

“None of Mr. McCain’s states appear in real jeopardy for the GOP this year. . . .

“After this initial hurdle, Mr. Romney’s victory road starts with ‘3’—as in Indiana, North Carolina and Virginia, a trio of historically Republican states. In 2008, Mr. Obama won by narrow margins in Indiana (barely 1%) and North Carolina (0.32%). . . .

“Next up is ‘2’—as in Florida and Ohio. They flipped from Republican in 2004 to Democratic in 2008. Both were close—a 2.8% margin for Mr. Obama in the former and 4.6% in the latter. . . .

“Which brings us to ‘1.’ Mr. Romney then needs one more state—any state—and the White House is his.”⁶¹

The *Cook Political Report* adjusted their Electoral-College scorecard as a result of Governor Romney’s selection of Congressman Paul Ryan of Wisconsin as the Republi-

⁵⁹ Eggen, Dan. Campaign ads flood into swing states for a summertime blitz. *Washington Post*. June 6, 2012.

⁶⁰ Page, Susan. Swing states poll: Amid barrage of ads, Obama has edge. *USA Today*. July 8, 2012.

⁶¹ Rove, Karl. Romney’s Roads to the White House: A 3-2-1 strategy can get him to the magic 270 electoral votes. *Wall Street Journal*. May 23, 2012.

Table 1.18 COOK'S NINE BATTLEGROUND STATES AS OF OCTOBER 18, 2012

LEAN DEMOCRATIC	TOSS UP	LEAN REPUBLICAN
Ohio	Colorado	Florida
Wisconsin	Iowa	North Carolina
	Nevada	Virginia
	New Hampshire	
28 electoral votes	25 electoral votes	57 electoral votes

can vice-presidential nominee. The August 28, 2012, Cook scorecard moved Wisconsin from the “lean Democratic” to the “toss-up” category; however, this reclassification did not increase the number of battleground states.

The October 28, 2012, Cook scorecard (table 1.18) reduced the number of battleground states from 11 to nine. The scorecard removed Michigan and Pennsylvania from the “lean Democratic” category and placed them in the safer “likely Democratic” category (not shown in the table here). The scorecard also moved Ohio and Wisconsin from “toss up” to “lean Democratic.” President Obama’s poor performance in the first presidential debate in early October resulted in Florida, Virginia, and North Carolina being moved from “toss-up” to “lean Republican.” The nine battleground states in this scorecard consisted of two Democratic-leaning states, four toss-up states, and three Republican-leaning states.

The presidential and vice-presidential candidates conducted 253 general-election campaign events after being nominated.

Table 1.19 shows the distribution of the 253 post-convention general-election campaign events in 2012. This table is based on CNN’s “On the Trail” campaign tracker and covers the period from September 7, 2012 (the day after the Democratic National Convention) to November 6 (Election Day).^{62,63} The data was compiled by FairVote.⁶⁴ The table is sorted according to the total number of campaign events per state (column 2). Columns 3, 4, 5, and 6 show the number of events by President Barack Obama, Vice President Joe Biden, Governor Mitt Romney, and Congressman Paul Ryan, respectively.

⁶² This count is based on *public* campaign events (e.g., rallies, speeches, town hall meetings). It does not include private fund-raisers, private meetings, non-campaign events (e.g., the Al Smith Dinner in New York City, the Clinton Global Initiative dinner), televised national debates (e.g., flying into a state just to participate in the debate), or interviews in television studios (e.g., flying into New York to do an interview). A “visit” to a state may consist of one or more individual events held at different places and times within the state. A joint appearance of a presidential and vice-presidential candidate is counted as one event. Additional information is available at <http://www.fairvote.org/presidential-tracker>.

⁶³ For the reader’s convenience, this same data is also presented in table 9.8 where it is sorted by state size.

⁶⁴ The FairVote tally excluded two events listed by CNN. In Kentucky, the Ryan family had breakfast at a diner on the morning after the vice-presidential debate. The event did not appear to be large enough, organized enough, or public enough to warrant being counted as a campaign event. See video at <http://www.cbsnews.com/video/watch?id=50133025n&tag=mg%3Bpolitics>. In Minnesota, Congressman Ryan flew into Minneapolis on his way to the storm relief events in Wisconsin on October 30. The Minnesota press made it seem that Ryan was campaigning there, but Ryan barely stopped to talk to reporters before heading to Wisconsin. He ate at a St. Paul restaurant later that night.

As can be seen from table 1.19:

- In 2012, President Obama conducted post-convention campaign events in just eight states after being nominated, and Governor Romney did so in only 10 states. In comparison, in 2008, Obama conducted post-convention events in 14 states, and McCain did so in 19 states.
- Four out of five states (and four out of five Americans) were ignored by the candidates in the post-convention campaign period in 2012. That is, no post-convention campaign event was conducted in 39 jurisdictions (38 states and the District of Columbia) involving a major-party presidential or vice-presidential candidate.
- Ohio received 73 of the 253 post-convention campaign events (29%).
- Over two-thirds (69%) of the post-convention campaign events were conducted in just four states (Ohio, Florida, Virginia, and Iowa).
- Only one of the 13 smallest states (New Hampshire) received any post-convention campaign events.
- Only three of the 25 smallest states (i.e., those with seven or fewer electoral votes) received any post-convention campaign events (New Hampshire, Iowa, and Nevada).
- Post-convention campaign events were conducted in only 12 states, and two of them (Michigan and Minnesota) received one event each (out of the 253 events).
- The presidential campaign was fully joined in only eight states in the sense that only eight states received campaign events from Obama, Romney, Biden, and Ryan.

Figure 1.5 shows the same information as table 1.19 concerning the states in which the presidential and vice-presidential candidates conducted their 253 post-convention general-election campaign events in 2012.

The irrelevance of voters in non-battleground states was made clear by a *Washington Post* article entitled “Networks, AP Cancel Exit Polls in 19 States.”

“Breaking from two decades of tradition, this year’s election exit poll is set to include surveys of voters in 31 states, not all 50 as it has for the past five presidential elections. . . .

“Dan Merkle, director of elections for ABC News, and a member of the consortium that runs the exit poll, confirmed the shift Thursday. The aim, he said, ‘is to still deliver a quality product in **the most important states.**’ . . .

“All 19 of the states with no exit polls are classified as either “solid Obama” or “solid Romney.”⁶⁵ [Emphasis added]

⁶⁵ Cohen, Jon and Clement, Scott. Networks, AP cancel exit polls in 19 states. *Washington Post*. October 4, 2012. <http://www.washingtonpost.com/blogs/the-fix/wp/2012/10/04/networks-ap-cancel-exit-polls-in-19-states/>.

Table 1.19 POST-CONVENTION CAMPAIGN EVENTS IN 2012

STATE	TOTAL	OBAMA	BIDEN	ROMNEY	RYAN
Ohio	73	15	13	27	18
Florida	40	9	8	15	8
Virginia	36	6	4	17	9
Iowa	27	5	6	7	9
Colorado	23	5	3	6	9
Wisconsin	18	5	6	1	6
Nevada	13	4	2	3	4
New Hampshire	13	4	4	3	2
Pennsylvania	5			3	2
North Carolina	3		2	1	
Michigan	1				1
Minnesota	1				1
Alabama					
Alaska					
Arizona					
Arkansas					
California					
Connecticut					
Delaware					
D.C.					
Georgia					
Hawaii					
Idaho					
Illinois					
Indiana					
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland					
Massachusetts					
Mississippi					
Missouri					
Montana					
Nebraska					
New Jersey					
New Mexico					
New York					
North Dakota					
Oklahoma					
Oregon					
Rhode Island					
South Carolina					
South Dakota					
Tennessee					
Texas					
Utah					
Vermont					
Washington					
West Virginia					
Wyoming					
Total	253	53	48	83	69



Figure 1.5 Post-convention campaign events in 2012

USA Today reported:

“Exit polls—surveys of people who have already voted—have been narrowed this year to focus on battleground states. . . .

