4 Analysis of Seven Proposals for Presidential Election Reform

This chapter analyzes seven proposals for changing the way the President is elected (other than the National Popular Vote Compact discussed elsewhere in this book).

- **Fractional-proportional (Lodge-Gossett) method of allocating electoral votes**: A federal constitutional amendment would be adopted to divide each state's electoral votes proportionally according to the percentage of popular votes received by each presidential candidate in the state—with the calculation *carried out to three decimal places* (section 4.1).
- **Whole-number proportional method of allocating electoral votes**: Laws would be enacted at the state level to divide the state's electoral votes proportionally according to the percentage of popular votes received by each presidential candidate in the state—*in whole-number increments* (section 4.2).
- **Congressional-district method of allocating electoral votes**: The voters would elect one presidential elector in each congressional district and two presidential electors statewide. This method could be implemented either by a federal constitutional amendment or enacted at the state level as Maine and Nebraska have done (section 4.3).
- **Elimination of senatorial electors**: A federal constitutional amendment would be adopted to eliminate the two presidential electors that each state currently receives above and beyond the number warranted by its population (section 4.4).
- **Adding 102 at-large presidential electors**: Under the "National Bonus Plan," a federal constitutional amendment would be adopted to create 102 additional at-large presidential electors and award them to the candidate receiving the most popular votes nationwide (section 4.5).
- **Increasing the number of electoral votes**: Under this approach, Congress would amend existing federal law to increase the number of seats in the U.S. House of Representatives from 435 to, say, 573, thereby increasing the number of electoral votes from 538 to 676 (section 4.6).
- **Direct election constitutional amendment**: A federal constitutional amendment would be adopted to abolish the Electoral College and directly elect the President on the basis of a nationwide popular vote (section 4.7).

Table 4.1 Comparison of seven proposals for presidential election reform

	Guaranteeing the presidency to the national popular vote winner	Making every vote equal	Giving presidential candidates a compelling reason to campaign in every state
Fractional-proportional method	No	No	Yes
Whole-number proportional method	No	No	No
Congressional-district method	No	No	No
Elimination of senatorial electors	No	No	No
Adding 102 at-large bonus electors	No	No	No
Increasing number of electoral votes	No	No	No
Direct election constitutional amendment	Yes	Yes	Yes

We discuss each of these proposed methods in terms of the following three criteria:

- **Guaranteeing the presidency to the national popular vote winner**: Would the method guarantee the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia?
- **Making every vote equal**: Would the method make every voter equal throughout the United States?
- **Giving presidential candidates a compelling reason to campaign in every state**: Would the method improve upon the current situation in which three out of four states and about 70% of voters in the United States are ignored in the general-election campaign for President?

Table 4.1 compares the seven proposals.

4.1. FRACTIONAL-PROPORTIONAL METHOD OF AWARDING ELECTORAL VOTES

4.1.1. Summary

- Under the fractional-proportional method of awarding electoral votes, a federal constitutional amendment would be adopted to divide each state's electoral votes proportionally according to the percentage of popular votes received in that state by each presidential candidate—with the *calculation carried out to three decimal places.*[1]
- The fractional-proportional method would not accurately reflect the national popular vote. For example, if this method is applied to the 2000 election returns, George W. Bush would have received *more* electoral votes than Al Gore—even though Gore received 543,816 more popular votes nationwide. Second-place Presidents are the consequence of this method's four significant built-in inequalities in the value of a vote. This shortcoming applies to all five

[1] Note that carrying this fractional calculation out to several decimal places is what distinguishes the fractional-proportional method from the *whole-number* proportional method (section 4.2).

proposed versions of the fractional-proportional method discussed in this chapter, including:

- the original 1950 Lodge-Gossett amendment,
- the 1969 Cannon amendment,
- the 2001 Engel amendment that would give electoral votes only to candidates receiving 5% or more of the popular vote,
- the version that would give electoral votes only to the top-two candidates *nationally*, and
- the version that would give electoral votes only to *each state's* top-two candidates.

- The fractional-proportional method would not make every voter equal throughout the United States. There are four substantial sources of inequality built into this method.
  - **Senatorial electors**: A 3.81-to-1 inequality in the value of a vote is created by the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population. The vote of the 261 million people living in 22 states (79% of the U.S. population) would be worth *less than a third* of a vote in Wyoming under the fractional-proportional method.
  - **Imprecision in apportionment**: A 1.72-to-1 inequality in the value of a vote is created by imprecision in apportioning U.S. House seats (and hence electoral votes) among the states.
  - **Voter turnout**: A vote in a high-turnout state is worth less than a vote elsewhere. A 1.67-to-1 disparity in the value of a vote is created by differences in voter turnout at the state level.
  - **Intra-decade population changes**: A vote in a fast-growing state is worth less than a vote elsewhere. Intra-decade population changes after each census produce a 1.39-to-1 disparity in the value of a vote.
- The fractional-proportional method would address one of the major shortcomings of the current state-by-state winner-take-all method of awarding electoral votes. It would make every voter in every state relevant (to some degree) in the general-election campaign for President. It would therefore give presidential candidates a compelling need to campaign in every state.

4.1.2. History of the fractional-proportional method

On February 1, 1950, the U.S. Senate voted 64–27 to approve a federal constitutional amendment to implement this method of electing the President.

The amendment was sponsored by Senator Henry Cabot Lodge, Jr. (R–Massachusetts) and Representative Ed Gossett (D–Texas).

A few weeks later, the House defeated the Lodge-Gossett amendment by almost a two-thirds margin.[2,3,4,5,6]

Professor Alexander Keyssar recounted the history of the Senate passage and the subsequent House defeat of the Lodge-Gossett Amendment in discussing his 2020 book *Why Do We Still Have the Electoral College?*[7] at a lecture in Cambridge, Massachusetts.[8]

> "[Senator Lodge] really believed in the national popular vote. … And he also wanted to help the Republican party maybe make some inroads in the South.…
>
> "His cosponsor was a guy named Ed Lee Gossett, who was a very right-wing congressman from Texas. … Gossett's argument was very different. He wanted to have a proportional system. And he gave speeches on the floor of Congress about this. Because he **wanted to limit the power of Jews, Blacks, and Italians in New York state, who he thought were in effect determining American presidential elections**. Basically, he wanted to break up the power of large cities. And he gave these extraordinary speeches about the Communists, the New York Labor Party, and then these Jews, and then the Italians, and Black people.
>
> "Remarkably, this Amendment gets passed by the Senate in 1950. … **The liberals were asleep at the switch** about what was going on here. And then after it gets passed, they start paying attention."
>
> "**And then the liberal members of Congress, coupled with some important outside African American advisors, recognized that what this is really aimed at, from Gossett's point of view, is killing the civil rights movement**, in killing Northern support for the civil rights movement, by diminishing the power of key Northern states, and in effect making the South the strongest wing of the Democratic Party.
>
> "So, in the period of 6 weeks, this whole thing turns around. It's a remarkable political moment, where you go from a constitutional amendment which is passed by a two-thirds vote in the Senate, and six weeks later, or seven

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[2] U.S. Senate Committee on the Judiciary. 1949. Election of President and Vice President: Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 81st Congress, 1st Session, on S.J. Res. 2. https://babel.hathitrust.org/cgi/pt?id=uiug.30112119853536&view=1up&seq=5

[3] Bennett, Emmett L. 1950. The reform of presidential elections: The Lodge amendment. *American Bar Association Journal*. Volume 37. February 1951. Page 89ff.

[4] Morley, Felix. 1961. Democracy and the Electoral College. *Modern Age*. Fall 1961. Pages 373–388.

[5] Editorial: Giving the minority vote a voice. *St. Petersburg Times*. August 6, 1951.

[6] Silva, Ruth C. 1950. The Lodge-Gossett resolution: A critical review. *The American Political Science Review*. Volume 44. Number 1. March 1950. Pages 86–99.

[7] Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press.

[8] Keyssar, Alexander. 2020. Lecture at Harvard Book Store. July 31, 2020. *C-SPAN*. https://www.c-span.org/video/?473814-1/why-electoral-college

> weeks later maybe, it is voted down by about a two-thirds vote in the House of Representatives."
>
> "But the anti-Communism, the racism, all that feeding into this says something about the anxiety attached to our politics in our discussions of political institutions."[9] [Emphasis added]

When the Lodge-Gossett amendment was debated in 1950, New York occupied a dominant role in deciding the presidency that has not been equaled by any state since.

First, New York had the largest number of electoral votes of any state at the time—a whopping 47 electoral votes (out of 531).

Second, New York was a closely divided battleground state at the time.

Third, in addition to being a battleground state, New York was a "swing" state, having voted:

- Republican (for Thomas Dewey) in 1948 by a 46%–45% margin, and
- Democratic (for Franklin D. Roosevelt) in 1944 by a 52%–47% margin.

If there had been a proportional division of New York's electoral votes in 1944 and 1948, New York would have given its chosen candidate a lead of only about two electoral votes in 1944 and one electoral vote in 1948.

Representative Gossett frequently highlighted the fact that several other large closely divided northern industrial states such as Pennsylvania, Illinois, and Michigan played outsized roles in electing the President at the time.

- Pennsylvania had 35 electoral votes and voted 51%–48% Democratic in 1944 and 47%–51% Republican in 1948.
- Illinois had 28 electoral votes and voted 52%–48% Democratic in 1944 and 50%–49% Democratic in 1948.
- Michigan had 19 electoral votes and voted 50%–49% Democratic in 1944 and 49%–48% Republican in 1948.

Under the fractional-proportional method of awarding electoral votes, these three states would have delivered leads of *only about one electoral vote each* to the candidate who won in 1944 and 1948.

In contrast, under the winner-take-all method of awarding electoral votes:

- New York delivered a 47–0 lead in electoral votes to the state's winner;
- Pennsylvania delivered a 35–0 lead;
- Illinois delivered a 28–0 lead; and
- Michigan delivered a 19–0 lead.

Together, New York, Pennsylvania, Illinois, and Michigan could deliver a 129–0 lead under the winner-take-all system.

However, they would have been able to deliver a lead of only about four or five electoral votes under the fractional-proportional method.

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[9] Keyssar, Alexander. 2020. Author talk at Harvard Book Store in Cambridge, Massachusetts on the book *Why Do We Still Have the Electoral College? C-SPAN*. July 21, 2020. Timestamp 52:58–55:12 https://www.c-span.org/video/?473814-1/why-electoral-college

Meanwhile, the 11 states of the former Confederacy had almost the same combined total number of electoral votes (127) as those four northern industrial states.

The "solid south" was a one-party region at the time. As shown in table 4.2, the 11 southern states delivered 76% of their popular votes in support of the region's then-dominant party (the Democrats) and in support of the region's hallmark governmental policy—racial segregation.

This 76% landslide was made possible, in large part, by the fact that virtually no blacks voted in the south under Jim Crow laws that were in place at the time.

If the south's 127 electoral votes were divided proportionately (that is, 97–30), the south would have delivered a lead of 67 electoral votes to its favored candidate under the fractional-proportional amendment.

A lead of 67 electoral votes would have been far greater than the paltry four-vote or five-vote lead that the four northern industrial states (New York, Pennsylvania, Illinois, and Michigan) could generate together.

In short, the Lodge-Gossett amendment would have dramatically shifted political power in the country, given the political situation at the time.

Representative Gossett was candid about this.

He described the role of Negroes, Jews, Italians, Irish, Poles, organized labor, and Communists in the closely divided northern industrial states in his testimony to a House committee in 1949:

> "The Electoral College permits and invites irresponsible control and domination by **small organized minority groups, within the large pivotal States**. It aggravates and accentuates the building up and solidification within these States of **religious, economic, and racial blocs**. Small, definable, minority groups, organized along religious or economic or racial lines, by voting together, can and do hold a balance of power within these pivotal States. As a result, the political strategists in both parties make special appeals to these various groups as such. **These groups have become more and more politically conscious. They know their power.** In many instances, they have no political alignments or philosophy as such, but are simply up for sale to the highest bidder. To encourage economic, racial, and religious group consciousness and group action, is a dangerously undemocratic practice, aside from its other evil consequences.
>
> "**At the danger of stepping on some toes, let's get down to specific cases. Let's take a look at the political platforms of both major parties in the presidential campaigns of 1944 and 1948 and see how they were built and designed to appeal to minority groups and blocs in the large pivotal States**. First, both parties wrote the FEPC[10] [Federal Employment Practices Committee] into their platforms. **The platform makers of both parties will tell you frankly, off the record of course, that this was done as a bid**

[10] In 1941, the Fair Employment Practices Committee (FEPC), was established by President Franklin D. Roosevelt to help prevent discrimination against African Americans in defense and government jobs. https://www.britannica.com/topic/Fair-Employment-Practices-Committee

Table 4.2 Vote for President in 1944 in 11 southern states

State	Democratic percent	Electoral votes
Alabama	81%	11
Arkansas	70%	9
Florida	70%	8
Georgia	82%	12
Louisiana	81%	10
Mississippi	94%	9
North Carolina	67%	14
South Carolina	88%	8
Tennessee	71%	12
Texas	71%	23
Virginia	62%	11
Total	**76%**	**127**

> **for the Negro vote. There are enough Negroes in New York City, when voting in bloc, to determine often how the entire electoral vote of the State of New York is cast; enough in Philadelphia if cast in bloc to probably determine the result of an election in the State of Pennsylvania; enough in Detroit to perhaps decide the vote of the State of Michigan; enough in Chicago to carry the State of Illinois**."[11][Emphasis added]

Referring to the civil-rights planks of the 1948 platforms of both major parties, Representative Gossett continued:

> "Hence, **a dangerous and radical proposal in which a majority of neither party believes was written into both platforms as political bait for a minority vote within the large pivotal States**.
>
> "A second minority group that was wooed by the platform makers of both parties was **the radical wing of organized labor**. In the large pivotal States above mentioned, the votes controlled by the political action committee of the CIO was a tremendous, potential, political threat. The votes allegedly controlled by this organization in the large pivotal States, if cast in bloc, would be sufficient to swing the votes of such States and perhaps elect a President. Hence, both parties generally speaking wrote platitudinous provisions into their platforms concerning industrial-management relations. Both parties pussyfooted on the labor question because of organized labor's power through the Electoral College.
>
> "**Now, with all due deference to our many fine Jewish citizens**, they constitute a third group, to whom a specific overt appeal was made in the platforms of both major parties. There are 2 million Jews in the city of New

[11] Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 16–18. https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21

> York alone. When they vote even substantially in bloc, it means the balance of power in our largest State. The candidate for whom they vote carries New York State and probably the presidency. What did the platform makers of 1944 do? Both of them wrote into their platforms specifically and without equivocation the so-called Palestine resolution, calling upon Great Britain to immediately open Palestine to unrestricted Jewish immigration. Regardless of the merits of the Zionists' cause in Palestine, this was political demagoguery and dangerous meddling with British foreign policy in the Holy Land. As a result of platform endorsements by both major parties, we passed a resolution through the Seventy-Ninth Congress calling upon England to open up Palestine to unrestricted Jewish immigration. Within a few weeks after this resolution was passed, England asked us if we were ready and willing to back up our request with the Army and the Navy if she got into war. We stuck our noses into British foreign policy for purely political reasons and to the detriment of all of our citizens, Jewish and otherwise.
>
> "Then **there are numerous other minority pressure groups** within these large pivotal States to whom continuous political overtures are made by the strategists of both parties. There are more than **1,000,000 Italians in New York City. There are 2,000,000 Irish**, many of whom are still politically conscious where Ireland is concerned. **There are 500,000 Poles** and other large racial groups. Because of the electoral college, **the American Labor Party and the Communist Party in the State of New York** have power and trading position out of all proportion to their numbers, to say nothing of their merit. It is entirely possible that because of this political straitjacket, the electoral college system, that said American Labor Party or the Communist Party will determine someday soon who will be the President of the United States. Of late, we have become rightly alarmed over the activities of the Communist Party in the United States. Strange to say, this party has its greatest following and influence in the aforesaid large pivotal States. This party and its fellow-travelers are shrewd political manipulators. What grim irony it would be if they should swing the balance of power and be responsible for the election of a President of the United States. Again, mention might be made of the undue power and influence given to the big city political machines through the Electoral College. Through, and because of the Electoral College, a few big cities have elected and will probably continue to elect Presidents of the United States. It is largely within these big cities that the racial, religious, and economic blocs are found and in which they operate."[12] [Emphasis added]

African Americans played a unique role in the national debate over the fractional-proportional (Lodge-Gossett) plan because, at the time, Jim Crow laws in the southern states denied them the right to vote.

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[12] Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 16–18. https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21

Representative Gossett obliquely acknowledged the relatively small total number of voters who went to the polls in southern states:

> "Under our proposal, **it's of no concern** to Texas how many vote in New York and of no concern **to New York how many vote in Texas**. New York would still have 47 electoral votes, divided, however, in the exact ratio in which they were cast. Texas would still have 23 electoral votes, divided, however, in the exact ratio in which they were cast."[13] [Emphasis added]

Thus, African Americans were especially concerned with preserving their political clout in the closely divided northern industrial states where they were able to vote.

If there was any doubt as to whether the concern of African Americans was well placed, Representative Gossett made it very clear why he objected to the winner-take-all method of awarding electoral votes at a congressional hearing in 1949:

> "Now, please understand, **I have no objection to the Negro in Harlem voting**, and to his vote being counted, but I do resent that fact that **both parties will spend a hundred times as much money to get his vote, and that his vote is worth a hundred times as much in the scale of national politics as is the vote of a white man in Texas**. I have no objection to a million folks who cannot speak English voting, or to their votes being counted, but I do resent the fact that because they happen to live in Chicago, or Detroit, or New York, that **their vote is worth a hundred times as much as mine because I happen to live in Texas**. Is it fair, is it honest, is it democratic, is it to the best interest of anyone in fact, to place **such a premium on a few thousand labor votes, or Italian votes, or Irish votes, or Negro votes, or Jewish votes, or Polish votes, or Communist votes, or big-city-machine votes**, simply because they happen to be located in two or three large, industrial pivotal States? Can anything but evil come from placing such temptation and such power in the hands of political parties and political bosses? They, of course, will never resist the temptation of making undue appeals to these minority groups whose votes mean the balance of power and the election of Presidents. Thus, both said groups and said politicians are corrupted and the Nation suffers."[14] [Emphasis added]

Professor Alexander Keyssar's book *Why Do We Still Have the Electoral College?* provides additional detail on Representative Gossett's vigorous—and overtly racist—campaign for his amendment.[15]

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[13] Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 19. https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21

[14] *Ibid.*

[15] Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press.

4.1.3. The fractional-proportional method would require a constitutional amendment.

Because the fractional-proportional method involves the creation of fractional electoral votes, a federal constitutional amendment would be required to implement it.

The position of presidential elector is established by the U.S. Constitution:

> "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…."[16] [Emphasis added]

That is, each state has the power to choose the manner of selecting the specified whole number of persons to serve as presidential electors in the Electoral College.

Under the original Constitution, presidential electors did not differentiate their vote for President from their vote for Vice President.

Under Article II, section 1, clause 3 of the original Constitution, each presidential elector voted for two persons:

> "The Electors shall meet in their respective States, and **vote by Ballot for two Persons, of whom one** at least shall not be an Inhabitant of the same State with themselves."
>
> "The Person having the greatest Number of Votes shall be the President."
>
> "After the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President." [Emphasis added]

The problems associated with giving each presidential elector two undifferentiated votes become apparent in the 1796 and 1800 elections (section 2.5 and 2.6).

The 12th Amendment (ratified in 1804) required presidential electors to cast separate ballots for President and Vice President:

> "**The Electors** shall meet in their respective states, and **vote by ballot** for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots **the person voted for as President**, and in distinct ballots **the person voted for as Vice-President**, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each …." [Emphasis added]

The requirement that each presidential elector cast a ballot for "the person" precludes fractional electoral votes.

Thus, a federal constitutional amendment would be necessary to implement the fractional-proportional method.[17]

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[16] U.S. Constitution. Article II, section 1, clause 2.

[17] In contrast, the whole-number proportional method (section 4.2) would divide each state's electoral votes proportionally in whole-number increments. Therefore it would not require a federal constitutional amendment and could be implemented by state law on a state-by-state basis.

4.1.4. Description of the fractional-proportional method

Under this method of awarding electoral votes, a state's electoral votes would be divided proportionally according to the percentage of popular votes received in the state by each presidential candidate—with this fractional calculation *carried out to three decimal places.*

Five versions of the fractional-proportional amendment have been proposed at various times:

- 1950 Lodge-Gossett amendment,
- 1969 Cannon amendment,
- 2001 Engel amendment,
- nationwide top-two fractional-proportional proposal, and
- state-level top-two fractional-proportional proposal.

Lodge-Gossett amendment of 1950

The Lodge-Gossett amendment to implement the fractional-proportional method passed the U.S. Senate in 1950 (but was defeated in the House). It would have

- retained the existing distribution of electoral votes among the states—that is, each state would have a number of electoral votes equal to its number of U.S. Representatives and Senators,
- awarded each state's electoral votes in proportion to each candidate's share of the state's electoral votes—carried out to three decimal places, and
- made a plurality of electoral votes sufficient for election—thereby eliminating the current procedure wherein the choice of the President and Vice President would be made by Congress.

The 1950 Lodge-Gossett amendment (Senate Joint Resolution 2 of the 81st Congress) reads:

> "Section 1. 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 herein provided.
>
> "**The Electoral College system for electing the President and Vice President of the United States is hereby abolished.** The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. **Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.**
>
> "Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall

make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. **Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President.** In making the computations, fractional numbers less than one one-thousandth shall be disregarded. **The person having the greatest number of electoral votes for President shall be President.** If two or more persons shall have an equal and the highest number of such votes, then the one for whom the greatest number of popular votes were cast shall be President.

"The Vice-President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice-President of the United States.

"Section 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution and the twelfth article of amendment to the Constitution, are hereby repealed.

"Section 3. This article shall take effect on the tenth day of February following its ratification.

"Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of the submission hereof to the States by the Congress." [Emphasis added]

Cannon amendment of 1969

While Congress was intensively debating various constitutional amendments for electing the president in 1969, Senator Howard Cannon (D–Nevada) introduced a constitutional amendment that would have:

- retained the existing distribution of electoral votes among the states;
- awarded each state's electoral votes in proportion to each candidate's share of the state's electoral votes—carried out to three decimal places;
- required that a candidate receive at least 40% of the electoral votes in order to win. If this requirement is not satisfied, there would be a contingent election for President and Vice President in a joint session of Congress in which each member of the House and Senate cast one vote.

The proposed 1969 Cannon amendment (Senate Joint Resolution 33 in the 91st Congress) reads:

"Section 1. 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 provided in this article. No person constitutionally ineligible for the office of President shall be eligible for the office of Vice President.

"Section 2. The President and Vice President shall be elected by the people of the several States and the District of Columbia. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that the legislature of any State may prescribe lesser qualifications with respect to residence therein. The electors of the District of Columbia shall have such qualifications as the Congress may prescribe. **The places and manner of holding such election in each State shall be prescribed by the legislature thereof, but the Congress may at any time by law make or alter such regulations.** The place and manner of holding such election in the District of Columbia shall be prescribed by the Congress. The Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin.

"Section 3. Each state shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which each State may be entitled in the Congress. **The District of Columbia shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives in Congress to which such District would be entitled if it were a State, but in no event more than the least populous State.**

"Section 4. Within forty-five days after such election, or at such time as Congress shall direct, the official custodian of the election returns of each State and the District of Columbia shall make distinct lists of all persons for whom votes were cast for President and the number of votes cast for each person, and the total vote cast by the electors of the State or the District for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates and the votes shall then be counted. **Each person for whom votes were cast shall be credited with such proportion of the electoral votes thereof as he received of the total vote cast by the electors therein for President.** In making the computation, fractional numbers less than one one-thousandth shall be disregarded. **The person having the greatest aggregate number of electoral**

> **votes of the States and the District of Columbia for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes**, or if two persons have received an identical number of such electoral votes which is at least 40 per centum of the whole number of electoral votes, then from the persons having the two greatest number of such electoral votes for President, the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined membership of the Senate and House of Representatives shall be necessary for a choice.
>
> "Section 5. The Vice President shall be likewise elected, at the same time, in the same manner, and subject to the same provisions as the President.
>
> "Section 6. The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them. The Congress shall have power to enforce this article by appropriate legislation.
>
> "Section 7. The following provisions of the Constitution are hereby repealed: paragraphs 1, 2, 3, and 4 of section 1, Article II; the twelfth article of amendment; section 4 of the twentieth article of amendment; and the twenty-third article of amendment.
>
> "Section 8. This article shall take effect on the 1st day of February following its ratification, except that this article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress." [Emphasis added]

Engel amendment with 5% threshold of 2001

The Congressional Research Service observed:

> "Many, though not all, proportional plan amendments would also require that candidates gain a minimum of 5% of the popular vote in a state in order to win any share of its electoral votes."[18]

For example, in 2001, Representative Eliot Engel (D–New York) proposed a version of the fractional-proportional method requiring that a candidate receive at least 5% of the popular vote in a state in order to receive any electoral votes.

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[18] Neale, Thomas H. 2003. *The Electoral College: Reform Proposals in the 107th Congress*. Congressional Research Service. February 7, 2003. Page 9.

The Engel amendment would have:

- retained the existing distribution of electoral votes among the states;
- required that a candidate receive at least 5% of a state's popular vote in order to get a proportionate share (calculated to three decimal places) of that state's electoral votes;
- contained no minimum number of electoral votes in order to win election (that is, it was like the original 1950 Lodge-Gossett amendment, but unlike the 1969 Cannon amendment, which had a 40% requirement); and
- provided for a contingent election in Congress only in the remote possibility of a 269.000-to-269.000 tie in the nationwide electoral vote.

The Engel amendment (Senate Joint Resolution 17 of the 107th Congress)[19] is as follows:

> "Section 1. In an election for President and Vice President, each State shall appoint a number of Electors to vote for each candidate for President or Vice President that bears the same ratio to the total number of Electors of that State as the number of votes received by that candidate bears to the total number of votes cast in that State.
>
> "Each State shall make computations for purposes of carrying out this section in accordance with such laws as it may adopt, including laws providing for the allocation of Electors among more than two **candidates receiving 5 percent or more of the total number of votes cast in the State** under such criteria as the State may by law establish, except that fractional numbers less than one one-thousandth shall be disregarded. The candidate having the greatest number of electoral votes for President shall be the President. The candidate having the greatest number of electoral votes for Vice President shall be the Vice President.
>
> "Section 2. If two or more candidates receive an equal number of electoral votes for President and such number is greater than the number of such votes received by any other candidate, then from the candidates who receive such equal number of votes the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.
>
> "Section 3. If two or more candidates receive an equal number of electoral votes for Vice President and such number is greater than the number of such votes received by any other candidate, then from the candidates who receive such equal number of votes the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

[19] House Joint Resolution 17. 107th Congress. February 13, 2001. https://www.congress.gov/bill/107th-congress/house-joint-resolution/17

> "Section 4. For purposes of this article other than sections 2 and 3, the District constituting the seat of Government of the United States shall be treated as if it were a State, except that the District may not appoint a number of Electors greater than the number of Electors appointed by the least populous State.
>
> "Section 5. The Congress shall have the power to enforce this article by appropriate legislation.
>
> "Section 6. This article shall apply with regard to any election for President and Vice President that is held more than one year after the date of the ratification of this article." [Emphasis added]

Nationwide top-two version of the fractional-proportional method

In 2020, Kevin Johnson of the Election Reformers Network described a version of the fractional-proportional method with a nationwide top-two rule:

> "Seventy years ago, senators voted 64-27 to amend the Constitution with exactly the features discussed here: replacing human electors with electoral votes, replacing winner-take-all with proportional allocation, and retaining the advantage for small states.
>
> "The version electoral reformers are pushing now is an improvement, because it would **limit the proportional allocation to the top-two vote-getters nationwide**."[20] [Emphasis added]

Thus, this constitutional amendment would:

- retain the existing distribution of electoral votes among the states;
- split each state's electoral votes between the top-two *nationwide* candidates in proportion to their share of the state's popular vote—with the fractional calculation carried out to three decimal places.
- apparently (by its silence) leave unchanged the current power of state legislatures to control the manner of conducting presidential elections (that is, it would be like the original 1950 Lodge-Gossett amendment and 2001 Engel amendment, but unlike the 1969 Cannon amendment and various other proposals that would increase the power of Congress over presidential elections).

State-level top-two version of the fractional-proportional method

The *nationwide* top-two approach described above appeals to staunch enthusiasts of the two existing major political parties.

However, it is correspondingly less appealing to those who would like to see more independent or third-party candidates.

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[20] Johnson, Kevin. 2020. Bloc voting is a bigger problem than electors going rogue. Here's a fix. *The Fulcrum*. July 10, 2020. https://thefulcrum.us/electoral-college-votes

Thus, the Election Reformers Network web site (as of March 2024) proposes a state-level variation of the top-two fractional-proportional method:

> "All of a state's electoral votes are divided proportionally between the two candidates receiving the most votes **in that state**."[21] [Emphasis added]

This change allows independent and third-party candidates to accumulate fractional electoral votes from state to state.

However, this change raises the question as to what happens if no presidential candidate wins an absolute majority of 269.001 electoral votes.

This is no small matter, because no candidate received a majority of the national popular vote in four of the eight presidential elections between 1992 and 2020.

Moreover, given the declining number of voters who identify themselves with one of the two established political parties, this outcome could become even more frequent in the future.

If the constitutional amendment is silent on this question, the existing constitutional provision for a contingent election would continue to operate—that is, the choice of the President and Vice President would be thrown into Congress.

4.1.5. The fractional-proportional method would not accurately reflect the national popular vote.

From the point-of-view of the general public, the most conspicuous shortcoming of the current system is that the second-place candidate can become President.

The country is currently in an era of relatively close presidential elections. Indeed, in the eight presidential elections between 1992 and 2020, the average margin of victory for the national popular vote winner has been only 4.3%.[22]

In 2000, Al Gore received 543,816 more popular votes nationwide than George W. Bush.

However, Bush would have received *more* electoral votes than Gore under all five versions of the fractional-proportional method and, therefore, would have been elected.

Lodge-Gossett amendment of 1950

In 2000, the national popular vote for President was:

- Al Gore—51,003,926
- George W. Bush—50,460,110
- Ralph Nader—2,883,105
- Pat Buchanan—449,225
- Harry Browne—384,516
- 11 other candidates—236,593[23]

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[21] See slide 8. Election Reformers Network. *The Top-two Proportional Approach to Fixing the Electoral College*. Accessed March 10, 2024. https://assets-global.website-files.com/642dcbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

[22] The margin of victory for the national popular vote winner was 5.6% in 1992, 8.5% in 1996, 0.5% in 2000, 2.4% in 2004, 7.2% in 2008, 3.9% in 2012, 2.0% in 2016, and 4.0% in 2020.

[23] These 236,593 popular votes were scattered among 11 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." The total national popular vote for President in 2000 was 105,417,475.

Table 4.3 2000 election results

State	Gore	Bush	Nader	Buchanan	Browne	Others	Total
AL	695,602	944,409	18,349	6,364	5,902	1,925	1,672,551
AK	79,004	167,398	28,747	5,192	2,636	2,583	285,560
AZ	685,341	781,652	45,645	12,373	0	9,102	1,534,113
AR	422,768	472,940	13,421	7,358	2,781	2,513	921,781
CA	5,861,203	4,567,429	418,707	44,987	45,520	28,010	10,965,856
CO	738,227	883,745	91,434	10,465	12,799	4,695	1,741,365
CT	816,015	561,094	64,452	4,731	3,484	9,749	1,459,525
DE	180,068	137,288	8,307	777	774	408	327,622
DC	171,923	18,073	10,576	0	669	653	201,894
FL	2,912,253	2,912,790	97,488	17,484	16,415	6,680	5,963,110
GA	1,116,230	1,419,720	13,432	10,926	36,332	164	2,596,804
HI	205,286	137,845	21,623	1,071	1,477	649	367,951
ID	138,637	336,937	12,292	7,615	3,488	2,652	501,621
IL	2,589,026	2,019,421	103,759	16,106	11,623	2,188	4,742,123
IN	901,980	1,245,836	18,531	16,959	15,530	466	2,199,302
IA	638,517	634,373	29,374	5,731	3,209	4,359	1,315,563
KS	399,276	622,332	36,086	7,370	4,525	2,627	1,072,216
KY	638,898	872,492	23,192	4,173	2,896	2,536	1,544,187
LA	792,344	927,871	20,473	14,356	2,951	7,661	1,765,656
ME	319,951	286,616	37,127	4,443	3,074	606	651,817
MD	1,145,782	813,797	53,768	4,248	5,310	2,575	2,025,480
MA	1,616,487	878,502	173,564	11,149	16,366	6,916	2,702,984
MI	2,170,418	1,953,139	84,165	2,061	16,711	6,217	4,232,711
MN	1,168,266	1,109,659	126,696	22,166	5,282	6,616	2,438,685
MS	404,964	573,230	8,126	2,267	2,009	4,330	994,926
MO	1,111,138	1,189,924	38,515	9,818	7,436	3,061	2,359,892
MT	137,126	240,178	24,437	5,697	1,718	1,841	410,997
NE	231,780	433,862	24,540	3,646	2,245	946	697,019
NV	279,978	301,575	15,008	4,747	3,311	4,351	608,970
NH	266,348	273,559	22,198	2,615	2,757	1,604	569,081
NJ	1,788,850	1,284,173	94,554	6,989	6,312	6,348	3,187,226
NM	286,783	286,417	21,251	1,392	2,058	704	598,605
NY	4,107,907	2,403,374	244,060	31,703	7,702	27,922	6,822,668
NC	1,257,692	1,631,163	0	8,874	12,307	1,226	2,911,262
ND	95,284	174,852	9,497	7,288	671	675	288,267
OH	2,186,190	2,351,209	117,857	26,724	13,475	10,002	4,705,457
OK	474,276	744,337	0	9,014	6,602	0	1,234,229
OR	720,342	713,577	77,357	7,063	7,447	8,182	1,533,968
PA	2,485,967	2,281,127	103,392	16,023	11,248	15,362	4,913,119
RI	249,508	130,555	25,052	2,273	742	982	409,112
SC	566,039	786,426	20,279	3,520	4,888	2,625	1,383,777
SD	118,804	190,700	0	3,322	1,662	1,781	316,269
TN	981,720	1,061,949	19,781	4,250	4,284	4,197	2,076,181
TX	2,433,746	3,799,639	137,994	12,394	23,160	704	6,407,637
UT	203,053	515,096	35,850	9,319	3,616	3,820	770,754
VT	149,022	119,775	20,374	2,192	784	2,161	294,308
VA	1,217,290	1,437,490	59,398	5,455	15,198	4,616	2,739,447
WA	1,247,652	1,108,864	103,002	7,171	13,135	8,921	2,488,745
WV	295,497	336,475	10,680	3,169	1,912	391	648,124
WI	1,242,987	1,237,279	94,070	11,471	6,640	6,160	2,598,607
WY	60,481	147,947	4,625	2,724	1,443	1,131	218,351
Total	**51,003,926**	**50,460,110**	**2,883,105**	**449,225**	**384,516**	**236,593**	**105,417,475**

Table 4.4 2000 election under the Lodge-Gossett fractional-proportional method

State	Gore	Bush	Nader	Buchanan	Browne	All others	EV
AL	3.743	5.082	0.099	0.034	0.032	0.010	9
AK	0.830	1.759	0.302	0.055	0.028	0.027	3
AZ	3.574	4.076	0.238	0.065	0.000	0.047	8
AR	2.752	3.078	0.087	0.048	0.018	0.016	6
CA	28.863	22.492	2.062	0.222	0.224	0.138	54
CO	3.391	4.060	0.420	0.048	0.059	0.022	8
CT	4.473	3.075	0.353	0.026	0.019	0.053	8
DE	1.649	1.257	0.076	0.007	0.007	0.004	3
DC	2.555	0.269	0.157	0.000	0.010	0.010	3
FL	12.209	12.212	0.409	0.073	0.069	0.028	25
GA	5.588	7.107	0.067	0.055	0.182	0.001	13
HI	2.232	1.499	0.235	0.012	0.016	0.007	4
ID	1.106	2.687	0.098	0.061	0.028	0.021	4
IL	12.011	9.369	0.481	0.075	0.054	0.010	22
IN	4.921	6.798	0.101	0.093	0.085	0.003	12
IA	3.397	3.375	0.156	0.030	0.017	0.023	7
KS	2.234	3.482	0.202	0.041	0.025	0.015	6
KY	3.310	4.520	0.120	0.022	0.015	0.013	8
LA	4.039	4.730	0.104	0.073	0.015	0.039	9
ME	1.963	1.759	0.228	0.027	0.019	0.004	4
MD	5.657	4.018	0.265	0.021	0.026	0.013	10
MA	7.176	3.900	0.771	0.049	0.073	0.031	12
MI	9.230	8.306	0.358	0.009	0.071	0.026	18
MN	4.791	4.550	0.520	0.091	0.022	0.027	10
MS	2.849	4.033	0.057	0.016	0.014	0.030	7
MO	5.179	5.547	0.180	0.046	0.035	0.014	11
MT	1.001	1.753	0.178	0.042	0.013	0.013	3
NE	1.663	3.112	0.176	0.026	0.016	0.007	5
NV	1.839	1.981	0.099	0.031	0.022	0.029	4
NH	1.872	1.923	0.156	0.018	0.019	0.011	4
NJ	8.419	6.044	0.445	0.033	0.030	0.030	15
NM	2.395	2.392	0.178	0.012	0.017	0.006	5
NY	19.869	11.625	1.180	0.153	0.037	0.135	33
NC	6.048	7.844	0.000	0.043	0.059	0.006	14
ND	0.992	1.820	0.099	0.076	0.007	0.007	3
OH	9.757	10.493	0.526	0.119	0.060	0.045	21
OK	3.074	4.825	0.000	0.058	0.043	0.000	8
OR	3.287	3.256	0.353	0.032	0.034	0.037	7
PA	11.638	10.679	0.484	0.075	0.053	0.072	23
RI	2.440	1.276	0.245	0.022	0.007	0.010	4
SC	3.272	4.547	0.117	0.020	0.028	0.015	8
SD	1.127	1.809	0.000	0.032	0.016	0.017	3
TN	5.201	5.626	0.105	0.023	0.023	0.022	11
TX	12.154	18.976	0.689	0.062	0.116	0.004	32
UT	1.317	3.342	0.233	0.060	0.023	0.025	5
VT	1.519	1.221	0.208	0.022	0.008	0.022	3
VA	5.777	6.822	0.282	0.026	0.072	0.022	13
WA	5.514	4.901	0.455	0.032	0.058	0.039	11
WV	2.280	2.596	0.082	0.024	0.015	0.003	5
WI	5.262	5.237	0.398	0.049	0.028	0.026	11
WY	0.831	2.033	0.064	0.037	0.020	0.016	3
Total	**258.271**	**259.170**	**14.898**	**2.425**	**1.985**	**1.251**	**538**

Table 4.3 shows, by state, the results of the 2000 presidential election.

Table 4.4 shows the result of applying the Lodge-Gossett fractional-proportional method to the 2000 election returns.[24]

Columns 2 through 7 of the table show, by state, the number of electoral votes that Gore, Bush, Nader, Buchanan, Browne, and "all others" would have received, respectively. Each candidate's number of electoral votes is obtained by:

- dividing the candidate's popular vote in the state by the total popular vote for President in that state,
- multiplying this quotient by the state's number of electoral votes (found in column 8 of the table), and
- rounding the result off to three decimal places.

The bottom line of the table shows that Al Gore would have received 258.271 electoral votes, while George W. Bush would have received 259.170 electoral votes under the fractional-proportional method in 2000.

That is, the Lodge-Gossett version of the fractional-proportional system would have produced the same second-place President in 2000 as the current state-by-state winner-take-all method of awarding electoral votes.

Cannon amendment of 1969

Similarly, the Cannon version of the fractional-proportional method would have produced the same second-place President in 2000.

Engel amendment with 5% threshold in 2001

The Engel version of the fractional-proportional system would have required that a candidate receive at least 5% of a state's votes in order to share in the state's electoral votes.[25]

In 2000, third-party candidates received the following percentages of the national popular vote for President:

- Ralph Nader—2.73%
- Pat Buchanan—0.43%
- Harry Browne—0.36%
- 11 other candidates—0.22%

Moreover, none of these minor-party candidates received 5% of the popular vote in any state. Therefore, all of their votes would have been extinguished, and none of them would have received any electoral votes under the Engel amendment.

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[24] In this book, all hypothetical analyses of an alternative electoral system being applied to a past election are necessarily based on the election returns from the actual election conducted under the then-existing electoral system. The authors, of course, recognize that the campaigns would have been conducted differently if a different electoral system had been in effect. For example, George W. Bush led in the vast majority of national polls during most of 2000. That, in turn, suggests that Bush might well have won the national popular vote if the candidates had campaigned nationwide, instead of just in the battleground states.

[25] House Joint Resolution 17. 107th Congress. February 13, 2001. https://www.congress.gov/bill/107th-congress/house-joint-resolution/17

In particular, Ralph Nader, the minor-party candidate with the greatest support in 2000, would have received no electoral votes as a result of the 5% threshold, whereas he would have received 14.898 electoral votes under the original 1950 Lodge-Gossett proposal (table 4.4).

Table 4.5 shows, by state, the results of the fractional-proportional method with Engel's 5% threshold.

- Columns 2 and 3 show, by state, the number of popular votes received by Gore and Bush, respectively.
- Columns 4 and 5 show the electoral votes that Gore and Bush would have received under the fractional-proportional method with a 5% threshold. This number is obtained by:
  - dividing each candidate's popular vote in a state by the combined Bush–Gore vote in that state,
  - multiplying this quotient by the state's number of electoral votes (column 6), and
  - rounding the result off to three decimal places.

As can be seen in the table, even if all minor-party candidates had been excluded, George W. Bush would have received 269.231 electoral votes, while Gore would have received 268.769.

That is, the Engel version of the fractional-proportional system would have produced the same second-place President in 2000 as the current state-by-state winner-take-all method of awarding electoral votes.

Nationwide top-two version of the fractional-proportional plan

In describing the nationwide top-two version of the fractional-proportional plan, Kevin Johnson of the Election Reformers Network inaccurately asserted in *Governing* magazine that this approach would:

> "make a second-place president extremely unlikely."[26]

Both versions of the top-two fractional-proportional method would have operated in the same way in 2000 as the Engel amendment (table 4.5), because Bush and Gore were the top-two candidates in every state as well as nationally.

Under both versions, George W. Bush would have received *more* electoral votes than Al Gore with either of the top-two variations. Thus, 2000 would have been a divergent election in which the candidate who became President did not win the most popular votes nationwide.

The Election Reformers Network attempts to dismiss this inconvenient outcome by arguing that their proposal might be further modified so as to give individual states the option to use ranked-choice voting (RCV).

Having given states this option, the Election Reformers Network then hypothesizes

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[26] Johnson, Kevin. 2020. To Fix the Electoral College, Change the Way Its Votes Are Awarded. *Governing*. December 11, 2020. https://www.governing.com/now/to-fix-the-electoral-college-change-the-way-its-votes-are-awarded.html

Table 4.5 2000 election under the fractional-proportional method after exclusion of all minor-party candidates

State	Gore	Bush	Gore-EV	Bush-EV	EV
Alabama	695,602	944,409	3.817	5.183	9
Alaska	79,004	167,398	0.962	2.038	3
Arizona	685,341	781,652	3.737	4.263	8
Arkansas	422,768	472,940	2.832	3.168	6
California	5,861,203	4,567,429	30.350	23.650	54
Colorado	738,227	883,745	3.641	4.359	8
Connecticut	816,015	561,094	4.740	3.260	8
Delaware	180,068	137,288	1.702	1.298	3
D.C.	171,923	18,073	2.715	0.285	3
Florida	2,912,253	2,912,790	12.499	12.501	25
Georgia	1,116,230	1,419,720	5.722	7.278	13
Hawaii	205,286	137,845	2.393	1.607	4
Idaho	138,637	336,937	1.166	2.834	4
Illinois	2,589,026	2,019,421	12.360	9.640	22
Indiana	901,980	1,245,836	5.039	6.961	12
Iowa	638,517	634,373	3.511	3.489	7
Kansas	399,276	622,332	2.345	3.655	6
Kentucky	638,898	872,492	3.382	4.618	8
Louisiana	792,344	927,871	4.145	4.855	9
Maine	319,951	286,616	2.110	1.890	4
Maryland	1,145,782	813,797	5.847	4.153	10
Massachusetts	1,616,487	878,502	7.775	4.225	12
Michigan	2,170,418	1,953,139	9.474	8.526	18
Minnesota	1,168,266	1,109,659	5.129	4.871	10
Mississippi	404,964	573,230	2.898	4.102	7
Missouri	1,111,138	1,189,924	5.312	5.688	11
Montana	137,126	240,178	1.090	1.910	3
Nebraska	231,780	433,862	1.741	3.259	5
Nevada	279,978	301,575	1.926	2.074	4
New Hampshire	266,348	273,559	1.973	2.027	4
New Jersey	1,788,850	1,284,173	8.732	6.268	15
New Mexico	286,783	286,417	2.502	2.498	5
New York	4,107,907	2,403,374	20.819	12.181	33
North Carolina	1,257,692	1,631,163	6.095	7.905	14
North Dakota	95,284	174,852	1.058	1.942	3
Ohio	2,186,190	2,351,209	10.118	10.882	21
Oklahoma	474,276	744,337	3.114	4.886	8
Oregon	720,342	713,577	3.517	3.483	7
Pennsylvania	2,485,967	2,281,127	11.994	11.006	23
Rhode Island	249,508	130,555	2.626	1.374	4
South Carolina	566,039	786,426	3.348	4.652	8
South Dakota	118,804	190,700	1.152	1.848	3
Tennessee	981,720	1,061,949	5.284	5.716	11
Texas	2,433,746	3,799,639	12.494	19.506	32
Utah	203,053	515,096	1.414	3.586	5
Vermont	149,022	119,775	1.663	1.337	3
Virginia	1,217,290	1,437,490	5.961	7.039	13
Washington	1,247,652	1,108,864	5.824	5.176	11
West Virginia	295,497	336,475	2.338	2.662	5
Wisconsin	1,242,987	1,237,279	5.513	5.487	11
Wyoming	60,481	147,947	0.871	2.129	3
Total	**51,003,926**	**50,460,110**	**268.769**	**269.231**	**538**

that Nader's two best states (California and New York) enacted RCV in 2000. The use of RCV in those two particular states would have extinguished Nader's fractional electoral votes from those two states. As a result, Nader's fractional electoral votes would have then ended up with Gore and Bush in the final round of RCV tabulation. After Nader's electoral votes are zeroed out, Gore would just barely overtake Bush. Election Reformers Network then proclaims:

> "Gore wins in a 2000 scenario with RCV incorporated in only 2 states."[27]

However, after-the-fact adjusting of the voting laws of *two selected states* cannot be used to dismiss inconvenient historical data.

If it were, apologists for the current winner-take-all system would be entitled to dismiss the outcome of the 2000 election by saying that Gore would have become President if RCV had been in use in just *one selected state*—Florida.[28]

State-level top-two version of the fractional-proportional method

The state-level top-two version of the fractional-proportional system would have produced the same second-place President in 2000 as the nationwide top-two version, because Bush and Gore were the top-two candidates in every state.

4.1.6. The fractional-proportional method would not make every vote equal.

The aim of democracy reformers since the Constitution was written in 1787 has been to achieve the goal stated in the Declaration of Independence:

> "We hold these truths to be self-evident, that all men are created equal."

It is thus appropriate to evaluate a proposed electoral reform in terms of whether it makes every vote equal.

Every vote would *not* be equal under any of the five proposed versions of the fractional-proportional method.

There are four significant sources of inequality built into this method, including a:

- 3.81-to-1 inequality in the value of a vote created by the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population;
- 1.72-to-1 inequality in the value of a vote because of the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) among the states;
- 1.68-to-1 inequality in the value of a vote in favor of voters in low-turnout states; and

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[27] See slide 10 of undated presentation that was accessed March 10, 2024. Election Reformers Network. *The Top-two Proportional Approach to Fixing the Electoral College*. https://assets-global.website-files.com/642dcbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

[28] Ralph Nader received 97,488 popular votes in Florida in 2000, while George W. Bush's margin of victory in the state was a mere 537 votes. If RCV had been the law in Florida in 2000, it is a certainty that Gore would have overcome Bush's 537-vote lead after these 97,488 ballots were redistributed according to the second choices of Nader supporters.

- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census.

The magnitude of the inequalities built into the fractional-proportional method can be appreciated by comparing them with the considerably smaller inequalities that courts tolerate when reviewing the constitutionality of congressional, state, and local legislative districts.

The largest allowed deviation in population between congressional districts in the same state after the 2010 census was 0.76%—that is an inequality of 1.0076-to-1.[29] Deviations of up to 10% (that is, 1.1-to-1) are generally allowed in state legislative redistricting.[30]

Moreover, because the fractional-proportional method must necessarily be enacted in the form of a federal constitutional amendment, these four inequalities would be constitutionally enshrined.

Inequality because of the two senatorial electoral votes

First, each state receives two senatorial electoral votes above and beyond the number of electoral votes warranted by its population.

As a result, a vote cast in a large state has less weight than a vote cast in a small state under the fractional-proportional method of awarding electoral votes.

For example, Wyoming (with a population of 576,851 according to the 2020 census) has three electoral votes in the 2024 and 2028 presidential elections, whereas California (population 39,538,223) has 54 electoral votes.

Thus, there is one presidential elector for every 192,283 people in Wyoming, compared to one for every 732,189 people in California.

That is, the ratio of the number of persons per electoral vote for California to that of Wyoming is 3.81-to-1 (table 1.34).

Inequality because of imprecision of the process of apportioning U.S. House seats

Second, the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) introduces significant inequalities in the value of a vote under the fractional-proportional method.

The Constitution specifies that seats in the U.S. House of Representatives are to be apportioned among the states on the basis of population. That process is governed by a mathematical formula known as the "method of equal proportions" specified by a 1941 federal law.[31]

However, because so few seats (435) must be distributed over so many states (50), the process of apportioning House seats—and hence electoral votes—introduces significant differences among the states in the number of people per congressional district.

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[29] National Conference of State Legislatures. 2012. 2010 Redistricting Table. https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx

[30] Spencer, Doug. 2022. Equal Population. *Prof. ~~Justin Levitt's~~ Doug Spencer's Guide to Drawing Electoral Lines*. Accessed September 4, 2022. https://redistricting.lls.edu/redistricting-101/where-are-the-lines-drawn

[31] U.S. Census Bureau. 2021. *Computing Apportionment*. March 1, 2021. https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html.

As a result, even among states possessing the *same* number of House seats (and therefore the *same* number of electoral votes), a vote in some states will have considerably less weight than a vote cast in another state.

The impact of these rough approximations is illustrated by the seven jurisdictions with three electoral votes.

For example, one electoral vote corresponds to 329,983 people in Delaware, but only 192,284 in Wyoming—a 1.72-to-1 variation in the value of a vote (table 1.35).

Similar disparities exist among states in every other cohort of states with the same number of electoral votes (section 1.4.2).

Inequality because of voter-turnout differences

Third, a voter in a low-turnout state has greater voting power under the fractional-proportional method than a voter in a high-turnout state.

Differences in voter turnout at the state level create variations of up to 1.67-to-1 in the value of a vote under the fractional-proportional method (table 1.41).

Inequalities because of population changes occurring during the decade after each census

Fourth, the value of a voter's vote in a fast-growing state declines from year to year, because a state's number of electoral votes is only adjusted every 10 years.

This inequality is relatively small for a presidential election held in the second year of a decade. However, it typically grows as the decade progresses. It is especially large when a presidential election occurs at the end of a decade—such as 2000 and 2020. In such end-of-decade elections, the allocation of electoral votes among the states is based on 10-year-old population data.

These differences create variations of up to 1.39-to-1 in the value of a vote under the fractional-proportional method (table 1.40).

4.1.7. The fractional-proportional method would make every voter in every state politically relevant.

All five versions of the fractional-proportional method would remedy one of the major shortcomings of the current system, namely that three out of four states and 70% of the voters in the United States are ignored in the general-election campaign for President.

In 1949 testimony, Texas Representative Ed Gossett, noted the distorting effects of the current state-by-state winner-take-all method of awarding electoral votes:

> "**The Electoral College confines and largely restricts national campaigns to a half-dozen pivotal States**. The national campaign committees and the political strategists of both parties sit down with a map of the Nation and decide where to do their work and where to spend their money."[32] [Emphasis added]

[32] Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Page 11. https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21

He added:

> "**Most of our citizens outside of the great pivotal states never see a presidential candidate** or a campaign speaker, and never hear a campaign speech except by radio. **Neither the platforms nor the speeches are designed to appeal to them**.
>
> "Furthermore, **millions in these areas refrain from voting** in general elections, knowing that to do so is futile, since their votes will have no bearing on results."[33] [Emphasis added]

Because electoral votes would be calculated to three decimal places, candidates would have something to gain or lose everywhere in the country and therefore have a compelling reason to campaign in every state.

For example, 324 popular votes would have corresponded to 0.001 of an electoral vote in the nation's largest state (California) in 2020 under the fractional-proportional method.

In the nation's smallest state (Wyoming), a candidate could earn an additional 0.001 electoral vote by winning 92 additional popular votes.[34]

Under the current winner-take-all method of awarding electoral votes, votes for President in California and Wyoming are politically equal—both are irrelevant in presidential elections.

Although the value of a vote would vary significantly between California and Wyoming under the fractional-proportional method, candidates would nonetheless have reason to campaign in both states.

4.1.8. None of the five versions of the fractional-proportional method eliminates the partisan political advantage created by the inclusion of non-citizens in the census.

Professor George C. Edwards III pointed out in his seminal book *Why the Electoral College Is Bad for America*:

> "Representation in the House is based on the decennial census, which counts all residents—whether citizens or not. States such as California, Florida, and New York where non-citizens compose a larger percentage of the population receive more electoral votes than they would if electoral votes were allocated on the basis of the number of a state's citizens."[35]

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[33] Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Page 18. https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21

[34] Note that if the fractional calculation to a fourth decimal place, a candidate could earn an additional 0.0001 electoral vote by winning 32 additional popular votes in California and 9 additional popular votes in Wyoming.

[35] Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press. Second edition. Page 46.

It is true that non-citizens (whether legal residents or undocumented persons) cannot vote in presidential elections under federal law.

Nonetheless, non-citizens significantly impact presidential elections, because they amplify the vote of citizens in the states where they reside.

In an interview with Elon Musk on March 18, 2024, Don Lemon said:

> "[Concerning] President Biden's immigration plan to open up the border … you said that the President … and the Democrats are doing it to get more votes."[36]

Elon Musk responded:

> "The more that come into the country, the more that are likely to vote in that direction. It is, in my view, a simple incentive to increase Democratic voters."
>
> "The census is based on all people in an area, whether they are citizens or not. So, if there is a concentration of people who came here illegally in a particular state, that state will actually then get an increased number of House seats. So, the House seat apportionment is proportionate to the number of people, not the number of citizens. … The illegals overwhelmingly go to places like California or New York. And, if you just look at the math, if you look at the apportionment with, and without illegals, I believe … there would be a net loss of blue states of approximately 20 seats in the House. This also applies to the Electoral College. This also applies to electing the President, because the electoral votes are also done by apportionment the same way that House seats are done."
>
> "If, as is the case, a disproportionate number of illegal immigrants go to blue states, they amplify the effect of a blue state vote. … The Democrats would lose approximately 20 seats in the House if illegals were not counted in the census, and that's also 20 less electoral votes for President. So, illegals absolutely affect who controls the House and who controls the presidency."[37]

The U.S. Constitution requires that the census be used to determine each state's number of seats in the U.S. House of Representatives. Each state receives a number of electoral votes equal to the state's number of Representatives plus two (representing the state's two U.S. Senators).

The Constitution specifies that the census count all "persons," thereby including non-citizens living in the United States in the count:

> "Representatives … shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free **Persons**, including

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[36] Don Lemon Interview of Elon Musk. *YouTube*. March 18, 2024. Timestamp: 23:20 https://www.youtube.com/watch?v=hhsfjBpKiTw&t=1399s

[37] *Ibid*. Timestamp: 24:00. https://www.youtube.com/watch?v=hhsfjBpKiTw&t=1399s

> those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."[38,39] [Emphasis added]

The Census Bureau uses a mathematical formula (specified by a federal statute adopted in 1941) known as the "method of equal proportions" to apportion seats in the U.S. House of Representatives automatically among the states.[40]

A state with a disproportionally large number of non-citizens (relative to other states) acquires additional U.S. House seats and, hence, additional electoral votes.

Because of the winner-take-all rule, *legal* voters in a state that acquired additional electoral votes by virtue of the disproportionate presence of non-citizens control the disposition of an enlarged bloc of electoral votes to the candidate receiving the most popular votes in their state.

That is, the voting power of the *legal* voters is increased because of the presence of non-citizens in their state.

Professor Leonard Steinhorn of American University has computed the effect of non-citizens on presidential elections. He applied the statutory formula to apportion U.S. House seats among the states to data on the number of citizens and non-citizens in each state from the American Community Survey.[41]

In a 2012 article entitled "Without Voting, Noncitizens Could Swing the Election for Obama," Steinhorn found that non-citizens affected the number of electoral votes possessed by 15 states.

Five states gained between one and five electoral votes, and 10 states each lost one electoral vote because of non-citizens.

Overall, the Democrats had a built-in net advantage of 10 electoral votes in the 2012, 2016, and 2020 presidential elections from the 15 states whose representation was affected by the counting of non-citizens in allocating electoral votes among the states.

Specifically, Democratic non-battleground states gained seven electoral votes from the following states:

- +5 for California
- +1 for New York
- +1 for Washington.

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[38] U.S. Constitution. Article I, section 2, clause 3. The provisions concerning indentured servants, "Indians not taxed," and slaves ("other persons") are not applicable today.

[39] No doubt, the reason why the Constitution specified that the census would count "persons," instead of trying to count eligible voters, was that the states had complicated and widely varying criteria for voter eligibility in 1787. In most states, eligibility depended on property, wealth, and/or income. Moreover, the requirements for voting were often more stringent for the upper house of the state legislature, as compared to the lower house.

[40] U.S. Census Bureau. 2021. Computing Apportionment. March 1, 2021. https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html. The U.S. Supreme Court upheld the constitutionality of the "method of equal proportions" in 1992 in *Department of Commerce v. Montana* (112 S.Ct. 1415) and *Franklin v. Massachusetts* (112 S.Ct. 2767).

[41] Steinhorn, Leonard. Without voting, noncitizens could swing the election for Obama. *Washington Post*. October 5, 2012.

Republican non-battleground states lost a net of three electoral votes from the following states:

- +2 for Texas
- –1 for Indiana
- –1 for Missouri
- –1 for Louisiana
- –1 for Montana
- –1 for Oklahoma.

Six states that were presidential battlegrounds in the 2012, 2016, and 2020 elections were also affected. However, battleground states can, by definition, go either way in a presidential election. Thus, the following states did not constitute a systemic advantage to either party at the time:

- +1 Florida
- –1 for Iowa
- –1 for Michigan
- –1 for North Carolina
- –1 for Ohio
- –1 for Pennsylvania.

In December 2019, the Center for Immigration Studies issued a projection of the likely effect of non-citizens on the allocation of electoral votes in the 2024 and 2028 presidential elections.

Excluding U.S.-born minor children (who are U.S. citizens under provisions of the 14th Amendment), the study projected:

> "Counting only immigrants themselves (naturalized citizens, legal permanent residents, guest workers, foreign students and illegal aliens), but not their U.S.-born minor children, will redistribute 18 seats in the House in 2020."[42,43]

The National Popular Vote Compact and the direct election constitutional amendment (section 4.7) would eliminate the distortion in presidential elections caused by the disproportionate presence of non-citizens in certain states. These proposals would equalize the vote of every legal voter in the country by guaranteeing the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia.

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[42] Camarota, Steven A. and Zeigler, Karen. 2019. The Impact of Legal and Illegal Immigration on the Apportionment of Seats in the U.S. House of Representatives in 2020. Center for Immigration Studies. December 2019. https://cis.org/Report/Impact-Legal-and-Illegal-Immigration-Apportionment-Seats-US-House-Representatives-2020.

[43] Dorman, Sam. 2019. LBJ-era immigration changes skewed political power toward Dems, away from GOP: study. Fox News. December 24, 2019. https://www.foxnews.com/politics/study-immigration-electoral-college-house-2020

4.1.9. The spoiler effect would not be eliminated by the top-two fractional-proportional method.

Kevin Johnson of the Election Reformers Network has claimed:

> "This [top-two fractional-proportional] approach would also drastically reduce the 'spoiler' problem: A few percentage points to a Libertarian or Green Party candidate would no longer potentially swing [the outcome]."[44,]

Advocates of the top-two fractional-proportional method specifically cite the 1992 election involving Bill Clinton, George H.W. Bush, and Ross Perot as demonstrating:

> "Proportional allocation significantly reduces the impact of a 'spoiler candidate.'"[45]

In fact, the fractional-proportional (Lodge-Gossett) approach alone, the top-two method alone, and the top-two fractional-proportional method would do nothing at all to ameliorate the spoiler effect.

The spoiler effect can, however, be ameliorated with ranked choice voting (RCV). Indeed, RCV would also ameliorate the spoiler effect if it were included in the direct election amendment (section 4.7) and the current state-by-state winner-take all method of awarding electoral votes. However, it would be RCV—not the fractional-proportional method—that would be doing the ameliorating.

To disentangle the role played by the top-two fractional-proportional method versus the role played by RCV, let's examine the 1992 Clinton-Bush-Perot race.

The 1992 election returns were as follows:

- Bill Clinton—44,909,806
- George H.W. Bush—39,104,550
- Ross Perot—19,743,821
- All others—665,816[46]

The state-by-state returns for the 1992 election are shown in table 4.32 later in this chapter.

Table 4.6 shows the number of electoral votes under the fractional-proportional method for Bill Clinton, George H.W. Bush, Ross Perot and all other candidates—before considering the effect of either RCV or top-two.

Ross Perot was a highly successful Republican Texas businessman known for his hawkish views on foreign policy and fiscal conservatism. When he ran for President in 1992 as an independent candidate, budget deficits and foreign-trade imbalances were prominent

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[44] Johnson, Kevin. 2020. To Fix the Electoral College, Change the Way Its Votes Are Awarded. *Governing*. December 11, 2020. https://www.governing.com/now/to-fix-the-electoral-college-change-the-way-its-votes-are-awarded.html

[45] See slide 10 in Election Reformers Network. 2021. *The Top-two Proportional Approach to Fixing the Electoral College*. January 2021. https://electionreformers.org/wp-content/uploads/2022/01/The-proportional-allocation-approach-to-fixing-the-electoral-college-Jan-2021.pdf Accessed October 18, 2022.

[46] The total national popular vote for President in 1992 was 104,423,993. This total included 665,816 popular votes scattered among 20 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above."

Table 4.6 Fractional-proportional method in 1992

State	Clinton	Bush	Perot	Others	EV
AL	3.679	4.288	0.976	0.056	9
AK	0.909	1.184	0.853	0.055	3
AZ	2.922	3.078	1.903	0.098	8
AR	3.192	2.129	0.626	0.053	6
CA	24.844	17.612	11.138	0.407	54
CO	3.210	2.870	1.866	0.054	8
CT	3.377	2.862	1.726	0.034	8
DE	1.306	1.060	0.613	0.021	3
DC	2.539	0.273	0.128	0.060	3
FL	9.750	10.224	4.954	0.072	25
GA	5.651	5.574	1.734	0.041	13
HI	1.924	1.468	0.569	0.040	4
ID	1.137	1.681	1.082	0.100	4
IL	10.688	7.554	3.662	0.097	22
IN	4.415	5.149	2.373	0.063	12
IA	3.030	2.609	1.310	0.051	7
KS	2.024	2.333	1.619	0.023	6
KY	3.564	3.307	1.093	0.036	8
LA	4.103	3.687	1.063	0.147	9
ME	1.551	1.216	1.217	0.016	4
MD	4.980	3.562	1.418	0.040	10
MA	5.705	3.483	2.736	0.076	12
MI	7.879	6.548	3.473	0.100	18
MN	4.348	3.185	2.396	0.071	10
MS	2.854	3.478	0.610	0.058	7
MO	4.848	3.731	2.386	0.034	11
MT	1.129	1.054	0.783	0.034	3
NE	1.470	2.329	1.181	0.020	5
NV	1.494	1.389	1.047	0.069	4
NH	1.556	1.508	0.903	0.032	4
NJ	6.443	6.087	2.341	0.129	15
NM	2.295	1.867	0.806	0.032	5
NY	16.409	11.179	5.196	0.215	33
NC	5.971	6.082	1.918	0.028	14
ND	0.966	1.326	0.692	0.016	3
OH	8.438	8.053	4.406	0.103	21
OK	2.722	3.412	1.841	0.026	8
OR	2.974	2.277	1.695	0.055	7
PA	10.384	8.309	4.186	0.121	23
RI	1.881	1.161	0.927	0.031	4
SC	3.190	3.842	0.924	0.044	8
SD	1.114	1.220	0.654	0.012	3
TN	5.179	4.668	1.109	0.044	11
TX	11.865	12.979	7.045	0.111	32
UT	1.233	2.168	1.367	0.233	5
VT	1.383	0.913	0.683	0.021	3
VA	5.277	5.846	1.771	0.106	13
WA	4.775	3.516	2.605	0.103	11
WV	2.421	1.770	0.796	0.014	5
WI	4.524	4.045	2.366	0.064	11
WY	1.023	1.191	0.769	0.017	3
Total	**230.547**	**202.334**	**101.537**	**3.582**	**538**

components of his platform. That is, the most prominent elements of Perot's persona were Republican.

Most (albeit not all) political observers have concluded that Perot took far more votes from the Republican incumbent President George H.W. Bush than from Clinton—that is, Perot acted as a spoiler who helped Clinton win.

For the sake of argument here, let's accept that prevailing view so that we can disentangle the role played by the top-two fractional-proportional method versus the role played by RCV.

Because Perot came in third nationally, he would have received no electoral votes under the *nationwide* top-two fractional-proportional method.

Thus, the nationwide version of the top-two fractional-proportional method would not have protected Bush from the spoiler—because Perot's 19,743,821 voters had *already given* their votes to him. Therefore, this huge Republican-tilted bloc of voters would not have been available to help Bush in his match-up with Clinton.

In other words, the top-two rule would have eliminated the spoiler (Perot)—but not the damaging and decisive impact that the spoiler had on Bush.

The results would have been almost the same under the *state-level* top-two fractional-proportional method. Because Perot came in second in two states, he would have received 1.217 electoral votes from Maine and 1.367 electoral votes from Utah. Nonetheless, the overall result would have been the same—very few of Perot's huge bloc of votes would have been available to help Bush in his final match-up with Clinton.

It is definitely true that RCV is an excellent way to ameliorate the spoiler problem. If every state were constitutionally required to use RCV in conjunction with the top-two fractional-proportional system, Bush would have received the lion's share of the second choices made by Perot's voters (under either the nationwide or state level version), and thus Bush would have emerged as the national winner. However, as will be discussed in the next section, any attempt to incorporate universal use of RCV in a federal constitutional amendment would almost certainly prevent its ratification by three-quarters of the states.

4.1.10. Prospects of adoption for the fractional-proportional method

The fractional-proportional method:

- *would not* accurately reflect the nationwide popular vote,
- *would not* make every vote equal, but
- *would* improve upon the current state-by-state winner-take-all method of awarding electoral votes in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President.

The fractional-proportional method has the very desirable feature of giving candidates a need to solicit the votes of every voter, in every state, in every presidential election.

However, the fractional-proportional method does not eliminate the most conspicuous shortcoming of the current system from the point-of-view of the general public, namely that the second-place candidate can become President.

If the fractional-proportional method is applied to the 2000 election returns, it would

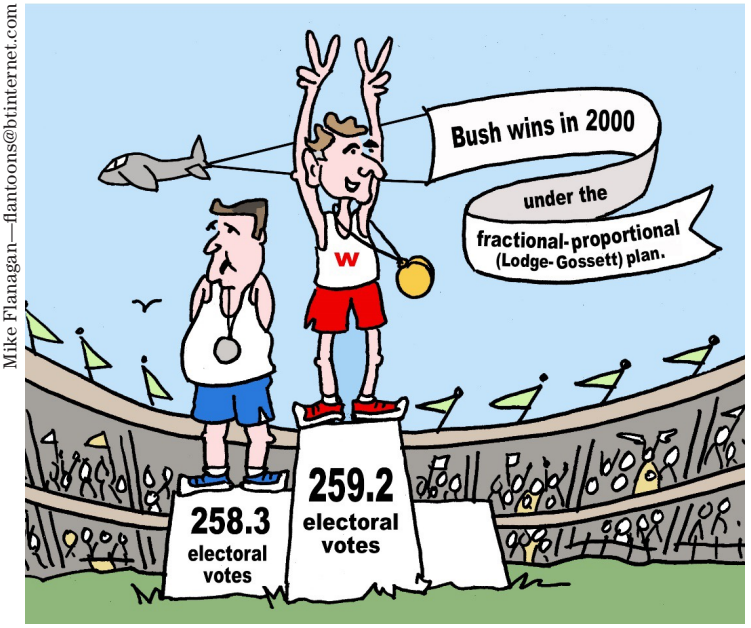

Figure 4.1 George W. Bush would have won under the fractional-proportional method in 2000.

have elected George W. Bush, despite the fact that his opponent received 543,816 more popular votes nationwide, as shown in figure 4.1.

In fact, all five proposed versions of the fractional-proportional method discussed in this chapter would have elected George W. Bush in 2000, including:

- the original 1950 Lodge-Gossett amendment,
- the 1969 Cannon amendment,
- the 2001 Engel amendment that would give electoral votes only to candidates receiving 5% or more of the popular vote,
- the version that would give electoral votes only to the top-two candidates *nationally*, and
- the version that would give electoral votes only to *each state's* top-two candidates.

Moreover, the fractional-proportional method would fail to eliminate any of the four sources of inequality in the value of a vote caused by senatorial electors, imprecision in apportionment of electoral votes among the states, uneven voter turnout, and intra-decade population changes.

In fact, the fractional-proportional method would make these inequalities dramatically worse, because it would convert the *theoretical* advantage conferred by the senatorial electors onto the small states into an *actual* political advantage.

Under the current winner-take-all method of awarding electoral votes, presidential candidates have nothing to gain or lose by campaigning in a state whose outcome is a fore-

gone conclusion. Thus, the theoretically greater value of a vote in smaller states is negated, because almost all of the small states are one-party states in presidential elections. Specifically, only two of the 28 smallest states (Nevada and New Hampshire) are places where the 2024 presidential candidates will campaign.[47]

Thus, the 3.81-to-1 theoretical advantage of a Wyoming voter over a California voter does not currently translate into any real-world clout in favor of Wyoming under the current winner-take-all system, because presidential candidates pay no attention to voters in either state. In a practical political sense, a Wyoming voter is currently equal to a California voter—both are politically irrelevant in the general election campaign for President under the winner-take-all system.

In fact, a voter in 26 of the 28 smallest states is currently as politically irrelevant as a California voter, because the winner-take-all rule causes presidential candidates to ignore all of them.

However, the fractional-proportional method would dramatically change that. Fractional electoral votes would be added together on a nationwide basis, thus converting a Wyoming voter's *theoretical* 3.81-to-1 advantage into an *actual* 3.81-to-1 advantage. Voters in all of the 28 smallest states would instantly become the most avidly courted voters in the country in every presidential election. They would suddenly matter.

In fact, under the fractional-proportional method, the value of vote of 261 million people in 22 states (79% of the U.S. population) would be less than a third of the value of a vote in Wyoming (as shown in figure 4.2).

Table 4.7 shows the value of a vote under the fractional-proportional method, compared to the value of a vote in the smallest state (Wyoming). The combined population of the 28 smallest states (at the top of the table) is 70,022,053 (21% of the U.S. population of 331,449,281). The combined population of the 22 states at the bottom of the table (in bold) is 261,427,228 (79% of the population).[48]

The political effect of the fractional-proportional method would be to substantially enhance the influence of the 28 smallest states (which already enjoy outsized influence in the federal government because of their constitutionally entrenched position in the U.S. Senate and in ratifying constitutional amendments).

The 261 million people in the 22 states whose votes would be worth less than a third of a vote in Wyoming may have something to say about that. They are represented by 341 of the 435 members of the U.S. House (that is, 78%).

A constitutional amendment that devalues voters represented by three-quarters of the House is hardly likely to ever be approved by two-thirds of the House.

That fact alone means that none of the five versions of the fractional-proportional method is ever likely to become part of the U.S. Constitution.

Indeed, several weeks after the U.S. Senate passed the Lodge-Gossett amendment by a 64–27 vote in 1950, more than two-thirds of the House voted against it.

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[47] One of the 14 smallest states (New Hampshire) has been a battleground state in earlier elections, although it ended up in the Democratic column in seven of the eight elections between 1992 and 2020. That is, New Hampshire was a "battleground" state, but not a "swing" state.

[48] Table 1.34 is similar to this table, except that the comparison is made in terms of persons per electoral votes.

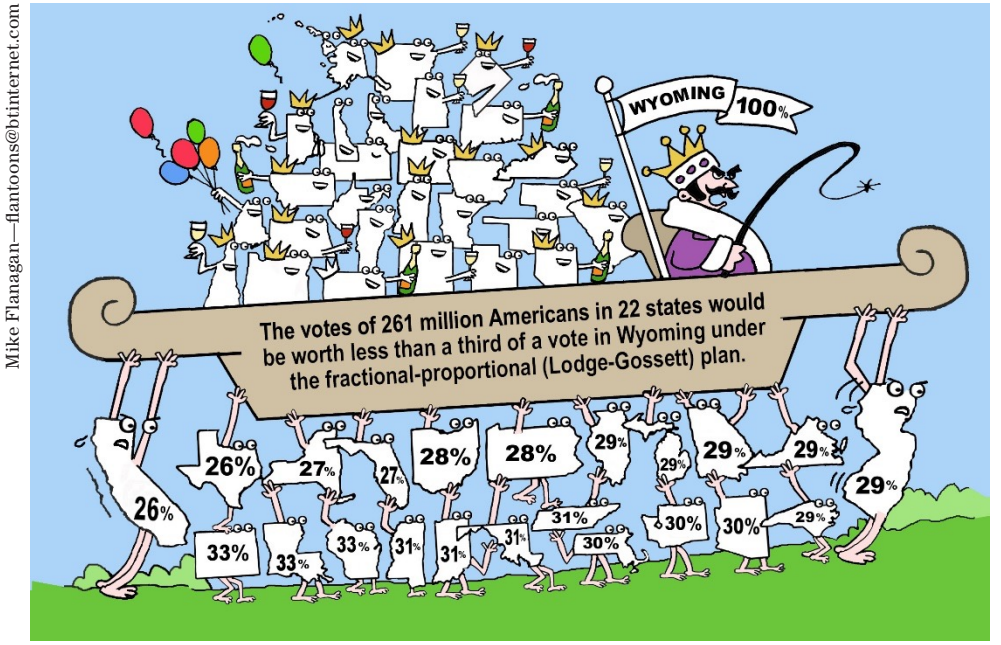

Figure 4.2 The value of the vote of 79% of Americans would be less than a third of that of Wyoming.

The fractional-proportional method does not appeal to two of the natural constituencies for electoral reform.

Much of the political energy behind efforts to reform presidential elections comes from democracy advocates who want every voter to have an equal voice.

The fractional-proportional method fails to deliver this.

As the Making Every Vote Count Foundation observes in its 2023 report *Improving Our Electoral College System*, the fractional-proportional method:

> "would retain … the greater weight given to smaller states under the Electoral College. As a result, [it] **could also be criticized by progressives for failing to adhere fully to the principle of all votes counting equally**."[49] [Emphasis added]

The Election Reformers Network dismisses the fact that every vote would not be equal under the top-two fractional-proportional method, saying:

> "Top-two proportional has something for everyone to like."