“What we did was just what every journalistic organization does: **We focused our resources on where the story is. The story appears to be in those states that are competitive,**’ says Sheldon Gawiser, NBC’s director of elections and head of the National Election Pool, a consortium of ABC, CBS, NBC, CNN, Fox News and the Associated Press.”⁶⁶ [Emphasis added]

On Election Day (November 6, 2012), President Obama ended up with a total of 332 electoral votes to Governor Romney’s 206. Obama’s nationwide lead was almost five million votes.⁶⁷

Obama won eight of the nine battleground states identified by the *Cook Political Report* in its October 18, 2012 electoral scorecard (table 1.18)—that is, all except North Carolina.

Figure 1.6 shows the results of the 2012 presidential election on a proportional map. The darker gray states voted for President Barack Obama and the lighter gray states voted for Governor Mitt Romney. In this figure, the size of each state is proportional to the state’s number of electoral votes. The advantage of a proportional map is that it more accurately shows the distribution of the nation’s population (and the distribution of popular support) than the more familiar geographic map. This proportional

⁶⁶ Moore, Martha T. and Korte, Gregory. Exit polling goes the way of changing media trends. *USA Today*. November 5, 2012. <http://www.usatoday.com/story/news/politics/2012/11/05/exit-polls-networks-election-day/1680839/>.

⁶⁷ See appendix HH for the two-party results of the 2012 election. Table 9.43 presents the presidential vote for Barack Obama (Democrat), Mitt Romney (Republican), Gary Johnson (Libertarian), Jill Stein (Green), and the other 22 minor-party and independent candidates that were on the ballot in 2012 in at least one state.

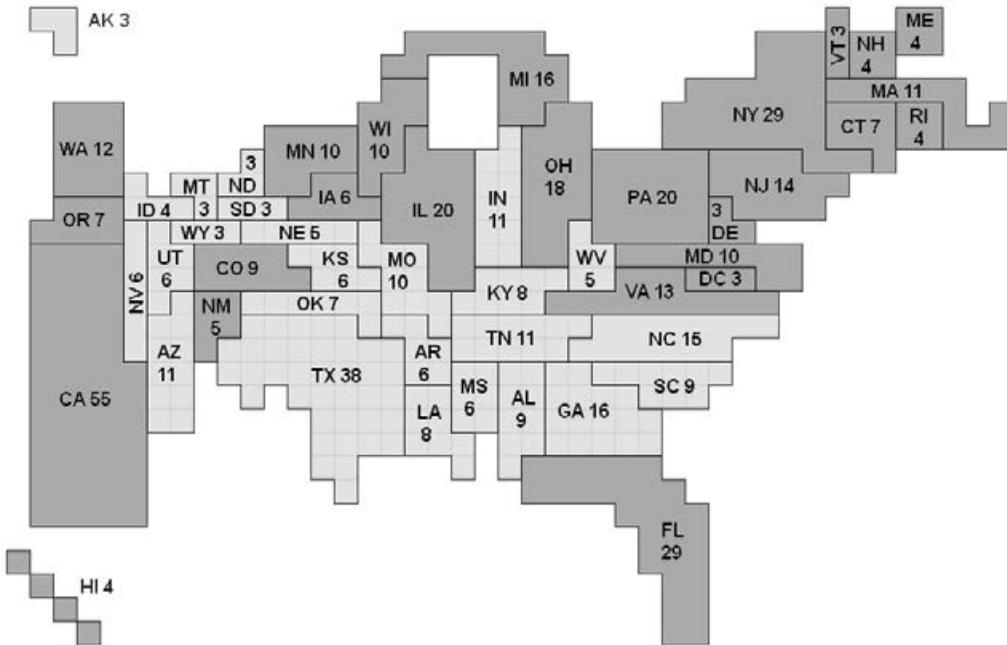


Figure 1.6 Proportional map showing results of 2012 election

map (created by Princeton Astrophysics Professor J. Richard Gott III)⁶⁸ is topologically accurate in the sense that geographically adjacent states are adjacent in this map. See figure 9.4 for a presentation of the results of the 2012 election on a geographic map.

Thirty-two states voted for the same party in all six presidential elections between 1992 and 2012. These 32 states (shown in table 9.41) possess about two-thirds (64%) of the 538 votes in the Electoral College. Of these 32 states, 19 states (possessing 242 electoral votes based on the 2010 census) voted Democratic in all six presidential elections between 1992 and 2012. Thirteen states (possessing 102 electoral votes) voted Republican in all six elections.

The fact that four out of five states and four out of five Americans, were ignored by the 2012 presidential campaign rekindled proposals to modify the manner by which states award their electoral votes.

In December 2012, legislators in Pennsylvania, Michigan, Wisconsin, and Virginia announced that they would introduce legislation in 2013 to divide their state's electoral votes by congressional district (as discussed in greater detail in section 9.23.1).

⁶⁸ Professor J. Richard Gott III is gratefully acknowledged for permission to use his topologically accurate proportional electoral map. Professor Gott collaborated with Wesley N. Colley (a senior research scientist at the Center for Modeling, Simulation and Analysis at the University of Alabama in Huntsville) in publishing an electoral scoreboard based on Gott and Colley's method of median poll statistics at <http://www.colleyrankings.com/election2012/>.

Also, Pennsylvania Senate Majority Leader Dominic Pileggi (R) announced in December 2012 that he planned to introduce legislation to award 18 of Pennsylvania's 20 electoral votes proportionally and two electoral votes to the statewide winner (as discussed in greater detail in section 9.23.2).

In 2012, voter turnout was 11% higher in the battleground states than in the remainder of the country.

Professor Michael P. McDonald of George Mason University computed voter turnout for each state and the nation as a whole.⁶⁹

Based on the 130,234,600 ballots that were counted in the November 2012 elections, the national turnout rate was 59.4%.

Voter turnout in the nine battleground states identified by the *Cook Political Report* in its October 18, 2012 electoral scorecard (table 1.18) was as follows:

- 71.1% in Colorado,
- 63.6% in Florida,
- 70.2% in Iowa,
- 57.2% in Nevada,
- 70.9% in New Hampshire,
- 65.2% in North Carolina
- 65.2% in Ohio
- 66.9% in Virginia, and
- 72.5% in Wisconsin.

The average voter turnout in the nine battleground states was 67.0%—11% higher than the 59.4% rate for the nation as a whole).

The absence of a meaningful presidential campaign in most states diminishes voter turnout in the ignored 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.”^{70,71}

⁶⁹ The figures are from the web page entitled “2012 General Election Turnout Rates” found at http://elections.gmu.edu/Turnout_2012G.html on December 31, 2012. The voter turnout figures are those for the number of ballots that were counted, except for Wisconsin where the highest office turnout rate was used.

⁷⁰ Nivola, Pietro S. 2005. *Thinking about Political Polarization*. Washington, DC: The Brookings Institution. Policy Brief 139. January 2005.