[49] Making Every Vote Count Foundation. 2023. *Improving Our Electoral College System*. November 2023. Page 7. https://static1.squarespace.com/static/5a7b7d95b7411c2b69bd666f/t/65b979baf7e8e411b2864a40/1706654139098/MEVC+Report.pdf

Table 4.7 Value of a vote under the fractional-proportional method, compared to the value of a vote in the smallest state

State	2020 population	Electoral votes 2024–2028	Persons per electoral vote	Value of vote compared to smallest state
Wyoming	576,851	3	192,284	100%
Vermont	643,077	3	214,359	90%
D.C.	689,545	3	229,848	84%
Alaska	733,391	3	244,464	79%
North Dakota	779,094	3	259,698	74%
Montana	1,084,225	4	271,056	71%
Rhode Island	1,097,379	4	274,345	70%
South Dakota	886,667	3	295,556	65%
Delaware	989,948	3	329,983	58%
Maine	1,362,359	4	340,590	56%
New Hampshire	1,377,529	4	344,382	56%
Hawaii	1,455,271	4	363,818	53%
Nebraska	1,961,504	5	392,301	49%
New Mexico	2,117,522	5	423,504	45%
West Virginia	1,793,716	4	448,429	43%
Idaho	1,839,106	4	459,777	42%
Kansas	2,937,880	6	489,647	39%
Mississippi	2,961,279	6	493,547	39%
Arkansas	3,011,524	6	501,921	38%
Connecticut	3,605,944	7	515,135	37%
Nevada	3,104,614	6	517,436	37%
Oregon	4,237,256	8	529,657	36%
Iowa	3,190,369	6	531,728	36%
Utah	3,271,616	6	545,269	35%
Alabama	5,024,279	9	558,253	34%
Kentucky	4,505,836	8	563,230	34%
Oklahoma	3,959,353	7	565,622	34%
South Carolina	5,118,425	9	568,714	34%
Minnesota	5,706,494	10	570,649	34%
Colorado	5,773,714	10	577,371	33%
Louisiana	4,657,757	8	582,220	33%
Wisconsin	5,893,718	10	589,372	33%
Missouri	6,154,913	10	615,491	31%
Indiana	6,785,528	11	616,866	31%
Maryland	6,177,224	10	617,722	31%
Tennessee	6,910,840	11	628,258	31%
Massachusetts	7,029,917	11	639,083	30%
Washington	7,705,281	12	642,107	30%
Arizona	7,151,502	11	650,137	30%
North Carolina	10,439,388	16	652,462	29%
New Jersey	9,288,994	14	663,500	29%
Virginia	8,631,393	13	663,953	29%
Georgia	10,711,908	16	669,494	29%
Michigan	10,077,331	15	671,822	29%
Illinois	12,812,508	19	674,343	29%
Pennsylvania	13,002,700	19	684,353	28%
Ohio	11,799,448	17	694,085	28%
Florida	21,538,187	30	717,940	27%
New York	20,201,249	28	721,473	27%
Texas	29,145,505	40	728,638	26%
California	39,538,223	54	732,189	26%
Total	**331,449,281**	**538**	**616,077**	

"Democracy advocates:

- Fix all problems with the system **except making every vote equal**."[50] [Emphasis added]

One wonders what it means to be a "democracy advocate," but not want to see "every vote equal."

How can a proposal that would have elected the candidate who lost the nationwide popular vote by 543,816 votes in 2000 be said to "fix all problems"?

Another significant constituency for election reform comes from the growing number of independent voters and third-party supporters seeking more choice than is currently offered by the two dominant political parties.

However, the top-two rule as well as Engel's 5% threshold further entrench the two currently existing major parties.

A proposal that fails to appeal to the natural constituencies for political reform seems unlikely to ever pass two-thirds of both houses of Congress and 38 state legislatures.

The claim that the Republican Party will support the fractional-proportional method because small states give them a political advantage is not based on political reality.

In his 2024 book, Nick Troiano claims that the over-representation of small states would generate Republican support for the top-two fractional-proportional method:

> "**As Republicans desire**, it maintains the Electoral College as an institution that ensures national elections are still state-based and ensures that **smaller states can still wield influence** by continuing to award at least three electoral votes per states, regardless of population."[51] [Emphasis added]

However, this claim is based on a widespread misconception, namely that the small states deliver a partisan political advantage to the Republican Party in presidential elections.

Table 4.8 shows the political facts—namely that the 14 smallest states (those with three or four electoral votes) were divided 7–7 in the five presidential elections between 2004 and 2020.[52,53]

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[50] Slide 14 of a presentation with no date that was accessed March 10, 2024. Election Reformers Network. *The Top-Two Proportional Approach to Fixing the Electoral College*. https://assets-global.website-files.com/642dcbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

[51] Troiano, Nick. 2024. *The Primary Solution: Rescuing Our Democracy from the Fringes*. Page 200. New York, NY: Simon & Shuster.

[52] Note that there are 14 states that currently have three or four electoral votes, but that one of them (West Virginia) had five electoral votes before the 2020 census.

[53] The table shows which party's presidential candidate won statewide. Note, however, that Maine awards two of its four electoral votes by congressional district. In 2016 and 2020, Donald Trump won one of Maine's district-level electoral votes by carrying the state's 2nd congressional district, while the Democratic nominee won the state as a whole as well as the 1st district.

Table 4.8 Statewide winner of 14 smallest states 2004–2020

State	2004	2008	2012	2016	2020	Total
Delaware	D	D	D	D	D	
District of Columbia	D	D	D	D	D	
Hawaii	D	D	D	D	D	
Maine	D	D	D	D	D	
Rhode Island	D	D	D	D	D	
Vermont	D	D	D	D	D	
New Hampshire	D	D	D	D	D	
Montana	R	R	R	R	R	
Alaska	R	R	R	R	R	
Idaho	R	R	R	R	R	
North Dakota	R	R	R	R	R	
South Dakota	R	R	R	R	R	
West Virginia	R	R	R	R	R	
Wyoming	R	R	R	R	R	
Democratic states	**7**	**7**	**7**	**7**	**7**	
Republican states	**7**	**7**	**7**	**7**	**7**	
Democratic electoral votes	**24**	**24**	**24**	**23**	**23**	**118**
Republican electoral votes	**20**	**20**	**20**	**21**	**21**	**102**

In fact, the Democrats won slightly more electoral votes than the Republicans from the 14 smallest states in five presidential elections between 2004 and 2020 (for a cumulative 118-to-102 margin for the period).[54]

Kevin Johnson of the Election Reformers Network makes a similar point, namely that divergent elections such as 2016 are the consequence of the state-by-state winner-take-all method of awarding electoral votes—not from the non-existent partisan tilt of the smallest states.

> "Donald Trump did not become president because of small states: The 16 least populous split, eight to eight. Instead, Trump won from second place because he carried states with smaller margins of victory than Hillary Clinton did."[55,56]

It may not be politically possible to incorporate RCV in a constitutional amendment. When contemplating a federal constitutional amendment, the relevant political question is whether there is one state legislative chamber in 13 or more states that would oppose the amendment because of the inclusion of ranked choice voting (RCV).

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[54] A similar table covering the eight presidential elections between 1992 and 2020 shows that the Democratic presidential nominee won the 13 smallest states 56 times, compared to 48 times for the Republican, and that the Democratic nominee won 189 electoral votes, compared to 153 for the Republican (table 9.4).

[55] Johnson, Kevin. 2020. Bloc voting is a bigger problem than electors going rogue. Here's a fix. *The Fulcrum*. July 10, 2020. https://thefulcrum.us/electoral-college-votes

[56] See slide 4. Election Reformers Network. The Top-two Proportional Approach to Fixing the Electoral College. Accessed March 10, 2024. https://assets-global.website-files.com/642dcbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

Advocates of the top-two variation of the fractional-proportional method may not be in a position to incorporate RCV as part of their proposed constitutional amendment.

It is certainly true that RCV has been adopted by an impressive number of state and local jurisdictions in recent years. It is already used statewide by Maine and Alaska. Proposals to adopt RCV will be on the ballot in Oregon and Nevada in November 2024. In addition, proposals to adopt RCV on a statewide basis are expected to be on the statewide ballot in November 2024 in Arizona, Colorado, District of Columbia, and Idaho.

Meanwhile, organized opposition to RCV has grown dramatically since Sarah Palin's loss in the 2022 Alaska congressional election conducted under RCV.

As of July 2024, there are 14 states where at least one house of the state legislature has recently taken a position in opposition to RCV.

Specifically, 10 states have enacted laws prohibiting the use of RCV in their elections:

- Alabama
- Florida
- Idaho
- Kentucky
- Louisiana
- Montana
- Mississippi
- Oklahoma
- South Dakota
- Tennessee.

Similar bills banning RCV have recently passed at least one chamber of the legislatures of four additional states:

- Arizona
- North Dakota
- Texas
- Utah.

The existence of this bloc of 14 states strongly suggests that it may not be politically possible to ratify any federal constitutional amendment that involves the use of RCV.

Moreover, well-funded conservative leader Leonard Leo[57] has launched a major nationwide effort—centered on Republican-controlled states—to stop the spread of RCV. This development suggests that there will soon be a number of additional states where one or more legislative chambers will go on record as being strongly opposed to RCV as a matter of policy.

Also, a state constitutional prohibition against RCV will be on the statewide ballot in Missouri in November 2024.

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[57] Perez, Andrew. GOP Puppetmaster Expands His Dark-Money Operation. 2024. *Rolling Stone*. February 20, 2024. https://www.rollingstone.com/politics/politics-features/leonard-leo-dark-money-supreme-court-trump-1234972151/

4.2. WHOLE-NUMBER PROPORTIONAL METHOD OF AWARDING ELECTORAL VOTES

4.2.1. Summary

- Under the whole-number proportional method for awarding electoral votes, a state's electoral votes would be divided proportionally according to the percentage of popular votes received in the state by each presidential candidate—*in whole-number increments*.[58]
- Because it would not abolish the position of presidential elector or the Electoral College and does not require the creation of fractional electoral votes, the whole-number proportional method can be enacted as state legislation on a state-by-state basis.
- The whole-number proportional method *would not* accurately reflect the nationwide popular vote—even if enacted by every state. In fact, the national popular vote winner would not have become President in three of the eight presidential elections between 1992 and 2020 under this method.
  - In two of these eight presidential elections (2000 and 2016), the winner of the national popular vote would not have won the most electoral votes.
  - In four of these eight elections (1992, 1996, 2000, and 2016), the choice of President would have been thrown into the U.S. House. Based on the composition of the House at the time, the national popular vote winner would not have been chosen by the House in three of those four cases (1996, 2000, and 2016).
- In practice, the whole-number proportional method would be a "winner-take-one" system in almost every state—with perhaps two electoral votes being in play in Texas, and three in California.
- Although it might appear that the whole-number proportional method would give candidates a reason to campaign in all 50 states, it would not do so. Candidates would only campaign in states where their level of support was a few percentage points away from a breakpoint that might possibly gain or lose them an electoral vote. In practice, only about 29 electoral votes from about 26 states would typically be in play. Candidates would not have any reason to campaign in the 24 remaining states, because their level of support would be too far away from a breakpoint that would change an electoral vote. That is, almost half of the states would be politically irrelevant spectator states.
- The whole-number proportional method *would not* make every vote equal. There are five sources of significant inequality built into this method, including a
  - 3.81-to-1 inequality because of senatorial electors;
  - 1.72-to-1 inequality because of imprecision in apportioning U.S. House seats (and hence electoral votes);

[58] Note that the allocation of electoral votes in *whole-number* increments is what distinguishes this method from the *fractional-proportional* (Lodge-Gossett) method (section 4.1).

  - 1.67-to-1 inequality in favor of voters in low-turnout states;
  - 1.39-to-1 inequality because of intra-decade population changes; and
  - 50.2-to-1 inequality, because one electoral vote could be won with a few thousand popular votes in a low-population state, while requiring tens of thousands of popular votes in a bigger state.
- Minor-party and independent candidates would almost always be zeroed-out in small- and medium-sized states. The reason is that their level of support would be far less than the fraction of the state's popular vote required to win one electoral vote in such states. One electoral vote would correspond to 33% of the popular vote in a state with three electoral votes. One electoral vote would correspond to 14% of the popular vote of a median-sized state (that is, a state with seven electoral votes).
- The whole-number proportional method would transfer the choice of President from the people to Congress in about half of all elections. The reason is that this method would be adopted without amending the U.S. Constitution, thereby leaving the U.S. House in a position to pick the President if no candidate were to receive an absolute majority of the electoral votes. If the whole-number proportional method had been used by all states, the U.S. House would have picked the President in four of the eight presidential elections between 1992 and 2020 (1992, 1996, 2000, and 2016).
- A state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all. The whole-number proportional method would penalize first movers and early adopters. Moreover, a piecemeal state-by-state adoption process would quickly become self-arresting, because each new adherent would increase the influence of the remaining winner-take-all states—thereby reducing their incentive to make the change.
- In November 2004, Colorado voters defeated an initiative petition to enact the whole-number proportional method.

4.2.2. Description of the whole-number proportional method

Under the whole-number proportional method, each state's electoral votes are awarded—*in whole-number increments*—according to each presidential candidate's percentage share of the state's popular vote.

The procedure for determining the number of electoral votes that each presidential candidate would receive under the whole-number proportional method is as follows:

- First, each candidate's percentage share of the popular vote in a state is computed by dividing the candidate's popular vote in the state by the total number of popular votes cast there.
- Second, each candidate's percentage share is multiplied by the number of electoral votes possessed by the state. In the unlikely event that only two candidates receive popular votes for President in a given state, the result of this

multiplication is simply rounded off, and each candidate receives that number of electoral votes.[59]

- Third, if more than two candidates receive popular votes in a given state (as would almost always be the case in a presidential race), at least one of the state's electoral votes will remain unallocated by the previous step. In this case, each candidate is initially given the whole number of electoral votes obtained by the multiplication in the second step.
- Fourth, each state's unallocated electoral vote(s) are then allocated to the candidate(s) with the largest fractional remainder(s) resulting from the multiplication in the second step.

4.2.3. History of the whole-number proportional method

We now discuss the history of the debate about this method in the two places where it was recently considered—Pennsylvania in 2012–2013 and Colorado in 2004.

Debate in Pennsylvania in 2012–2013

There were three reasons why the Republican-controlled legislature and Republican Governor in Pennsylvania were interested in examining alternatives to the winner-take-all method of awarding electoral votes in the aftermath of the 2012 presidential election.

First, Pennsylvania proved to be a "jilted battleground" in 2012. As *PoliticsPA* said:

> "Once a reliable battleground state, Pennsylvania spent most of the 2012 presidential campaign on the sidelines."[60]

Indeed, Pennsylvania received only five general-election campaign events in 2012—out of a nationwide total of 253. In contrast, there were 40 visits to the state in 2008.

Particularly galling to Pennsylvanians was the fact that neither incumbent President Obama nor Vice President Biden bothered to visit the state during the 2012 general-election campaign.

Even more galling was the fact that neighboring Ohio (with two fewer electoral votes than Pennsylvania) received 73 general-election campaign events—almost one-third of the nationwide total of 253.

Pennsylvania received so little attention because both presidential campaigns correctly predicted that the state would go Democratic in 2012.

Second, even though Pennsylvania was not overwhelmingly Democratic, the Republican presidential nominee had not won any electoral votes from the state in the six previous presidential elections.

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[59] Note that if more than two candidates were to receive popular votes for President in a state, simple "rounding off" would result in numerous anomalies. For example, if simple "rounding off" were applied to the results of the 2016 election (as discussed in detail below), it would allocate only 54 of the 55 electoral votes that California had at the time, and it would allocate 17 electoral votes in Michigan (which had only 16 electoral votes at the time).

[60] Gibson, Keegan. House Republicans resurrect congressional-based Electoral College plan. *PoliticsPA*. December 20, 2012. http://www.politicspa.com/house-rs-resurrect-congressional-based-electoral-college-plan/44960/

Third, there were six states that President Obama carried in both 2008 and 2012 and where the Republican party controlled both houses of the legislature and the Governor's office (namely Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida). That is, these six Republican-controlled state governments (with a combined total of 106 electoral votes) had the potential to make a dramatic change in the presidential election system.

Thus, in December 2012, Pennsylvania Senate Majority Leader Dominic Pileggi (R)[61] announced that he planned to introduce a bill in 2013 to award 18 of Pennsylvania's 20 electoral votes using the whole-number proportional method, while continuing to award the state's two senatorial electoral votes to the candidate receiving the most popular votes statewide.[62]

In a state allocating 18 electoral votes proportionally, each electoral vote would represent 5.56% of the statewide vote.

Table 4.9 shows how Pennsylvania's 20 electoral votes would be divided under Pileggi's proportional proposal in a race with two major-party candidates.[63]

Note that a candidate receiving between 47.22% and 49.99% of the statewide vote would win nine electoral votes. However, because of the state's two senatorial electoral votes, a candidate receiving between 50.01% and 52.78% of the statewide vote would receive 11 electoral votes.

In a December 2012 article entitled "Electoral College Chaos: How Republicans Could Put a Lock on the presidency," Rob Richie from FairVote discussed the political effect if the six Republican-controlled states (Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida) were to adopt Senator Pileggi's proposal.[64]

As Richie observed, President Obama won the electoral votes of these six states by a 106–0 margin in November 2012.

Meanwhile, Obama won the Electoral College by a 332–206 margin over Governor Mitt Romney—that is, with only 62 more electoral votes than the 270 required for election.

Table 4.10 shows the effect (using data from Richie's article) of applying Senator Pileggi's 2012 proportional proposal to the 2012 election returns from the six states being discussed.

The table shows that, under Pileggi's 2012 proposal (with each state's two senatorial electoral votes awarded to the statewide popular vote winner), President Obama would have received 61 electoral votes to Governor Romney's 45 electoral votes in the six states.

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[61] As discussed in section 4.3.3, Senator Pileggi had previously proposed (in September 2011) the congressional-district method for awarding Pennsylvania's electoral votes.

[62] Varghese, Romy. Pennsylvania proposal may help Republicans win electoral votes. *Bloomberg*. December 3, 2012. http://www.bloomberg.com/news/2012-12-03/pennsylvania-proposal-may-help-republicans-win-electoral-votes.html

[63] The whole-number proportional method can be implemented in several slightly different ways, depending how third parties, fractions, and round-offs are treated. Senator Pileggi did not release legislative language at the time of announcing his proposal in December 2012. The calculation here assumes use of the whole-number proportional method as described in section 4.1 of this book and also assumes only two major-party candidates.

[64] Richie, Rob. 2012. Electoral College chaos: How Republicans could put a lock on the presidency. December 13, 2012. http://www.fairvote.org/electoral-college-chaos-how-republicans-could-put-a-lock-on-the-presidency

Table 4.9 Division of Pennsylvania's 20 electoral votes under Senator Pileggi's proportional proposal

Candidate receiving statewide popular vote of	Wins this number of "proportional" electoral votes	Wins this number of senatorial electoral votes	Wins this total number of electoral votes
Between 0% and 2.78%	0	0	0
Between 2.78% and 8.33%	1	0	1
Between 8.33% and 13.89%	2	0	2
Between 13.89% and 19.44%	3	0	3
Between 19.44% and 25.00%	4	0	4
Between 25.00% and 30.56%	5	0	5
Between 30.56% and 36.11%	6	0	6
Between 36.11% and 41.67%	7	0	7
Between 41.67% and 47.22%	8	0	8
Between 47.22% and 49.99%	9	0	9
Between 50.01% and 52.78%	9	2	11
Between 52.78% and 58.33%	10	2	12
Between 58.33% and 63.89%	11	2	13
Between 63.89% and 69.44%	12	2	14
Between 69.44% and 75.00%	13	2	15
Between 75.00% and 80.56%	14	2	16
Between 80.56% and 86.11%	15	2	17
Between 86.11% and 91.67%	16	2	18
Between 91.67% and 97.22%	17	2	19
Between 97.22% and 100%	18	2	20

Table 4.10 Political effect of Pileggi's 2012 proportional proposal in six states that Obama carried in 2012

State	D	R	D proportional	R proportional	D at-large	R at-large	D total	R total
FL	50%	49%	14	13	2	0	16	13
MI	54%	45%	8	6	2	0	10	6
OH	51%	48%	8	8	2	0	10	8
PA	52%	47%	9	9	2	0	11	9
VA	51%	47%	6	5	2	0	8	5
WI	53%	46%	4	4	2	0	6	4
Total			**49**	**45**	**12**	**0**	**61**	**45**

That is, President Obama would have ended up with a narrow 287–251 win in the Electoral College, instead of his actual 332–206 win.

These six Republican-controlled states could potentially narrow the margin even more by awarding all of their electoral votes (instead of all but two) on a proportional basis.

For comparison, table 4.11 shows the effect of applying the whole-number proportional method to all 106 electoral votes possessed by the six states.

As can be seen in the table, if this method is applied to the election returns of these six states, President Obama would have received only 56 electoral votes to Governor

Table 4.11 Political effect of the whole-number proportional method in six states that Obama carried in 2012

State	D	R	D total	R total
FL	50%	49%	15	14
MI	54%	45%	9	7
OH	51%	48%	9	9
PA	52%	47%	11	9
VA	51%	47%	7	6
WI	53%	46%	5	5
Total			**56**	**50**

Romney's 50 electoral votes. That is, Obama would have ended up with a 282–256 win in the Electoral College.

Not surprisingly, the Democrats did not like Pileggi's proposal.

Clifford B. Levine, a prominent Democrat in Pennsylvania, said the following in a speech to the Electoral College meeting in Harrisburg, Pennsylvania, on December 17, 2012:

> "**If Pennsylvania became the third state to split its electors**—lightly populated Maine and Nebraska are the only states that do so now—**it would have little influence in future presidential elections, diminishing the voice of Pennsylvania on the national stage**.
>
> "Worse, seems a more nefarious nationwide scheme is being orchestrated by far-right strategists.
>
> "In 2010, Republicans took control of state legislatures in many battleground states, including Pennsylvania, Ohio, Michigan, Wisconsin, Virginia and Florida, which have voted Democratic in recent presidential elections. Instead of listening to voters, Republican leaders in those states have recently proposed similar drastic changes to the elector-selection process, seeking a pro rata allocation of electors in their states.
>
> "These partisans assert this allocation is fair because the winner-take-all approach deprives the losing party of a voice. What these partisan Republicans do not address—and what every voter and journalist in America should ask—is whether the pro rata systems are being proposed in red states, where Republicans control the state government and which vote Republican in presidential elections. Texas, Georgia, Mississippi, North Carolina and Missouri apparently will retain the winner-take-all selection method. Only in blue states are proposals being made to dilute Democratic strength. **The result would be a country of red states and irrelevant states, with preordained election results**."[65] [Emphasis added]

[65] Levine, Clifford B. Hands off the Electoral College! *Pittsburgh Post-Gazette*. December 30, 2012. http://www.post-gazette.com/stories/opinion/perspectives/hands-off-the-electoral-college-668327/

When the Pennsylvania legislature met in 2013 and 2014, it took no action on Pileggi's proposal.

Initiative petition in Colorado in 2004 for the whole-number proportional method (Amendment 36)

The practical political difficulties of enacting this method in a single state were illustrated in Colorado in 2004.

An initiative petition was filed in Colorado calling for a statewide vote on November 2, 2004, on a proposed amendment to the state constitution to install the whole-number proportional method.[66,67,68]

There were three main reasons why the voters defeated Amendment 36 in Colorado in 2004.

First, if Amendment 36 had been adopted, Colorado would have been the only state in the country to divide its electoral votes in this manner. Everyone agreed that the practical political effect of Amendment 36 would be to convert Colorado from a "winner-take-nine" state into a "winner-take-one" state. In his campaign against Amendment 36, Colorado Governor Bill Owens (R) argued that it did not make sense for just one state to adopt this method. Many voters agreed that Colorado's national influence would be reduced if Colorado were the only state in the country to divide its presidential electors proportionally. The Governor's argument was, in essence, the same that Thomas Jefferson had made in his January 12, 1800, letter to James Monroe (section 2.6.1) concerning the "folly" of dividing the electoral votes of states (Virginia and North Carolina) that supported Jefferson in the 1796 presidential election.

Second, Amendment 36 was presented to the voters by its proponents using the argument that it would take effect immediately and apply to the November 2004 presidential election. That is, the initiative would have applied to the very election in which the voters were deciding its fate. Many voters said that they would have approved the change for a subsequent election, but that they were troubled by changing the rules of the game in the midst of the presidential campaign.[69]

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[66] The text of Amendment 36 is found on pages 32–38 of Colorado's 2004 voter pamphlet, and the arguments for and against the proposition are found on pages 10–12. Legislative Council of the Colorado General Assembly. 2004. *Analysis of the 2004 Ballot Proposals*. Research Publication No. 527-8. http://hermes.cde.state.co.us/drupal/islandora/object/co:2995/datastream/OBJ/view

[67] Johnson, Kirk. 2004. Coloradans to Consider Splitting Electoral College Votes. *New York Times*. September 19, 2004. https://www.nytimes.com/2004/09/19/politics/campaign/coloradans-to-consider-splitting-electoral-college-votes.html

[68] The Colorado effort was inspired and supported by the late Professor John Sperling, who authored an analysis of the problems of the current political system. See Sperling, John; Helburn, Suzanne; George, Sam; Morris, John; and Hunt Carl. 2004. *The Great Divide: Retro vs. Metro America*. Polipoint Press.

[69] Amendment 36 would almost certainly not have applied to the 2004 presidential election in Colorado even if it had been approved by the voters on Election Day in 2004. Section 5 of the Electoral Count Act of 1887 states that a state's appointment of presidential elector is conclusive as to the counting of the electoral votes by Congress only if the electors were appointed under laws "enacted *prior* to the day fixed for the appointment of the electors." Note that if current federal law (section 5 of the Electoral Count Reform Act of 2022) had been in effect in 2004, there is no question that no change in the law on or after Election Day can be applied to the presidential election at hand.

Third, the changing fortunes of the candidates during the campaign interacted with the claim (whether legally correct or not) that Amendment 36 would govern Colorado's awarding of its electoral votes in the 2004 presidential election. During the summer of 2004, it was taken for granted that President George W. Bush, would easily carry Colorado. Indeed, Colorado had voted Republican in most recent presidential elections. Given that political expectation, the political effect of Amendment 36 would have been to transfer four of Colorado's nine electoral votes from Bush to the candidate who was almost universally expected to lose the state, namely Democratic presidential nominee John Kerry.

The historical context of the 2004 campaign was that Bush received only 271 votes in the Electoral College in 2000—that is, only one more electoral vote than is necessary to win. Based on the closeness of the 2000 election and closeness of the 2004 race, it was widely predicted that the vote in the Electoral College was likely to be very close again in 2004.[70] Thus, there was little Republican support for Amendment 36 because it was perceived, from the beginning, to be a partisan effort to take four electoral votes from Bush.

Colorado's Republican Governor Bill Owens led a campaign that spent over a million dollars in opposition to Amendment 36.

Then, as Election Day approached, some polls unexpectedly showed Kerry virtually tied with Bush in Colorado. At that point, Democrats started believing that Kerry might win all nine of Colorado's electoral votes under the winner-take-all system, and Democratic support evaporated. Amendment 36 ended up with only 35% statewide support on Election Day.

4.2.4. The whole-number proportional method would not accurately reflect the nationwide popular vote.

At first blush, it might appear that this method would accurately reflect the nationwide popular vote.

However, the national popular vote winner would not have become President in three of the eight presidential elections between 1992 and 2020 if this method had been used in every state.

In two of these eight elections—namely 2000 and 2016—the winner of the national popular vote would not have won the most electoral votes under this method.

- In 2016, this method would have produced a *tie* between Clinton and Trump in the Electoral College (with 261 each)—even though Clinton received 2,868,518 more popular votes nationwide.
- In 2000, this method would have given Bush *more* electoral votes than Gore in 2000—even though Gore received 543,816 more popular votes nationwide.

In four of these eight elections—namely 1992, 1996, 2000, and 2016—no candidate would have received the constitutionally required absolute majority (270 of 538) in the Electoral College.

Consequently, the election for President would have been thrown into the U.S. House of Representatives (with each state having one vote).

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[70] In fact, this prediction turned out to be correct—Bush eventually received only 286 electoral votes in 2004.

- In three of these four elections (1996, 2000, and 2016), the composition of the newly elected U.S. House was such that the candidate who received the most popular votes nationwide would *not* have been chosen as President by the House.
- In one of these four elections (1992), the national popular vote winner (Bill Clinton) would have been chosen by the House.

To see how the whole-number proportional method operates, we now apply it to the results of the eight presidential elections between 1992 and 2020.

We start with the 2016 election, because it illustrates several of the method's most unexpected features.

2016 election

The total national popular vote for President in 2016 was 137,125,484.

The results of the 2016 election were:

- Hillary Clinton—65,853,652
- Donald Trump—62,985,134
- Gary Johnson—4,489,235
- Jill Stein—1,457,226
- Evan McMullin—732,273
- 26 other candidates—1,607,964.[71]

Table 4.12 shows, by state, the results of the 2016 presidential election.

- Columns 2 through 6 show the number of popular votes for each candidate.
- Column 7 shows the combined total vote for candidates other than the top five.
- Column 8 shows the total number of popular votes cast for President in each state.

Now let's illustrate the four steps of the whole-number proportional process by applying it to California (highlighted in the fifth row of this table).

First, Hillary Clinton received 8,753,792 of the 14,237,893 popular votes cast in California. Her percentage share of California's popular vote was 61.48%.

Second, Clinton's percentage share in California (61.48%) is multiplied by 55 (the state's number of electoral votes at the time) yielding 33.815.[72] That is, the result of this step is a whole number (33) and a fractional remainder (0.815). This is shown in table 4.13.

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[71] A combined total of 1,607,964 votes were scattered among 26 additional candidates (most of whom were on the ballot in only one state, or just a few states), various write-in candidates (notably Ron Paul), and votes cast in the state of Nevada for "none of the above." None of these 26 additional candidates received enough popular votes in any state to come close to winning any electoral votes under the whole-number proportional method. These 1,607,964 votes have been consolidated as "others" in this table.

[72] An alternative way to think of this second step is that one electoral vote represented 258,871 popular votes cast in California in 2016. If you divide Clinton's statewide popular vote total in California (8,753,792) by 258,871, the result is 33 (the whole number portion of the quotient) plus a remainder of 211,056 (that is, a fractional remainder of 0.815).

Table 4.12 2016 election results

State	Clinton	Trump	Johnson	Stein	McMullin	Others	Total
AL	729,547	1,318,255	44,467	9,391		21,712	2,123,372
AK	116,454	163,387	18,725	5,735		14,307	318,608
AZ	1,161,167	1,252,401	106,327	34,345	17,449	32,968	2,604,657
AR	380,494	684,872	29,829	9,473	13,255	12,712	1,130,635
CA	**8,753,792**	**4,483,814**	**478,500**	**278,658**	**39,596**	**203,533**	**14,237,893**
CO	1,338,870	1,202,484	144,121	38,437	28,917	27,418	2,780,247
CT	897,572	673,215	48,676	22,841	2,108	508	1,644,920
DE	235,603	185,127	14,757	6,103	706	1,518	443,814
DC	282,830	12,723	4,906	4,258		6,551	311,268
FL	4,504,975	4,617,886	207,043	64,399		108,444	9,502,747
GA	1,877,963	2,089,104	125,306	7,674	13,017	28,383	4,141,447
HI	266,891	128,847	15,954	12,737		4,508	428,937
ID	189,765	409,055	28,331	8,496	46,476	8,310	690,433
IL	3,090,729	2,146,015	209,596	76,802	11,915	59,768	5,594,825
IN	1,033,126	1,557,286	133,993	7,841		25,719	2,757,965
IA	653,669	800,983	59,186	11,479	12,366	28,348	1,566,031
KS	427,005	671,018	55,406	23,506	6,520	11,300	1,194,755
KY	628,854	1,202,971	53,752	13,913	22,780	1,880	1,924,150
LA	780,154	1,178,638	37,978	14,031	8,547	9,684	2,029,032
ME	357,735	335,593	38,105	14,251	1,887	356	747,927
MD	1,677,928	943,169	79,605	35,945	9,630	35,169	2,781,446
MA	1,995,196	1,090,893	138,018	47,661	2,719	50,559	3,325,046
MI	2,268,839	2,279,543	172,136	51,463	8,183	44,378	4,824,542
MN	1,367,825	1,323,232	112,984	36,991	53,083	51,118	2,945,233
MS	485,131	700,714	14,435	3,731		7,077	1,211,088
MO	1,071,068	1,594,511	97,359	25,419	7,072	32,837	2,828,266
MT	177,709	279,240	28,037	7,970	2,297	6,569	501,822
NE	284,494	495,961	38,946	8,775		16,051	844,227
NV	539,260	512,058	37,384			36,683	1,125,385
NH	348,526	345,790	30,777	6,496	1,064	11,643	744,296
NJ	2,148,278	1,601,933	72,477	37,772		46,263	3,906,723
NM	385,234	319,667	74,541	9,879	5,825	3,173	798,319
NY	4,556,142	2,819,557	176,600	107,937	10,413	51,146	7,721,795
NC	2,189,316	2,362,631	130,126	12,105		47,386	4,741,564
ND	93,758	216,794	21,434	3,780		8,594	344,360
OH	2,394,169	2,841,006	174,498	46,271	12,574	68,029	5,536,547
OK	420,375	949,136	83,481			0	1,452,992
OR	1,002,106	782,403	94,231	50,002		72,594	2,001,336
PA	2,926,441	2,970,733	146,715	49,941	4,304	68,595	6,166,729
RI	252,525	180,543	14,746	6,220	759	9,351	464,144
SC	855,373	1,155,389	49,204	13,034	21,016	9,011	2,103,027
SD	117,458	227,721	20,850			4,064	370,093
TN	870,695	1,522,925	70,397	15,993	11,991	16,026	2,508,027
TX	3,877,868	4,685,047	283,492	71,558	42,366	32,835	8,993,166
UT	310,676	515,231	39,608	9,438	243,690	24,958	1,143,601
VT	178,573	95,369	10,078	6,758	631	23,658	315,067
VA	1,981,473	1,769,443	118,274	27,638	54,054	31,870	3,982,752
WA	1,742,718	1,221,747	160,879	58,417	2,104	131,131	3,316,996
WV	188,794	489,371	23,004	8,075	1,104	10,885	721,233
WI	1,382,536	1,405,284	106,674	31,072	11,855	38,729	2,976,150
WY	55,973	174,419	13,287	2,515		9,655	255,849
Total	**65,853,652**	**62,985,134**	**4,489,235**	**1,457,226**	**732,273**	**1,607,964**	**137,125,484**

The result of these first two steps for the top five candidates in California are:

- 33.815 for Hillary Clinton
- 17.321 for Trump
- 1.848 for Johnson
- 1.076 for Stein
- 0.153 for McMullin

Table 4.13 shows this same calculation for all 50 states and the District of Columbia for 2016. Specifically, the table shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Note that these intermediate calculations for the whole-number proportional method are the very same calculations needed to implement the fractional-proportional method (section 4.1). That is, the totals on the bottom line of this table are the number of electoral votes that each candidate would receive under the fractional-proportional method.

Third, each candidate in California *initially* receives the *whole number* of electoral votes resulting from the second step above:

- 33 electoral votes for Hillary Clinton
- 17 electoral votes for Trump
- 1 electoral vote for Johnson
- 1 electoral vote for Stein
- 0 electoral votes for McMullin

Note that only 52 of California's 55 electoral votes have been allocated after this third step. That is, three of California's 55 electoral votes remain to be allocated at this point in the process.[73]

Fourth, in order to allocate California's three remaining electoral votes, we now examine the fractional remainders for each candidate resulting from the second step above.

- 0.815 for Hillary Clinton
- 0.321 for Trump
- 0.848 for Johnson
- 0.076 for Stein
- 0.153 for McMullin
- insignificant small fractions for each of the 26 other candidates

Johnson has the largest fraction (0.848), Clinton has the second largest fraction (0.815), and Trump has the third largest fraction (0.321).

Therefore, these three candidates each receive one additional electoral vote—thereby completing the allocation of all 55 of California's electoral votes.

Stein and McMullin would not have received any additional electoral votes in this final step, because of their smaller fractional remainders (0.076 and 0.153, respectively).

Note that this step is *not* a simple rounding-off of the numbers produced in the second step. Indeed, rounding-off would not produce a complete allocation of California's electoral votes.

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[73] On a nationwide basis, 82 of the 538 electoral votes remain unallocated after this third step.

Table 4.13 Intermediate calculation for 2016 election

State	Clinton	Trump	Johnson	Stein	McMullin	Others	EV
AL	3.092	5.587	0.188	0.040	0.000	0.092	9
AK	1.097	1.538	0.176	0.054	0.000	0.135	3
AZ	4.904	5.289	0.449	0.145	0.074	0.139	11
AR	2.019	3.634	0.158	0.050	0.070	0.067	6
CA	**33.815**	**17.321**	**1.848**	**1.076**	**0.153**	**0.786**	**55**
CO	4.334	3.893	0.467	0.124	0.094	0.089	9
CT	3.820	2.865	0.207	0.097	0.009	0.002	7
DE	1.593	1.251	0.100	0.041	0.005	0.010	3
DC	2.726	0.123	0.047	0.041	0.000	0.063	3
FL	13.748	14.093	0.632	0.197	0.000	0.331	29
GA	7.255	8.071	0.484	0.030	0.050	0.110	16
HI	2.489	1.202	0.149	0.119	0.000	0.042	4
ID	1.099	2.370	0.164	0.049	0.269	0.048	4
IL	11.049	7.671	0.749	0.275	0.043	0.214	20
IN	4.121	6.211	0.534	0.031	0.000	0.103	11
IA	2.504	3.069	0.227	0.044	0.047	0.109	6
KS	2.144	3.370	0.278	0.118	0.033	0.057	6
KY	2.615	5.002	0.223	0.058	0.095	0.008	8
LA	3.076	4.647	0.150	0.055	0.034	0.038	8
ME	1.913	1.795	0.204	0.076	0.010	0.002	4
MD	6.033	3.391	0.286	0.129	0.035	0.126	10
MA	6.601	3.609	0.457	0.158	0.009	0.167	11
MI	7.524	7.560	0.571	0.171	0.027	0.147	16
MN	4.644	4.493	0.384	0.126	0.180	0.174	10
MS	2.403	3.471	0.072	0.018	0.000	0.035	6
MO	3.787	5.638	0.344	0.090	0.025	0.116	10
MT	1.062	1.669	0.168	0.048	0.014	0.039	3
NE	1.685	2.937	0.231	0.052	0.000	0.095	5
NV	2.875	2.730	0.199	0.000	0.000	0.196	6
NH	1.873	1.858	0.165	0.035	0.006	0.063	4
NJ	7.698	5.741	0.260	0.135	0.000	0.166	14
NM	2.413	2.002	0.467	0.062	0.036	0.020	5
NY	17.111	10.589	0.663	0.405	0.039	0.192	29
NC	6.926	7.474	0.412	0.038	0.000	0.150	15
ND	0.817	1.889	0.187	0.033	0.000	0.075	3
OH	7.784	9.236	0.567	0.150	0.041	0.221	18
OK	2.025	4.573	0.402	0.000	0.000	0.000	7
OR	3.505	2.737	0.330	0.175	0.000	0.254	7
PA	9.491	9.635	0.476	0.162	0.014	0.222	20
RI	2.176	1.556	0.127	0.054	0.007	0.081	4
SC	3.661	4.945	0.211	0.056	0.090	0.039	9
SD	0.952	1.846	0.169	0.000	0.000	0.033	3
TN	3.819	6.679	0.309	0.070	0.053	0.070	11
TX	16.386	19.796	1.198	0.302	0.179	0.139	38
UT	1.630	2.703	0.208	0.050	1.279	0.131	6
VT	1.700	0.908	0.096	0.064	0.006	0.225	3
VA	6.468	5.776	0.386	0.090	0.176	0.104	13
WA	6.305	4.420	0.582	0.211	0.008	0.474	12
WV	1.309	3.393	0.159	0.056	0.008	0.075	5
WI	4.645	4.722	0.358	0.104	0.040	0.130	10
WY	0.656	2.045	0.156	0.029	0.000	0.113	3
Total	**255.377**	**249.022**	**18.034**	**5.795**	**3.255**	**6.517**	**538**

Overall, the final allocation of California's 55 electoral votes would have been:

- 34 electoral votes for Hillary Clinton
- 18 electoral votes for Trump
- 2 electoral votes for Johnson
- 1 electoral vote for Stein
- 0 electoral votes for McMullin
- 0 electoral votes for each of the 26 other candidates.

Table 4.14 carries out this process for all 50 states and the District of Columbia. It shows the number of electoral votes each candidate would have received from each state if the whole-number proportional method is applied to the 2016 election returns.

As can be seen from the bottom line in the table, the overall national results of applying the whole-number proportional method to the results of the 2016 election would have been as follows:

- 261 electoral votes for Hillary Clinton
- 261 electoral votes for Donald Trump
- 14 electoral votes for Johnson (two from California and one each from Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Michigan, New Mexico, New York, Ohio, Texas, and Washington)
- 1 electoral vote for Jill Stein (from California)
- 1 electoral vote for McMullin (from Utah)
- 0 electoral votes for each of the 26 other candidates

In other words, the whole-number proportional method would have produced a 261–261 tie in electoral votes for Hillary Clinton and Donald Trump—even though Clinton received 2,868,518 more popular votes nationwide than Trump.

The reason for this 261–261 tie is that this method of allocating electoral votes yields only a very crude approximation of each state's popular vote. Indeed, in half of the states, one electoral vote corresponds to between 14% and 33% of a state's popular vote.

The most important consequence of this 261–261 tie is that no candidate in 2016 would have received the constitutionally required absolute majority of the electoral votes (270 of 538). Consequently, the presidential election would have been thrown into the newly elected U.S. House of Representatives.

In a so-called "contingent" election for President, each state would have one vote, and the House would be constitutionally limited to choosing among the three candidates receiving the most electoral votes, namely Clinton, Trump, and Johnson in 2016.

If all the members of the 50 delegations in the newly elected U.S. House of Representatives had voted in accordance with their party affiliations on January 6, 2017, Donald Trump would have been chosen President.

In summary, the whole-number proportional method would have initially produced a 261–261 tie in the Electoral College in 2016, and the resulting contingent election in the House would not have selected the candidate (Hillary Clinton) who received the most popular votes nationwide.

The contingent election for Vice President in the Senate is limited to choosing between the two candidates receiving the most electoral votes (Pence and Kaine in 2016). If each

Table 4.14 2016 election under the whole-number proportional method

State	Clinton	Trump	Johnson	Stein	McMullin	Others	EV
AL	3	6					9
AK	1	2					3
AZ	5	5	1				11
AR	2	4					6
CA	**34**	**18**	**2**	**1**			**55**
CO	4	4	1				9
CT	4	3					7
DE	2	1					3
DC	3						3
FL	14	14	1				29
GA	7	8	1				16
HI	3	1					4
ID	1	3					4
IL	11	8	1				20
IN	4	6	1				11
IA	3	3					6
KS	2	4					6
KY	3	5					8
LA	3	5					8
ME	2	2					4
MD	6	4					10
MA	7	4					11
MI	7	8	1				16
MN	5	5					10
MS	2	4					6
MO	4	6					10
MT	1	2					3
NE	2	3					5
NV	3	3					6
NH	2	2					4
NJ	8	6					14
NM	2	2	1				5
NY	17	11	1				29
NC	7	8					15
ND	1	2					3
OH	8	9	1				18
OK	2	5					7
OR	4	3					7
PA	10	10					20
RI	2	2					4
SC	4	5					9
SD	1	2					3
TN	4	7					11
TX	17	20	1				38
UT	2	3			1		6
VT	2	1					3
VA	7	6					13
WA	6	5	1				12
WV	1	4					5
WI	5	5					10
WY	1	2					3
Total	**261**	**261**	**14**	**1**	**1**	**0**	**538**

Table 4.15 2016 election under the whole-number proportional method and fractional-proportional (Lodge-Gossett) method

Method	Clinton	Trump	Johnson	Stein	McMullin	Others	EV
FP	255.377	249.022	18.034	5.795	3.255	6.517	538
WNP	261	261	14	1	1	0	538

Senator had voted in accordance with party affiliations on January 6, 2017, Mike Pence would have been elected Vice President.

The conclusion is that the whole-number proportional method, if applied to the 2016 election returns, would not have accurately reflected the nationwide popular vote for President or Vice President.

Table 4.15 compares the results produced by the whole-number proportional method (WNP) to the fractional-proportional method (FP) to 2016 election returns.

The table shows that the three minor-party candidates would have received considerably fewer electoral votes under the whole-number proportional method than under the fractional-proportional method.

2020 election

The results of the 2020 election were:

- Joe Biden (Democrat)—81,268,586
- Donald Trump (Republican)—74,215,875
- Jo Jorgensen (Libertarian)—1,865,526
- Howie Hawkins (Green)—404,980
- 32 other candidates—470,032.[74]

The total national popular vote for President in 2020 was 158,224,999.

Table 4.16 shows, by state, the results for the 2020 presidential election.[75]

Table 4.17 shows the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote in 2020 by each state's number of electoral votes.

Table 4.18 shows, by state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the results of the 2020 election.

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[74] A combined total of 470,032 popular votes were scattered among 32 additional candidates (most of whom were on the ballot in only one state, or just a few states), various write-in candidates, and votes cast in the state of Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

[75] The data in this table comes from the 51 Certificates of Ascertainment on file at the National Archives and found at https://www.archives.gov/electoral-college/2020?_ga=2.79064146.774453085.1607395607-1857190428.1606759205

Table 4.16 2020 election results

State	Biden	Trump	Jorgensen	Hawkins	Others	Total
AL	849,624	1,441,170	25,176		7,312	2,323,282
AK	153,778	189,951	8,897	2,673	2,270	357,569
AZ	1,672,143	1,661,686	51,465	1,557	475	3,387,326
AR	423,932	760,647	13,133	2,980	18,377	1,219,069
CA	11,110,250	6,006,429	187,895	81,029	115,268	17,500,871
CO	1,804,352	1,364,607	52,460	8,986	26,575	3,256,980
CT	1,080,831	714,717	20,230	7,538	541	1,823,857
DE	295,933	200,327	4,993	2,138	290	503,681
DC	317,323	18,586	2,036	1,726	4,685	344,356
FL	5,297,045	5,668,731	70,324	14,721	16,635	11,067,456
GA	2,473,633	2,461,854	62,138		91	4,997,716
HI	366,130	196,864	5,539	3,822	2,114	574,469
ID	287,021	554,119	16,304		9,787	867,231
IL	3,471,915	2,446,891	66,544	30,494	17,594	6,033,438
IN	1,242,413	1,729,516	59,232	988	963	3,033,112
IA	759,061	897,672	19,637	3,075	7,089	1,686,534
KS	570,323	771,406	30,574			1,372,303
KY	772,474	1,326,646	26,234	716	10,658	2,136,728
LA	856,034	1,255,776	21,645		14,607	2,148,062
ME	435,072	360,737	14,152	8,230	1,183	819,374
MD	1,985,023	976,414	33,488	15,799	7,195	3,017,919
MA	2,382,202	1,167,202	47,013	18,658		3,615,075
MI	2,804,040	2,649,852	60,381	13,718	11,293	5,539,284
MN	1,717,077	1,484,065	34,976	10,033	22,299	3,268,450
MS	539,398	756,764	8,026	1,498	8,073	1,313,759
MO	1,253,014	1,718,736	41,205	8,283	4,724	3,025,962
MT	244,786	343,602	15,252			603,640
NE	374,583	556,846	20,283			951,712
NV	703,486	669,890	14,783		3,138	1,391,297
NH	424,937	365,660	13,236			803,833
NJ	2,608,335	1,883,274	31,677	14,202	11,865	4,549,353
NM	501,614	401,894	12,585	4,426	3,446	923,965
NY	5,230,985	3,244,798	60,234	32,753	22,587	8,591,357
NC	2,684,292	2,758,775	48,678	12,195	7,549	5,511,489
ND	114,902	235,595	9,393		1,929	361,819
OH	2,679,165	3,154,834	67,569	18,812	1,822	5,922,202
OK	503,890	1,020,280	24,731		11,798	1,560,699
OR	1,340,383	958,448	41,582	11,831	4,988	2,357,232
PA	3,458,229	3,377,674	79,380			6,915,283
RI	307,486	199,922	5,053		5,296	517,757
SC	1,091,541	1,385,103	27,916	6,907	1,862	2,513,329
SD	150,471	261,043	11,095			422,609
TN	1,143,711	1,852,475	29,877	4,545	23,243	3,053,851
TX	5,259,126	5,890,347	126,243	33,396	5,944	11,315,056
UT	560,282	865,140	38,447	5,053	19,367	1,488,289
VT	242,820	112,704	3,608	1,310	6,986	367,428
VA	2,413,568	1,962,430	64,761			4,440,759
WA	2,369,612	1,584,651	80,500	18,289	7,327	4,060,379
WV	235,984	545,382	10,687	2,599	79	794,731
WI	1,630,866	1,610,184	38,491		18,500	3,298,041
WY	73,491	193,559	5,768		2,208	275,026
Total	**81,268,586**	**74,215,875**	**1,865,526**	**404,980**	**470,032**	**158,224,999**

Table 4.17 Intermediate calculation for 2020 election

State	Biden	Trump	Jorgensen	Hawkins	Others	EV
AL	3.291	5.583	0.098	0.000	0.028	9
AK	1.290	1.594	0.075	0.022	0.019	3
AZ	5.430	5.396	0.167	0.005	0.002	11
AR	2.087	3.744	0.065	0.015	0.090	6
CA	34.916	18.876	0.590	0.255	0.362	55
CO	4.986	3.771	0.145	0.025	0.073	9
CT	4.148	2.743	0.078	0.029	0.002	7
DE	1.763	1.193	0.030	0.013	0.002	3
DC	2.764	0.162	0.018	0.015	0.041	3
FL	13.880	14.854	0.184	0.039	0.044	29
GA	7.919	7.882	0.199	0.000	0.000	16
HI	2.549	1.371	0.039	0.027	0.015	4
ID	1.324	2.556	0.075	0.000	0.045	4
IL	11.509	8.111	0.221	0.101	0.058	20
IN	4.506	6.272	0.215	0.004	0.003	11
IA	2.700	3.194	0.070	0.011	0.025	6
KS	2.494	3.373	0.134	0.000	0.000	6
KY	2.892	4.967	0.098	0.003	0.040	8
LA	3.188	4.677	0.081	0.000	0.054	8
ME	2.124	1.761	0.069	0.040	0.006	4
MD	6.577	3.235	0.111	0.052	0.024	10
MA	7.249	3.552	0.143	0.057	0.000	11
MI	8.099	7.654	0.174	0.040	0.033	16
MN	5.253	4.541	0.107	0.031	0.068	10
MS	2.463	3.456	0.037	0.007	0.037	6
MO	4.141	5.680	0.136	0.027	0.016	10
MT	1.217	1.708	0.076	0.000	0.000	3
NE	1.968	2.925	0.107	0.000	0.000	5
NV	3.034	2.889	0.064	0.000	0.014	6
NH	2.115	1.820	0.066	0.000	0.000	4
NJ	8.027	5.796	0.097	0.044	0.037	14
NM	2.714	2.175	0.068	0.024	0.019	5
NY	17.657	10.953	0.203	0.111	0.076	29
NC	7.306	7.508	0.132	0.033	0.021	15
ND	0.953	1.953	0.078	0.000	0.016	3
OH	8.143	9.589	0.205	0.057	0.006	18
OK	2.260	4.576	0.111	0.000	0.053	7
OR	3.980	2.846	0.123	0.035	0.015	7
PA	10.002	9.769	0.230	0.000	0.000	20
RI	2.376	1.545	0.039	0.000	0.041	4
SC	3.909	4.960	0.100	0.025	0.007	9
SD	1.068	1.853	0.079	0.000	0.000	3
TN	4.120	6.673	0.108	0.016	0.084	11
TX	17.662	19.782	0.424	0.112	0.020	38
UT	2.259	3.488	0.155	0.020	0.078	6
VT	1.983	0.920	0.029	0.011	0.057	3
VA	7.066	5.745	0.190	0.000	0.000	13
WA	7.003	4.683	0.238	0.054	0.022	12
WV	1.485	3.431	0.067	0.016	0.000	5
WI	4.945	4.882	0.117	0.000	0.056	10
WY	0.802	2.111	0.063	0.000	0.024	3
Total	**273.594**	**254.775**	**6.525**	**1.374**	**1.731**	**538**

Table 4.18 2020 election under the whole-number proportional method

State	Biden	Trump	Jorgensen	Hawkins	Others	EV
AL	3	6				9
AK	1	2				3
AZ	6	5				11
AR	2	4				6
CA	35	19	1			55
CO	5	4				9
CT	4	3				7
DE	2	1				3
DC	3					3
FL	14	15				29
GA	8	8				16
HI	3	1				4
ID	1	3				4
IL	12	8				20
IN	5	6				11
IA	3	3				6
KS	3	3				6
KY	3	5				8
LA	3	5				8
ME	2	2				4
MD	7	3				10
MA	7	4				11
MI	8	8				16
MN	5	5				10
MS	3	3				6
MO	4	6				10
MT	1	2				3
NE	2	3				5
NV	3	3				6
NH	2	2				4
NJ	8	6				14
NM	3	2				5
NY	18	11				29
NC	7	8				15
ND	1	2				3
OH	8	10				18
OK	2	5				7
OR	4	3				7
PA	10	10				20
RI	2	2				4
SC	4	5				9
SD	1	2				3
TN	4	7				11
TX	18	20				38
UT	2	4				6
VT	2	1				3
VA	7	6				13
WA	7	5				12
WV	2	3				5
WI	5	5				10
WY	1	2				3
Total	**276**	**261**	**1**	**0**	**0**	**538**

This table shows the overall national results of applying this method to the results of the 2020 election:

- 276 electoral votes for Joe Biden
- 261 electoral votes for Donald Trump
- 1 electoral vote for Jo Jorgensen (from California)
- 0 electoral votes for Hawkins
- 0 electoral votes for the 32 additional candidates

Thus, the national popular vote winner (Biden) would have received an absolute majority of the electoral votes if this method had been applied to the 2020 election returns.

The very small separation between the winner's number of electoral votes (276) and loser's number (261) reflects the fact that very few electoral votes are actually in play under this method.

2012 election

The results of the 2012 election were:

- Barack Obama—65,918,036
- Mitt Romney—60,934,261
- Gary Johnson—1,275,912
- Jill Stein—469,643
- 23 other candidates—486,668

The total national popular vote for President was 129,084,520.[76]

Table 4.19 shows, by state, the results for the 2012 presidential election.

Table 4.20 shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.21 shows the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the 2012 election returns.

The bottom line of this table shows the overall national results of applying this method to the 2012 election returns:

- 276 electoral votes for Obama
- 261 electoral votes for Romney
- 1 electoral vote for Johnson (from California)
- 0 electoral votes for Stein
- 0 electoral votes for the 23 additional candidates

Thus, the national popular vote winner (Obama) would have received an absolute majority of the electoral votes if this method had been applied to the 2012 election returns.

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[76] A combined total of 486,668 popular votes were scattered among 23 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

Table 4.19 2012 election results

State	Obama	Romney	Johnson	Stein	Others	Total
AL	795,696	1,255,925	12,328	3,397	6,992	2,074,338
AK	122,640	164,676	7,392	2,917	2,870	300,495
AZ	1,025,232	1,233,654	32,100	7,816	7,757	2,306,559
AR	394,409	647,744	16,276	9,305	1,734	1,069,468
CA	7,854,285	4,839,958	143,221	85,638	115,445	13,038,547
CO	1,323,102	1,185,243	35,545	7,508	18,124	2,569,522
CT	905,109	634,899	12,580	863	5,542	1,558,993
DE	242,584	165,484	3,882	1,940	31	413,921
DC	267,070	21,381	2,083	2,458	772	293,764
FL	4,237,756	4,163,447	44,726	8,947	19,303	8,474,179
GA	1,773,827	2,078,688	45,324	1,516	695	3,900,050
HI	306,658	121,015	3,840	3,184		434,697
ID	212,787	420,911	9,453	4,402	4,793	652,346
IL	3,019,512	2,135,216	56,229	30,222	835	5,242,014
IN	1,154,275	1,422,872	50,148	625	368	2,628,288
IA	822,544	730,617	12,926	3,769	12,324	1,582,180
KS	439,908	689,809	20,409	714	5,414	1,156,254
KY	679,370	1,087,190	17,063	6,337	7,252	1,797,212
LA	809,141	1,152,262	18,157	6,978	7,527	1,994,065
ME	401,306	292,276	9,352	8,119	2,127	713,180
MD	1,677,844	971,869	30,195	17,110	10,309	2,707,327
MA	1,921,290	1,188,314	30,920	20,691	6,552	3,167,767
MI	2,564,569	2,115,256	7,797	21,897	21,465	4,730,984
MN	1,546,167	1,320,225	35,098	13,023	22,048	2,936,561
MS	562,949	710,746	6,676	1,588	3,625	1,285,584
MO	1,223,796	1,482,440	43,151		7,936	2,757,323
MT	201,839	267,928	14,165		116	484,048
NE	302,081	475,064	11,109		6,125	794,379
NV	531,373	463,567	10,968		9,010	1,014,918
NH	369,561	329,918	8,212	324	2,957	710,972
NJ	2,126,610	1,478,749	20,974	9,902	6,699	3,642,934
NM	415,335	335,788	27,787	2,691	2,156	783,757
NY	4,485,877	2,490,496	47,256	39,984	17,923	7,081,536
NC	2,178,391	2,270,395	44,515		12,071	4,505,372
ND	124,827	188,163	5,231	1,361	3,045	322,627
OH	2,827,709	2,661,437	49,493	18,573	23,658	5,580,870
OK	443,547	891,325				1,334,872
OR	970,488	754,175	24,089	19,427	21,091	1,789,270
PA	2,990,274	2,680,434	49,991	21,341		5,742,040
RI	279,677	157,204	4,388	2,421	2,359	446,049
SC	865,941	1,071,645	16,321	5,446	4,765	1,964,118
SD	145,039	210,610	5,795		2,371	363,815
TN	960,709	1,462,330	18,623	6,515	10,400	2,458,577
TX	3,308,124	4,569,843	88,580	24,657	2,647	7,993,851
UT	251,813	740,600	12,572	3,817	8,638	1,017,440
VT	199,239	92,698	3,487	594	3,272	299,290
VA	1,971,820	1,822,522	31,216	8,627	20,304	3,854,489
WA	1,755,396	1,290,670	42,202	20,928	16,320	3,125,516
WV	238,269	417,655	6,302	4,406	4,035	670,667
WI	1,620,985	1,407,966	20,439	7,665	11,379	3,068,434
WY	69,286	170,962	5,326		3,487	249,061
Total	**65,918,036**	**60,934,261**	**1,275,912**	**469,643**	**486,668**	**129,084,520**

Table 4.20 Intermediate calculation for 2012 election

State	Obama	Romney	Johnson	Stein	Others	EV
AL	3.452	5.449	0.053	0.015	0.030	9
AK	1.224	1.644	0.074	0.029	0.029	3
AZ	4.889	5.883	0.153	0.037	0.037	11
AR	2.213	3.634	0.091	0.052	0.010	6
CA	33.131	20.416	0.604	0.361	0.487	55
CO	4.634	4.151	0.124	0.026	0.063	9
CT	4.064	2.851	0.056	0.004	0.025	7
DE	1.758	1.199	0.028	0.014	0.000	3
DC	2.727	0.218	0.021	0.025	0.008	3
FL	14.502	14.248	0.153	0.031	0.066	29
GA	7.277	8.528	0.186	0.006	0.003	16
HI	2.822	1.114	0.035	0.029	0.000	4
ID	1.305	2.581	0.058	0.027	0.029	4
IL	11.520	8.147	0.215	0.115	0.003	20
IN	4.831	5.955	0.210	0.003	0.002	11
IA	3.119	2.771	0.049	0.014	0.047	6
KS	2.283	3.580	0.106	0.004	0.028	6
KY	3.024	4.839	0.076	0.028	0.032	8
LA	3.246	4.623	0.073	0.028	0.030	8
ME	2.251	1.639	0.052	0.046	0.012	4
MD	6.197	3.590	0.112	0.063	0.038	10
MA	6.672	4.126	0.107	0.072	0.023	11
MI	8.673	7.154	0.026	0.074	0.073	16
MN	5.265	4.496	0.120	0.044	0.075	10
MS	2.627	3.317	0.031	0.007	0.017	6
MO	4.438	5.376	0.156	0.000	0.029	10
MT	1.251	1.661	0.088	0.000	0.001	3
NE	1.901	2.990	0.070	0.000	0.039	5
NV	3.141	2.741	0.065	0.000	0.053	6
NH	2.079	1.856	0.046	0.002	0.017	4
NJ	8.173	5.683	0.081	0.038	0.026	14
NM	2.650	2.142	0.177	0.017	0.014	5
NY	18.370	10.199	0.194	0.164	0.073	29
NC	7.253	7.559	0.148	0.000	0.040	15
ND	1.161	1.750	0.049	0.013	0.028	3
OH	9.120	8.584	0.160	0.060	0.076	18
OK	2.326	4.674	0.000	0.000	0.000	7
OR	3.797	2.950	0.094	0.076	0.083	7
PA	10.415	9.336	0.174	0.074	0.000	20
RI	2.508	1.410	0.039	0.022	0.021	4
SC	3.968	4.911	0.075	0.025	0.022	9
SD	1.196	1.737	0.048	0.000	0.020	3
TN	4.298	6.543	0.083	0.029	0.047	11
TX	15.726	21.723	0.421	0.117	0.013	38
UT	1.485	4.367	0.074	0.023	0.051	6
VT	1.997	0.929	0.035	0.006	0.033	3
VA	6.650	6.147	0.105	0.029	0.068	13
WA	6.740	4.955	0.162	0.080	0.063	12
WV	1.776	3.114	0.047	0.033	0.030	5
WI	5.283	4.589	0.067	0.025	0.037	10
WY	0.835	2.059	0.064	0.000	0.042	3
Total	**272.247**	**256.138**	**5.537**	**1.988**	**2.091**	**538**

Table 4.21 2012 election under the whole-number proportional method

State	Obama	Romney	Johnson	Stein	Others	EV
AL	4	5				9
AK	1	2				3
AZ	5	6				11
AR	2	4				6
CA	33	21	1			55
CO	5	4				9
CT	4	3				7
DE	2	1				3
DC	3					3
FL	15	14				29
GA	7	9				16
HI	3	1				4
ID	1	3				4
IL	12	8				20
IN	5	6				11
IA	3	3				6
KS	2	4				6
KY	3	5				8
LA	3	5				8
ME	2	2				4
MD	6	4				10
MA	7	4				11
MI	9	7				16
MN	5	5				10
MS	3	3				6
MO	5	5				10
MT	1	2				3
NE	2	3				5
NV	3	3				6
NH	2	2				4
NJ	8	6				14
NM	3	2				5
NY	19	10				29
NC	7	8				15
ND	1	2				3
OH	9	9				18
OK	2	5				7
OR	4	3				7
PA	11	9				20
RI	3	1				4
SC	4	5				9
SD	1	2				3
TN	4	7				11
TX	16	22				38
UT	2	4				6
VT	2	1				3
VA	7	6				13
WA	7	5				12
WV	2	3				5
WI	5	5				10
WY	1	2				3
Total	**276**	**261**	**1**	**0**	**0**	**538**

2008 election

The results of the 2008 election were:

- Barack Obama—69,499,428
- John McCain—59,950,323
- Ralph Nader—739,278
- Bob Barr—523,433
- 19 other candidates—749,119.[77]

The total national popular vote for President in 2008 was 131,461,581.

Table 4.22 shows the results by state for the 2008 presidential election.

Table 4.23 shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.24 shows, for each state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the 2008 election returns.

The bottom line of this table shows that the overall national results of applying this method to the results of the 2008 election would have been:

- 289 electoral votes for Obama
- 248 electoral votes for McCain
- 1 electoral vote for Nader (from California)
- 0 electoral votes for Barr
- 0 electoral votes for 19 additional candidates.

Thus, the national popular vote winner (Obama) would have received an absolute majority of the electoral votes if the whole-number proportional method had been applied to the 2008 election returns.

2004 election

The results of the 2004 election were:

- John Kerry—59,028,432
- George W. Bush—62,040,611
- Ralph Nader—465,650
- Michael Badnarik (Libertarian)—397,266
- 12 other candidates—371,577.[78]

The total national popular vote for President in 2004 was 122,303,536.

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[77] A combined total of 749,119 popular votes were scattered among 19 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

[78] A combined total of 371,577 popular votes were scattered among 12 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

Table 4.22 2008 election results

State	Obama	McCain	Nader	Barr	Others	Total
AL	813,479	1,266,546	6,788	4,991	8,015	2,099,819
AK	123,594	193,841	3,783	1,589	3,390	326,197
AZ	1,034,707	1,230,111	11,301	12,555	15,164	2,303,838
AR	422,310	638,017	12,882	4,776	8,632	1,086,617
CA	8,274,473	5,011,781	108,381	67,582	115,048	13,577,265
CO	1,288,633	1,073,629	13,352	10,898	14,950	2,401,462
CT	997,773	629,428	19,162		430	1,646,793
DE	255,459	152,374	2,401	1,109	1,273	412,616
DC	245,800	17,367	958		1,728	265,853
FL	4,282,367	4,046,219	28,128	17,220	37,927	8,411,861
GA	1,844,123	2,048,759	1,165	28,731	9,380	3,932,158
HI	325,871	120,566	3,825	1,314	1,992	453,568
ID	236,440	403,012	7,175	3,658	8,169	658,454
IL	3,419,348	2,031,179	31,152	19,642	27,034	5,528,355
IN	1,374,039	1,345,648	909	29,257	5,737	2,755,590
IA	828,940	682,379	8,014	4,590	13,200	1,537,123
KS	514,765	699,655	10,527	6,706	7,220	1,238,873
KY	751,985	1,048,462	15,378	5,989	5,773	1,827,587
LA	782,989	1,148,275	6,997		22,500	1,960,761
ME	421,923	295,273	10,636	251	3,080	731,163
MD	1,629,467	959,862	14,713	9,842	17,712	2,631,596
MA	1,904,098	1,108,854	28,841	13,189	26,087	3,081,069
MI	2,872,579	2,048,639	33,085	23,716	32,175	5,010,194
MN	1,573,354	1,275,409	30,152	9,174	22,280	2,910,369
MS	554,662	724,597	4,011	2,529	4,066	1,289,865
MO	1,441,911	1,445,814	17,813	11,386	12,025	2,928,949
MT	232,159	243,882	3,699	1,358	11,652	492,750
NE	333,319	452,979	5,406	2,740	6,837	801,281
NV	533,736	412,827	6,150	4,263	10,872	967,848
NH	384,826	316,534	3,503	2,217	3,890	710,970
NJ	2,215,422	1,613,207	21,298	8,441	19,039	3,877,407
NM	472,422	346,832	5,327	2,428	3,149	830,158
NY	4,804,945	2,752,771	41,249	19,596	22,387	7,640,948
NC	2,142,651	2,128,474	1,454	25,722	12,488	4,310,789
ND	141,403	168,887	4,199	1,067	2,182	317,738
OH	2,940,044	2,677,820	42,337	19,917	41,697	5,721,815
OK	502,496	960,165				1,462,661
OR	1,037,291	738,475	18,614	7,635	25,849	1,827,864
PA	3,276,363	2,655,885	42,977	19,912	20,339	6,015,476
RI	296,571	165,391	4,829	1,382	3,593	471,766
SC	862,449	1,034,896	5,053	7,283	11,288	1,920,969
SD	170,924	203,054	4,267	1,835	1,895	381,975
TN	1,087,437	1,479,178	11,560	8,547	15,260	2,601,982
TX	3,528,633	4,479,328	5,751	56,116	17,380	8,087,208
UT	327,670	596,030	8,416	6,966	18,399	957,481
VT	219,262	98,974	3,339	1,067	2,404	325,046
VA	1,959,532	1,725,005	11,483	11,067	16,173	3,723,260
WA	1,750,848	1,229,216	29,489	12,728	30,970	3,053,251
WV	303,857	397,466	7,219		6,326	714,868
WI	1,677,211	1,262,393	17,605	8,858	17,350	2,983,417
WY	82,868	164,958	2,525	1,594	2,713	254,658
Total	**69,499,428**	**59,950,323**	**739,278**	**523,433**	**749,119**	**131,461,581**

Table 4.23 Intermediate calculation for 2008 election

State	Obama	McCain	Nader	Barr	Others	EV
AL	3.487	5.429	0.029	0.021	0.034	9
AK	1.137	1.783	0.035	0.015	0.031	3
AZ	4.491	5.339	0.049	0.054	0.066	10
AR	2.332	3.523	0.071	0.026	0.048	6
CA	33.519	20.302	0.439	0.274	0.466	55
CO	4.829	4.024	0.050	0.041	0.056	9
CT	4.241	2.676	0.081	0.000	0.002	7
DE	1.857	1.108	0.017	0.008	0.009	3
DC	2.774	0.196	0.011	0.000	0.019	3
FL	13.745	12.987	0.090	0.055	0.122	27
GA	7.035	7.815	0.004	0.110	0.036	15
HI	2.874	1.063	0.034	0.012	0.018	4
ID	1.436	2.448	0.044	0.022	0.050	4
IL	12.989	7.716	0.118	0.075	0.103	21
IN	5.485	5.372	0.004	0.117	0.023	11
IA	3.775	3.108	0.036	0.021	0.060	7
KS	2.493	3.389	0.051	0.032	0.035	6
KY	3.292	4.589	0.067	0.026	0.025	8
LA	3.594	5.271	0.032	0.000	0.103	9
ME	2.308	1.615	0.058	0.001	0.017	4
MD	6.192	3.647	0.056	0.037	0.067	10
MA	7.416	4.319	0.112	0.051	0.102	12
MI	9.747	6.951	0.112	0.080	0.109	17
MN	5.406	4.382	0.104	0.032	0.077	10
MS	2.580	3.371	0.019	0.012	0.019	6
MO	5.415	5.430	0.067	0.043	0.045	11
MT	1.413	1.485	0.023	0.008	0.071	3
NE	2.080	2.827	0.034	0.017	0.043	5
NV	2.757	2.133	0.032	0.022	0.056	5
NH	2.165	1.781	0.020	0.012	0.022	4
NJ	8.571	6.241	0.082	0.033	0.074	15
NM	2.845	2.089	0.032	0.015	0.019	5
NY	19.494	11.168	0.167	0.080	0.091	31
NC	7.456	7.406	0.005	0.090	0.043	15
ND	1.335	1.595	0.040	0.010	0.021	3
OH	10.277	9.360	0.148	0.070	0.146	20
OK	2.405	4.595	0.000	0.000	0.000	7
OR	3.972	2.828	0.071	0.029	0.099	7
PA	11.438	9.272	0.150	0.070	0.071	21
RI	2.515	1.402	0.041	0.012	0.030	4
SC	3.592	4.310	0.021	0.030	0.047	8
SD	1.342	1.595	0.034	0.014	0.015	3
TN	4.597	6.253	0.049	0.036	0.065	11
TX	14.835	18.832	0.024	0.236	0.073	34
UT	1.711	3.112	0.044	0.036	0.096	5
VT	2.024	0.913	0.031	0.010	0.022	3
VA	6.842	6.023	0.040	0.039	0.056	13
WA	6.308	4.429	0.106	0.046	0.112	11
WV	2.125	2.780	0.050	0.000	0.044	5
WI	5.622	4.231	0.059	0.030	0.058	10
WY	0.976	1.943	0.030	0.019	0.032	3
Total	**283.146**	**246.455**	**3.124**	**2.128**	**3.147**	**538**

Table 4.24 2008 election under the whole-number proportional method

State	Obama	McCain	Nader	Barr	Other	EV
AL	4	5				9
AK	1	2				3
AZ	5	5				10
AR	2	4				6
CA	34	20	1			55
CO	5	4				9
CT	4	3				7
DE	2	1				3
DC	3					3
FL	14	13				27
GA	7	8				15
HI	3	1				4
ID	1	3				4
IL	13	8				21
IN	6	5				11
IA	4	3				7
KS	3	3				6
KY	3	5				8
LA	4	5				9
ME	2	2				4
MD	6	4				10
MA	8	4				12
MI	10	7				17
MN	6	4				10
MS	3	3				6
MO	5	6				11
MT	1	2				3
NE	2	3				5
NV	3	2				5
NH	2	2				4
NJ	9	6				15
NM	3	2				5
NY	20	11				31
NC	8	7				15
ND	1	2				3
OH	10	10				20
OK	2	5				7
OR	4	3				7
PA	12	9				21
RI	3	1				4
SC	4	4				8
SD	1	2				3
TN	5	6				11
TX	15	19				34
UT	2	3				5
VT	2	1				3
VA	7	6				13
WA	6	5				11
WV	2	3				5
WI	6	4				10
WY	1	2				3
Total	**289**	**248**	**1**	**0**	**0**	**538**

Table 4.25 shows, for each state, the results for the 2004 presidential election.

Table 4.26 shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.27 shows, for each state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the results of the 2004 election.

The bottom line of this table shows the overall national results of applying this method to the 2004 election returns:

- 258 electoral votes for Kerry
- 280 electoral votes for George W. Bush
- 0 electoral votes for Nader and Badnarik
- 0 electoral votes for 12 additional candidates

Thus, the national popular vote winner (George W. Bush) would have received an absolute majority of the electoral votes if the whole-number proportional method had been applied to the 2004 election returns.

2000 election

The results of the 2000 election were:

- Al Gore—51,003,926
- George W. Bush—50,460,110
- Ralph Nader—2,883,105
- Pat Buchanan—449,225
- Harry Browne—384,516
- 11 other candidates—236,593.[79]

The total national popular vote for President in 2000 was 105,417,475.

Table 4.3 (located earlier in this chapter) shows the results of the 2000 presidential election by state.

Table 4.4 shows the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.28 shows, for each state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the 2000 election returns.