⁷¹ Voter turnout is adversely affected in non-battleground states because voters of both parties in such 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.” See

Diminished voter turnout in presidential races in non-battleground states weakens down-ballot candidates, thereby making the state even less competitive in the future.

Governance—not just electioneering—is affected by the winner-take-all rule.

While governing, every sitting President is either anticipating his own run for reelection (during his first term) or contemplating the election of his preferred successor (in his second term).

As former Illinois Governor Jim Edgar (R) pointed out:

“People who are in elected office remember what they learned when they were campaigning.”⁷²

Edgar continued:

“After serving in government, I learned first-hand how important it is for the candidate to know the district, or the state, or the nation they’re running in. And know all of it, not just parts of it. And it’s even more important after the election

“When you’re governing, when you’re doing your duty, you remember particularly where you campaigned. You remember who you met during the campaign. You remember the issues that were raised. It’s just human nature. You’re going to remember that, because that was very important to you during the campaign.”⁷³ [Emphasis added]

However, in present-day presidential campaigns, candidates do not campaign throughout the entire United States. As Scott Wilson reported in the *Washington Post*:

“During his first five months in office, **public policy and electoral politics have come together seamlessly in his domestic travel itinerary.** On nearly every trip he has taken, **Obama has followed the timeworn path of presidential travel—go where the votes matter most.** . . .

“Of the 16 states Obama has visited, nine shifted from the Republican to Democratic column in 2008. Five of the states are among the six that posted the narrowest margins of victory for either Obama or Sen. John McCain (R-Ariz.), and are likely to remain the most closely divided through the coming campaign cycles.”⁷⁴ [Emphasis added]

November 4, 2004, report from the Committee for the Study of the American Electorate entitled “President Bush, mobilization drives propel turnout to post-1968 high.”

⁷² Press conference at the National Press Club in Washington, D.C. May 12, 2011. http://www.nationalpopularvote.com/pages/misc/hl_20110514_thompson-culver-edgar.php

⁷³ Press conference at the National Press Club in Washington, D.C. May 12, 2011. http://www.nationalpopularvote.com/pages/misc/hl_20110514_thompson-culver-edgar.php

⁷⁴ Wilson, Scott. Obama’s travel mixes policy, politics: States with close electoral results getting most of his visits. *Washington Post*. June 21, 2009.

In the 2012 book *The Rise of the President's Permanent Campaign*,⁷⁵ Professor Brendan Doherty of the United States Naval Academy has tracked presidential travels during the year *before* the re-election campaigns of Presidents Bill Clinton (1995), George W. Bush (2003), and Barack Obama (2011). Table 1.20 shows the distribution of presidential travel by state during the year before re-election campaigns.⁷⁶

Table 1.21 shows the relationship between 2011 presidential travel and state population. Column 2 shows the state's 2010 population, and column 4 shows each state's percentage share of the population of the 50 states. Note that the District of Columbia is not included in this table because Professor Doherty did not count events in the District by a sitting President as "travel." Column 3 is the number of presidential visits for 2011 (that is, the same information as in column 4 of table 1.20). Column 5 shows each state's percentage share of the 104 visits.

Column 6 of table 1.21 shows the index of 2011 presidential travel in relation to state population. The index is computed by dividing column 5 by column 3 and multiplying by 100. An index above 100 means that a state received proportionately more visits than its share of the nation's population. Conversely, an index below 100 indicates that a state received proportionately fewer visits. Table 1.19 is sorted by the index (column 6), thereby placing the states receiving more attention at the top of this table.

For example, Hawaii's percentage share of the nation's population is 0.44% (as shown in column 4 of the first row of table 1.21). Hawaii's four visits during 2011 represent a 3.85%-share of the 104 total visits. This 3.85% is 8.7 times Hawaii's share of the nation's population. Thus, Hawaii's index is 870. The explanation for Hawaii's high index is that President Obama often vacations there.

Table 1.19 shows that

- 19 states received no visits in 2011 even though these states represent one in six Americans.⁷⁷
- Eight of the nine closely divided battleground states where \$100,000,000 was spent by June 2012 by Obama and Romney supporters (as reported in the June 8, 2012, *New York Times* article discussed earlier in this section) had indices above 100. These states were Virginia, Iowa, New Hampshire, Nevada, Pennsylvania, Colorado, North Carolina, and Ohio.
- Two additional states with indices above 100 (Michigan and Minnesota) appeared on Cook's scorecards (shown earlier in this section) as "lean Democratic" during 2011.

⁷⁵ Doherty, Brendan J. 2012. *The Rise of the President's Permanent Campaign*. Lawrence, KS: University Press of Kansas.

⁷⁶ The authors gratefully acknowledge Professor Brendan Doherty of the United States Naval Academy for permission to include data on presidential travel found in the table.

⁷⁷ In fact, seven states did not receive any visits in 1995, 2003, and 2011, namely Alabama, Idaho, Louisiana, North Dakota, Rhode Island, South Dakota, and Utah). Eight additional states did not receive any visits in two of those three years, namely Maine, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, and South Carolina. Arkansas would also be on that list except for the fact that President Bill Clinton's home state was Arkansas (and hence received nine of Clinton's visits in 1995).

Table 1.20 PRESIDENTIAL TRAVEL DURING THE YEAR BEFORE RE-ELECTION

STATE	CLINTON 1995	BUSH 2003	OBAMA 2011
Alabama	0	1	1
Alaska	0	0	0
Arizona	0	2	1
Arkansas	9	2	0
California	13	8	8
Colorado	3	2	3
Connecticut	2	2	1
Delaware	0	0	1
Florida	3	5	4
Georgia	3	3	0
Hawaii	4	1	4
Idaho	0	0	0
Illinois	4	3	4
Indiana	0	2	1
Iowa	4	0	3
Kansas	0	0	1
Kentucky	0	2	1
Louisiana	0	0	0
Maine	0	1	0
Maryland	NA	NA	6
Massachusetts	2	0	4
Michigan	1	5	4
Minnesota	1	2	2
Mississippi	0	2	0
Missouri	0	5	2
Montana	2	0	0
Nebraska	0	1	0
Nevada	0	1	2
New Hampshire	1	1	1
New Jersey	2	2	1
New Mexico	0	2	0
New York	4	3	12
North Carolina	1	3	5
North Dakota	0	0	0
Ohio	2	5	4
Oklahoma	1	0	0
Oregon	1	1	1
Pennsylvania	3	6	8
Rhode Island	0	0	0
South Carolina	0	2	0
South Dakota	0	0	0
Tennessee	1	2	1
Texas	3	8	2
Utah	0	0	0
Vermont	1	0	0
Virginia	NA	NA	14
Washington	0	1	1
West Virginia	0	1	0
Wisconsin	0	1	1
Wyoming	3	0	0
Total	74	88	104

- New York and Massachusetts are non-battleground states, but major sources of campaign funds (as shown in table 1.11).
- Three non-battleground states with indices above 100 (Alaska, Delaware, and Kansas) appeared in the top part of the table by virtue of a single visit and are thus statistical anomalies.

Maryland's appearance in table 1.21, in relation to Virginia's, is especially noteworthy. Both Maryland and Virginia are near Washington, D.C. Neither state received any attention in presidential campaigns for decades prior to 2008—the year in which Virginia suddenly emerged as a closely divided battleground state. As Paul West pointed out in the “Maryland Politics” section of the *Baltimore Sun*:

“Recent presidents have divided their time more or less evenly between Maryland and Virginia. But Obama, by a lopsided margin, is favoring the commonwealth on the other side of the Potomac.”