[79] A combined total of 236,593 popular votes were scattered among 11 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

Table 4.25 2004 election results

State	Kerry	Bush	Nader	Badnarik	Other	Total
AL	693,933	1,176,394	6,701	3,529	2,892	1,883,449
AK	111,025	190,889	5,069	1,675	3,940	312,598
AZ	893,524	1,104,294	2,773	11,856	1,446	2,013,893
AR	469,953	572,898	6,171	2,352	3,571	1,054,945
CA	6,745,485	5,509,826	21,213	50,165	95,168	12,421,857
CO	1,001,725	1,101,256	12,718	7,665	6,961	2,130,325
CT	857,488	693,826	12,969	3,367	11,119	1,578,769
DE	200,152	171,660	2,153	586	719	375,270
DC	202,970	21,256	1,485	502	1,373	227,586
FL	3,583,544	3,964,522	32,971	11,996	16,777	7,609,810
GA	1,366,149	1,914,254	2,231	18,387	3,460	3,304,481
HI	231,708	194,191		1,377	1,737	429,013
ID	181,098	409,235	1,115	3,844	3,155	598,447
IL	2,891,550	2,345,946	3,571	32,442	813	5,274,322
IN	969,011	1,479,438	1,328	18,058	167	2,468,002
IA	741,898	751,957	5,973	2,992	4,088	1,506,908
KS	434,993	736,456	9,348	4,013	2,946	1,187,756
KY	712,733	1,069,439	8,856	2,619	2,432	1,796,079
LA	820,299	1,102,169	7,032	2,781	10,825	1,943,106
ME	396,842	330,201	8,069	1,965	3,675	740,752
MD	1,334,493	1,024,703	11,854	6,094	9,534	2,386,678
MA	1,803,800	1,071,109	4,806	15,022	17,651	2,912,388
MI	2,479,183	2,313,746	24,035	10,552	11,736	4,839,252
MN	1,445,014	1,346,695	18,683	4,639	13,356	2,828,387
MS	458,094	684,981	3,177	1,793	4,320	1,152,365
MO	1,259,171	1,455,713	1,294	9,831	5,355	2,731,364
MT	173,710	266,063	6,168	1,733	2,771	450,445
NE	254,328	512,814	5,698	2,041	3,305	778,186
NV	397,190	418,690	4,838	3,176	5,693	829,587
NH	340,511	331,237	4,479	372	1,139	677,738
NJ	1,911,430	1,670,003	19,418	4,514	6,772	3,612,137
NM	370,942	376,930	4,053	2,382	1,997	756,304
NY	4,314,280	2,962,567	99,873	11,607	3,414	7,391,741
NC	1,525,849	1,961,166	1,805	11,731	456	3,501,007
ND	111,052	196,651	3,756	851	523	312,833
OH	2,741,167	2,859,768		14,676	12,297	5,627,908
OK	503,966	959,792				1,463,758
OR	943,163	866,831		7,260	19,528	1,836,782
PA	2,938,095	2,793,847	2,656	21,185	13,807	5,769,590
RI	259,760	169,046	4,651	907	2,770	437,134
SC	661,699	937,974	5,520	3,608	8,929	1,617,730
SD	149,244	232,584	4,320	964	1,103	388,215
TN	1,036,477	1,384,375	8,992	4,866	2,609	2,437,319
TX	2,832,704	4,526,917	9,159	38,787	3,198	7,410,765
UT	241,199	663,742	11,305	3,375	8,223	927,844
VT	184,067	121,180	4,494	1,102	1,466	312,309
VA	1,454,742	1,716,959	2,393	11,032	13,241	3,198,367
WA	1,510,201	1,304,894	23,283	11,955	11,380	2,861,713
WV	326,541	423,778	4,063	1,405	100	755,887
WI	1,489,504	1,478,120	16,390	6,464	6,529	2,997,007
WY	70,776	167,629	2,741	1,171	1,111	243,428
Total	**59,028,432**	**62,040,611**	**465,650**	**397,266**	**371,577**	**122,303,536**

Table 4.26 Intermediate calculation for 2004 election

State	Kerry	Bush	Nader	Badnarik	Others	EV
AL	3.316	5.621	0.032	0.017	0.014	9
AK	1.066	1.832	0.049	0.016	0.038	3
AZ	4.437	5.483	0.014	0.059	0.007	10
AR	2.673	3.258	0.035	0.013	0.020	6
CA	29.867	24.396	0.094	0.222	0.421	55
CO	4.232	4.652	0.054	0.032	0.029	9
CT	3.802	3.076	0.058	0.015	0.049	7
DE	1.600	1.372	0.017	0.005	0.006	3
DC	2.676	0.280	0.020	0.007	0.018	3
FL	12.715	14.066	0.117	0.043	0.060	27
GA	6.201	8.689	0.010	0.083	0.016	15
HI	2.160	1.811	0.000	0.013	0.016	4
ID	1.210	2.735	0.007	0.026	0.021	4
IL	11.513	9.341	0.014	0.129	0.003	21
IN	4.319	6.594	0.006	0.080	0.001	11
IA	3.446	3.493	0.028	0.014	0.019	7
KS	2.197	3.720	0.047	0.020	0.015	6
KY	3.175	4.763	0.039	0.012	0.011	8
LA	3.799	5.105	0.033	0.013	0.050	9
ME	2.143	1.783	0.044	0.011	0.020	4
MD	5.591	4.293	0.050	0.026	0.040	10
MA	7.432	4.413	0.020	0.062	0.073	12
MI	8.709	8.128	0.084	0.037	0.041	17
MN	5.109	4.761	0.066	0.016	0.047	10
MS	2.385	3.566	0.017	0.009	0.022	6
MO	5.071	5.863	0.005	0.040	0.022	11
MT	1.157	1.772	0.041	0.012	0.018	3
NE	1.634	3.295	0.037	0.013	0.021	5
NV	2.394	2.523	0.029	0.019	0.034	5
NH	2.010	1.955	0.026	0.002	0.007	4
NJ	7.938	6.935	0.081	0.019	0.028	15
NM	2.452	2.492	0.027	0.016	0.013	5
NY	18.094	12.425	0.419	0.049	0.014	31
NC	6.537	8.403	0.008	0.050	0.002	15
ND	1.065	1.886	0.036	0.008	0.005	3
OH	9.741	10.163	0.000	0.052	0.044	20
OK	2.410	4.590	0.000	0.000	0.000	7
OR	3.594	3.304	0.000	0.028	0.074	7
PA	10.694	10.169	0.010	0.077	0.050	21
RI	2.377	1.547	0.043	0.008	0.025	4
SC	3.272	4.638	0.027	0.018	0.044	8
SD	1.153	1.797	0.033	0.007	0.009	3
TN	4.678	6.248	0.041	0.022	0.012	11
TX	12.996	20.769	0.042	0.178	0.015	34
UT	1.300	3.577	0.061	0.018	0.044	5
VT	1.768	1.164	0.043	0.011	0.014	3
VA	5.913	6.979	0.010	0.045	0.054	13
WA	5.805	5.016	0.089	0.046	0.044	11
WV	2.160	2.803	0.027	0.009	0.001	5
WI	4.970	4.932	0.055	0.022	0.022	10
WY	0.872	2.066	0.034	0.014	0.014	3
Total	**257.830**	**274.545**	**2.176**	**1.762**	**1.688**	**538**

Table 4.27 2004 election under the whole-number proportional method

State	Kerry	Bush	Nader	Badnarik	Others	EV
AL	3	6				9
AK	1	2				3
AZ	4	6				10
AR	3	3				6
CA	30	25				55
CO	4	5				9
CT	4	3				7
DE	2	1				3
DC	3					3
FL	13	14				27
GA	6	9				15
HI	2	2				4
ID	1	3				4
IL	12	9				21
IN	4	7				11
IA	3	4				7
KS	2	4				6
KY	3	5				8
LA	4	5				9
ME	2	2				4
MD	6	4				10
MA	8	4				12
MI	9	8				17
MN	5	5				10
MS	2	4				6
MO	5	6				11
MT	1	2				3
NE	2	3				5
NV	2	3				5
NH	2	2				4
NJ	8	7				15
NM	2	3				5
NY	18	13				31
NC	7	8				15
ND	1	2				3
OH	10	10				20
OK	2	5				7
OR	4	3				7
PA	11	10				21
RI	2	2				4
SC	3	5				8
SD	1	2				3
TN	5	6				11
TX	13	21				34
UT	1	4				5
VT	2	1				3
VA	6	7				13
WA	6	5				11
WV	2	3				5
WI	5	5				10
WY	1	2				3
Total	**258**	**280**	**0**	**0**	**0**	**538**

Table 4.28 2000 election under the whole-number proportional method

State	Gore	Bush	Nader	Buchanan	Browne	All others	EV
AL	4	5					9
AK	1	2					3
AZ	4	4					8
AR	3	3					6
CA	29	23	2				54
CO	3	4	1				8
CT	5	3					8
DE	2	1					3
DC	3	0					3
FL	12	12	1				25
GA	6	7					13
HI	2	2					4
ID	1	3					4
IL	12	9	1				22
IN	5	7					12
IA	4	3					7
KS	2	4					6
KY	3	5					8
LA	4	5					9
ME	2	2					4
MD	6	4					10
MA	7	4	1				12
MI	9	8	1				18
MN	5	5					10
MS	3	4					7
MO	5	6					11
MT	1	2					3
NE	2	3					5
NV	2	2					4
NH	2	2					4
NJ	8	6	1				15
NM	3	2					5
NY	20	12	1				33
NC	6	8					14
ND	1	2					3
OH	10	10	1				21
OK	3	5					8
OR	3	3	1				7
PA	12	11					23
RI	3	1					4
SC	3	5					8
SD	1	2					3
TN	5	6					11
TX	12	19	1				32
UT	1	4					5
VT	2	1					3
VA	6	7					13
WA	6	5					11
WV	2	3					5
WI	5	5	1				11
WY	1	2					3
Total	**262**	**263**	**13**	**0**	**0**		**538**

The bottom line of this table shows the overall national results of applying the whole-number proportional method to the 2000 election returns:

- 262 electoral votes for Gore
- 263 electoral votes for George W. Bush
- 13 electoral votes for Ralph Nader, including two electoral votes in California and one electoral vote in each of 11 other states (Colorado, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Texas, and Wisconsin)
- 0 electoral votes for Buchanan
- 0 electoral votes for Brown
- 0 electoral votes for 11 additional candidates

Note that Gore received *fewer* electoral votes than Bush under the whole-number proportional method—despite the fact that Gore received over a half million more popular votes than Bush.

The reason that the second-place candidate (Bush) would have had a 263–262 lead in electoral votes is that this method produces only a very rough approximation to the national popular vote.

In any case, no candidate would have received "a majority of the whole number of Electors appointed" as required by the Constitution if this method is applied to the 2000 election returns. Consequently, the election for President would have been thrown into the newly elected U.S. House of Representatives on January 6, 2001.

If the members of the 50 delegations in the U.S. House of Representatives had voted in accordance with their party affiliations in the contingent election on January 6, 2001, George W. Bush would have been elected President.

In summary, the whole-number proportional method would have initially produced a 263–262 lead for the second-place candidate (Bush), and the contingent election in the House would have resulted in the election of the second-place candidate as President.

The newly elected Senate was equally divided on January 6, 2001. The U.S. Constitution is not entirely clear as to whether, in the event of a tie in the Senate in a contingent election for Vice President, the sitting Vice President (namely Al Gore, whose term of office ran until January 20, 2001) would have been entitled to vote to break the tie.

If Gore had voted, and all the Senators had voted in accordance with their party affiliation, the Democratic nominee for Vice President (Senator Joseph Lieberman) would have been elected Vice President by the Senate. If Gore had not voted, and all the Senators had voted in accordance with their party affiliations, the office of Vice President would have remained unfilled.

Then, the President whom the House would have elected (George W. Bush) would have filled the vacant office of Vice President under terms of the 25th Amendment after he was inaugurated on January 20, 2001.

1996 election

The results of the 1996 election were:

- Bill Clinton—47,400,125
- Bob Dole—39,198,755
- Ross Perot—8,085,402
- Ralph Nader—685,435
- Harry Browne—485,798
- 17 additional candidates—420,125.[80]

The total national popular vote for President in 1996 was 96,275,640.

Table 4.29 shows, for each state, the results for the 1996 presidential election.

Table 4.30 shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.31 shows, for each state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the 1996 election returns.

The bottom line of this table shows the overall national results of applying this method to the results of the 1996 election:

- 267 electoral votes for Bill Clinton
- 224 electoral votes for Dole
- 46 electoral votes for Perot (coming from a total of 35 states)
- 1 electoral vote for Nader (from California)
- 0 electoral votes for Browne
- 0 electoral votes for 17 additional candidates

No candidate would have received "a majority of the whole number of Electors appointed" as required by the Constitution if this method had been applied to the results of the 1996 election. Consequently, the election for President would have been thrown into the newly elected U.S. House of Representatives on January 6, 1997, and the election for Vice President would have been thrown into the newly elected U.S. Senate.

If the members of the 50 delegations in the U.S. House of Representatives had voted in accordance with their party affiliations in the contingent election on January 6, 1996, Bob Dole would have been elected President.

Thus, after the contingent election in the House, the whole-number proportional method would not have resulted in the election of the candidate who received the most popular votes nationwide in 1996, namely Bill Clinton.

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[80] This total of 96,275,640 includes 420,125 popular votes scattered among 17 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

Table 4.29 1996 election results

State	Clinton	Dole	Perot	Nader	Browne	Others	Total
AL	662,165	769,044	92,149		5,290	5,701	1,534,349
AK	80,380	122,746	26,333	7,597	2,276	2,288	241,620
AZ	653,288	622,073	112,072	2,062	14,358	552	1,404,405
AR	475,171	325,416	69,884	3,649	3,076	7,066	884,262
CA	5,119,835	3,828,380	697,847	237,016	73,600	62,806	10,019,484
CO	671,152	691,848	99,629	25,070	12,392	10,613	1,510,704
CT	735,740	483,109	139,523	24,321	5,788	4,133	1,392,614
DE	140,355	99,062	28,719	156	2,052	740	271,084
DC	158,220	17,339	3,611	4,780	588	1,188	185,726
FL	2,546,870	2,244,536	483,870	4,101	23,965	452	5,303,794
GA	1,053,849	1,080,843	146,337		17,870	172	2,299,071
HI	205,012	113,943	27,358	10,386	2,493	928	360,120
ID	165,443	256,595	62,518		3,325	3,838	491,719
IL	2,341,744	1,587,021	346,408	1,447	22,548	12,223	4,311,391
IN	887,424	1,006,693	224,299	1,121	15,632	673	2,135,842
IA	620,258	492,644	105,159	6,550	2,315	7,149	1,234,075
KS	387,659	583,245	92,639	914	4,557	5,286	1,074,300
KY	636,614	623,283	120,396	701	4,009	3,705	1,388,708
LA	927,837	712,586	123,293	4,719	7,499	8,025	1,783,959
ME	312,788	186,378	85,970	15,279	2,996	2,486	605,897
MD	966,207	681,530	115,812	2,606	8,765	5,950	1,780,870
MA	1,571,763	718,107	227,217	4,734	20,426	14,538	2,556,785
MI	1,989,653	1,481,212	336,670	2,322	27,670	11,317	3,848,844
MN	1,120,438	766,476	257,704	24,908	8,271	14,843	2,192,640
MS	394,022	439,838	52,222		2,809	4,966	893,857
MO	1,025,935	890,016	217,188	534	10,522	13,870	2,158,065
MT	167,922	179,652	55,229		2,526	1,932	407,261
NE	236,761	363,467	71,278		2,792	3,117	677,415
NV	203,974	199,244	43,986	4,730	4,460	7,885	464,279
NH	246,214	196,532	48,390		4,237	3,802	499,175
NJ	1,652,329	1,103,078	262,134	32,465	14,763	11,038	3,075,807
NM	273,495	232,751	32,257	13,218	2,996	1,357	556,074
NY	3,756,177	1,933,492	503,458	75,956	12,220	34,826	6,316,129
NC	1,107,849	1,225,938	168,059	2,108	8,740	3,113	2,515,807
ND	106,905	125,050	32,515		847	1,094	266,411
OH	2,148,222	1,859,883	483,207	2,962	12,851	27,309	4,534,434
OK	488,105	582,315	130,788		5,505		1,206,713
OR	649,641	538,152	121,221	49,415	8,903	10,428	1,377,760
PA	2,215,819	1,801,169	430,984	3,086	28,000	27,060	4,506,118
RI	233,050	104,683	43,723	6,040	1,109	1,679	390,284
SC	504,051	573,458	64,386		4,271	3,291	1,149,457
SD	139,333	150,543	31,250		1,472	1,228	323,826
TN	909,146	863,530	105,918	6,427	5,020	4,064	1,894,105
TX	2,459,683	2,736,167	378,537	4,810	20,256	12,191	5,611,644
UT	221,633	361,911	66,461	4,615	4,129	6,880	665,629
VT	137,894	80,352	31,024	5,585	1,183	2,411	258,449
VA	1,091,060	1,138,350	159,861		9,174	18,197	2,416,642
WA	1,123,323	840,712	201,003	60,322	12,522	15,955	2,253,837
WV	327,812	233,946	71,639		3,062		636,459
WI	1,071,971	845,029	227,339	28,723	7,929	15,178	2,196,169
WY	77,934	105,388	25,928		1,739	582	211,571
Total	**47,400,125**	**39,198,755**	**8,085,402**	**685,435**	**485,798**	**420,125**	**96,275,640**

Table 4.30 Intermediate calculation for 1996 election

State	Clinton	Dole	Perot	Nader	Browne	Others	EV
AL	3.884	4.511	0.541	0.000	0.031	0.033	9
AK	0.998	1.524	0.327	0.094	0.028	0.028	3
AZ	3.721	3.544	0.638	0.012	0.082	0.003	8
AR	3.224	2.208	0.474	0.025	0.021	0.048	6
CA	27.593	20.633	3.761	1.277	0.397	0.338	54
CO	3.554	3.664	0.528	0.133	0.066	0.056	8
CT	4.227	2.775	0.802	0.140	0.033	0.024	8
DE	1.553	1.096	0.318	0.002	0.023	0.008	3
DC	2.556	0.280	0.058	0.077	0.009	0.019	3
FL	12.005	10.580	2.281	0.019	0.113	0.002	25
GA	5.959	6.112	0.827	0.000	0.101	0.001	13
HI	2.277	1.266	0.304	0.115	0.028	0.010	4
ID	1.346	2.087	0.509	0.000	0.027	0.031	4
IL	11.949	8.098	1.768	0.007	0.115	0.062	22
IN	4.986	5.656	1.260	0.006	0.088	0.004	12
IA	3.518	2.794	0.596	0.037	0.013	0.041	7
KS	2.165	3.257	0.517	0.005	0.025	0.030	6
KY	3.667	3.591	0.694	0.004	0.023	0.021	8
LA	4.681	3.595	0.622	0.024	0.038	0.040	9
ME	2.065	1.230	0.568	0.101	0.020	0.016	4
MD	5.425	3.827	0.650	0.015	0.049	0.033	10
MA	7.377	3.370	1.066	0.022	0.096	0.068	12
MI	9.305	6.927	1.575	0.011	0.129	0.053	18
MN	5.110	3.496	1.175	0.114	0.038	0.068	10
MS	3.086	3.444	0.409	0.000	0.022	0.039	7
MO	5.229	4.537	1.107	0.003	0.054	0.071	11
MT	1.237	1.323	0.407	0.000	0.019	0.014	3
NE	1.748	2.683	0.526	0.000	0.021	0.023	5
NV	1.757	1.717	0.379	0.041	0.038	0.068	4
NH	1.973	1.575	0.388	0.000	0.034	0.030	4
NJ	8.058	5.379	1.278	0.158	0.072	0.054	15
NM	2.459	2.093	0.290	0.119	0.027	0.012	5
NY	19.625	10.102	2.630	0.397	0.064	0.182	33
NC	6.165	6.822	0.935	0.012	0.049	0.017	14
ND	1.204	1.408	0.366	0.000	0.010	0.012	3
OH	9.949	8.614	2.238	0.014	0.060	0.126	21
OK	3.236	3.861	0.867	0.000	0.036	0.000	8
OR	3.301	2.734	0.616	0.251	0.045	0.053	7
PA	11.310	9.193	2.200	0.016	0.143	0.138	23
RI	2.389	1.073	0.448	0.062	0.011	0.017	4
SC	3.508	3.991	0.448	0.000	0.030	0.023	8
SD	1.291	1.395	0.290	0.000	0.014	0.011	3
TN	5.280	5.015	0.615	0.037	0.029	0.024	11
TX	14.026	15.603	2.159	0.027	0.116	0.070	32
UT	1.665	2.719	0.499	0.035	0.031	0.052	5
VT	1.601	0.933	0.360	0.065	0.014	0.028	3
VA	5.869	6.124	0.860	0.000	0.049	0.098	13
WA	5.482	4.103	0.981	0.294	0.061	0.078	11
WV	2.575	1.838	0.563	0.000	0.024	0.000	5
WI	5.369	4.233	1.139	0.144	0.040	0.076	11
WY	1.105	1.494	0.368	0.000	0.025	0.008	3
Total	**264.878**	**219.047**	**45.182**	**3.830**	**2.715**	**2.348**	**538**

Table 4.31 1996 election under the whole-number proportional method

State	Clinton	Dole	Perot	Nader	Browne	Others	EV
AL	4	4	1				9
AK	1	2					3
AZ	4	3	1				8
AR	3	2	1				6
CA	28	21	4	1			54
CO	4	4					8
CT	4	3	1				8
DE	2	1					3
DC	3						3
FL	12	11	2				25
GA	6	6	1				13
HI	2	1	1				4
ID	1	2	1				4
IL	12	8	2				22
IN	5	6	1				12
IA	3	3	1				7
KS	2	3	1				6
KY	4	3	1				8
LA	5	3	1				9
ME	2	1	1				4
MD	5	4	1				10
MA	8	3	1				12
MI	9	7	2				18
MN	5	4	1				10
MS	3	4					7
MO	5	5	1				11
MT	1	1	1				3
NE	2	3					5
NV	2	2					4
NH	2	2					4
NJ	8	6	1				15
NM	3	2					5
NY	20	10	3				33
NC	6	7	1				14
ND	1	2					3
OH	10	9	2				21
OK	3	4	1				8
OR	3	3	1				7
PA	12	9	2				23
RI	2	1	1				4
SC	4	4					8
SD	1	2					3
TN	5	5	1				11
TX	14	16	2				32
UT	2	3					5
VT	2	1					3
VA	6	6	1				13
WA	6	4	1				11
WV	3	2					5
WI	6	4	1				11
WY	1	2					3
Total	**267**	**224**	**46**	**1**	**0**	**0**	**538**

1992 election

The results of the 1992 election were:

- Bill Clinton—44,909,806
- George H.W. Bush—39,104,550
- Ross Perot—19,743,821
- Andre Marrou—290,087
- 19 additional candidates—375,729.[81]

The total national popular vote for President in 1992 was 104,423,993.

Table 4.32 shows, by state, the results of the 1992 presidential election.

Table 4.33 shows, for each state and each candidate, the *whole number* and *fraction* resulting from multiplying each candidate's percentage share of the state's popular vote by each state's number of electoral votes.

Table 4.34 shows, for each state, the number of electoral votes each candidate would have received if the whole-number proportional method is applied to the 1992 election returns.

The bottom line of this table shows the overall national results of applying this method to the results of the 1992 election:

- 236 electoral votes for Bill Clinton
- 197 electoral votes for George H.W. Bush
- 105 electoral votes for Ross Perot (with at least one electoral vote coming from each of the 50 states, but none from the District of Columbia)
- 0 electoral votes for Andre Marrou
- 0 electoral votes for 20 additional candidates

No candidate would have received "a majority of the whole number of Electors appointed" as required by the Constitution. Consequently, the election for President would have been thrown into the newly elected U.S. House of Representatives on January 6, 1993, and the election for Vice President would have been thrown into the newly elected U.S. Senate.

If the members of the 50 delegations in the U.S. House of Representatives had voted in accordance with their party affiliations in the contingent election on January 6, 1993, Bill Clinton would have been elected President.[82]

Thus, the whole-number proportional method would, after the contingent election in the House, have resulted in the election of the candidate who received the most popular votes nationwide in 1992, namely Bill Clinton.

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[81] This total of 104,423,993 includes a total of 375,729 popular votes scattered among 19 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for "none of the above." None of these other candidates received enough popular votes in any state to win any electoral votes under the whole-number proportional method.

[82] The newly elected House in 1993 had 30 Democratic-controlled delegations, ten tied delegations, nine Republican delegations, and Independent Congressman Bernie Sanders as the sole member of the Vermont delegation.

Table 4.32 1992 election results

State	Clinton	Bush	Perot	Marrou	Others	Total
AL	690,080	804,283	183,109	5,737	4,851	1,688,060
AK	78,294	102,000	73,481	1,378	3,353	258,506
AZ	543,050	572,086	353,741	6,781	11,348	1,487,006
AR	505,823	337,324	99,132	1,261	7,113	950,653
CA	5,121,325	3,630,574	2,296,006	48,139	35,677	11,131,721
CO	629,681	562,850	366,010	8,669	1,970	1,569,180
CT	682,318	578,313	348,771	5,391	1,539	1,616,332
DE	126,054	102,313	59,213	935	1,105	289,620
DC	192,619	20,698	9,681	467	4,107	227,572
FL	2,072,698	2,173,310	1,053,067	15,079	238	5,314,392
GA	1,008,966	995,252	309,657	7,110	148	2,321,133
HI	179,310	136,822	53,003	1,119	2,588	372,842
ID	137,013	202,645	130,395	1,167	10,894	482,114
IL	2,453,350	1,734,096	840,515	9,218	12,978	5,050,157
IN	848,420	989,375	455,934	7,936	4,206	2,305,871
IA	586,353	504,891	253,468	1,076	8,819	1,354,607
KS	390,434	449,951	312,358	4,314	199	1,157,256
KY	665,104	617,178	203,944	4,513	2,161	1,492,900
LA	815,971	733,386	211,478	3,155	26,027	1,790,017
ME	263,420	206,504	206,820	1,681	1,074	679,499
MD	988,571	707,094	281,414	4,715	3,252	1,985,046
MA	1,318,662	805,049	632,312	7,458	10,093	2,773,574
MI	1,871,182	1,554,940	824,813	10,175	13,563	4,274,673
MN	1,020,997	747,841	562,506	3,374	13,230	2,347,948
MS	400,258	487,793	85,626	2,154	5,962	981,793
MO	1,053,873	811,159	518,741	7,497		2,391,270
MT	154,507	144,207	107,225	986	3,658	410,583
NE	217,344	344,346	174,687	1,344	1,562	739,283
NV	189,148	175,828	132,580	1,835	6,927	506,318
NH	209,040	202,484	121,337	3,548	806	537,215
NJ	1,436,206	1,356,865	521,829	6,822	21,872	3,343,594
NM	261,617	212,824	91,895	1,615	2,035	569,986
NY	3,444,450	2,346,649	1,090,721	13,451	31,654	6,926,925
NC	1,114,042	1,134,661	357,864	5,171	112	2,611,850
ND	99,168	136,244	71,084	416	1,221	308,133
OH	1,984,942	1,894,310	1,036,426	7,252	17,034	4,939,964
OK	473,066	592,929	319,878	4,486		1,390,359
OR	621,314	475,757	354,091	4,277	7,204	1,462,643
PA	2,239,164	1,791,841	902,667	21,477	4,661	4,959,810
RI	213,299	131,601	105,045	571	2,961	453,477
SC	479,514	577,507	138,872	2,719	3,915	1,202,527
SD	124,888	136,718	73,295	814	539	336,254
TN	933,521	841,300	199,968	1,847	6,002	1,982,638
TX	2,281,815	2,496,071	1,354,781	19,699	1,652	6,154,018
UT	183,429	322,632	203,400	1,900	32,707	744,068
VT	133,592	88,122	65,991	501	1,495	289,701
VA	1,038,650	1,150,517	348,639	5,730	15,129	2,558,665
WA	993,037	731,234	541,780	7,533	13,981	2,287,565
WV	331,001	241,974	108,829	1,873		683,677
WI	1,041,066	930,855	544,479	2,877	11,837	2,531,114
WY	68,160	79,347	51,263	844	270	199,884
Total	**44,909,806**	**39,104,550**	**19,743,821**	**290,087**	**375,729**	**104,423,993**

Table 4.33 Intermediate calculation for 1992 election

State	Clinton	Bush	Perot	Marrou	Others	EV
AL	3.679	4.288	0.976	0.031	0.026	9
AK	0.909	1.184	0.853	0.016	0.039	3
AZ	2.922	3.078	1.903	0.036	0.061	8
AR	3.192	2.129	0.626	0.008	0.045	6
CA	24.844	17.612	11.138	0.234	0.173	54
CO	3.210	2.870	1.866	0.044	0.010	8
CT	3.377	2.862	1.726	0.027	0.008	8
DE	1.306	1.060	0.613	0.010	0.011	3
DC	2.539	0.273	0.128	0.006	0.054	3
FL	9.750	10.224	4.954	0.071	0.001	25
GA	5.651	5.574	1.734	0.040	0.001	13
HI	1.924	1.468	0.569	0.012	0.028	4
ID	1.137	1.681	1.082	0.010	0.090	4
IL	10.688	7.554	3.662	0.040	0.057	22
IN	4.415	5.149	2.373	0.041	0.022	12
IA	3.030	2.609	1.310	0.006	0.046	7
KS	2.024	2.333	1.619	0.022	0.001	6
KY	3.564	3.307	1.093	0.024	0.012	8
LA	4.103	3.687	1.063	0.016	0.131	9
ME	1.551	1.216	1.217	0.010	0.006	4
MD	4.980	3.562	1.418	0.024	0.016	10
MA	5.705	3.483	2.736	0.032	0.044	12
MI	7.879	6.548	3.473	0.043	0.057	18
MN	4.348	3.185	2.396	0.014	0.056	10
MS	2.854	3.478	0.610	0.015	0.043	7
MO	4.848	3.731	2.386	0.034	0.000	11
MT	1.129	1.054	0.783	0.007	0.027	3
NE	1.470	2.329	1.181	0.009	0.011	5
NV	1.494	1.389	1.047	0.014	0.055	4
NH	1.556	1.508	0.903	0.026	0.006	4
NJ	6.443	6.087	2.341	0.031	0.098	15
NM	2.295	1.867	0.806	0.014	0.018	5
NY	16.409	11.179	5.196	0.064	0.151	33
NC	5.971	6.082	1.918	0.028	0.001	14
ND	0.966	1.326	0.692	0.004	0.012	3
OH	8.438	8.053	4.406	0.031	0.072	21
OK	2.722	3.412	1.841	0.026	0.000	8
OR	2.974	2.277	1.695	0.020	0.034	7
PA	10.384	8.309	4.186	0.100	0.022	23
RI	1.881	1.161	0.927	0.005	0.026	4
SC	3.190	3.842	0.924	0.018	0.026	8
SD	1.114	1.220	0.654	0.007	0.005	3
TN	5.179	4.668	1.109	0.010	0.033	11
TX	11.865	12.979	7.045	0.102	0.009	32
UT	1.233	2.168	1.367	0.013	0.220	5
VT	1.383	0.913	0.683	0.005	0.015	3
VA	5.277	5.846	1.771	0.029	0.077	13
WA	4.775	3.516	2.605	0.036	0.067	11
WV	2.421	1.770	0.796	0.014	0.000	5
WI	4.524	4.045	2.366	0.013	0.051	11
WY	1.023	1.191	0.769	0.013	0.004	3
Total	**231.379**	**201.469**	**101.722**	**1.495**	**1.936**	**538**

Table 4.34 1992 election under the whole-number proportional method

State	Clinton	Bush	Perot	Marrou	Other	EV
AL	4	4	1			9
AK	1	1	1			3
AZ	3	3	2			8
AR	3	2	1			6
CA	25	18	11			54
CO	3	3	2			8
CT	3	3	2			8
DE	1	1	1			3
DC	3					3
FL	10	10	5			25
GA	6	5	2			13
HI	2	1	1			4
ID	1	2	1			4
IL	11	7	4			22
IN	5	5	2			12
IA	3	3	1			7
KS	2	2	2			6
KY	4	3	1			8
LA	4	4	1			9
ME	2	1	1			4
MD	5	4	1			10
MA	6	3	3			12
MI	8	7	3			18
MN	4	3	3			10
MS	3	3	1			7
MO	5	4	2			11
MT	1	1	1			3
NE	2	2	1			5
NV	2	1	1			4
NH	2	1	1			4
NJ	7	6	2			15
NM	2	2	1			5
NY	17	11	5			33
NC	6	6	2			14
ND	1	1	1			3
OH	9	8	4			21
OK	3	3	2			8
OR	3	2	2			7
PA	11	8	4			23
RI	2	1	1			4
SC	3	4	1			8
SD	1	1	1			3
TN	5	5	1			11
TX	12	13	7			32
UT	1	2	2			5
VT	1	1	1			3
VA	5	6	2			13
WA	5	3	3			11
WV	2	2	1			5
WI	5	4	2			11
WY	1	1	1			3
Total	**236**	**197**	**105**	**0**	**0**	**538**

4.2.5. The whole-number proportional method would not make every voter in every state politically relevant.

At first blush, it would appear that this method would give presidential candidates reason to campaign in all 50 states and the District of Columbia.

However, proper analysis of the whole-number proportional method cannot be accomplished qualitatively. Instead, a quantitative analysis of actual data is required to see how the system would work in practice.

As previously mentioned in this book, presidential candidates only campaign in places where they have something to gain or lose—that is, where they are within striking distance of gaining or losing one or more electoral votes.

For example, 100% of the general-election campaign events in 2012 occurred in the 12 particular states where the Republican percentage of the two-party vote was in the narrow six-percentage-point range between 45% and 51%—that is, where the separation between the major-party candidates was six percentage points or less.[83]

Another way of saying that is that the candidates are within three percentage points of the national outcome, which was 48% Republican in 2012.

Table 4.35 shows the 12 closely divided battleground states that received 100% of the nation's 253 general-election campaign events in 2012. The table is sorted according to the Republican percentage of the two-party vote.

Although all the general-election campaigning occurred in states where the candidates were within six percentage points, very little campaigning actually took place in states where the candidates were separated by the full six points. In fact:

- 98% of the 2012 general-election campaign events (249 of 253) were concentrated in the states where the Republican percentage of the two-party vote was in the narrow *four-percentage-point* range between 46% and 50%.
- 82% of the campaign events (208 of 253) were concentrated in the states where the Republican percentage of the two-party vote was in the narrow *two-percentage-point* range between 47% and 49%.

Now let's discuss what would happen when a presidential candidate formulates a plan to campaign under the whole-number proportional method.

The first thing to realize is that the share of a state's popular vote represented by one electoral vote varies enormously from state to state under this method.

Table 4.36 shows the percentage share of a state's popular vote corresponding to one electoral vote under the whole-number proportional method.

As can be seen from the table, one electoral vote corresponds to anywhere from 33.33% down to 1.82% of a state's popular vote under this method.

Half of the states (25) are median-sized or smaller. In the *median-sized* state (i.e., a state with seven electoral votes), one electoral vote corresponds to a 14.29% share of the state's popular vote.

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[83] In 2012, there were no general-election campaign events whatsoever (and virtually no advertising expenditures) in the 38 states outside this narrow six-percentage-point range. See table 1.10.

Table 4.35 The only states that received any attention in 2012 were those within three percentage points of the national outcome

Romney percent	2012 general-election campaign events (out of 253)	State	Ad spending	2010 population
51%	3	North Carolina	$80,000,000	9,565,781
50%	40	Florida	$175,776,780	18,900,773
48%	73	Ohio	$148,000,000	11,568,495
48%	36	Virginia	$127,000,000	8,037,736
47%	23	Colorado	$71,000,000	5,044,930
47%	27	Iowa	$52,194,330	3,053,787
47%	13	Nevada	$55,000,000	2,709,432
47%	13	New Hampshire	$34,000,000	1,321,445
47%	5	Pennsylvania	$31,000,000	12,734,905
47%	18	Wisconsin	$40,000,000	5,698,230
46%	1	Minnesota	$0	5,314,879
45%	1	Michigan	$15,186,750	9,911,626
Total	**253**		**$829,157,860**	**93,862,019**

Table 4.36 Share of a state's popular vote corresponding to one electoral vote

Number of electoral votes	Share of a state's popular vote corresponding to one electoral vote	Number of states of this size	States
3	33.33%	8	Alaska, District of Columbia, Delaware, Montana, North Dakota, South Dakota, Vermont, Wyoming
4	25.00%	5	Hawaii, Idaho, Maine, New Hampshire, Rhode Island
5	20.00%	3	Nebraska, New Mexico, West Virginia
6	16.67%	6	Arkansas, Iowa, Kansas, Mississippi, Nevada, Utah
7	14.29%	3	Connecticut, Oklahoma, Oregon
8	12.50%	2	Kentucky, Louisiana
9	11.11%	3	Alabama, Colorado, South Carolina
10	10.00%	4	Maryland, Minnesota, Missouri, Wisconsin
11	9.09%	4	Arizona, Indiana, Massachusetts, Tennessee
12	8.33%	1	Washington
13	7.69%	1	Virginia
14	7.14%	1	New Jersey
15	6.67%	1	North Carolina
16	6.25%	2	Georgia, Michigan
18	5.56%	1	Ohio
20	5.00%	2	Illinois, Pennsylvania
29	3.45%	2	Florida, New York
38	2.63%	1	Texas
55	1.82%	1	California
538		**51**	**Total**

In the *average-sized* state (i.e., a state with 10 electoral votes), one electoral vote corresponds to a 10% share of the state's popular vote. Two-thirds of the states (34) are average-sized or smaller.

We now use the 2012 race to demonstrate how the whole-number proportional method would actually operate. Specifically, we ask whether a candidate would bother to campaign in each state.

States with three electoral votes

Eight states are entitled to three presidential electors—Alaska, Delaware, the District of Columbia, Montana, North Dakota, South Dakota, Vermont, and Wyoming.

As we will see in this subsection, neither Obama nor Romney would have campaigned in any of these eight states if the whole-number proportional method had been in effect in 2012.

Under this method, one electoral vote corresponds to a 33.3% share of the state's popular vote in a state with three electoral votes.

In a state with three electoral votes:

- If a candidate receives less than 16.66% (half of the 33.3%) of the state's popular vote, then the candidate gets no electoral votes.
- If a candidate receives between 16.67% and 50% of the popular vote, then the candidate gets one electoral vote.
- If a candidate receives between 50.01% and 83.33% of the popular vote, then the candidate gets two electoral votes.
- Finally, if a candidate receives more than 83.33% of the popular vote, then the candidate gets all three of the state's electoral votes.

The *breakpoints*—where a candidate's number of electoral votes changes—are shown in table 4.37.

Table 4.37 Breakpoints for states with three electoral votes

Percent of popular vote	Number of electoral votes	Breakpoint
0.00% to 16.66%	0	16.67%
16.67% to 50.00%	1	50.00%
50.01% to 83.33%	2	83.33%
83.33% to 100.00%	3	NA

Figure 4.3 graphically presents these breakpoints for states with three electoral votes.

- The horizontal line represents a candidate's percentage share of the popular vote—from 0% to 100%.
- The vertical tick marks show the breakpoints at 16.67%, 50%, and 83.33%.
- The small numbers (0, 1, 2, or 3) immediately under the horizontal line show the number of electoral votes that a candidate would receive by winning a particular share of the state's popular vote.

Candidates will decide whether to campaign in a state by comparing their level of support in the state with the breakpoints (16.67%, 50%, and 83.33%).

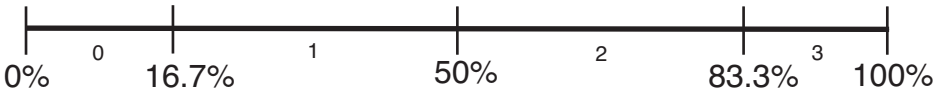

Figure 4.3 Scale showing the number of electoral votes that a candidate would win by receiving a particular share of the popular vote in a state with three electoral votes

Presidential candidates only campaign in places where they have something to gain or lose.

In a two-person race such as we are discussing here, the two candidates will campaign in a state only if they are within three percentage points of the same breakpoint (and hence six percentage points or less from one another).

We start in Wyoming, where President Obama had a 29% share of the two-party popular vote in 2012.

Figure 4.4 is the same as the previous figure, except that a marker has been added at the 29% point along the scale to mark Obama's level of support in Wyoming. A candidate with 29% support on Election Day would win one electoral vote under the whole-number proportional method, because 29% lies between the breakpoint of 16.7% and the breakpoint of 50%.

When Obama considers the question of whether he is within shooting distance of gaining or losing anything in Wyoming in 2012, it is immediately apparent that getting more than one electoral vote in Wyoming would have required him to perform the monumental task of increasing his level of support in the state by 21 percentage points during the course of the general-election campaign. If he could have increased his support up to the breakpoint at 50%, he would have won two electoral votes, instead of just one.

Meanwhile, Governor Mitt Romney would have considered the question of whether he could possibly win all three of Wyoming's electoral votes, instead of two. To accomplish that, Romney would have had to perform the daunting task of depressing Obama's support by 12.3 percentage points—that is, pushing Obama below the breakpoint at 16.7%.

Because Obama's level of support of 29% in Wyoming was so distant from the two nearest breakpoints in Wyoming (50% on the upside, and 16.67% on the downside), both Obama and Romney would have quickly reached the conclusion that they had nothing to gain or lose by bothering to campaign in Wyoming.

No amount of campaigning by either of them could possibly change the way Wyoming's three electoral votes would be divided under the whole-number proportional method.

Serious presidential candidates—advised by the nation's most astute political strategists—simply do not spend time and money in states where they have nothing to lose and nothing to gain.

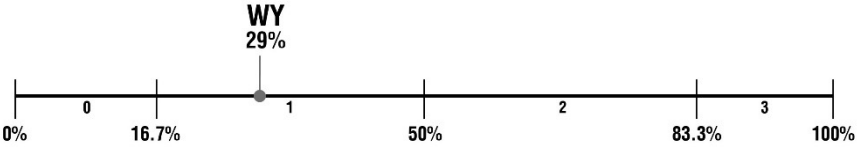

Figure 4.4 Obama's popular vote in 2012 in Wyoming (three electoral votes)

Hence, Wyoming would have been ignored in 2012 under this method.

Note that the above analysis is essentially the same that the candidates make today under the current winner-take-all method of awarding electoral votes.

Under the winner-take-all system, the breakpoint is always at 50% in a two-candidate race, and the payoff to the winner is all three of Wyoming's electoral votes, rather than just one.

Wyoming would have been ignored by both political parties under the whole-number proportional method for the very same reason that it was ignored under the current winner-take-all system. Obama could not possibly increase his level of support by the 21 percentage points needed to reach the 50% breakpoint, and he therefore wrote off Wyoming. Similarly, Romney could not possibly lose 21 percentage points, and he took the state for granted.

We now modify the previous figure by adding markers for the other states with three electoral votes.

Figure 4.5 is the same as the previous figure, except that it shows Obama's level of support in all eight states with three electoral votes.

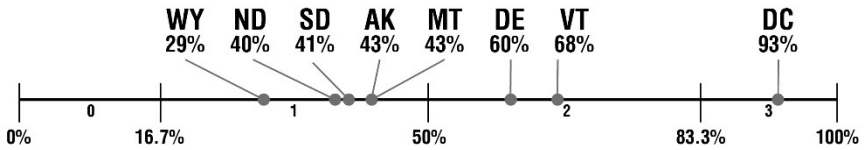

Figure 4.5 Obama's popular vote in 2012 in the eight states with three electoral votes

As can be seen, Obama was not within three percentage points of any breakpoint (16.67%, 50%, and 83.33%) in any of these eight states.

Table 4.38 provides the details as to how Obama and Romney would have analyzed their prospects in the eight states with three electoral votes under the whole-number proportional method.

- Column 2 of the table shows President Obama's percentage share of the two-party 2012 vote for the eight states with three electoral votes.
- Columns 3 and 4 show the respective number of electoral votes that President Obama and Governor Romney would have received if this method had been used to award electoral votes in 2012.
- Column 5 shows the breakpoint (taken from table 4.37) just below Obama's level of support in 2012, while column 6 shows the breakpoint just above Obama's level of support.
- Column 7 shows the smallest change that could have shifted one electoral vote. It shows the difference between Obama's level of support in a state (column 2) and the *nearer* of the two breakpoints (columns 5 and 6) for that state.

For example, Obama's vote in Alaska was 42.68%. This percentage is nearer to the 50% breakpoint (column 6) than the 33.33% breakpoint (column 5). Therefore, a change of 7.32 percentage points is the smallest change that could shift one electoral vote in Alaska in 2012. If Obama could have increased his level of support from 42.68% to 50.01%, he could have won two electoral votes (instead of one) in Alaska.

Table 4.38 Whole-number proportional method in states with three electoral votes for 2012 election

State	Obama vote	Obama EV	Romney EV	Breakpoint just below Obama percent	Breakpoint just above Obama percent	Change needed to gain or lose 1 EV
AK	42.68%	1	2	16.67%	50.00%	7.32%
DC	92.59%	3	0	83.33%	100.00%	7.41%
DE	59.45%	2	1	50.00%	83.33%	9.45%
MT	42.97%	1	2	16.67%	50.00%	7.03%
ND	39.89%	1	2	16.67%	50.00%	10.11%
SD	40.78%	1	2	16.67%	50.00%	9.22%
VT	68.25%	2	1	50.00%	83.33%	15.09%
WY	28.84%	1	2	16.67%	50.00%	12.17%

The percentage in column 7 is the most important number in understanding how the whole-number proportional method works in practice. It indicates whether it is likely for a candidate to gain or lose one electoral vote in a particular state. That, in turn, indicates whether a candidate will campaign in the state.

Unless the percentage in column 7 is "small" for a given state, it would be very difficult for a candidate to gain or lose one electoral vote in that state.

Now let's discuss precisely how small is "small."

For the sake of argument, suppose that Obama's level of support in Alaska in column 2 of table 4.5 was a hair above 47% (instead of its actual level of 42.68%). That would mean that Romney's level of support was a tad below 53%. That is, Obama and Romney would be *within six percentage points of one another*.

Under that assumption, the percentage in column 7 for Obama would be 3%.

If Obama could increase his standing with the voters by three percentage points (which would mean *simultaneously* decreasing Romney's standing by three percentage points), Obama would then be a hair above 50% and therefore would win one additional electoral vote. In that case, Obama would likely decide to campaign in Alaska.

In other words, if column 7 is 3% or less, the candidates are within six percentage points of one another.

We know—from the actual behavior of the real-world presidential candidates over many elections—that the two major-party candidates campaign only in places where they are within six percentage points, more or less, of one another.

Of course, Alaska did not meet that criterion in 2012.

Moreover, a glance at table 4.5 shows that *none* of the numbers in column 7 is less than three percentage points. In fact, all the numbers are rather large—they range from seven to 15 percentage points. They are so large that no candidate would have any reasonable expectation of gaining or losing even a single electoral vote by campaigning in any of the eight states with three electoral votes.

Thus, all eight states would have been ignored under the whole-number proportional method.

The 2012 election was (like most presidential races) essentially a two-party competition. However, the above analysis is equally applicable in a race with a strong third-party

candidate, such as George Wallace in 1968 or Ross Perot in 1992. Each of the candidates would carefully consider whether their level of support in a particular state is close enough to a breakpoint to offer them the chance of gaining or losing an electoral vote.

The division of electoral votes (columns 3 and 4) for the eight states with three electoral votes in 2012 would have been 12–12 under the whole-number proportional method, compared to nine for Obama and 15 for Romney under the existing statewide winner-take-all system.

States with four electoral votes

There were five states with four electoral votes in 2012—Hawaii, Idaho, Maine, New Hampshire, and Rhode Island.

As we will see in this subsection, Rhode Island would have been the *only* state with four electoral votes where Obama and Romney would have had any chance of winning or losing an electoral vote if the whole-number proportional system had been in effect in 2012.

In states with four electoral votes, one electoral vote corresponds to a 25% share of the state's popular vote under this method.

Table 4.39 shows the number of electoral votes that a candidate would win as a result of receiving various percentages of the popular vote in the states with four electoral votes.[84] Column 3 shows the breakpoints (12.5%, 37.5%, 62.5%, and 87.5%).

Note that there is no breakpoint at 50% for the states with four electoral votes (or any

Table 4.39 Breakpoints for states with four electoral votes

Percent of popular vote	Number of electoral votes	Breakpoint
0.00% to 12.50%	0	12.50%
12.51% to 37.50%	1	37.50%
37.51 to 62.50%	2	62.50%
62.51% to 87.50%	3	87.50%
87.51% to 100.00%	4	NA

other state with an even number of electoral votes). In other words, the 50% mark has no special political relevance to the candidates in states with an even number of electoral votes. The issue is always whether a candidate is close enough to a breakpoint (wherever it is) to warrant campaigning in a particular state.

Figure 4.6 shows Obama's level of support in 2012 in the five states with four electoral votes. The figure contains tick marks along the horizontal line at the breakpoints of 12.5%,

[84] The general rule for constructing this table (and other similar tables in this section) is that if x is the number of electoral votes, $1/2x$ is the breakpoint between zero and one electoral vote; $1/2x+1/x$ is the breakpoint between one and two electoral votes; $1/2x+2/x$ is the breakpoint between two and three electoral votes; $1/2x+3/x$ is the breakpoint between three and four electoral votes; and so forth.

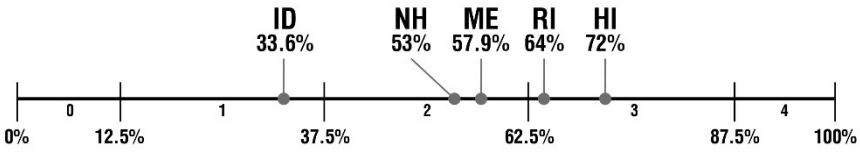

Figure 4.6 Obama's popular vote in 2012 in the five states with four electoral votes

37.5%, 62.5%, and 87.5%. The small numbers immediately under the horizontal line show the number of electoral votes (0, 1, 2, 3, or 4) that a candidate would win under the whole-number proportional method as a result of receiving a particular share of the popular vote.

Table 4.40 shows how the candidates would have analyzed their prospects in the five states with four electoral votes under the whole-number proportional method.

Hawaii, Idaho, Maine, and New Hampshire would have been ignored by candidates, because the change needed to gain or lose one electoral vote (column 7) was simply too large (9.20%, 3.92%, 4.64%, and 9.67%, respectively).

On the other hand, Obama's level of support in Rhode Island (64.02%) was very close to the breakpoint (62.5%). Therefore, Rhode Island would have been a battleground state (with one electoral vote at stake) under this method, because only a modest change (1.52%) would have been needed to change one electoral vote. In this case, Obama would have campaigned vigorously in Rhode Island so as to keep his support above the breakpoint of 62.5%, while Romney would have worked diligently to drive Obama below 62.5%.

In fact, among the 13 states with three or four electoral votes, Rhode Island would be the only place where a candidate would have had a reasonable expectation of winning or losing anything.

In fact, the whole-number proportional method would have performed very much like the current winner-take-all system among the 13 smallest states.

There was only one state (New Hampshire) that received any general-election campaign events under the current winner-take-all system. The reason was that Obama's level of support in New Hampshire (52.83%) was within three percentage points of the relevant breakpoint (that is, 50%).

Under the whole-number proportional method, the battle would have been for only one electoral vote in Rhode Island in 2012, whereas it was for four electoral votes in New Hampshire under the current winner-take-all system.

Table 4.40 Whole-number proportional method in states with four electoral votes for 2012 election

State	Obama vote	Obama EV	Romney EV	Breakpoint just below Obama percent	Breakpoint just above Obama percent	Change needed to gain or lose 1 EV
HI	71.70%	3	1	62.50%	87.50%	9.20%
ID	33.58%	1	3	12.50%	37.50%	3.92%
ME	57.86%	2	2	37.50%	62.50%	4.64%
NH	52.83%	2	2	37.50%	62.50%	9.67%
RI	64.02%	3	1	62.50%	87.50%	1.52%

The next few sections present a similar analysis for each of the larger states. Some readers may want to skip ahead to table 4.47, which summarizes all of the results.

States with five electoral votes

There were three states with five electoral votes in 2012—Nebraska, New Mexico, and West Virginia.

In states with five electoral votes, one electoral vote corresponds to a 20% share of the state's popular vote.

Table 4.41 shows the breakpoints for states with five electoral votes under the whole-number proportional method.

Table 4.41 Breakpoints for states with five electoral votes

Percent of popular vote	Number of electoral votes	Breakpoint
0.00% to 10.00%	0	10.00%
10.01 to 30.00%	1	30.00%
30.01% to 50.00%	2	50.00%
50.01% to 70.00%	3	70.00%
70.01% to 90.00%	4	90.00%
90.01% to 100.00%	5	NA

Figure 4.7 shows Obama's level of support in 2012 in the three states with five electoral votes.

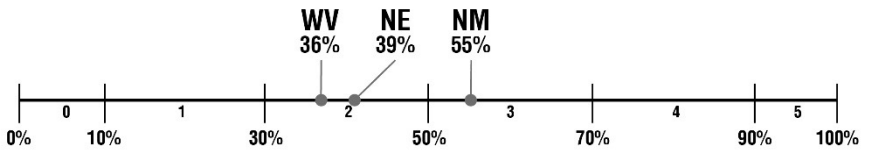

Figure 4.7 Obama's popular vote in 2012 in the three states with five electoral votes

Table 4.42 shows how candidates would have analyzed their prospects in the three states with five electoral votes under the whole-number proportional method.

All three states with five electoral votes would have been ignored by candidates, because the change (column 7) needed to gain or lose one electoral vote would have been too large (8.87%, 5.30%, and 6.33%, respectively).

Table 4.42 Whole-number proportional method in states with five electoral votes for 2012 election

State	Obama vote	Obama EV	Romney EV	Breakpoint just below Obama percent	Breakpoint just above Obama percent	Change needed to gain or lose 1 EV
NE	38.87%	2	3	30.00%	50.00%	8.87%
NM	55.30%	3	2	50.00%	70.00%	5.30%
WV	36.33%	2	3	30.00%	50.00%	6.33%

States with six electoral votes

There were six states with six electoral votes in 2012—Arkansas, Iowa, Kansas, Mississippi, Nevada, and Utah.

In states with six electoral votes, one electoral vote corresponds to a 16.67% share of the state's popular vote.

Table 4.43 shows the breakpoints for states with six electoral votes under the whole-number proportional method.

Table 4.43 Breakpoints for states with six electoral votes

Percent of popular vote	Number of electoral votes	Breakpoint
0.00% to 8.33%	0	8.33%
8.34% to 25.00%	1	25.00%
25.01% to 41.66%	2	41.66%
41.67% to 58.33%	3	58.33%
58.34% to 75.00%	4	75.00%
75.00% to 91.66%	5	91.66%
91.67% to 100.00%	6	NA

Figure 4.8 shows Obama's level of support in 2012 in the six states with six electoral votes.

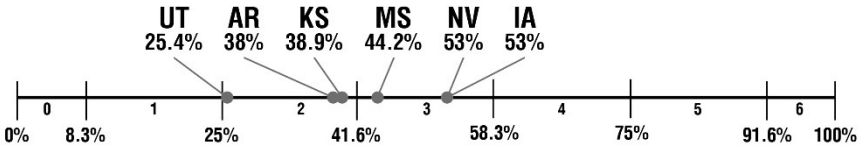

Figure 4.8 Obama's popular vote in 2012 in the six states with six electoral votes

Table 4.44 shows how candidates would have analyzed their prospects in the six states with six electoral votes under the whole-number proportional method.

Utah would have been a battleground state (for one electoral vote) under this method, because only a very small change (0.37%) would have been needed to gain or lose one

Table 4.44 Whole-number proportional method in states with six electoral votes for 2012 election

State	Obama vote	Obama EV	Romney EV	Breakpoint just below Obama percent	Breakpoint just above Obama percent	Change needed to gain or lose 1 EV
AR	37.85%	2	4	25.00%	41.67%	3.82%
IA	52.96%	3	3	41.67%	58.33%	5.37%
KS	38.89%	2	4	25.00%	41.67%	2.78%
MS	44.20%	3	3	41.67%	58.33%	2.53%
NV	53.41%	3	3	41.67%	58.33%	4.93%
UT	25.37%	2	4	25.00%	41.67%	0.37%

electoral vote. The battle in Utah would have been about whether Obama's level of support would remain above the breakpoint of 25%.

Kansas also would have been a battleground state (for one electoral vote), because a change of 2.78% of the popular vote would have affected one electoral vote. The battle in Kansas would have been about whether Obama could increase his level of support above the breakpoint at 41.67%.

Mississippi also would have been a battleground state (for one electoral vote), because a change of 2.53% of the popular vote would have affected one electoral vote. The battle in Mississippi would have been about whether Obama's level of support would remain above the breakpoint of 41.67%.

On the other hand, Arkansas, Iowa, and Nevada would have been ignored, because the change (column 7) needed to gain or lose one electoral vote was too large (3.82%, 5.37%, and 4.93%, respectively).

States with seven electoral votes

There were three states with seven electoral votes in 2012—Connecticut, Oklahoma, and Oregon.

In states with seven electoral votes, one electoral vote corresponds to a 14.29% share of the state's popular vote.

Table 4.45 shows the breakpoints for states with seven electoral votes under the whole-number proportional method.

Table 4.45 Breakpoints for states with seven electoral votes

Percent of popular vote	Number of electoral votes	Breakpoint
0.00% to 7.14%	0	7.14%
7.15% to 21.43%	1	21.43%
21.44% to 35.71%	2	35.71%
35.72% to 50.00%	3	50.00%
50.01% to 64.28%	4	64.28%
64.29% to 78.57%	5	78.57%
78.58% to 92.86%	6	92.86%
92.87% to 100.00%	7	NA

Figure 4.9 shows Obama's level of support in 2012 in the three states with seven electoral votes.

Table 4.46 shows how candidates would have analyzed their prospects in the three states with seven electoral votes under the whole-number proportional method.

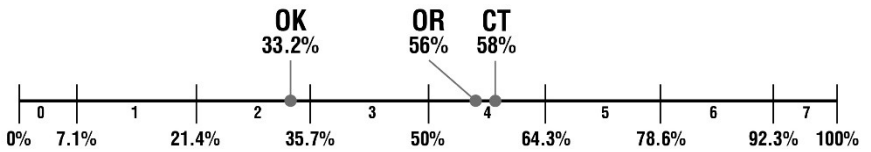

Figure 4.9 Obama's popular vote in 2012 in the three states with seven electoral votes

Table 4.46 Whole-number proportional method in states with seven electoral votes for 2012 election

State	Obama vote	Obama EV	Romney EV	Breakpoint just below Obama percent	Breakpoint just above Obama percent	Change needed to gain or lose 1 EV
CT	58.77%	4	3	50.00%	64.29%	5.51%
OK	33.23%	2	5	21.43%	35.71%	2.49%
OR	56.27%	4	3	50.00%	64.29%	6.27%

Oklahoma would have been a battleground state (for one electoral vote) under the whole-number proportional method, because only a modest change (2.49%) would have been needed to affect one electoral vote.

On the other hand, Connecticut and Oregon would have been ignored, because by the candidates, because the change needed to gain or lose one electoral vote was too large (5.51% and 6.27%, respectively).

Summary for states with between three and seven electoral votes

In only four of the 25 smallest states would the candidates have had any expectation of winning or losing anything (namely one electoral vote) under the whole-number proportional method:

- Rhode Island (where a change of 1.52% could have caused a candidate to gain or lose one electoral vote),
- Utah (with a change of 0.37%),
- Kansas (with a change of 2.78%), and
- Mississippi (with a change of 2.53%).

The other 21 smallest states would have been ignored.

In other words, the whole-number proportional method would have operated almost exactly like the current winner-take-all method in the 25 smallest states.

Indeed, under the current winner-take-all system, only three of these 25 states (Iowa, Nevada, and New Hampshire) received any general-election campaign events in 2012.

States with eight electoral votes

Figure 4.10 shows Obama's level of support in 2012 in the two states with eight electoral votes.

Among states with eight electoral votes, Louisiana would have been a battleground state (for one electoral vote) under the whole-number proportional method, because Obama's level of support (41.2%) was close to the breakpoint (43.75%); however, Kentucky would have been ignored, because 38% was not close enough to the breakpoint of 43.75%.

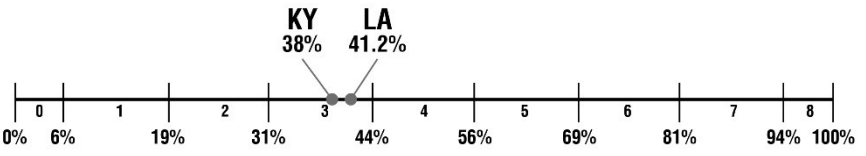

Figure 4.10 Obama's popular vote in 2012 in the two states with eight electoral votes

States with nine electoral votes

Figure 4.11 shows Obama's level of support in 2012 in the three states with nine electoral votes.

Among states with nine electoral votes, Alabama and Colorado would have been battleground states (for one electoral vote) under this method; however, South Carolina would have been ignored.

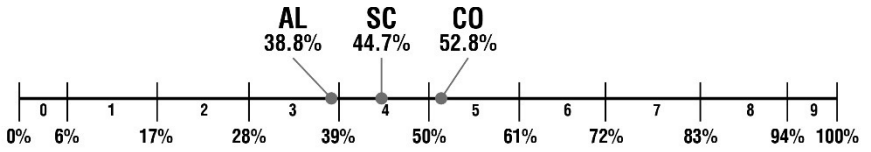

Figure 4.11 Obama's popular vote in 2012 in the three states with nine electoral votes

States with 10 electoral votes

Figure 4.12 shows Obama's level of support in 2012 in the four states with 10 electoral votes.

All four states with 10 electoral votes (Missouri, Minnesota, Wisconsin, and Maryland) would have been battleground states (for one electoral vote) under the whole-number proportional method.

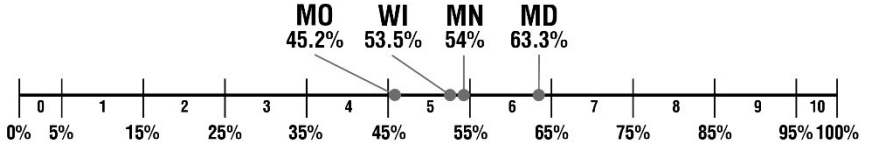

Figure 4.12 Obama's popular vote in 2012 in the four states with 10 electoral votes

States with 11 electoral votes

Figure 4.13 shows Obama's level of support in 2012 in the four states with 11 electoral votes.

Among states with 11 electoral votes, Tennessee and Massachusetts would have been battleground states (for one electoral vote) under the whole-number proportional method; however, Indiana and Arizona would have been ignored.

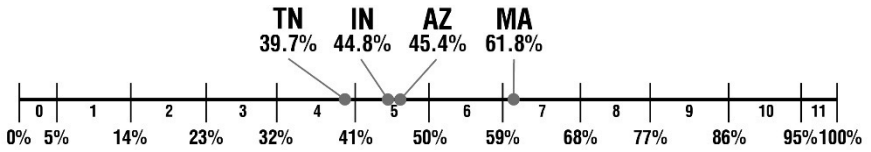

Figure 4.13 Obama's popular vote in 2012 in the four states with 11 electoral votes

States with 12 or more electoral votes

Figure 4.14 shows Obama's level of support in 2012 in Washington State (the only state with 12 electoral votes).

Washington State would have been ignored by the candidates under the whole-number proportional method, because Obama's level of support (57.6%) was too distant from the nearest breakpoints (54% and 62%).

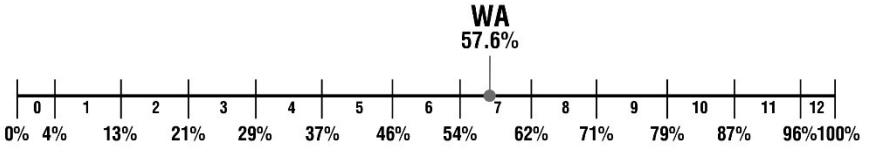

Figure 4.14 Obama's popular vote in 2012 in the one state (Washington) with 12 electoral votes

Figure 4.15 shows Obama's level of support in 2012 in Virginia (the only state with 13 electoral votes).

Virginia would have been a battleground state (for one electoral vote) under the whole-number proportional method, because Obama's level of support (52%) was sufficiently close to a breakpoint (50%).

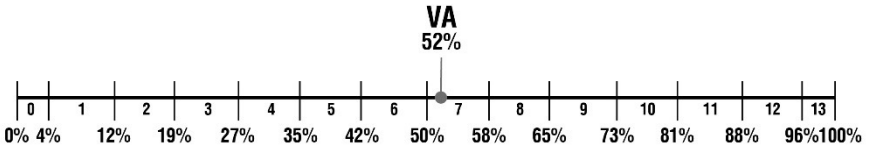

Figure 4.15 Obama's popular vote in 2012 in the one state (Virginia) with 13 electoral votes

Obama's level of support in New Jersey (14 electoral votes), North Carolina (15), Georgia (16), and Michigan (16) was such that they all would have been battleground states in 2012 (with one electoral vote at stake) under this method.

Things change at 18 electoral votes. Because 5.6% of the popular vote corresponds to one electoral vote in a state with 18 electoral votes, *every* state with 18 or more electoral votes would be a battleground (for at least one electoral vote) under the whole-number proportional method. The reason is that a six percentage-point range always occupies all the space between breakpoints that are 5.6% apart or closer.

Thus, Ohio (18 electoral votes), Illinois (20), Pennsylvania (20), Florida (29), New York (29), Texas (38), and California (55) would have been battleground states under this method.

In fact, the very largest states (California, Texas, and New York) can be battlegrounds for more than one electoral vote.

In California, the nation's largest state (with 55 electoral votes), one electoral vote corresponded to a slender 1.82% share of the state's popular vote.

Obama's level of support was 61.87% in California in 2012. Obama could have gained one electoral vote if his support had risen by 0.86% (so that it would have ended up above

the next breakpoint on the upside at 62.73%). In fact, he could have gained two electoral votes if his support had risen by 2.68% (so that it would have ended up above the next-higher breakpoint at 64.55%). Also, Obama could have lost one electoral vote if his support had dropped by 0.96% (so that it would have ended up below the next breakpoint on the downside at 60.91%). Thus, three electoral votes would have been in play in California in 2012.

Note that only three additional electoral votes would have been in play in California in 2012, because the next breakpoint on the downside would have been at 58.09% (a little too far away from 61.87%), and the next breakpoint on the upside would have been at 66.37% (a little too far away from 61.87%).[85]

In Texas, the nation's second largest state (with 38 electoral votes), one electoral vote corresponds to a 2.63% share of the state's popular vote. Obama's level of support was 41.99% in Texas in 2012. He could have gained one electoral vote in Texas if his support had risen by 1.43% (so that it would have ended up above the next breakpoint on the upside at 43.42%). Also, he could have lost one electoral vote in Texas if his support had dropped by 1.20% (so that it would have ended up below the next breakpoint on the downside at 40.79%). Thus, two electoral votes would have been in play in Texas in 2012.

However, no additional electoral votes would have been in play in Texas in 2012, because the next breakpoint on the downside would have been at 38.17%, and the next breakpoint on the upside would have been at 46.05%.[86]

Summary of the whole-number proportional method for all states

Table 4.47 shows the result of applying the whole-number proportional method to the 2012 election. The table is sorted in ascending order of the percentage change (column 8) that would have been needed in each state to change one electoral vote.

As can be seen from the top half of the table, there are 26 states where the number in column 8 is less than 3%. Among these 26 battleground states:

- only one electoral vote would be in play in 24 states (that is, the whole-number proportional method would be a one-state-one-vote system for these states);
- two electoral votes would be in play in Texas;
- three electoral votes would be in play in California;
- a total of only 29 electoral votes from 26 states would have been in play.

To say it another way, under the whole-number proportional method:

- The entire presidential election would have been about trying to change one electoral vote in each of 24 states, two in Texas, and three in California.
- Meanwhile, 509 of 538 electoral votes (95%) would have been preordained.

In this extremely narrow playing field of 29 electoral votes in 26 states, Obama would have won the 2012 election by a 276–262 margin in the Electoral College under the whole-number proportional method.

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[85] If a candidate were to have a particular (very unlikely) level of support in California, as many as four electoral votes could be in play in the state.

[86] If a candidate were to have a particular (very unlikely) level of support in Texas, as many as three electoral votes could might be potentially in play there.

Table 4.47 2012 election under the whole-number proportional method

State	EV	Obama vote	Obama EV	Romney EV	Breakpoint just below D-percent	Breakpoint just above D-percent	Percent change to gain or lose 1 EV
AL	9	38.78%	3	6	27.78%	38.89%	0.11%
MO	10	45.22%	5	5	45.00%	55.00%	0.22%
PA	20	52.73%	11	9	52.50%	57.50%	0.23%
UT	6	25.37%	2	4	25.00%	41.67%	0.37%
FL	29	50.44%	15	14	50.00%	53.45%	0.44%
NY	29	64.28%	19	10	63.79%	67.24%	0.48%
GA	16	46.04%	7	9	40.63%	46.88%	0.83%
CA	55	61.87%	34	21	60.91%	62.73%	0.85%
NC	15	48.97%	7	8	43.33%	50.00%	1.03%
MN	10	53.94%	5	5	45.00%	55.00%	1.06%
IL	20	58.58%	12	8	57.50%	62.50%	1.08%
TX	38	41.99%	16	22	40.79%	43.42%	1.20%
TN	11	39.65%	4	7	31.82%	40.91%	1.26%
OH	18	51.51%	9	9	47.22%	52.78%	1.26%
RI	4	64.02%	3	1	62.50%	87.50%	1.52%
WI	10	53.46%	5	5	45.00%	55.00%	1.54%
MI	16	54.80%	9	7	53.13%	59.38%	1.68%
MD	10	63.32%	6	4	55.00%	65.00%	1.68%
NJ	14	58.95%	8	6	53.57%	60.71%	1.76%
VA	13	51.97%	7	6	50.00%	57.69%	1.97%
OK	7	33.23%	2	5	21.43%	35.71%	2.49%
LA	8	41.25%	3	5	31.25%	43.75%	2.50%
MS	6	44.20%	3	3	41.67%	58.33%	2.53%
MA	11	61.79%	7	4	59.09%	68.18%	2.69%
CO	9	52.75%	5	4	50.00%	61.11%	2.75%
KS	6	38.89%	2	4	25.00%	41.67%	2.78%
WA	12	57.63%	7	5	54.17%	62.50%	3.46%
AR	6	37.85%	2	4	25.00%	41.67%	3.82%
IN	11	44.80%	5	6	40.91%	50.00%	3.89%
ID	4	33.58%	1	3	12.50%	37.50%	3.92%
AZ	11	45.39%	5	6	40.91%	50.00%	4.48%
ME	4	57.86%	2	2	37.50%	62.50%	4.64%
NV	6	53.41%	3	3	41.67%	58.33%	4.93%
KY	8	38.46%	3	5	31.25%	43.75%	5.29%
NM	5	55.30%	3	2	50.00%	70.00%	5.30%
SC	9	44.69%	4	5	38.89%	50.00%	5.31%
IA	6	52.96%	3	3	41.67%	58.33%	5.37%
CT	7	58.77%	4	3	50.00%	64.29%	5.51%
OR	7	56.27%	4	3	50.00%	64.29%	6.27%
WV	5	36.33%	2	3	30.00%	50.00%	6.33%
MT	3	42.97%	1	2	16.67%	50.00%	7.03%
AK	3	42.68%	1	2	16.67%	50.00%	7.32%
DC	3	92.59%	3	0	83.33%	100.00%	7.41%
NE	5	38.87%	2	3	30.00%	50.00%	8.87%
HI	4	71.70%	3	1	62.50%	87.50%	9.20%
SD	3	40.78%	1	2	16.67%	50.00%	9.22%
DE	3	59.45%	2	1	50.00%	83.33%	9.45%
NH	4	52.83%	2	2	37.50%	62.50%	9.67%
ND	3	39.89%	1	2	16.67%	50.00%	10.11%
WY	3	28.84%	1	2	16.67%	50.00%	12.17%
VT	3	68.25%	2	1	50.00%	83.33%	15.09%
Total	**538**	**51.96%**	**276**	**262**			

There would be about 27 battleground states in every election.

Recall that table 4.47 showed that there would have been the 26 battleground states if the 2012 Obama-Romney election had been conducted under the whole-number proportional method.

If we were to construct a similar table for a different election, the candidates would, of course, be different. Those candidates would, in turn, have different levels of support in each state than Obama and Romney did in 2012.

As will be seen momentarily, even though the candidates would be different, and even though each candidate's level of support in each state would be different, *there will always be about 27 states in play* under the whole-number proportional method.

The reason for this counter-intuitive conclusion is that a state is a battleground under this method if a candidate is within three percentage points of a breakpoint in a state. The distance between a state's breakpoints is the percentage of the popular vote that corresponds to one electoral vote in that state. This percentage is simply the reciprocal of the state's number of electoral votes (table 4.36).

The ratio of six percentage points to the total distance between breakpoints for a state is the probability that the state has a candidate within three percentage points of one of its breakpoints.

That ratio is, in turn, the *probability* that the state is a battleground state under the whole-number proportional method.

The sum of those probabilities is the expected number of battleground states under the whole-number proportional method.

Notably, these distances, these probabilities, and these ratios do *not* depend on the candidates.

Table 4.48 shows the probability that a state will be a battleground state under the whole-number proportional method.

- Column 2 shows the state's number of electoral votes.
- Column 3 is the percentage of the popular vote corresponding to one electoral vote in the state.
- Column 4 is the ratio of six percentage points to the number in column 3. This ratio is the probability that the state is a battleground state under this method.

The sum of all the probabilities in column 7 of table 4.48 is the expected number of battleground states under the whole-number proportional method.

This sum (26.74) depends on two things, namely the distribution of electoral votes among the states and the six-percentage point gap.

Thus, we can say that about 27 states would be battleground states in *any* future election conducted under the whole-number proportional method.

Note that the states that would be battlegrounds in a particular campaign would vary depending on each candidate's level of support in each state. However, the statistical expectation is that there would always be approximately 27 battleground states under the whole-number proportional method.

Table 4.48 Probability that a state is a battleground state under the whole-number proportional method

State	Electoral Votes	Percent of popular vote for one EV	Probability of being a battleground
Alabama	9	11.11%	0.54
Alaska	3	33.33%	0.18
Arizona	11	9.09%	0.66
Arkansas	6	16.67%	0.36
California	55	1.82%	1.00
Colorado	9	11.11%	0.54
Connecticut	7	14.29%	0.42
D.C.	3	33.33%	0.18
Delaware	3	33.33%	0.18
Florida	29	3.45%	1.00
Georgia	16	6.25%	0.96
Hawaii	4	25.00%	0.24
Idaho	4	25.00%	0.24
Illinois	20	5.00%	1.00
Indiana	11	9.09%	0.66
Iowa	6	16.67%	0.36
Kansas	6	16.67%	0.36
Kentucky	8	12.50%	0.48
Louisiana	8	12.50%	0.48
Maine	4	25.00%	0.24
Maryland	10	10.00%	0.60
Massachusetts	11	9.09%	0.66
Michigan	16	6.25%	0.96
Minnesota	10	10.00%	0.60
Mississippi	6	16.67%	0.36
Missouri	10	10.00%	0.60
Montana	3	33.33%	0.18
Nebraska	5	20.00%	0.30
Nevada	6	16.67%	0.36
New Hampshire	4	25.00%	0.24
New Jersey	14	7.14%	0.84
New Mexico	5	20.00%	0.30
New York	29	3.45%	1.00
North Carolina	15	6.67%	0.90
North Dakota	3	33.33%	0.18
Ohio	18	5.56%	1.00
Oklahoma	7	14.29%	0.42
Oregon	7	14.29%	0.42
Pennsylvania	20	5.00%	1.00
Rhode Island	4	25.00%	0.24
South Carolina	9	11.11%	0.54
South Dakota	3	33.33%	0.18
Tennessee	11	9.09%	0.66
Texas	38	2.63%	1.00
Utah	6	16.67%	0.36
Vermont	3	33.33%	0.18
Virginia	13	7.69%	0.78
Washington	12	8.33%	0.72
West Virginia	5	20.00%	0.30
Wisconsin	10	10.00%	0.60
Wyoming	3	33.33%	0.18
Total	**538**		**26.74**

4.2.6. The whole-number proportional method would not make every vote equal.

There are five sources of inequality in the whole-number proportional method, and each is substantial, including the:

- 3.81-to-1 inequality in the value of a vote because of the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population;
- 1.72-to-1 inequality in the value of a vote because of the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) among the states;
- 1.67-to-1 inequality in the value of a vote created by voter-turnout differences at the state level;
- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census; and
- 50.2-to-1 inequality because the one winnable electoral vote could be won with a few thousand popular votes in a low-population state while requiring tens of thousands of popular votes in a bigger state.

Inequality because of the two senatorial electoral votes

First, under the whole-number proportional method, a vote cast in a large state has less weight than a vote cast in a small state because of the two senatorial electoral votes that each state receives above and beyond the number warranted by the state's population.

Table 1.34 shows, for each state, the ratio of the number of people per electoral vote, compared to the number of people per electoral vote in the nation's smallest state (Wyoming). For example, the ratio of California's population per electoral vote to that of Wyoming is 3.81-to-1.

Inequality because of the imprecision of the process of apportioning U.S. House seats

Second, a vote cast in certain states has less weight than a vote cast in certain other states because of inequalities created by imprecision in apportioning U.S. House seats.

There is a 1.72-to-1 variation in the weight of a vote because of the imprecision of the process of apportioning U.S. House seats (table 1.35).

Inequalities because of voter-turnout differences at the state level

Third, a voter in a low-turnout state has greater voting power than a voter in a high-turnout state.

Differences in voter turnout at the state level create variations of up to 1.67-to-1 in the value of a vote under this method (table 1.41).

Inequalities because of population changes occurring during the decade after each census

Fourth, another source of variation in the value of a vote from state to state arises from the fact that state populations change at different rates during the decade after each census.

These differences create variations of up to 1.39-to-1 in the value of a vote under this method (table 1.40).

Inequalities due to differences in the number of votes that enable a candidate to win an electoral vote

Fifth, recall that table 4.47 showed that, under the whole-number proportional method applied to the 2012 election:

- only one electoral vote would be in play in 24 states;
- two electoral votes would be in play in Texas; and
- three electoral votes would be in play in California.

Winning the single electoral vote available in 24 states would require only a few thousand popular votes in a low-population state, while requiring tens of thousands of popular votes in a bigger state.

This inequality becomes apparent by focusing on the *number* of popular votes—rather than the percentages presented in the earlier table.

Table 4.49 shows the 26 states that would have been in play if the 2012 election had been conducted under the whole-number proportional method.

- Column 3 shows the number of popular votes that Obama received in each state.
- Column 4 shows the number of popular votes that Romney received in each state.
- Column 5 shows Obama's level of support in the state.
- Column 6 shows the percentage change needed to gain or lose one electoral vote in the state. Note that this change is measured to the nearest breakpoint (up or down).
- Column 7 shows the number of popular votes needed to gain or lose one electoral vote in the state (measured to the nearest breakpoint).

This table is sorted in ascending order of the percentage change needed to gain or lose one electoral vote (column 6) in 2012 under the whole-number proportional method.

A glance at rows 4 through 6 of the table (highlighted in bold) shows that changing 3,710 popular votes in Utah would have yielded one electoral vote, while the same one-electoral-vote reward would have taken 36,812 popular votes in Florida and 33,591 popular votes in New York.

Table 4.50 presents the same information as the previous table, except that this table is sorted in ascending order of the number of popular votes (column 7) needed to affect one electoral vote in 2012 under the whole-number proportional method.

Table 4.49 The 26 battleground states of 2012 sorted by the percentage change needed to affect one electoral vote (column 6)

State	EV	Obama (D)	Romney (R)	D-Percent	Percent change to affect one EV	Popular-vote change to affect one EV
AL	9	795,696	1,255,925	38.78%	0.11%	2,157
MO	10	1,223,796	1,482,440	45.22%	0.22%	5,990
PA	20	2,990,274	2,680,434	52.73%	0.23%	13,152
UT	6	251,813	740,600	25.37%	0.37%	3,710
FL	29	4,235,965	4,162,341	50.44%	0.44%	36,812
NY	29	4,471,871	2,485,432	64.28%	0.48%	33,591
GA	16	1,773,827	2,078,688	46.04%	0.83%	32,039
CA	55	7,854,285	4,839,958	61.87%	0.85%	108,467
NC	15	2,178,391	2,270,395	48.97%	1.03%	46,002
MN	10	1,546,167	1,320,225	53.94%	1.06%	30,349
IL	20	3,019,512	2,135,216	58.58%	1.08%	55,543
TX	38	3,308,124	4,569,843	41.99%	1.20%	94,743
TN	11	960,709	1,462,330	39.65%	1.26%	30,534
OH	18	2,827,621	2,661,407	51.51%	1.26%	69,366
RI	4	279,677	157,204	64.02%	1.52%	6,626
WI	10	1,620,985	1,410,966	53.46%	1.54%	46,588
MI	16	2,564,569	2,115,256	54.80%	1.68%	78,412
MD	10	1,677,844	971,869	63.32%	1.68%	44,469
NJ	14	2,122,786	1,478,088	58.95%	1.76%	63,459
VA	13	1,971,820	1,822,522	51.97%	1.97%	74,649
OK	7	443,547	891,325	33.23%	2.49%	33,193
LA	8	809,141	1,152,262	41.25%	2.50%	48,973
MS	6	562,949	710,746	44.20%	2.53%	32,243
MA	11	1,921,290	1,188,314	61.79%	2.69%	83,797
CO	9	1,322,998	1,185,050	52.75%	2.75%	68,974
KS	6	440,726	692,634	38.89%	2.78%	31,507

As can be seen from the table, there is considerable variation in the number of popular votes required to change one electoral vote.