The article continued:

“Obama has shown Virginia far more love than Maryland since taking office.

“Presidents of both parties frequently use the neighboring states as sites for their public events. Since many Americans revile the capital city, it is often necessary to escape to a more suitable ‘real world’ locale. Next-door Maryland and Virginia are obvious choices, since they are only a quick trip away (time is a president’s scarcest resource).

“Today, for example, the White House announced that Obama plans to deliver a national back-to-school address next Tuesday from a high school in northern Virginia. . . .

“There isn’t much mystery in Obama’s apparent preference for Virginia over Maryland. . . .

“Obama has concentrated his domestic travels on key electoral states—favoring those that will matter in 2012, while largely ignoring states that are either out of reach (such as those in the Deep South) or are safely Democratic. . . .”⁷⁸ [Emphasis added]

Cabinet travel exhibits a similar pattern.

“A half-dozen Cabinet members have made more than 85 trips this year to electoral battlegrounds such as Colorado, Florida, Nevada, North Carolina, Ohio and Pennsylvania, according to a *Politico* review of public speeches

⁷⁸ West, Paul. Maryland politics: Obama favoring purple Virginia over blue Maryland by 8-1 margin. *Baltimore Sun*. September 2, 2009.

Table 1.21 INDEX OF 2011 PRESIDENTIAL TRAVEL IN RELATION TO POPULATION

STATE	POPULATION	OBAMA 2011	SHARE OF POPULATION	SHARE OF VISITS	INDEX
Hawaii	1,366,862	4	0.44%	3.85%	870
Virginia	8,037,736	14	2.60%	13.46%	518
Alaska	721,523	1	0.23%	0.96%	412
Delaware	900,877	1	0.29%	0.96%	330
Maryland	5,789,929	6	1.87%	5.77%	308
Iowa	3,053,787	3	0.99%	2.88%	292
New Hampshire	1,321,445	1	0.43%	0.96%	225
Nevada	2,709,432	2	0.88%	1.92%	219
Pennsylvania	12,734,905	8	4.12%	7.69%	187
New York	19,421,055	12	6.28%	11.54%	184
Massachusetts	6,559,644	4	2.12%	3.85%	181
Colorado	5,044,930	3	1.63%	2.88%	177
North Carolina	9,565,781	5	3.09%	4.81%	155
Michigan	9,911,626	4	3.21%	3.85%	120
Minnesota	5,314,879	2	1.72%	1.92%	112
Kansas	2,863,813	1	0.93%	0.96%	104
Ohio	11,568,495	4	3.74%	3.85%	103
Missouri	6,011,478	2	1.94%	1.92%	99
Illinois	12,864,380	4	4.16%	3.85%	92
Connecticut	3,581,628	1	1.16%	0.96%	83
Oregon	3,848,606	1	1.24%	0.96%	77
Kentucky	4,350,606	1	1.41%	0.96%	68
California	37,341,989	8	12.08%	7.69%	64
Florida	18,900,773	4	6.11%	3.85%	63
Wisconsin	5,698,230	1	1.84%	0.96%	52
Tennessee	6,375,431	1	2.06%	0.96%	47
Arizona	6,412,700	1	2.07%	0.96%	46
Indiana	6,501,582	1	2.10%	0.96%	46
Washington	6,753,369	1	2.18%	0.96%	44
New Jersey	8,807,501	1	2.85%	0.96%	34
Texas	25,268,418	2	8.17%	1.92%	24
Alabama	4,802,982	0	1.55%	-	-
Arkansas	2,926,229	0	0.95%	-	-
Georgia	9,727,566	0	3.15%	-	-
Idaho	1,573,499	0	0.51%	-	-
Louisiana	4,553,962	0	1.47%	-	-
Maine	1,333,074	0	0.43%	-	-
Mississippi	2,978,240	0	0.96%	-	-
Montana	994,416	0	0.32%	-	-
Nebraska	1,831,825	0	0.59%	-	-
New Mexico	2,067,273	0	0.67%	-	-
North Dakota	675,905	0	0.22%	-	-
Oklahoma	3,764,882	0	1.22%	-	-
Rhode Island	1,055,247	0	0.34%	-	-
South Carolina	4,645,975	0	1.50%	-	-
South Dakota	819,761	0	0.27%	-	-
Utah	2,770,765	0	0.90%	-	-
Vermont	630,337	0	0.20%	-	-
West Virginia	1,859,815	0	0.60%	-	-
Wyoming	568,300	0	0.18%	-	-
Total	309,183,463	104	100.00%	100.00%	

and news clippings. Those **swing-state visits represent roughly half of all travel for those six Cabinet officials this year.**⁷⁹ [Emphasis added]

The pattern of presidential interviews with local news stations shows a similar pattern:

“Mr. Obama also has granted about 50 interviews [in 2011] with local news outlets, the majority from swing states.”⁸⁰

Professor Andrew Reeves examined presidential disaster declarations, which allow Presidents to unilaterally authorize potentially billions of dollars to specific constituencies. He reported in a 2011 paper:

“In an analysis extending from 1981 to 2004, I find that a state’s electoral competitiveness influences whether they receive a disaster declaration from the president. **A highly competitive state can expect to receive twice as many presidential disaster declarations as an uncompetitive state.** This relationship has existed since the passage of the 1988 Stafford Act, which expanded the disaster declaration powers of the president. Additionally, I find that **these decisions have the intended electoral benefits—voters react and reward presidents for presidential disaster declarations. A president can expect over a one point increase in a statewide contest in return for a single presidential disaster declaration.**”⁸¹ [Emphasis added]

Dana Ross of Durham, North Carolina, noted a pattern in federal exemptions from the No Child Left Behind law:

“The purple state balance of the Obama administration’s exemptions appears to be based on a ‘**no swing state left behind**’ calculation.”⁸² [Emphasis added]

The executive branch has sole discretionary authority over the distribution of billions of dollars of discretionary grants.

In a study entitled *The Politics of Federal Grants: Presidential Influence over the Distribution of Federal Funds*, Dr. John Hudak of the Brookings Institution observed:

“Because of the institutional design of the Electoral College, presidents do not face a national electorate, but instead a series of sub-national, state-

⁷⁹ Samuelsohn, Darren. Obama’s cabinet members mix policy, politics. *Politico*. June 7, 2012.

⁸⁰ Weisman, Daniel, and Lee, Carol E. Obama swing-state visits surpass presidential record. *Wall Street Journal*. November 28, 2011.

⁸¹ Reeves, Andrew. 2011. Political disaster: unilateral powers, electoral incentives, and presidential disaster declarations. *Journal of Politics*. 73(4):1142–1151.

⁸² Ross, Dana. President Obama’s ‘No swing state left behind’ policy. *Wall Street Journal On-Line*. June 5, 2012.

level electorates. Moreover, only a handful of states [are] competitive in presidential elections, reducing a huge national electoral to a much smaller set of competitive races. . . . The small size of the truly competitive presidential electorate makes an electoral strategy that utilizes the distribution of government funds a feasible and appealing tactic.”⁸³

Using a recently available database that permits the study of all federal grants by state between 1996 and 2008, Hudak concluded:

“The President and his subordinates strategically direct federal funding toward electorally competitive states. . . .