Among the 24 states in table 4.50 where one electoral vote is in play, Alabama is the state requiring the fewest popular votes (2,157) to change one electoral vote. California is the state requiring the most popular votes (108,467) to change one electoral vote.

That is, the ratio of the number of popular votes required to change one electoral vote in California, compared to Alabama is 50.2-to-1.

We mentioned above that the very largest states (California, Texas, and New York) could potentially be battlegrounds for two or three electoral votes. However, another counter-intuitive feature of the whole-number proportional method is that the candidates would probably choose to ignore that opportunity. The reason would be that statewide campaigns in a large state are very expensive. The cost of campaigning for two or three electoral votes in California or Texas would be similar to that required to run a campaign for Governor or U.S. Senator in those states. There would be many smaller states where it would be far more cost-effective to campaign for an extra electoral vote.

Table 4.50 The 26 battleground states of 2012 sorted by the number of popular votes needed to affect one electoral vote (column 7)

State	EV	Obama (D)	Romney (R)	D-Percent	Percent change needed to gain or lose one EV	Popular-vote change needed to gain or lose one EV
AL	9	795,696	1,255,925	38.78%	0.11%	2,157
UT	6	251,813	740,600	25.37%	0.37%	3,710
MO	10	1,223,796	1,482,440	45.22%	0.22%	5,990
RI	4	279,677	157,204	64.02%	1.52%	6,626
PA	20	2,990,274	2,680,434	52.73%	0.23%	13,152
MN	10	1,546,167	1,320,225	53.94%	1.06%	30,349
TN	11	960,709	1,462,330	39.65%	1.26%	30,534
KS	6	440,726	692,634	38.89%	2.78%	31,507
GA	16	1,773,827	2,078,688	46.04%	0.83%	32,039
MS	6	562,949	710,746	44.20%	2.53%	32,243
OK	7	443,547	891,325	33.23%	2.49%	33,193
NY	29	4,471,871	2,485,432	64.28%	0.48%	33,591
FL	29	4,235,965	4,162,341	50.44%	0.44%	36,812
MD	10	1,677,844	971,869	63.32%	1.68%	44,469
NC	15	2,178,391	2,270,395	48.97%	1.03%	46,002
WI	10	1,620,985	1,410,966	53.46%	1.54%	46,588
LA	8	809,141	1,152,262	41.25%	2.50%	48,973
IL	20	3,019,512	2,135,216	58.58%	1.08%	55,543
NJ	14	2,122,786	1,478,088	58.95%	1.76%	63,459
CO	9	1,322,998	1,185,050	52.75%	2.75%	68,974
OH	18	2,827,621	2,661,407	51.51%	1.26%	69,366
VA	13	1,971,820	1,822,522	51.97%	1.97%	74,649
MI	16	2,564,569	2,115,256	54.80%	1.68%	78,412
MA	11	1,921,290	1,188,314	61.79%	2.69%	83,797
TX	38	3,308,124	4,569,843	41.99%	1.20%	94,743
CA	55	7,854,285	4,839,958	61.87%	0.85%	108,467

4.2.7. Minor-party candidates would be zeroed-out in small- and medium-sized states under the whole-number proportional method.

Jerry Spriggs, an advocate of the whole-number proportional method of allocating electoral votes, describes the effect of this method of allocating electoral votes on minor-party candidates as follows:

> "Third (or more) party candidate electoral votes are counted and remain in the system."[87]

[87] Spriggs, Jerry. 2012. *Equal Voice Voting: Making Our Votes Count in the Electoral College*. Page 70. https://equalvoicevoting.com. See also Spriggs, Jerry. 2021. *All Votes Matter!* Bloomington, IN: iUniverse.

The facts show otherwise. Minor-party candidates would:

- rarely win any electoral votes from small-and medium-sized states, and
- receive a significantly smaller percentage of electoral votes than warranted by their share of the national popular vote.

The reason is that the percentage of the popular vote needed to win one electoral vote—particularly in small- and medium-sized states—is typically far greater than a third party's level of support in the state.

Under the whole-number proportional method, it takes:

- 33.33% of the state's popular vote to win one electoral vote in the eight states with three electoral votes
- 25% of the state's popular vote to win one electoral vote in the five states with four electoral votes
- 14.3% of the state's popular vote to win one electoral vote in the three states with the *median* number of electoral votes (that is, seven electoral votes)
- 10% of the state's popular vote to win one electoral vote in the four states with the *average* number of electoral votes (that is, 10 electoral votes).

For example, consider the 2016 presidential election. In that election:

- Libertarian candidate Gary Johnson received 3.3% of the national popular vote
- Green candidate Jill Stein received 1.1% of the national popular vote.

Johnson would have received 14 electoral votes under the whole-number proportional method. As shown in table 4.14, two of those 14 electoral votes would have come from California, and one each would have come from Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Michigan, New Mexico, New York, Ohio, Texas, and Washington. Except for former Governor Johnson's home state of New Mexico (with five electoral votes), all of these states have nine or more electoral votes (and most have considerably more than nine).

Similarly, Jill Stein would have received one electoral vote under this method in 2016 (table 4.14). California would have been the source of her electoral vote.

In 2012, Johnson received 1.1% of the national popular vote and would have received one electoral vote under this method. California would have been the source of Johnson's one electoral vote (table 4.21).

In 2008, Ralph Nader received 0.6% of the national popular vote and would have received one electoral vote under this method. Again, California would have been the source of Nader's one electoral vote (table 4.24).

In 2000, Ralph Nader received 2.7% of the national popular vote and would have received 13 electoral votes under the whole-number proportional method. As shown in table 4.28, two of those 14 electoral votes would have come from California, and one each would have come from Colorado, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Oregon, Texas, and Wisconsin. All of these states except Oregon have nine or more electoral votes (and most have considerably more than nine).

In 1996, Perot's support was 8% nationally and distributed fairly evenly across the country. He would have received 46 electoral votes from 35 states under the whole-number proportional method (table 4.31). However, he would not have received any electoral votes from 15 states or the District of Columbia. Thirteen of these 16 jurisdictions had only

three, four, or five electoral votes each (namely Alaska, Delaware, District of Columbia, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, South Dakota, Utah, Vermont, West Virginia, and Wyoming). Perot would not have won any electoral votes from these 13 jurisdictions, because one electoral vote corresponds to 33% of the popular vote in a three-electoral-vote jurisdiction, 25% in a four-electoral-vote state, or 20% in a five-electoral-vote state.

Moreover, Perot would have just barely missed winning one electoral vote in the remaining three of these 16 states, namely Colorado (8), Mississippi (7), and South Carolina (8). He would not have won any electoral votes from these three states, because one electoral vote corresponds to 14% of the popular vote in a seven-electoral-vote state and 12.5% in an eight-electoral-vote state.

4.2.8. Prospects of adoption for the whole-number proportional method

The whole-number proportional method

- *would not* accurately reflect the nationwide popular vote;
- *would not* make every vote equal; and
- *would not* significantly improve upon the current state-by-state winner-take-all method of awarding electoral votes in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President.

That is, the whole-number proportional method would not satisfy any of the three criteria necessary for improving the current system.

In particular, the whole-number proportional method does not address the most conspicuous shortcoming of the current system from the point of view of the general public, namely that the second-place candidate can become President.

Moreover, the whole-number proportional method would fail to address any of the four sources of inequality in the value of a vote.

As the Making Every Vote Count Foundation correctly noted in their 2023 report *Improving Our Electoral College System*, the whole-number proportional method:

> "would retain … the greater weight given to smaller states under the Electoral College. As a result, [it] could also be criticized by progressives for **failing to adhere fully to the principle of all votes counting equally**."[88] [Emphasis added]

Furthermore, there are two prohibitive practical impediments to adoption of the whole-number proportional method.

First, a state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all. Thus, this method would penalize first movers and early adopters—leaving them with only minimal influence.

Thomas Jefferson summed up this objection in his January 12, 1800, letter to Virginia

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[88] Making Every Vote Count Foundation. 2023. *Improving Our Electoral College System*. November 2023. Page 7. https://static1.squarespace.com/static/5a7b7d95b7411c2b69bd666f/t/65b979baf7e8e411b2864a40/1706654139098/MEVC+Report.pdf

Governor (and later President) James Monroe arguing that the state should switch from its existing district system[89] to the statewide winner-take-all system.

> "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."[90] [Emphasis added; spelling and punctuation as per original]

The now-prevailing statewide winner-take-all system became entrenched in the political landscape between 1800 and 1830 precisely because each state's dominant political party came to realize that fragmentation of its electoral votes diminished its influence in comparison to states employing winner-take-all. Once a few states adopted the winner-take-all method, it became increasingly disadvantageous for other states not to follow. Once entrenched, winner-take-all is difficult to unwind.

If states were to ever start unilaterally adopting the whole-number proportional method on a state-by-state basis, each additional adherent would increase the influence of the remaining winner-take-all states—thereby decreasing the incentive of other states to adopt the method. That is, the adoption process would quickly become self-arresting.[91]

For the sake of argument, suppose that as many as 49 states adopted the whole-number proportional method.

Recall that table 4.47 showed that only about 29 electoral votes would be in play nationally under this method.

Then, if just one closely divided state with a substantial number of electoral votes (e.g., perhaps Texas or Florida) were to retain its winner-take-all law, then that state would immediately become, for all practical purposes, the only state that would matter in presidential politics.

The second prohibitive impediment to adoption of the whole-number proportional method stems from the fact that it is state legislation that may be enacted on a state-by-state basis without a federal constitutional amendment. That is, these state-level enactments would leave intact the existing federal constitutional provision that specifies that the President be chosen by the U.S. House of Representatives (on a one-state-one-vote basis) if no candidate receives an absolute majority of the electoral votes.

If the whole-number proportional method is applied to the results of the eight presidential elections between 1992 and 2020, the presidential election would have been thrown into the House in four of those elections.

In fact, the most salient feature of the whole-number proportional method would be that it would frequently throw presidential elections into the U.S. House.[92]

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[89] At the time, Virginia chose its 14 presidential electors from 14 special presidential elector districts.

[90] The entire letter and citations appear in the text and footnotes of section 2.2.3 of this book.

[91] The above problems associated with piecemeal adoption by the states of the whole-number proportional method would not apply if it were adopted on a uniform national basis in the form of a federal constitutional amendment. A federal constitutional amendment would, if ratified, take effect simultaneously in all 50 states and the District of Columbia. However, if there ever were support for a proportional amendment, the fractional-proportional (Lodge-Gossett) approach would be the more attractive approach.

[92] Note that the National Popular Vote Compact guarantees the national popular winner a majority of the electoral votes, and hence avoids the possibility of a contingent election in the House.

Conceivably, this method could be adopted in the form of a federal constitutional amendment. In that case, the amendment could simply eliminate the contingent election in the House (as the 1950 Lodge-Gossett fractional-proportional amendment would have done).

However, if amending the Constitution were being considered, the whole-number proportional method would be manifestly inferior to the fractional-proportional method in several ways. Specifically, the fractional-proportional method (section 4.1) would:

- make every voter in every state politically relevant in every president election, and
- less frequently give the presidency to a candidate who did not win the national popular vote. Specifically, the fractional-proportional method would not have elected Trump in 2016, although it would have elected George W. Bush in 2000.

4.3. CONGRESSIONAL-DISTRICT METHOD OF AWARDING ELECTORAL VOTES

4.3.1. Summary

- Under the congressional-district method of awarding electoral votes, one electoral vote is awarded to the presidential candidate who receives the most popular votes in each of a state's congressional districts. The state's two senatorial electoral votes are awarded on the basis of the statewide vote.
- The congressional-district method could be implemented in two ways, namely by means of a federal constitutional amendment or by state-level legislation enacted by individual states (as Maine did in 1969, Nebraska did in 1992, and many states did in the late 1700s and early 1800s).
- The congressional-district method *would not* accurately reflect the nationwide popular vote even if used nationwide. In three of the six presidential elections between 2000 and 2020, the winner of the most votes nationwide would not have won the presidency if this method had been applied to past election returns.
- The congressional-district method *would not* make every voter in every state politically relevant. It would worsen the current situation in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President. Campaigns would be focused only on the small number of congressional districts that are closely divided in the presidential race. In 2020, 31% of the U.S. population lived in the dozen closely divided battleground states where the major-party presidential candidates were within eight percentage points of each other. In contrast, only 17% of the nation's congressional districts (72 of 435) were within eight percentage points of each other in 2020.
- The congressional-district method *would not* make every vote equal. There are six substantial sources of inequality built into this method, namely:
  - 3.81-to-1 inequality because of senatorial electors;
  - 1.72-to-1 inequality because of imprecision in apportioning U.S. House seats (and hence electoral votes);

  - 3.76-to-1 inequality in the value of a vote because of voter-turnout differences among congressional districts across the country;
  - 1.67-to-1 inequality in favor of voters in low-turnout states;
  - 1.39-to-1 inequality because of intra-decade population changes; and
  - 7.1-to-1 differences, from district to district within a state, in the number of votes that enable a candidate to win an electoral vote; and
  - 210-to-1 inequality in the value of a vote based on its ability to decide the national outcome.
- District allocation of electoral votes would magnify the effects of gerrymandering of congressional districts and increase the incentive to gerrymander.
- Presidential campaigns would not be attracted *to a state* by the congressional-district method but, instead, only to whatever closely divided districts, if any, happen to exist in a given state. For example, recent presidential campaigns paid attention to Nebraska's closely divided 2nd congressional district (the Omaha area) while totally ignoring the heavily Republican rural 1st and 3rd districts. Similarly, recent campaigns paid attention to Maine's closely divided 2nd congressional district (the northern part of the state), while ignoring the heavily Democratic 1st district (the Portland area).
- The congressional-district method would be difficult to install on a state-by-state basis, because it imposes a substantial disadvantage on first movers and early adopters. A state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all. Moreover, each additional state that adopts this method increases the influence of the states that cling to the winner-take-all method.
- The congressional-district method of awarding electoral votes would make a bad system worse, because it would not accurately reflect the nationwide popular vote, would not make every voter in every state politically relevant, and would not make every vote equal.

4.3.2. Description of the congressional-district method

Under this method of awarding electoral votes, one electoral vote is awarded to the presidential candidate who receives the most popular votes in each of a state's congressional districts. Typically, the state's two senatorial electoral votes are awarded on the basis of the statewide vote.

4.3.3. History of the congressional-district method

This method could be implemented in two ways.

First, a federal constitutional amendment could implement it on a nationwide basis.

Second, an individual state could enact a law to allocate its electoral votes by district (as Maine did in 1969, as Nebraska did in 1992, and numerous other states have done as far back as the nation's first presidential election in 1789).

Using a constitutional amendment to implement the congressional-district method

The U.S. Senate approved, by a two-thirds vote, a constitutional amendment to implement the district method in 1813, 1819, 1820, and 1822. However, in each case, the amendment failed to pass the House.[93]

The congressional-district method received considerable attention in 1969, when Congress intensively debated various alternative constitutional amendments concerning election of the President, including direct popular election (section 4.7) and the fractional-proportional method (section 4.1).

In 1969, Senator Karl Mundt (R–South Dakota) sponsored a federal constitutional amendment to implement the district method. Senate Joint Resolution 12 of the 91st Congress read:

> "Section 1. Each State shall choose a number of electors of President and Vice President 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 chosen elector.
>
> "The electors assigned to each State with its Senators shall be elected by the people thereof. Each of the electors apportioned with its Representatives shall be elected by the people of a single-member electoral district formed by the legislature of the State.[94] Electoral districts within each State shall be of compact and contiguous territory containing substantially equal numbers of inhabitants, and shall not be altered until another census of the United States has been taken. Each candidate for the office of elector of President and Vice President shall file in writing under oath a declaration of the identity of the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor to his office. In choosing electors the voters in each State have the qualifications requisite for electors of the most numerous branch of the State legislature.
>
> "The electors shall meet in their respective States, fill any vacancies in their number as directed by the State legislature, and vote by signed ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the State with themselves.…
>
> "Any vote cast by an elector contrary to the declaration made by him shall be counted as a vote cast in accordance with his declaration."

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[93] Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press. Page 62.

[94] Although the 1969 Mundt amendment is generally viewed as being based on congressional districts, it did not specifically require that the presidential-elector districts be the same as the state's congressional districts. Instead, the amendment merely said that the districts would be "single-member electoral district[s] formed by the legislature of the State."

The 1969 Mundt amendment was sponsored by 18 Senators including:

- Mundt (R–South Dakota)
- Boggs (R–Delaware)
- Byrd (D–West Virginia)
- Cotton (R–New Hampshire)
- Curtis (R–Nebraska)
- Dominick (R–Colorado)
- Fong (R–Hawaii)
- Goldwater (R–Arizona)
- Hansen (R–Wyoming)
- Hruska (R–Nebraska)
- Jordan (R–Idaho)
- Miller (R–Iowa)
- Sparkman (D–Alabama)
- Stennis (D–Mississippi)
- Thurmond (R–South Carolina)
- Tower (R–Texas)
- Williams (R–Delaware)
- Young (R–North Dakota).

A secondary feature of the 1969 Mundt amendment was that it eliminated the possibility of faithless presidential electors, while retaining the position of presidential elector. The Mundt amendment provided that each person nominated for presidential elector must take an oath promising to vote in the Electoral College for a particular candidate for President and Vice President. Then, regardless of how the presidential elector actually voted when the Electoral College met, the elector's vote would "be counted as a vote cast in accordance with his declaration."

Passing a constitutional amendment requires an enormous head of steam at the front-end of the process—specifically, getting a two-thirds vote in both houses of Congress. A constitutional amendment then requires ratification by three-fourths of the states. There have been only 17 amendments ratified since the Bill of Rights.[95]

However, the district method of awarding electoral votes could be implemented without a constitutional amendment—that is, it could be implemented unilaterally by individual states, as discussed in the next section.

Using state legislation to implement the congressional-district method

Before we discuss the history of use of the congressional-district method at the state level, note that states have employed districts other than congressional districts to award their electoral votes in the past.

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[95] The most recently approved constitutional amendment was the 27th Amendment (congressional salaries), which became part of the Constitution in 1992; however, that amendment had been submitted to the states by the First Congress on September 25, 1789—203 years earlier.

- In the first three presidential elections (1789, 1792, and 1796), Virginia voters chose presidential electors from single-elector districts. Presidential-elector districts were also used in North Carolina in 1796, 1800, 1804, and 1808.
- In the nation's first presidential election in 1789, Delaware had three counties and three electoral votes (as it still does today). In 1789, one presidential elector was elected from each of Delaware's three counties.[96]
- In 1792, Massachusetts voters chose presidential electors from four multi-elector regional districts (with the legislature choosing the state's remaining two electors).

Between 1789 and 1832, presidential electors were elected by congressional district in numerous states in various years.

In the nation's first presidential election in 1789, Massachusetts voters voted on candidates for presidential elector on a congressional-district basis.

Chief Justice Melville Fuller recounted the history of the congressional-district method between 1804 and 1828 in his opinion in *McPherson v. Blacker*:

> "The district method obtained in Kentucky until 1824; in Tennessee and Maryland until 1832; in Indiana in 1824 and 1828; in Illinois in 1820 and 1824; and in Maine in 1820, 1824, and 1828. Massachusetts … used the district system again in 1812 and 1820.… In New York, the electors were elected in 1828 by districts, the district electors choosing the electors at large."[97]

1892 enactment of the congressional-district method in Michigan

Michigan had given all of its electoral votes to the Republican presidential nominee between the formation of the modern Republican Party in 1856 and the 1888 election.

In 1888, Democrats were outraged when incumbent President Grover Cleveland won the national popular vote while losing the Electoral College to Republican Benjamin Harrison.

> "In the off-year election of 1890, Republicans suffered epic landslide losses, nationally and in Michigan. Democrats picked up 75 seats and won control of the U.S. House of Representatives.… Democrats had won eight … Congressional districts in Michigan."[98]

Moreover, the Democrats also won control of both houses of the Michigan legislature and the governorship.

In 1891, they repealed Michigan's winner-take-all law for awarding electoral votes. The

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[96] The U.S. Supreme Court decision in the 1892 case of *McPherson v. Blacker* contains an error concerning Delaware. In its historical review of the election laws of 1789, the Court (incorrectly) stated, "At the first presidential election, the appointment of electors was made by the legislatures of Connecticut, Delaware, Georgia, New Jersey, and South Carolina." 146 U.S. 1 at 29. This source of this incorrect statement appears to be page 19 of the plaintiff's brief in the 1892 case. *Brief of F.A. Baker for Plaintiffs in Error* in *McPherson v. Blacker.* 1892. In fact, Delaware's presidential electors in 1789 were elected on a county basis. See section 2.2.

[97] *McPherson v. Blacker*. 146 U.S. 1 at 32. 1892.

[98] Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 1.

new law provided that one presidential elector would be chosen from each of the state's 12 congressional districts. In addition, the Miner Act created an eastern and western super-district—each consisting of six congressional districts. One electoral vote was awarded to the candidate who received the most popular votes in each super-district.

> "Enactment of Miner's bill meant that Democrats would not be shut out in 1892, and might even be assured of winning six or seven votes, instead of zero electoral votes, from Michigan in the impending presidential election.
>
> "Miner predicted that a system for district elections, if adopted elsewhere, would prevent the election of minority presidents like Harrison."[99]

This new law in Michigan aroused intense opposition.

In his 1891 State of the Union address to Congress, President Benjamin Harrison—the beneficiary of the winner-take-all system in the 1888 election—criticized Michigan's adoption of the district system:

> "The method of appointment by the States of electors of President and Vice-President has recently attracted renewed interest by reason of **a departure by the State of Michigan from the method which had become uniform in all the States**."
>
> **"For nearly sixty years all the States save one have appointed their electors by a popular vote upon a general ticket, and for nearly thirty years this method was universal."**[100] [Emphasis added]

President Harrison then spent 10% of his 16,000-word address to Congress arguing that the use of districts to elect presidential electors would subject the presidency to "the baneful influence of the gerrymander."

In 1892, the Michigan Republicans challenged the constitutionality of the Miner Act in state courts.

> "On June 17, 1892, the Michigan Supreme Court stunned the GOP by unanimously denying the writ of mandamus and upholding the Miner Law. This action came from a Supreme Court that had been elected on a partisan ballot and where Republican justices constituted a majority on the court."[101]

On appeal, the U.S. Supreme Court unanimously upheld Michigan's use of the congressional-district method in *McPherson v. Blacker*—the seminal case on the power of state legislatures to choose the method of awarding the state's electoral votes.

In November 1892, Michigan voters elected seven Republican and five Demo-

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[99] Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.

[100] Harrison, Benjamin. 1891. Third Annual Message. *The American Presidency Project*. https://www.presidency.ucsb.edu/node/205168

[101] Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.

cratic presidential electors at the district level. The Republicans won both of the state's super-districts.

Michigan voters also elected a Republican Governor and legislature in 1892.

> "The very first bill introduced in the state Senate in January of 1893 was a bill to repeal the Miner Law.… On straight party line votes, first in the state Senate and later in the state House, the Miner Law was wiped out of Michigan's statute books."[102]

Under the restored winner-take-all law, Republican presidential nominee William McKinley won all of Michigan's electoral votes in 1896.

1969 enactment of the congressional-district method in Maine

This method is in use today in Maine as a result of a 1969 state law. Maine awards its two senatorial electoral votes to the candidate who receives the most popular votes statewide.

In the 13 presidential elections between 1972 and 2020 in which Maine used this method, there were only two occasions when the state's electoral votes were divided. In 2016 and 2020, Donald Trump carried Maine's 2nd congressional district (the northern part of the state), while the Democratic nominee carried the 1st district (the Portland area) and the state as a whole.

1992 congressional-district proposal in Florida and seven other states

The congressional-district method was actively considered by the states of Arizona, Connecticut, Florida, Georgia, Louisiana, Nebraska, New Jersey, North Carolina, and Virginia in 1992.

In 1992, Nebraska enacted a congressional-district law similar to Maine's 1969 law. In the eight presidential elections between 1992 and 2020 in which Nebraska used this method, there were only two occasions when the state's electoral votes were divided. Barack Obama carried Nebraska's 2nd congressional district (the Omaha area) in 2008, and Joe Biden carried the 2nd district in 2020.

A congressional-district system came close to enactment in Florida in 1992, when the proposal had the support of Governor Lawton Chiles (D) and passed the state House. However, the bill failed to pass the Senate.

2011 congressional-district proposal in Pennsylvania

Just before and after the 2012 presidential election, this method was the subject of considerable debate in various states—notably in Pennsylvania in 2011.

In November 2010, the Republicans won control of both houses of the Pennsylvania legislature and the Governor's office.

The political context of this debate was that the Democratic presidential nominee had won Pennsylvania in the five previous elections. Moreover, it was generally expected that President Obama would win Pennsylvania again in 2012—as indeed he did.

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[102] Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.

Also, it was widely anticipated that the Republican legislature and Republican Governor would enact a congressional redistricting plan that would be highly favorable to their party—as they, in fact, did.

Thus, in September 2011, Pennsylvania Senate Majority Leader Dominic Pileggi (R) introduced a bill that would have replaced Pennsylvania's existing winner-take-all law with a law similar to the 1969 Maine and 1992 Nebraska laws. Under Pileggi's proposal, the candidate winning each of Pennsylvania's congressional districts would receive one electoral vote, and the candidate winning the state would receive the state's two senatorial electoral votes.

Although Senator Pileggi's 2011 proposal was not enacted in time for the 2012 election, the issue remained active and resurfaced in 2013.

2013 Congressional-district proposals in Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida

There were six closely divided battleground states in which the Republicans won control of both houses of the legislature and the Governor's office in the November 2010 midterm elections—Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida.

In 2012, President Obama carried all six states (as he had in 2008), thus giving him a 106–0 margin over Governor Romney in these six states. This 106-vote margin was considerably larger than the 62-vote margin by which President Obama won the Electoral College in 2012.

Thus, the congressional-district method attracted increased attention among Republican state legislators in these six states after the 2012 election.

A *National Journal* article entitled "The GOP's Electoral College Scheme" in December 2012 reported:

> "Republicans alarmed at the apparent challenges they face in winning the White House are preparing an all-out assault on the Electoral College system in critical states, an initiative that would significantly ease the party's path to the Oval Office.
>
> "**Senior Republicans say they will try to leverage their party's majorities in Democratic-leaning states in an effort to end the winner-take-all system of awarding electoral votes. Instead, bills that will be introduced in several Democratic states would award electoral** votes on a proportional basis."
>
> "If more reliably blue states like Michigan, Pennsylvania, and Wisconsin were to award their electoral votes proportionally, Republicans would be able to eat into what has become a deep Democratic advantage.
>
> "All three states have given the Democratic nominee their electoral votes in each of the last six presidential elections. Now, senior Republicans in Washington are overseeing legislation in all three states to end the winner-take-all system."
>
> "The proposals, the senior GOP official said, are likely to come up in each

Table 4.51 Political effect of the congressional-district method in six states in 2012

State	D	R	D districts	R districts	D-EV under CD	R-EV under CD
FL	50%	49%	11	16	13	16
MI	54%	45%	5	9	7	9
OH	51%	48%	4	12	6	12
PA	52%	47%	5	13	7	13
VA	51%	47%	4	7	6	7
WI	53%	46%	3	5	5	5
Total			**32**	**62**	**44**	**62**

state's legislative session in 2013. Bills have been drafted, and legislators are talking to party bosses to craft strategy."

"In the long run, Republican operatives say they would like to pursue similar Electoral College reform in Florida, Ohio, and Virginia. Obama won all three states, but Romney won a majority of the congressional districts in each state.

"**Rewriting the rules would dramatically shrink or eliminate the Democratic advantage, because of the way House districts are drawn**."

"If Republicans go ahead with their plan, Democrats don't have the option of pushing back.… **Some consistently blue presidential states have Republican legislatures; the reverse is not true**."[103] [Emphasis added]

Table 4.51 shows the effect of applying the congressional-district method to the actual 2012 election returns from these six states (Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida).[104] Columns 2 and 3 of the table show the statewide popular-vote results in each of the six states. Columns 4 and 5 show the number of congressional districts won by President Barack Obama and Governor Mitt Romney in each state. Columns 6 and 7 show the total number of electoral votes (including the two senatorial electoral votes) for Obama and Romney if this method had been applied to the results of the 2012 election.[105]

Under this method, President Obama would have received only 44 electoral votes to Governor Romney's 62 electoral votes from the six states—even though Obama carried all six states.

If this method had been in place in 2012 in the six states, President Obama would have ended up nationally with a razor-thin 270–268 win in the Electoral College (instead of the actual 332–206 margin).[106]

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[103] Wilson, Reid. The GOP's Electoral College scheme. *National Journal.* December 17, 2012. http://www.nationaljournal.com/columns/on-the-trail/the-gop-s-electoral-college-scheme-20121217

[104] Richie, Rob. 2012. Electoral College chaos: How Republicans could put a lock on the presidency. December 13, 2012. http://www.fairvote.org/electoral-college-chaos-how-republicans-could-put-a-lock-on-the-presidency

[105] *Ibid.*

[106] In 2012, if the congressional-district method is applied to the election returns in every state, Mitt Romney would have received a total of 274 electoral votes, and Obama would have received 264 electoral votes, despite the fact that Barack Obama received 4,966,945 more popular votes nationwide.

2013 Congressional-district proposal in Pennsylvania

The debate was particularly intense in Pennsylvania because Pennsylvania lost its battleground status in 2012. As *PoliticsPA* said:

> "Once a reliable battleground state, **Pennsylvania spent most of the 2012 presidential campaign on the sidelines**."[107] [Emphasis added]

Indeed, Pennsylvania received only five general-election campaign events in 2012 (out of 253 nationally)—compared to 40 that it had received in 2008.

Particularly galling to Pennsylvanians was the fact that neither President Obama nor Vice President Biden bothered to visit the state at all during the 2012 general-election campaign.

Moreover, neighboring Ohio (with two fewer electoral votes than Pennsylvania) received 73 general-election campaign events—almost one-third of the national total of 253.

In short, Pennsylvania was a "jilted battleground" state in the 2012 election.

Shortly after the 2012 election, Pennsylvania state Representatives Robert Godshall (R) and Seth Grove (R) announced that they intended to introduce a bill in 2013 to implement the congressional-district method in Pennsylvania.

The memo soliciting Pennsylvania legislators to co-sponsor the congressional-district bill said:

> "I believe that the Congressional District Method will increase voter turnout and **encourage candidates t**o **campaign in all states rather than just those that are competitive**.… Most importantly, this method of selecting presidential electors will give a stronger voice to voters in **all regions** of our great Commonwealth." [Emphasis added]

2013 congressional-district proposal in Michigan

Michigan was another "jilted battleground" in the 2012 election.

In fact, Michigan was ignored in the 2012 general-election campaign for President to an even greater degree than Pennsylvania.

Michigan's only general-election campaign visit in 2012 was an appearance by Republican vice-presidential nominee Paul Ryan in Rochester, Michigan.

President Obama, Governor Romney, and Vice President Biden never bothered to visit the state during the general-election campaign.

Thus, Representative Pete Lund (R), Chair of the House Redistricting and Elections Committee, announced his intention to introduce a bill[108] in the 2013 legislative session to enact the congressional-district method, saying:

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[107] Gibson, Keegan. House Republicans resurrect congressional-based Electoral College plan. *PoliticsPA*. December 20, 2012. http://www.politicspa.com/house-rs-resurrect-congressional-based-electoral-college-plan/44960/

[108] Oosting, Jonathan. Shake up the Electoral College? GOP proposal would have helped Mitt Romney win Michigan. *MLive*. December 18, 2012. http://www.mlive.com/politics/index.ssf/2012/12/shake_up_the_electoral_college.html

> "It's more representative of the people.… A person doesn't win a state by 100 percent of the vote, so this is a better, more accurate way.… People would feel voting actually matters. It's an idea I've had for several years."[109]

An Associated Press story reported:

> "Pete Lund, Michigan's House Republican whip, said next year is an opportune time to renew the push for his bill to award two electoral votes to the statewide winner and allocate the rest based on results in each congressional district—the method used by Nebraska and Maine.
>
> "The 2016 election 'is still a few years away and no one knows who the candidates are going to be,' said Lund."[110]

A *Christian Post* article entitled "GOP Operatives Eye Reversal of Democrats' Electoral College Edge" in December 2012 reported:

> "**The current method of calculating electoral college votes in most states gives Democrats an edge in presidential races.** Republican operatives are working to undo that edge, not by supporting a popular vote, though, as most Americans would prefer, but by supporting changes that would give Republicans an edge.
>
> "In all but two states, Maine and Nebraska, the candidate who wins the majority of votes in the state receives all the electors for that state. In Maine and Nebraska, electors are assigned by congressional district. A candidate gets one elector for each congressional district they win and two more electors if they win the popular vote in the state.
>
> "**Republican operatives are working to cherry pick a few select states to change the system to one like Maine and Nebraska in order to pick up a few more electors in the next presidential election**.
>
> "The states they are looking at are Michigan, Pennsylvania and Wisconsin. Obama won all three of those states in 2008 and 2012. Combined, those states netted 46 electors for President Barack Obama. If those states had assigned electors by congressional district, though, at least 26 electors would have likely gone to Republican presidential candidate Mitt Romney instead of Obama, according to calculations by Reid Wilson for *National Journal*. It would not have been enough for Romney to win, but would at least put future Republican candidates in a better position to win in future elections.

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[109] Lund: Divide Electoral College votes by congressional district. *Michigan Information and Research Service*. December 17, 2012. www.mirsnews.com/alert.php?alert_id=1352

[110] Associated Press. Changes advocated in Pennsylvania electoral vote counting. *PennLive*. December 22, 2012. http://www.pennlive.com/midstate/index.ssf/2012/12/changes_advocated_in_pennsylva.html

> "One aspect that all three of those states have in common is their state governments are controlled by Republicans, making the change possible. It also means that the 2010 redistricting in those states was controlled by the Republicans, thus giving them an advantage in drawing congressional district lines favorable to their party.…
>
> "**The current plan pursued by some Republicans is not aimed at fixing perceived flaws in the system, though. Rather, it is aimed at simply helping Republicans win**. (Notice they are not proposing the same system for states like Texas, which would help Democrats gain a few more electors.)"[111] [Emphasis added]

2013 congressional-district proposal in Virginia

In December 2012, Virginia state Senator Charles Carrico (R) proposed that his state adopt a variation of the congressional-district method.[112]

Under Carrico's proposal, Virginia's two senatorial electoral votes would not go to the statewide winner (namely Obama in 2008 and 2012).

Instead, the candidate winning a majority of Virginia's 11 districts (which were gerrymandered in 2011 to favor the Republican Party) would receive a bonus of two senatorial electoral votes. That is, Carrico's bill would layer a winner-take-all rule on top of the winner-take-all rule applied at the district level.

Because the Republican legislature and Governor had created congressional districts highly favorable to their own party, President Obama won only four of Virginia's 11 districts while carrying the state in November 2012. Meanwhile, Governor Romney won seven.

If the congressional-district law used in Maine and Nebraska is applied to the 2012 election returns in Virginia, the state's electoral votes would have been split 7–6 in favor of Romney.

If Senator Carrico's variation had been used, Romney would have won Virginia's two senatorial electoral votes, and the state's electoral votes would have been split 9–4 in favor of Romney. Note that President Obama won Virginia's two-party vote by a 52%–48% margin in 2012.

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[111] Nazworth, Napp. GOP operatives eye reversal of Democrats' Electoral College edge. *Christian Post*. December 20, 2012. http://www.christianpost.com/news/gop-operatives-eye-reversal-of-democrats-electoral-college-edge-87014/

[112] Lee, Tony. OH, VA Republicans Consider Changes to Electoral Vote System. *Breitbart*. December 10, 2012. http://www.breitbart.com/Big-Government/2012/12/10/OH-VA-Republicans-Float-Idea-Of-Getting-Rid-Of-Winner-Take-All-System-Of-Awarding-Electoral-Votes

2013 congressional-district proposal in Wisconsin

A December 27, 2012, *Milwaukee Journal Sentinel* article reported that incoming Assembly Speaker Robin Vos (R) had sponsored a bill (Assembly Bill 589) to divide Wisconsin's electoral votes by congressional district in 2008.[113]

A *Milwaukee Journal Sentinel* article entitled "Walker Open to Changing state's Electoral College Allocations" reported on December 22, 2012:

> "Gov. Scott Walker is open to having Wisconsin allocate its Electoral College votes based on results from each congressional district—a move that would offer Republicans a chance to score at least a partial victory in a state that has gone Democratic in the last seven presidential elections.
>
> "The idea is being considered in other battleground states that have tipped toward Democrats as Republicans try to develop a national plan to capture the presidency in future years.…
>
> "In the weeks since Obama won reelection, Republicans are now eyeing splitting up electoral votes in other key battleground states, according to the *National Journal*. **If Wisconsin, Michigan and Pennsylvania went to such a system, Republicans would have a chance to edge into the national Electoral College advantage that Democrats now enjoy.**
>
> "While those states lend an advantage to Democrats in presidential years, Republicans control all of state government in those three states after the GOP sweep of 2010."
>
> "Republicans last year bolstered their chances in congressional races by redrawing district lines. Those boundaries have to be redrawn every decade to account for population changes, and Republicans were able to use that opportunity to their advantage since they controlled state government."[114] [Emphasis added]

2021 congressional-district proposals in various state legislatures

Interest in the district method of awarding electoral votes has decreased considerably since the flurry of activity between 2011 and 2013.

Nonetheless, such bills are introduced regularly in state legislatures.

Table 4.52 shows the 28 bills to implement the district method of awarding electoral votes that were introduced in state legislatures in 2021 and 2022. District bills were introduced in 14 states, with a total of 87 sponsors.