“The executive branch delivers more money and grants to swing states than all other states.

“Further, the proximity of a presidential election enhances this swing state bias in the distribution of funds.”

“Swing states are more likely to be benefactors of federal money than states that the president (or his party) has no chance of winning....

“Through the strategic use of discretion, presidents influence the distribution of federal funds, essentially using them as a campaign resource.

“Presidents strategically time grant allocation announcements in order to reap the maximum benefits in terms of credit claiming.”⁸⁴

In his study, Hudak defined “core” states, “lost cause” states, and “swing” states as follows:

“Core states are those in which the incumbent party received more than 55% of the vote in the previous election.

”Lost cause states are those in which the incumbent party received less than 45% of the vote.

“Swing states are those which were decided by 10% or less in the previous election.”⁸⁵

Hudak reached the following conclusion regarding federal discretionary grants controlled by the executive branch:

⁸³ Hudak, John Joseph. 2011. *The Politics of Federal Grants: Presidential Influence over the Distribution of Federal Funds*. Center for the Study of Democratic Institutions. Working Paper # 01-2011. Pages 10–11. <http://www.vanderbilt.edu/political-science/graduate/CSDI-WP-01-2011.pdf>.

⁸⁴ *Ibid.* Pages 1–5.

⁸⁵ *Ibid.* Page 11.

“Swing states receive between 7.3% and 7.6% more grants than do other states. . . .

“Swing states see a benefit of 5.7% more grant dollars than other states.”⁸⁶

In summary:

“Presidents use their discretionary control over huge sums of federal grant dollars to target funds to swing states. . . .

“Federal grants function as an incumbent-controlled pool of campaign funds that presidents are able to allocate strategically.”⁸⁷

Additional details are found in Hudak’s 2012 study.⁸⁸

In the same vein, Professor Kevin Stack of Vanderbilt University and Dr. John Hudak presented a tentative study in August 2012 revealing a similar relationship between the location of Superfund enforcement actions and a state’s battleground status.⁸⁹

In September 2011, a bill was introduced in the Pennsylvania state legislature to award Pennsylvania’s electoral votes by congressional district (as Maine and Nebraska currently do). The approach proposed in the bill would replace Pennsylvania’s current state statute allocating all 20 of its electoral votes to the candidate who receives the most votes statewide. The effect of the proposed bill would be to divide Pennsylvania’s electoral votes between the parties.

State Senator Daylin Leach (a leading Democratic opponent of the bill) said on the *PBS News Hour* on September 28, 2011:

“Pennsylvania is a battleground state, it gets a ton of attention, a ton of resources. **The day this bill passes we become irrelevant to electoral campaigns.** . . . We become Utah on the day this bill passes.”⁹⁰ [Emphasis added]

In a September 27, 2011, article entitled “Specter Bluntly Says Electoral Change Will Cut Fed Funding for PA,” former U.S. Senator Arlen Specter (who was a Republican until 2009) said:

“I think it’d be very bad for Pennsylvania because we wouldn’t attract attention from Washington on important funding projects for the state.”

⁸⁶ *Ibid.* Pages 21–22.

⁸⁷ *Ibid.* Page 28.

⁸⁸ Hudak, John Joseph. 2012. *The Politics of Federal Grants: Presidential Influence over the Distribution of Federal Funds*. PhD dissertation. Nashville, TN: Vanderbilt University. May 2012.

⁸⁹ Hudak, John Joseph and Stack, Kevin M. *The President and the Politics of Agency Enforcement: The Case of Superfund*. Conference draft. August 19, 2012.

⁹⁰ *PBS News Hour*. September 28, 2011.

“Under the current electoral system, Obama has good reason to give us the money to carry Pennsylvania. Because Presidents think that way. It affects their decisions.”

“In 2004, when I ran with Bush, he was running for re-election and so was I. The President came to Pennsylvania 44 times, and he was looking for items the state needed to help him win the state.”

“That has been the tradition with the Presidents I served with and it helped us get federal funding throughout the state. It has worked pretty well for us for 30 years, I can tell you.”

“It’s undesirable to change the system so Presidents won’t be asking us always for what we need, what they can do for us.”

“For 30 years, that system has worked pretty well for us, and **it’s undesirable to alter a system that is not broken.**”⁹¹ [Emphasis added]

Former Pennsylvania Governor Ed Rendell (D) said on September 17, 2011:

“Why would you pay any attention to Pennsylvania? Why would you care, day in and day out, about doing things for Pennsylvania? . . . We’re sacrificing tremendous clout that we presently have.”⁹² [Emphasis added]

On September 13, Rendell said that presidential elections are decided by

“basically Pennsylvania, Michigan, Ohio and Florida”

“That gives us tremendous clout when the governor of Pennsylvania asks the president or Congress for something, such as disaster recovery aid, Rendell said. If the disaster’s cost is close to what qualifies the state for federal aid, its electoral votes tip the balance in its favor.”⁹³

Rob Gleason, the Republican State Chairman, said on September 17, 2011:

“We would no longer be a battleground state with all the benefits that come with that.”⁹⁴

In summary, political influence in presidential elections is today concentrated in a scattered handful of battleground states, while the vast majority of states (small and large) are politically irrelevant.

⁹¹ DeCoursey, Peter L. Specter bluntly says electoral change will cut fed funding for PA. *Pennsylvania Capitol Wire*. September 27, 2011.

⁹² *Chron.com*. September 17, 2011.

⁹³ Wereschagin, Mike, and Bumsted, Brad. GOP plan could jeopardize Pennsylvania’s political clout. *Pittsburgh Tribune-Review*. September 13, 2011.

⁹⁴ *PoliticsPA*. September 17, 2011.

As former Illinois Governor Jim Edgar (R) said:

“We need a President who is a President for all the nation—not just the battleground states.”⁹⁵

As former White House Press Secretary Ari Fleischer said in 2009 about the current state-by-state winner-take-all system:

“If people don’t like it, they can move from a safe state to a swing state and see their president more.”⁹⁶ [Emphasis added]

In chapter 6 of this book, the authors show that the American people have an alternative to moving their families to another state in order to obtain a permanent and equal voice in presidential elections, namely a national popular vote for President.

1.2.2 THE CURRENT SYSTEM DOES NOT ACCURATELY REFLECT THE NATIONWIDE POPULAR VOTE

One of the other consequences of the statewide winner-take-all rule (i.e., awarding all of a state’s electoral votes to the presidential candidate who receives the most popular votes in each separate state) is that it is possible for a candidate to win the Presidency without winning the most popular votes nationwide.

Of the 56 presidential elections between 1789 and 2008, there have been four elections in which the candidate with the most popular votes nationwide did not win the Presidency (table 1.22).⁹⁷ The rate of such occurrences is one in 14, or 7%.⁹⁸

There have been six presidential elections since World War II 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. 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 1.23, there has been about one such “near miss” election each decade.⁹⁹

In 2004, President George W. Bush had a nationwide lead of 3,012,171 popular votes; however, the outcome of the election remained in doubt on election night because it was not initially 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,¹⁰⁰ thus

⁹⁵ Press conference at the National Press Club in Washington, DC, May 12, 2011. http://www.nationalpopularvote.com/pages/misc/hl_20110514_thompson-culver-edgar.php

⁹⁶ *Washington Post*. June 21, 2009.

⁹⁷ Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press.

⁹⁸ A 2012 analysis used the mathematical technique of principal components analysis to arrive at an estimate of 5% for the likelihood of a modern presidential election in which the winner of the national popular vote is not also the winner in the Electoral College. See Neubauer, Michael; Schilling, Mark; and Zeitlin, Joel. *Exploring Unpopular Presidential Elections*. June 12, 2012. Cornell University Library. arXiv:1206.2683v1.

⁹⁹ *Ibid.*

¹⁰⁰ Ohio Certificate of Ascertainment, December 6, 2004.

Table 1.22 PRESIDENTIAL ELECTIONS IN WHICH THE CANDIDATE WITH THE 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

winning all of the state's 20 electoral votes and ensuring his re-election. However, if 59,393 Bush voters in Ohio had shifted to Kerry in 2004, Kerry would have ended up with 272 electoral votes (two more than the 270 required to be elected). The 59,393 voters in Ohio were decisive, whereas Bush's nationwide lead of more than three million votes was irrelevant.¹⁰¹ The illusion of closeness in 2004 resulted from the statewide winner-take-all system—not because the election was genuinely close on the basis of the nationwide popular vote.

In his 2011 book *Why the Electoral College Is Bad for America*, Professor George Edwards argues that a fair accounting of the popular vote cast in Alabama in 1960 would make Richard Nixon—not John F. Kennedy—the winner of the nationwide popular vote in 1960. Under this method of accounting, there would have been five (instead of four) out of 56 presidential elections in which the candidate winning the Electoral College did not win the nationwide popular vote.

The issue arises because neither Nixon's name nor Kennedy's name actually appeared on the ballot in Alabama in 1960 (figure 2.13). Instead, only the names of 11 candidates from each party for the position of presidential electors appeared on the ballot. Each party's group of 11 candidates for the position of presidential elector were arranged in columns headed only by the political party's name, but not the name of the party's presidential candidate. In the primary election that chose the Democratic nominees for the 11 positions, only five of the Democratic nominees were publicly pledged to their party's national nominee (John F. Kennedy). Six of the elector candidates were unpledged and made it clear that they opposed the national party. All 11 candidates in the Democratic column were elected as presidential electors. The six unpledged Democratic electors ultimately voted for Harry F. Byrd in the Electoral College. A reason-

¹⁰¹ Ohio was not the only key state in the Electoral College in 2004. A shift of 6,743 votes in Iowa (with seven electoral votes), 4,295 in New Mexico (with five electoral votes), and 10,784 in Nevada (with five electoral votes) would have given George W. Bush and John Kerry each 269 electoral votes. If this shift 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 been thrown into the Senate (with each Senator having one vote).

Table 1.23 SIX “NEAR MISS” PRESIDENTIAL ELECTIONS SINCE WORLD WAR II

YEAR	POPULAR VOTE WINNER	ELECTORAL VOTE WINNER	NATIONWIDE POPULAR VOTE LEAD	ELECTORAL VOTES RECEIVED BY NATIONWIDE POPULAR VOTE WINNER	ELECTORAL VOTES RECEIVED BY ELECTORAL VOTE WINNER	POPULAR VOTE SHIFT 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 8,933 in California

able argument can thus be made to proportionally allocate only five-elevenths of the Democratic Party’s popular margin in Alabama over the Republican Party to Kennedy. This method of accounting would put Nixon ahead of Kennedy in the nationwide total popular vote. Nixon, however, never publicly argued for this interpretation or claimed to have won the national popular vote in 1960.¹⁰²

About half of American presidential elections have been landslides (that is, elections with a margin of 10% or more). If one considers only non-landslide presidential elections, the four “wrong winner” elections represent one in seven of the non-landslide elections (14%). Thus, it should not be surprising that one of the seven non-landslide elections between 1988 and 2012—namely the 2000 election—was a “wrong winner” election.

Given the relative closeness of all seven presidential elections between 1988 and 2012, and given today’s closely divided political environment, problems with the operation of the state-by-state winner-take-all rule can be expected in the future.

The 1991 book *Wrong Winner: The Coming Debacle in the Electoral College* by David Abbott and James P. Levine¹⁰³ 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.

Matthew Dowd discussed the possibility of a “wrong winner” election in 2004:

“In 2004, during my tenure as chief strategist for the Bush–Cheney re-election campaign, I did some scenario planning on possible outcomes in a

¹⁰² Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press. Second edition. Pages 67–69.

¹⁰³ Abbott, David W., and Levine, James P. 1991. *Wrong Winner: The Coming Debacle in the Electoral College*. Westport, CT: Praeger.

very close election. I had expected that election to be decided by 3 percentage points or less

“One scenario I raised as a real possibility internally was that George Bush could win the popular vote but lose the electoral college (the exact opposite of what happened in 2000). And this scenario would have come to pass if the Bush margin in Ohio had changed by 120,000 votes. John Kerry would have won the electoral college, 271 to 266, while Bush would have won the popular vote by approximately 3 million votes. . . .

“Subtract 2.2 percent from the margin in each state in 2004 and Bush would have still barely won the popular vote (but by a bigger margin than Gore won the popular vote in 2000), but lost the electoral college to Kerry, 283 to 254, because Ohio, Iowa and New Mexico would have switched from Bush to Kerry.”¹⁰⁴ [Emphasis added]

Applying the same methodology to the situation in 2012, Dowd said the following on June 6, 2012, about the possibility of a “wrong winner” election in 2012:

“So let’s do some similar scenario planning for 2012, when another tight election is expected. It is also expected to be decided by less than 3 percentage points, just like 2004. . . .

“In a very tight race this November, . . . Romney could win the popular vote by more than 1 million votes and lose the electoral college to Obama by a margin of 272 to 266. . . .

“Let me show you how I arrived at this scenario. Obama won the popular vote by a national percentage of just over 7 points in 2008. If we subtract 8 points from the margin in every state, Romney would have a little less than a 1-point victory nationally (which gives you the 1 million vote margin for him in the popular vote).

“And as we subtract 8 points from every state’s margin, what happens to the electoral college? It gets much, much closer, but Obama still wins it by six electoral votes. So in one very possible scenario, Obama can lose the popular vote and still be reelected because he barely carries the electoral college.

“Obviously, much can change over the coming weeks and months, and there are a variety of possibilities. The economy could get worse and Romney wins by a bigger margin and carries the electoral college. The economy could improve and Obama gets reelected comfortably in both the popular

¹⁰⁴Dowd, Matthew. How Obama could lose the popular vote and win the election. *Huffington Post*. June 6, 2012.

vote and the electoral college. Or it's a close election, and as is traditionally the case, the popular vote and electoral college are in sync.

“But keep in mind that in the very tight elections since 2000, we have been increasingly faced with a divergence of the popular vote and the electoral college. **This happened in 2000, it could have easily have happened in 2004, and it could definitely happen in 2012.** But interestingly, if there is a divergence in 2012, it is likely to benefit President Obama and not Mitt Romney.”¹⁰⁵ [Emphasis added]

Albert Hunt commented on Dowd's analysis on July 8, 2012:

“If the race is decided by two percentage points or . . . less than that, the president has a slight advantage with the map.”¹⁰⁶

1.2.3 NOT EVERY VOTE IS EQUAL

There are numerous examples of large disparities in the value of votes under the state-wide winner-take-all system.

For example, Gore won five electoral votes by carrying New Mexico by only 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 a thousandth 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.¹⁰⁷

Large differences in the value of a vote in various states have 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 130,000,000 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 a 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

¹⁰⁵ Dowd, Matthew. How Obama could lose the popular vote and win the election. *Huffington Post*. June 6, 2012.

¹⁰⁶ Hunt, Albert R. Electoral map doesn't always lead straight to White House. *Bloomberg View*. July 8, 2012.

¹⁰⁷ George W. Bush received 271 electoral votes when the Electoral College met in December 2000—one more than the minimum required for election.



Figure 1.7 Herb Block cartoon of September 15, 1970¹⁰⁸

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 example, Nixon's lead of 510,314 in 1968 and Kennedy's lead of 118,574 in 1960.¹⁰⁸ The closeness of the 2000 presidential election was an artificial crisis caused by 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:

¹⁰⁸ Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press. Pages 146 and 148.

¹⁰⁹ The Herb Block Foundation is gratefully acknowledged for permission to use the copyrighted Herb Block cartoon in figure 1.7.

- 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.¹¹⁰

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

The six problematic presidential elections in the past six decades (table 1.23) are reminders that the operation of the winner-take-all system in 51 separate jurisdictions makes razor-thin margins more likely. This, in turn, makes electoral mischief and 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.”¹¹¹

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 *every* voter in *every* state relevant in *every* presidential election,
- guarantees that the candidate with the most popular votes in the entire country wins the Presidency, and
- makes every vote equal.

The authors of this book believe that George W. Bush’s lead of over 3,000,000 popular votes in 2004 should alone have guaranteed him the Presidency in 2004—regardless of which candidate ended up carrying Ohio. Similarly, Al Gore’s nationwide lead of 537,179 should alone 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

A fortuitous convergence of factors currently exists favoring reform of the current system of electing the President.

First, the public has come to realize that voters are effectively disenfranchised

¹¹⁰ Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press. Page 125.

¹¹¹ *Congressional Record*. March 14, 1979. Page 5000.

in presidential elections in about four-fifths of the states. Because of the closeness of the seven presidential elections between 1988 and 2012 and today’s closely divided political environment, the media has spotlighted the notion of reliably “red” states and reliably “blue” states and the operation of the state-by-state winner-take-all rule. In particular, the public has become more aware that presidential elections are contested in only a handful of battleground states. In addition, the six problematic presidential elections in the past six decades (table 1.23) 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 seven most recent presidential elections (1988 through 2012).

- Six of the 13 small states (Alaska, Idaho, Montana, North Dakota, South Dakota, and Wyoming) have regularly given their combined 19 electoral votes to the Republican presidential candidate. The only exception was when Clinton carried Montana in 1992 (undoubtedly because of Ross Perot’s presence on the ballot).
- Six other small jurisdictions (Delaware, the District of Columbia, Hawaii, Maine, Rhode Island, and Vermont) have regularly given their combined 21 electoral votes to the Democratic presidential candidate. The only exceptions were that George H. W. Bush carried Vermont, Maine, and Delaware in 1988.
- Only one of the 13 smallest states (New Hampshire) is a closely divided battleground state. New Hampshire supported the Democrat in 1992 and 1996, the Republican in 1988 and 2000, and the Democrat in 2004, 2008, and 2012.

As it happens, the small states are disadvantaged by the statewide winner-take-all rule to a considerably greater degree than the other states. Specifically, 92% (12 of the 13) of the smallest states are routinely ignored by presidential campaigns.

The 13 smallest states have a combined population of 11,448,957.¹¹² 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 noncompetitive small states—16 electoral votes warranted by population and 24 because of the two electoral-vote bonus per state). The Constitution gives Ohio only 20 electoral votes—half as many as the 12 noncompetitive 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 noncompetitive small states (with their total of 40 electoral votes) are politically irrelevant. Table 1.2 (on 2004 campaign events) dramatically shows the irrelevance of the 12 noncompetitive small states in presidential elections. Table 1.1

¹¹²Unless otherwise stated, population figures in this book refer to the 2000 federal census.

shows that almost none of the \$237,423,744 in advertising expenditures was spent in the 12 noncompetitive small states. The 11 million people in Ohio are politically important, whereas the 11 million people in the 12 small noncompetitive states are not.

It is true that the Founding Fathers intended, as part of the political compromise that led to the Constitution, 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. The additional influence intended for the small states was not large, but neither was it negligible. At the present time, the 13 smallest states (i.e., those with three or four electoral votes) collectively possess about 4% of the nation's population but have 8% of the electoral votes (44 of 538). The Founders' intended allocation of additional political influence to the small states was not achieved because the political effect of the arithmetic bonus provided by the Constitution was trumped by the influence-cancelling effect of the state-by-state winner-take-all rule. Because of the winner-take-all rule, political power in presidential elections resides in the scattered collection of states where the popular vote happens to be closely divided—that is, the battleground states. Because small states have an unusually high probability of being one-party states in presidential elections, 12 of the 13 (92%) least populous states are non-battleground states.

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 the electoral votes of the small states of any political *substance*. If, hypothetically, the Constitution had given each state a bonus of *four* electoral votes (instead of just two), the 12 noncompetitive 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 noncompetitive 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 Founding Fathers also intended that the Constitution's formula for allocating electoral votes would give the most populous states a large amount of influence in presidential elections.¹¹³ A glance at table 1.1, table 1.2, and figure 1.2 demonstrates that the Founders did not achieve this objective. If size mattered, the nation's most populous states would be at center stage in presidential elections. But this is not the case. The political reality is that six of the 12 largest states (California, Texas, New York, Illinois, Georgia, and New Jersey) suffer from the same spectator status as the 12 noncompetitive small states—none has mattered in recent presidential elections.

¹¹³ Out of the present-day 538 electoral votes, 435 are allocated according to population because they correspond to the 435 members of the House of Representatives. That is, about 81% of the 538 electoral votes are allocated according to population.

The Founders' intended allocation of political influence to the large states was not achieved because it was trumped by the widespread adoption of the winner-take-all rule by the states. If, hypothetically, each of these six large spectator states were to suddenly acquire an extra 10 electoral votes each, they still would not matter in presidential elections. Presidential candidates would continue to take the noncompetitive states for granted and 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.¹¹⁴ This argument is arithmetically correct, but it does not reflect political reality. A vote in a small spectator state such as Wyoming and a vote in a large spectator state such as California simply do not matter because everyone knows 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, as discussed in detail in chapter 9, there is no fact-based argument in favor of the position that either political party gains a partisan advantage from a national popular vote for President.

Fourth, 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 U.S. Senator or U.S. Representative in each of the 50 states over the past 40 years 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.

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

¹¹⁴ 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.

(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 nondeliberative 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, these features are not 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 starts by reviewing the history of problematic presidential elections (section 3.1). It then 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 3.2),
- district allocation of electoral votes (section 3.3), and
- nationwide popular election (section 3.4).

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—a 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 uniform 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” (generally called the “National Popular Vote” compact). The compact is a proposed state law that would not become operative when a particular state enacts it. Instead, the compact would govern presidential elections only after it is enacted by states collectively possessing a majority of the electoral votes (i.e., 270 of the 538 electoral votes).

The National Popular Vote compact would not change any state's internal procedures for conducting or counting its presidential vote. The compact would not reduce state control over elections. After the people cast their ballots on Election Day 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 determine the 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. To accomplish this, the National Popular Vote 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 (that is, at least 270 of the 538 electoral votes) in the Electoral College to be elected.

Membership in the National Popular Vote compact is *not* required for all the popular votes of a state to count. Every state's popular vote is included on equal footing in the nationwide total regardless of whether the state has enacted 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 guaranteed enough electoral votes (that is, at least 270 of the 538) to be elected regardless of which states happen to belong to the compact.

Chapter 7 outlines the strategy for enacting the National Popular Vote compact, including a discussion of the roles of public opinion (section 7.1), the state legislatures (section 7.2), the citizen-initiative process (section 7.3), and Congress (section 7.4).

Chapter 8 discusses the possible role of the citizen-initiative process in enacting the National Popular Vote compact. Section 8.1 describes the citizen-initiative process (and the related protest-referendum processes). Section 8.2 discusses the question of whether the citizen-initiative process may be used to enact interstate compacts in general. Section 8.3 discusses whether the citizen-initiative process may be used to enact a state law concerning the manner of choosing presidential electors (such as the National Popular Vote compact).

Chapter 9 contains responses to myths about the National Popular Vote compact.

Chapter 10 is the epilogue.

1.6 SOURCES OF ADDITIONAL INFORMATION

There is a large body of literature analyzing the arguments for and against the current electoral system and possible alternatives.

The congressional hearings held in 1967,¹¹⁵ 1969,^{116,117,118} 1975,¹¹⁹ 1977,¹²⁰ 1979,¹²¹

¹¹⁵U.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.

¹¹⁶U.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.

¹¹⁷U.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.

¹¹⁸U.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.

¹¹⁹U.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.

¹²⁰U.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.

¹²¹U.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*

1993,¹²² and 1999¹²³ contain detailed discussions of the current system and its alternatives from various experts, members of the public, organizations, and public officials.

Books on reforming the method of electing the President include:

- *Wrong Winner: The Coming Debacle in the Electoral College* by David Abbott and James P. Levine (1991),¹²⁴
- *Taming the Electoral College* by Robert W. Bennett (2006),¹²⁵
- *Choice of the People? Debating the Electoral College* by Judith A. Best (1996),¹²⁶
- *The Case against Direct Election of the President: A Defense of the Electoral College* by Judith Vairo Best (1975),¹²⁷
- *Electoral College Reform: Challenges and Possibilities*, a collection of articles edited by Gary Bugh (2010),¹²⁸
- *Why the Electoral College Is Bad for America* by George C. Edwards III (2011, second edition),¹²⁹
- *The Importance of the Electoral College* by George Grant (2004),¹³⁰
- *Securing Democracy: Why We Have an Electoral College*, a collection of articles edited by Gary L. Gregg II (2001),¹³¹
- *The Electoral College and the Constitution: The Case for Preserving Federalism* by Robert M. Hardaway (1994),¹³²

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.

¹²² 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.

¹²³ 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.

¹²⁴ Abbott, David W., and Levine, James P. 1991. *Wrong Winner: The Coming Debacle in the Electoral College.* Westport, CT: Praeger.

¹²⁵ Bennett, Robert W. 2006. *Taming the Electoral College.* Stanford, CA: Stanford University Press.

¹²⁶ Best, Judith A. 1996. *Choice of the People? Debating the Electoral College.* Lanham, MD: Rowman & Littlefield.

¹²⁷ Best, Judith Vairo. 1975. *The Case against Direct Election of the President: A Defense of the Electoral College.* Ithaca, NY: Cornell University Press.

¹²⁸ Bugh, Gary (editor). 2010. *Electoral College Reform: Challenges and Possibilities.* Burlington, VT: Ashgate.

¹²⁹ Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America.* New Haven, CT: Yale University Press. Second edition.

¹³⁰ Grant, George. 2004. *The Importance of the Electoral College.* San Antonio, TX: Vision Forum Ministries.

¹³¹ Gregg, Gary L., II (editor). 2001. *Securing Democracy: Why We Have an Electoral College.* Wilmington, DE: ISI Books.

¹³² Hardaway, Robert M. 1994. *The Electoral College and the Constitution: The Case for Preserving Federalism.* Westport, CT: Praeger.

- *The Electoral College* by Suzanne LeVert (2004),¹³³
- *The Politics of Electoral College Reform* by Lawrence D. Longley and Alan G. Braun (1972),¹³⁴
- *The People's President: The Electoral College in American History and Direct-Vote Alternative* by Neal R. Peirce (1968),¹³⁵
- *Enlightened Democracy: The Case for the Electoral College* by Tara Ross (2004),¹³⁶
- *Choosing a President*, a collection of articles edited by Paul D. Schumaker and Burdett A. Loomis (2002),¹³⁷
- *History of American Presidential Elections 1878–2001*, an 11-volume collection of articles edited by Arthur M. Schlesinger, Jr., and Fred L. Israel (2002),¹³⁸
- *A History of the Presidency from 1788 to 1897*¹³⁹ and *A History of the Presidency from 1897 to 1916* by Edward Stanwood (1924),¹⁴⁰ and
- *The Electoral College* by Lucius Wilmerding (1958).¹⁴¹

Among books that have come out since the 2000 presidential election, the 2004 book *Enlightened Democracy: The Case for the Electoral College*¹⁴² contains some of the clearest arguments supporting the existing system. On the other side of the argument, the 2004 book (and its 2011 second edition) *Why the Electoral College Is Bad for America*¹⁴³ 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.

¹³³ LeVert, Suzanne. 2004. *The Electoral College*. New York, NY: Franklin Watts.

¹³⁴ Longley, Lawrence D., and Braun, Alan G. 1972. *The Politics of Electoral College Reform*. New Haven, CT: Yale University Press.

¹³⁵ Peirce, Neal R. 1968. *The People's President: The Electoral College in American History and Direct-Vote Alternative*. New York, NY: Simon & Schuster.

¹³⁶ Ross, Tara. 2004. *Enlightened Democracy: The Case for the Electoral College*. Los Angeles, CA: World Ahead Publishing Company.

¹³⁷ Schumaker, Paul D., and Loomis, Burdett A. (editors). 2002. *Choosing a President*. New York, NY: Chatham House Publishers.

¹³⁸ Schlesinger, Arthur M., Jr. and Israel, Fred L. (editors). 2002. *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. 11 volumes.

¹³⁹ Stanwood, Edward. 1924. *A History of the Presidency from 1788 to 1897*. Boston, MA: Houghton Mifflin Company.

¹⁴⁰ Stanwood, Edward. 1916. *A History of the Presidency from 1897 to 1916*. Boston, MA: Houghton Mifflin Company.

¹⁴¹ Wilmerding, Lucius, Jr. 1958. *The Electoral College*. Boston, MA: Beacon Press.

¹⁴² Ross, Tara. 2004. *Enlightened Democracy: The Case for the Electoral College*. Los Angeles, CA: World Ahead Publishing Company.

¹⁴³ Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press. Second edition.

FairVote (formerly the Center for Voting and Democracy) published two insightful reports on presidential elections:

- *The Shrinking Battleground: The 2008 Presidential Election and Beyond*¹⁴⁴
and
- *Who Picks the President?*¹⁴⁵

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.

¹⁴⁴ FairVote. 2005. *The Shrinking Battleground: The 2008 Presidential Election and Beyond*. Takoma Park, MD: The Center for Voting and Democracy. www.fairvote.org/shrinking.

¹⁴⁵ FairVote. 2005. *Who Picks the President?* Takoma Park, MD: The Center for Voting and Democracy. www.fairvote.org/whopicks.