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[113] Marley, Patrick. Vos previously backed changing electoral vote rules. *Milwaukee Journal Sentinel*. December 27, 2012. http://www.jsonline.com/news/statepolitics/vos-previously-backed-changing-electoral-vote-rules-jb865ct-184975431.html

[114] Marley, Patrick. Walker open to changing state's Electoral College allocations. *Milwaukee Journal Sentinel*. December 22, 2012. http://www.jsonline.com/news/statepolitics/walker-open-to-changing-states-electoral-college-allocations-8884ck6-184566961.html

Table 4.52 2021–2022 state legislative bills for district allocation of electoral votes

State	Bill	Year	Party that won state in 2020	Sponsors
Arizona	HB2426[a]	2021	Democrat	3 Republicans
Arizona	HB2476[b]	2022	Democrat	5 Republicans
Connecticut	HB5012[c]	2021	Democrat	2 Republicans
Connecticut	HB5322[d]	2021	Democrat	1 Republican
Connecticut	HB5324[e]	2021	Democrat	1 Democrat
Iowa	HF519[f]	2021	Republican	2 Democrats and 1 Republican
Illinois	HB2611[g]	2021	Democrat	2 Republicans
Illinois	HB2821[h]	2021	Democrat	1 Republican
Illinois	SB1762[i]	2021	Democrat	1 Republican
Illinois	SB54[j]	2021	Democrat	1 Republican
Massachusetts	HB785[k]	2021	Democrat	1 Republican
Massachusetts	HB799[l]	2021	Democrat	5 Republicans
Michigan	HB4319[m]	2021	Democrat	5 Republicans
Michigan	HB4320[n]	2021	Democrat	5 Republicans
Minnesota	HF453[o]	2021	Democrat	1 Republican
Minnesota	HF2608[p]	2021	Democrat	5 Republicans
Minnesota	SF429[q]	2021	Democrat	3 Republicans
Mississippi	HB176[r]	2022	Republican	1 Democrat
New Hampshire	HB370[s]	2021	Democrat	4 Republicans
New York	AB4895[t]	2021	Democrat	2 Republicans
New York	AB5437[u]	2021	Democrat	8 Republicans
New York	SB1804[v]	2021	Democrat	1 Republican
New York	SB2552[w]	2021	Democrat	1 Republican
Texas	HB1375[x]	2021	Republican	1 Democrat
Texas	HB3868[y]		Republican	5 Republicans and 2 Democrats
Virginia	SB1432[z]		Democrat	1 Republican
Wisconsin	AB35[aa]		Democrat	8 Republicans
Wisconsin	SB61[ab]		Democrat	8 Republicans

a https://apps.azleg.gov/BillStatus/BillOverview/74978
b https://apps.azleg.gov/BillStatus/BillOverview/76974
c https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05012&which_year=2021
d https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05322&which_year=2021
e https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05324&which_year=2021
f https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF519
g https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2611&GAID=16&DocTypeID=HB&SessionID=110&GA=102
h https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2821&GAID=16&DocTypeID=HB&SessionID=110&GA=102
i https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1762&GAID=16&DocTypeID=SB&SessionID=110&GA=102
j https://www.ilga.gov/legislation/BillStatus.asp?DocNum=54&GAID=16&DocTypeID=SB&SessionID=110&GA=102
k https://malegislature.gov/Bills/192/H785
l https://malegislature.gov/Bills/192/H799
m http://www.legislature.mi.gov/(S(asihliut5srpqo34h2qj4aem))/mileg.aspx?page=GetObject&objectname=2021-HB-4319
n http://www.legislature.mi.gov/(S(asihliut5srpqo34h2qj4aem))/mileg.aspx?page=GetObject&objectname=2021-HB-4320
o https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF453&ssn=0&y=2021
p https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF2608&ssn=0&y=2021
q https://www.revisor.mn.gov/bills/bill.php?f=SF429&y=2021&ssn=0&b=senate
r http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB0176.xml
s http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=318&sy=2021&sortoption=&txtsessionyear=2021&txtbillnumber=HB370
t https://www.nysenate.gov/legislation/bills/2021/A4895
u https://www.nysenate.gov/legislation/bills/2021/A5437
v https://www.nysenate.gov/legislation/bills/2021/s1804
w https://www.nysenate.gov/legislation/bills/2021/s2552
x https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB1375
y https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB3868
z https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1432
aa https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/ab35
ab https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/sb61

As can be seen from the table, 92% of sponsors (80 of the 87) belonged to the political party that did not carry their state in the 2020 presidential election. The seven exceptions included:

- a Democratic Connecticut state legislator who sponsored a district bill in 2021, even though Biden won the state in 2020;
- an Iowa Republican state legislator who sponsored a district bill in 2021, even though Trump won the state in 2020; and
- five Texas Republican state legislators who sponsored a district bill in 2021 even though Trump won the state in 2020.[115]

All of the bills in the table called for the allocation of electoral votes based on congressional districts, except for the New Hampshire bill.

The New Hampshire bill (HB370) was based on the five districts used to elect the Governor's Executive Council—a body with considerable power that harks back to Pre-Independence America.

Under the New Hampshire bill, all four of the state's electoral votes would be awarded to the presidential candidate who receives the most votes in a majority of the five Executive Council districts. That is, like the 2012 Carrico bill in Virginia, this bill would layer a winner-take-all rule on top of a winner-take-all rule. For example, if a candidate were to carry three of the five Executive-Council districts, that candidate would receive all four of New Hampshire's electoral votes.

By way of background, the current five districts for electing the New Hampshire Executive Council are significantly gerrymandered. Four of the five districts will usually elect a Republican, even when more total Democratic votes are cast for Council members statewide.[116,117] That is, the practical political effect of the New Hampshire bill (HB370) would be to award all four of New Hampshire's electoral votes to the Republican presidential candidate.

4.3.4. The congressional-district method would not accurately reflect the national popular vote.

The late Curtis Gans and Leslie Francis (opponents of a national popular vote for President) advocated the use of this method of awarding electoral votes by saying:

> "**The lack of competition and campaigning in a majority of states owes itself not to the existence of the Electoral College's indirect method of choosing presidents, but rather to the winner-take-all method of choosing electors** in all but two states. If a party knows either that it can't win a single elector in a state or has an easy road to winning all of them, it sends its resources to where it has a competitive chance.

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[115] Note that Texas voted 62% Republican in 2004, 58% in 2012, 55% in 2016, and 53% in 2020.

[116] Rayno, Gerry. 2022. Gerrymandering Makes the Majority the Minority in the NH State House. *InDepthNH*. November 12, 2022. https://indepthnh.org/2022/11/12/gerrymandering-makes-the-majority-the-minority-in-the-nh-state-house/

[117] New Hampshire Election Results. *New York Times*. December 13, 2022. https://www.nytimes.com/interactive/2022/11/08/us/elections/results-new-hampshire.html?action=click&pgtype=Article&state=default&module=election-results&context=election_recirc&region=StateResultsFooter

> "There are alternatives to winner-take-all that do not involve abandoning the positive aspects of the Electoral College. **All states could adopt the system that now exists in Maine and Nebraska**, where all but two electors are chosen by congressional district, and the other two go to the statewide winner.
>
> "Or states might explore what was recently proposed in Colorado [in a statewide vote in November 2004]—that electors be allocated in proportion to each candidate's share of the popular vote above a certain threshold.
>
> "Either would provide a reason for both parties to compete in most states because there would be electors to win. Either **would likely produce an electoral vote count closer to the popular vote.**"[118] [Emphasis added]

The claim by Gans and Francis that the congressional-district system would "likely produce an electoral vote count closer to the popular vote" is demonstrably false.[119]

In three of the first six presidential elections of the 2000s (namely 2000, 2012, and 2016), the winner of the most votes nationwide would *not* have won the presidency if the district system had been in use in all states.

In 2016, if the congressional-district method is applied to election returns, Donald Trump would have received a majority in the Electoral College despite the fact that Hillary Clinton received 2,868,518 more popular votes nationwide. Overall, Trump would have received 290 electoral votes in 2016, and Clinton would have received 248 electoral votes. Specifically:

- Trump carried 230 of the nation's 435 congressional districts, whereas Clinton carried only 205 districts.
- Trump carried 30 states (having 60 senatorial electors), whereas Clinton carried only 20 states (having 40 senatorial electors).
- Clinton carried the District of Columbia with three electoral votes.

In 2012, if this method is applied to the election returns, Mitt Romney would have received a majority in the Electoral College despite the fact that Barack Obama received 4,966,945 more popular votes nationwide. Romney would have received a total of 274 electoral votes, and Obama would have received 264 electoral votes.[120]

In 2000, if this method is applied to the election returns,[121] George W. Bush would have

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[118] Gans, Curtis and Francis, Leslie. Why National Popular Vote is a bad idea. *Huffington Post*. January 6, 2012.

[119] The claim by Curtis Gans and Leslie Francis that the whole-number proportional method of awarding electoral votes "would likely produce an electoral vote count closer to the popular vote" is also demonstrably false, as discussed in 4.2.4.

[120] Daviss, Claire and Richie, Rob. 2015. *Fuzzy Math: Wrong Way Reforms for Allocating Electoral Votes (Problems with the Whole Number proportional and Congressional District Systems)*. FairVote report. https://fairvote.app.box.com/v/fuzzy-math-wrong-way-reforms

[121] In this book, all hypothetical analyses of an alternative electoral system being applied to a past election are necessarily based on the election returns from the actual election conducted under the then-existing electoral system. The authors, of course, recognize that the campaigns would have been conducted differently if a different electoral system had been in effect. For example, George W. Bush led in the vast majority of national polls during most of 2000. That, in turn, suggests that Bush might well have won the national popular vote if the candidates had campaigned nationwide, instead of just in the battleground states.

received a majority in the Electoral College despite the fact that Al Gore received 543,816 more popular votes nationwide. Overall, in 2000, Bush would have received a total of 288 electoral votes, and Gore would have received 250 electoral votes.[122] Specifically:

- George W. Bush carried 228 of the 435 congressional districts, whereas Al Gore carried only 207 districts.
- Bush carried 30 states (having 60 senatorial electors), whereas Gore carried only 20 states (having 40 senatorial electors).
- Gore carried the District of Columbia, which has three electoral votes.

The congressional-district method would have given Bush a 6.8% lead in electoral votes over Gore in 2000. However, Gore received 51,003,926 popular votes (50.2% of the two-party popular vote), whereas Bush received 50,460,110 (49.7% of the two-party popular vote). Under the existing statewide winner-take-all system, Bush received 271 electoral votes in 2000 (50.4% of the total number of electoral votes), a 0.8% lead in electoral votes over Gore.

In three of the first six elections of the 2000s (namely 2004, 2008, and 2020), the congressional-district method would have yielded the same winner as the current state-by-state winner-take-all method of awarding electoral votes; however, the winner's percentage of the electoral votes would have differed considerably from his popular-vote percentage.

In 2004, George W. Bush carried 255 of the 435 congressional districts, whereas John Kerry carried 180. Bush carried 30 of the 50 states, and Kerry won the District of Columbia.[123] Bush would have won 59% of the electoral votes (315 of 538) under the congressional-district method in an election in which he received only 51% of the two-party national popular vote. Bush would have won 29 more electoral votes under this method than the 286 electoral votes that he actually won under the current system.

In 2008, Obama would have won 64 fewer electoral votes under the congressional-district method than he won under the current state-by-state winner-take-all method of awarding electoral votes. Instead of winning by 365–173 electoral votes, Obama would have won by the much narrower margin of 301–237.

In 2020, Biden won 224 of the 435 congressional districts, while Trump won 211. Biden and Trump each won 25 states—that is, each won 50 senatorial electoral votes. Biden won the District of Columbia's three electoral votes. If the congressional-district method had been applied to the 2020 election returns, Biden would have won the Electoral College by a slender margin of 277–261 electoral votes, instead of the 306–232 margin produced by the current winner-take-all system.

Table 4.53 shows the closest eight congressional districts that Biden won in 2020.

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[122] Daviss, Claire and Richie, Rob. 2015. *Fuzzy Math: Wrong Way Reforms for Allocating Electoral Votes (Problems with the Whole Number proportional and Congressional District Systems)*. FairVote report. https://fairvote.app.box.com/v/fuzzy-math-wrong-way-reforms

[123] America's choice in 2004: Votes by congressional district. *Cook Political Report*. 2005.

Table 4.53 The nine closest congressional districts that Biden won in 2020

Percent margin	District	Biden	Trump	Total	Winner	Margin (D–R)
0.2%	NV-3	214,184	213,299	435,796	Biden	885
1.1%	VA-7	228,335	223,268	460,031	Biden	5,067
1.5%	NY-19	182,965	177,569	368,128	Biden	5,396
1.5%	CA-48	199,791	193,832	401,845	Biden	5,959
1.8%	AZ-1	187,182	180,673	374,808	Biden	6,509
1.9%	TX-15	119,784	115,315	237,719	Biden	4,469
2.5%	IL-14	203,741	193,889	407,226	Biden	9,852
2.8%	PA-17	221,555	209,683	438,251	Biden	11,872
3.0%	CA-10	154,990	146,084	309,075	Biden	8,906
	Total	**1,712,527**	**1,653,612**	**3,432,879**		**58,915**

If 29,458 voters across these nine congressional districts had changed their votes from Biden to Trump, Biden would have lost the Electoral College by a 268–270 margin, despite leading in the national popular vote by 7,052,711 votes.[124]

Overall, Thomas, Gelman, King, and Katz concluded that:

> "The current electoral college and direct popular vote are both substantially fairer compared to those alternatives where states would have divided their electoral votes by congressional district."[125]

In summary, the congressional-district method would have been even less accurate than the current state-by-state winner-take-all method of awarding electoral votes in terms of reflecting the national popular vote.

One reason why the congressional-district method would not accurately reflect the nationwide popular vote is the widespread gerrymandering of congressional districts.

A more fundamental reason is that the congressional-district method is a combination of a "winner-takes-one" system at the district level and a "winner-takes-two" system at the statewide level.

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[124] In fact, Biden would have lost the presidency if only eight districts had switched, because there would have been a 269–269 tie in the Electoral College. In that event, the presidential election would have been thrown into the U.S. House of Representatives. In the contingent election in the House, each state casts one vote. The newly elected House takes office on January 3. The Republicans had a majority of the state delegations in the House on January 6, 2021 (although not a majority of the 435 House members). However, since the Republicans did not have a majority of the House, it is not clear that the Democrats would have allowed the House to conduct the contingent election. If the House had been given a chance to vote and if the House Republicans supported their party's presidential nominee, incumbent President Donald Trump would have been selected by the House on January 6, 2021. Two Democrats from Georgia were elected to the Senate on January 5, 2021. However, they had not yet taken their seats as of January 6, so the Senate still had a Republican majority in the Senate on January 6. Thus, if Senate Republicans supported their party's vice-presidential nominee on January 6, incumbent Vice President Mike Pence would have been selected by the U.S. Senate.

[125] Thomas, A. C.; Gelman, Andrew; King, Gary; and Katz, Jonathan N. 2012. Estimating partisan bias of the Electoral College under proposed changes in elector apportionment. SSRN-id2136804. August 27, 2012. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2134776

Whenever a single office is filled by an electoral process in which the winner-take-all rule is applied to districts that are smaller than the entire jurisdiction served by the office, the candidate who received the most popular votes in the jurisdiction as a whole will frequently be different from the candidate who received the most popular votes in a majority of the districts. That is, the application of the winner-take-all rule to sub-jurisdictions will often lead to the defeat of the candidate receiving the most votes in the entire jurisdiction.

4.3.5. The congressional-district method would not make every vote equal.

Every vote would not be equal throughout the country if this method of awarding electoral votes were used in all states.

There are six different sources of inequality inherent in this method.

Each of these inequalities is substantial.

As will be detailed below, these inequalities include a

- 3.81-to-1 inequality in the value of a vote because of the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population;
- 1.72-to-1 inequality in the value of a vote because of the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) among the states;
- 3.76-to-1 inequality in the value of a vote because of voter-turnout differences at the district level;
- 1.67-to-1 inequality in the value of a vote created by voter-turnout differences at the state level;
- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census;
- 7.1-to-1 differences, from district to district within a state, in the number of votes that enable a candidate to win an electoral vote; and
- 210-to-1 inequality in the value of a vote based on its ability to decide the national outcome.

Inequality because of the two senatorial electoral votes

First, a vote cast in a large state has less weight than a vote cast in a small state because of the two senatorial electoral votes that each state receives above and beyond the number of electoral votes warranted by the state's population.

Table 1.3 shows, for each state, the ratio of the number of people per electoral vote, compared to the number of people per electoral vote in the nation's smallest state (Wyoming). For example, the ratio of California's population per electoral vote to that of Wyoming is 3.81-to-1.

Inequality because of the imprecision of the process of apportioning U.S. House seats

Second, a vote cast in many states has less weight than a vote cast in other states because of inequalities created by imprecision in apportioning U.S. House seats.

There is a 1.72-to-1 variation in the weight of a vote (table 1.35).

Inequalities because of differences in voter turnout at the district level

Third, voter turnout varies considerably from district to district for a variety of reasons. Under the congressional-district system, a voter in a low-turnout district has greater voting power in choosing the President than a voter in a high-turnout district.

Texas' 33rd congressional district[126] had the nation's lowest total vote for President in both the 2020 and 2016 elections—only 160,828 votes in 2020.

In contrast, Montana's single congressional district had the nation's highest total vote for President—603,674 votes in 2020.

That is, there was a 3.76-to-1 variation in the value of a vote between these two districts.

The example of Montana is hardly unique.[127]

In fact, under the congressional-district method of awarding electoral votes, the value of a vote in 328 of the nation's 435 congressional districts would have been less than half of that of Texas' 33rd congressional district.

Table 4.54 shows the 10 districts where the value of a vote would be less than a third of that of TX-33 under the congressional-district method. The table is sorted according to the district's 2020 total vote for President in column 1.

There are many reasons for this wide variation in turnout from district to district.

Consider, for example, Florida's 11th congressional district, which had the nation's ninth highest presidential vote (486,702) in the table.

Turnout is generally higher among older voters, and lower among younger voters. According to U.S. Census Bureau data, turnout in 2020 was:

- 78% among those 65 or over,
- 75% for those 50–64,
- 68% for those 40–49,
- 63% for those 30–39, and
- 53% for those 18–29.[128]

Florida's 11th congressional district contains, among other things, The Villages, a vast retirement community. Overall, a third of the population of FL-11 was 65 or older, while only 14% was age 18 to 34.[129] In contrast, only 8% of the people in TX-33 were 65 or over, and 27% were between 18 and 34 in 2020.

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[126] Note that the district numbers in this section were those in use for the 2020 election (that is, before the redistricting that occurred after the 2020 census).

[127] Cook, Rhodes, 2023. Where People Voted in 2022—and Where They Didn't: The vast differences in congressional district turnout. *Sabato's Crystal Ball*. July 20, 2023. https://centerforpolitics.org/crystalball/articles/where-people-voted-in-2022-and-where-they-didnt/

[128] Clement, Scott and Santamariña, Daniela. 2021. What we know about the high, broad turnout in the 2020 election. *Washington Post*. May 13, 2021. https://www.washingtonpost.com/politics/2021/05/13/what-we-know-about-high-broad-turnout-2020-election/

[129] Cohen, Richard and Cook, Charlie. 2019. *The Almanac of American Politics*. Columbia Books and Information Services. Pages 448 and 1752.

Table 4.54 Congressional districts where a vote's value is less than a third of that of a vote in the 33rd congressional district of Texas

Total	District	Biden	Trump	Winner	Margin (D–R)	Percent margin
603,674	MT-at-Large	244,786	343,602	Trump	–98,816	16.8%
530,867	CO-2	338,261	178,561	Biden	159,700	30.9%
512,062	FL-4	198,414	305,934	Trump	–107,520	21.3%
504,346	DE-at-Large	296,268	200,603	Biden	95,665	19.3%
504,172	NC-2	323,249	171,017	Biden	152,232	30.8%
501,293	NC-4	332,604	160,812	Biden	171,792	34.8%
491,810	FL-16	223,366	262,840	Trump	–39,474	8.1%
487,935	CO-4	198,971	276,309	Trump	–77,338	16.3%
486,702	FL-11	164,285	318,054	Trump	–153,769	31.9%
483,462	OR-3	356,714	112,509	Biden	244,205	52.0%

Hispanic turnout is considerably less than average. According to Census Bureau data, turnout in 2020 was:

- 73% among whites
- 66% among blacks
- 62% among Asians
- 53% among Hispanics
- 49% among American Indians.[130]

TX-33 was 66% Latino, whereas FL-11 was only 10% Latino.

Turnout is generally higher among those with advanced education. According to Census Bureau data, turnout in 2020 was:

- 90% for those with a post-graduate degree,
- 84% for those with a four-year college degree,
- 72% for those with some college,
- 54% for high-school graduates, and
- 36% for those with less than a high-school diploma.[131]

North Carolina's 4th congressional district is home to the Research Triangle. In that district, 22% have a post-graduate degree, and an additional 31% have a four-year college degree. That is, 53% of the population have college degrees. In contrast, only 3% of TX-33 have a post-graduate degree, and only 7% have a four-year college degree.[132]

Turnout is generally higher among those with higher income.

Consider Colorado's 2nd congressional district, another district in table 4.54. The median income in CO-2 is $75,021, whereas it is only $39,089 in TX-33.[133]

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[130] Clement, Scott and Santamariña, Daniela. 2021. What we know about the high, broad turnout in the 2020 election. *Washington Post*. May 13, 2021. https://www.washingtonpost.com/politics/2021/05/13/what-we-know-about-high-broad-turnout-2020-election/

[131] *Ibid*.

[132] Cohen, Richard and Cook, Charlie. 2019. *The Almanac of American Politics*. Columbia Books and Information Services. Pages 448 and 1752.

[133] *Ibid*.

Inequality because of voter-turnout differences

Fourth, a voter in a low-turnout state has greater voting power than a voter in a high-turnout state.

Differences in voter turnout at the state level create variations of up to 1.67-to-1 in the value of a vote in electing a state's two senatorial electors under the congressional-district method (table 1.41).

There are additional turnout differences among districts.

Inequalities because of population changes occurring during the decade after each census

Fifth, another source of variation in the value of a vote from state to state arises from the fact that state populations change during the decade after each census.

These differences create variations of up to 1.39-to-1 in the value of a vote under the congressional-district method (table 1.40).

Inequalities because of differences in the number of votes needed to win an electoral vote from district to district in the same state

Sixth, the number of votes required to win one electoral vote varies widely from district to district in the same state.

For example, in Nebraska in 2020, a margin of 22,091 in the 2nd congressional district gave Joe Biden one electoral vote, while a margin of 156,325 in the 3rd district gave Donald Trump one electoral vote—a 7.1-to-1 difference in the value of a vote within Nebraska.[134]

In Maine in 2020, a margin of 102,331 in the 1st congressional district gave Joe Biden one electoral vote, while a margin of 27,996 in the 2nd congressional district gave Donald Trump one electoral vote—a 3.6-to-1 difference within Maine.[135]

If the congressional-district method were used across the country, there would be similar differences in almost every state with more than one congressional district.

4.3.6. The congressional-district method would not make every voter in every state politically relevant.

Gans and Francis say that this method:

> "would provide a reason for both parties to compete **in most states** because there would be electors to win."[136] [emphasis added]

This prediction ignores the political reality that candidates would have no more reason to campaign in unwinnable and unlosable congressional districts any more than they currently campaign in unwinnable and unlosable states.

In their pursuit of electoral votes, presidential candidates do not spend their time and

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[134] State of Nebraska. 2020 Electoral College Certificate of Ascertainment. November 30, 2020. https://www.archives.gov/files/electoral-college/2020/ascertainment-nebraska.pdf

[135] State of Maine. Certificate of Ascertainment of Electors. November 23, 2020. https://www.archives.gov/files/electoral-college/2020/ascertainment-maine.pdf

[136] Gans, Curtis and Francis, Leslie. Why National Popular Vote is a bad idea. *Huffington Post*. January 6, 2012.

money soliciting votes in places where they are safely ahead or hopelessly behind. They do not campaign in places where they have nothing to gain or nothing to lose. Here are the facts about the current state-by-state winner-take-all method of awarding electoral votes:

- In 2020, almost all (96%) of the general-election campaign events (204 of 212) occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 46% and 54%.
- In 2016, almost all (94%) of the general-election campaign events (375 of 399) occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 47% and 55%.
- In 2012, 100% of the 253 general-election campaign events occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **six-point range** between 45% and 51%.
- In 2008, almost all (98%) of the general-election campaign events (293 of 300) occurred in the 14 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 42% and 50%.

In other words, under the current winner-take-all method of awarding electoral votes, virtually all campaigning occurs in states where the two leading candidates are within six to eight percentage points of each other.

In the discussion below, we will generously use a margin of eight percentage points.

If electoral votes were awarded by congressional district, virtually all campaigning would necessarily occur in districts where the two leading candidates are within eight (or fewer) percentage points of one another.

The fact is that the presidential results were within eight percentage points in only one sixth (17%) of the congressional districts (72 of 435) in 2020.

Column 1 of table 4.55 shows the percentage margin by which Biden or Trump won the district (that is, the absolute value of the percentage). Column 7 shows the vote margin by which the Democratic vote exceeded the Republican vote in that district. For example, the closest congressional district in the country in the 2020 presidential race was Missouri's 2nd district, which Trump won by 0.03% or 115 votes.[137] Column 5 shows the total presidential vote in the district (including votes for minor-party candidates).

Similarly, in 2016, only about one seventh (14.4%) of the congressional districts (63 of 435) were within eight percentage points, as shown in table 4.56.

Likewise, in 2012, the presidential race was within eight percentage points in only 17% of the districts (75 out of 435).

In other words, the presidential race is competitive in only a small fraction of the nation's 435 congressional districts.[138]

Moreover, the fraction of Americans living in presidentially close congressional districts is an even smaller percentage of the population than those living in presidentially close states.

In 2020, almost all (96%) of the general-election campaign events (204 of 212) occurred

[137] Note that the district numbers in this table were those in use for the 2020 election (that is, before the redistricting that occurred after the 2020 census).

[138] Of course, the vast majority of congressional districts are also noncompetitive in congressional elections.

Table 4.55 The 72 congressional districts where the 2020 presidential race was within 8%

Percent margin	District	Biden	Trump	Total	Winner	Margin (D–R)
0.03%	MO-2	222,349	222,464	452,483	Trump	–115
0.1%	IA-3	224,159	224,726	458,496	Trump	–567
0.2%	NJ-3	217,223	218,016	443,175	Trump	–793
0.2%	NV-3	214,184	213,299	435,796	Biden	885
0.8%	MI-8	212,085	215,649	435,141	Trump	–3,564
0.9%	TX-22	206,114	210,011	421,647	Trump	–3,897
1.1%	TX-3	209,859	214,359	430,821	Trump	–4,500
1.1%	VA-7	228,335	223,268	460,031	Biden	5,067
1.3%	TX-2	170,430	174,980	350,554	Trump	–4,550
1.5%	NY-19	182,965	177,569	368,128	Biden	5,396
1.5%	CA-48	199,791	193,832	401,845	Biden	5,959
1.6%	IL-17	145,987	150,764	303,947	Trump	–4,777
1.6%	TX-10	203,975	210,770	421,398	Trump	–6,795
1.8%	AZ-1	187,182	180,673	374,808	Biden	6,509
1.8%	TX-23	146,559	151,964	302,498	Trump	–5,405
1.9%	TX-15	119,784	115,315	237,719	Biden	4,469
2.3%	IN-5	200,376	209,669	420,107	Trump	–9,293
2.5%	IL-14	203,741	193,889	407,226	Biden	9,852
2.7%	TX-21	220,572	232,949	460,886	Trump	–12,377
2.8%	PA-17	221,555	209,683	438,251	Biden	11,872
2.9%	TX-31	192,599	204,096	405,541	Trump	–11,497
2.9%	NJ-2	183,250	194,366	383,596	Trump	–11,116
3.0%	PA-10	189,804	201,367	398,383	Trump	–11,563
3.0%	CA-10	154,990	146,084	309,075	Biden	8,906
3.0%	TX-6	164,746	175,101	344,906	Trump	–10,355
3.2%	FL-27	178,643	167,420	348,765	Biden	11,223
3.2%	OH-1	185,947	198,433	390,655	Trump	–12,486
3.3%	MI-3	194,585	207,752	411,223	Trump	–13,167
3.4%	OH-13	171,221	159,955	336,690	Biden	11,266
3.5%	IA-1	199,259	213,601	421,596	Trump	–14,342
3.5%	IL-13	158,905	170,490	338,909	Trump	–11,585
3.9%	WA-3	198,429	214,391	426,189	Trump	–15,962
4.0%	NV-4	174,851	161,363	343,613	Biden	13,488
4.0%	TX-34	106,771	98,462	207,395	Biden	8,309
4.1%	IA-2	193,437	209,858	411,705	Trump	–16,421
4.1%	OR-4	238,619	219,851	474,234	Biden	18,768
4.1%	NY-2	168,779	183,204	356,856	Trump	–14,425
4.1%	FL-13	211,530	194,721	411,893	Biden	16,809
4.2%	AZ-6	204,365	222,166	433,904	Trump	–17,801
4.2%	NY-1	182,793	198,826	387,224	Trump	–16,033
4.4%	TX-28	125,755	115,160	243,915	Biden	10,595
4.4%	MI-5	189,245	173,179	368,480	Biden	16,066
4.4%	VA-1	213,535	233,398	455,418	Trump	–19,863
4.4%	PA-8	169,148	184,892	358,252	Trump	–15,744
4.5%	OH-10	172,479	188,657	368,121	Trump	–16,178
4.6%	MI-11	237,696	216,799	461,648	Biden	20,897
4.6%	MI-6	180,139	197,508	385,582	Trump	–17,369
4.7%	WI-3	184,306	202,659	394,654	Trump	–18,353
4.8%	VA-2	186,427	169,365	363,766	Biden	17,062
4.9%	PA-7	199,520	180,936	386,112	Biden	18,584
5.1%	NY-18	184,181	166,448	356,255	Biden	17,733

(Continued)

Table 4.55 (Continued)

Percent margin	District	Biden	Trump	Total	Winner	Margin (D–R)
5.3%	NJ-5	224,937	202,421	435,160	Biden	22,516
5.5%	OK-5	140,370	156,645	305,082	Trump	–16,275
5.5%	CA-22	146,467	163,584	316,836	Trump	–17,117
5.5%	TX-24	180,609	161,671	347,875	Biden	18,938
5.6%	FL-26	164,356	184,019	351,018	Trump	–19,663
5.7%	CO-3	200,886	224,996	436,225	Trump	–24,110
5.9%	PA-1	233,462	207,442	446,826	Biden	26,020
6.1%	OH-12	206,168	232,995	447,243	Trump	–26,827
6.1%	NH-1	213,662	188,999	410,379	Biden	24,663
6.1%	SC-1	197,130	222,867	427,597	Trump	–25,737
6.5%	NC-8	177,876	202,785	386,816	Trump	–24,909
6.6%	GA-7	199,533	174,869	380,036	Biden	24,664
6.7%	NE-2	176,468	154,377	339,666	Biden	22,091
6.7%	WA-8	218,274	190,801	422,538	Biden	27,473
6.7%	NJ-11	237,986	208,018	454,000	Biden	29,968
7.0%	MN-2	226,589	197,005	434,216	Biden	29,584
7.0%	FL-9	232,318	201,924	439,502	Biden	30,394
7.5%	CA-42	170,481	198,259	376,001	Trump	–27,778
7.7%	ME-2	168,696	196,725	376,349	Trump	–28,029
7.9%	CA-50	166,841	195,430	370,905	Trump	–28,589
7.9%	NC-9	187,012	219,265	411,994	Trump	–32,253
	Total	**13,703,300**	**13,799,454**	**28,025,776**		**–96,154**

in 12 states where the Republican percentage of the two-party presidential vote was in the narrow eight-point range between 46% and 54%, as shown in table 1.6.

Similarly, in 2016, almost all (94%) of the general-election campaign events (384 of 399) occurred in 12 states where the Republican percentage of the two-party presidential vote was in the narrow range between 47% and 55%, as shown in table 1.8.

If the congressional-district method were used in presidential elections, the promises made by candidates and the actions made by sitting presidents would tend to emphasize decisions of interest to a handful of very localized areas, namely the presidentially close districts. These policies might include federal support for specific local infrastructure projects (e.g., bridges, roads, harbors, airports, waterways, levees), the awarding of job-generating government contracts to specific local employers, and placement of job-generating government facilities (e.g., regional offices of agencies, military bases) employing large numbers of local people.

Note that, under the district system, presidential candidates would probably de-emphasize efforts to win the senatorial electors who would be available in larger closely divided battleground states.

The average state has about 10 electoral votes, but the average closely divided battleground state has about 13 electoral votes.[139] Thus, winning a battleground state's two

[139] Note that the closely divided battleground states are, on average, bigger than the average-sized state, because very few small states are competitive in presidential elections. Only three of the battleground states in 2020, 2016, and 2012 (New Hampshire, Nevada, and Iowa) had fewer than 10 electoral votes.

Table 4.56 The 63 congressional districts where the 2016 presidential race was within 8%

Percent margin	District	Clinton	Trump	Total	Winner	Margin (D–R)
0.1%	OR-4	180,872	180,318	406,334	Clinton	554
0.2%	PA-8	185,685	186,607	388,182	Trump	–922
0.6%	PA-6	177,639	175,340	372,927	Clinton	2,299
0.7%	IL-17	133,999	136,017	290,469	Trump	–2,018
0.9%	NJ-11	182,334	185,696	384,811	Trump	–3,362
1.0%	NV-3	151,552	154,814	325,602	Trump	–3,262
1.0%	AZ-1	132,874	135,928	291,816	Trump	–3,054
1.1%	NJ-7	180,525	176,386	374,404	Clinton	4,139
1.1%	NJ-5	173,969	178,058	367,796	Trump	–4,089
1.2%	KS-3	161,479	157,304	349,308	Clinton	4,175
1.2%	MN-2	171,396	176,088	382,067	Trump	–4,692
1.4%	TX-7	124,722	121,204	258,953	Clinton	3,518
1.5%	GA-6	155,087	160,029	338,532	Trump	–4,942
1.6%	NH-1	173,344	179,259	377,574	Trump	–5,915
1.7%	CA-48	152,035	146,595	320,355	Clinton	5,440
1.7%	FL-25	126,668	131,320	266,103	Trump	–4,652
1.8%	TX-32	134,895	129,701	283,843	Clinton	5,194
1.9%	NY-18	146,188	152,142	313,121	Trump	–5,954
2.2%	NE-2	131,030	137,564	291,680	Trump	–6,534
2.3%	PA-7	190,599	181,455	389,508	Clinton	9,144
2.4%	NH-2	175,182	166,531	366,722	Clinton	8,651
2.9%	CT-2	165,799	155,975	341,409	Clinton	9,824
2.9%	CA-10	116,335	109,145	245,251	Clinton	7,190
2.9%	WA-8	153,167	143,403	332,795	Clinton	9,764
3.2%	FL-13	178,892	167,348	364,512	Clinton	11,544
3.3%	VA-2	147,217	158,067	326,515	Trump	–10,850
3.4%	TX-23	115,157	107,273	233,235	Clinton	7,884
3.5%	IA-3	178,937	192,960	402,164	Trump	–14,023
3.5%	IA-1	176,535	190,410	395,633	Trump	–13,875
3.6%	NY-24	151,021	139,763	310,431	Clinton	11,258
3.8%	IL-14	154,058	167,327	347,995	Trump	–13,269
4.1%	IA-2	170,796	186,384	384,495	Trump	–15,588
4.1%	OR-5	180,404	164,548	389,157	Clinton	15,856
4.1%	CT-5	161,142	147,901	323,202	Clinton	13,241
4.3%	MI-5	162,982	148,953	329,869	Clinton	14,029
4.3%	MI-11	177,143	194,245	394,639	Trump	–17,102
4.5%	WI-3	160,999	177,172	363,271	Trump	–16,173
4.6%	NJ-2	147,656	162,486	323,778	Trump	–14,830
4.8%	AZ-2	156,676	141,196	322,180	Clinton	15,480
4.9%	NV-4	137,070	123,380	276,932	Clinton	13,690
5.4%	IL-13	141,540	159,013	324,629	Trump	–17,473
5.4%	CA-45	162,449	144,713	329,076	Clinton	17,736
6.1%	NY-3	178,288	156,942	348,016	Clinton	21,346
6.1%	NJ-3	165,090	187,703	368,671	Trump	–22,613
6.2%	TX-24	122,872	140,128	279,514	Trump	–17,256
6.3%	GA-7	132,012	150,845	299,946	Trump	–18,833
6.5%	VA-7	172,544	198,032	394,604	Trump	–25,488
6.5%	OH-13	163,600	142,738	322,976	Clinton	20,862
6.6%	OH-1	160,988	185,025	363,580	Trump	–24,037
6.6%	CA-25	137,491	119,249	275,282	Clinton	18,242

(Continued)

Table 4.56 (Continued)

Percent margin	District	Clinton	Trump	Total	Winner	Margin (D–R)
6.6%	UT-4	89,796	108,421	280,350	Trump	–18,625
6.7%	PA-16	140,186	161,763	321,358	Trump	–21,577
6.7%	MI-8	164,436	189,891	378,440	Trump	–25,455
6.7%	NY-19	140,517	162,266	323,115	Trump	–21,749
6.8%	IL-6	177,549	152,935	360,943	Clinton	24,614
6.9%	RI-2	121,843	105,033	243,824	Clinton	16,810
7.1%	WA-3	134,009	157,359	327,002	Trump	–23,350
7.2%	OH-10	153,346	178,674	351,828	Trump	–25,328
7.2%	FL-7	186,658	160,178	367,614	Clinton	26,480
7.4%	CA-49	159,081	135,576	317,552	Clinton	23,505
7.5%	PA-15	148,078	173,596	338,011	Trump	–25,518
7.7%	MI-9	183,085	155,597	357,076	Clinton	27,488
7.8%	TX-22	135,525	159,717	308,653	Trump	–24,192
	Total	**9,805,043**	**9,911,686**	**21,129,630**		**–106,643**

senatorial electoral votes requires campaigning among about 5½ times more people than winning a congressional district's single electoral vote.[140]

Because a candidate would have to run a statewide campaign in order to win the two senatorial electoral votes, the pursuit of these particular electoral votes would not be cost-effective when compared to the cost of winning at the district level.

One reason why so few congressional districts are competitive in presidential races is that the dominant political party in a state's government usually tries to draft districts to its advantage. This gerrymandering typically involves creating numerous noncompetitive districts where the dominant party is safe, but not too safe (perhaps giving the dominant party a comfortable 55%–45% advantage), while simultaneously creating a significantly smaller number of noncompetitive districts that are excessively safe for the opposing party (say, giving the minority party an advantage of 70%–30% or even more).[141]

If the presidential election were based on congressional districts, the incentive for, and the impact of, gerrymandering would be even greater than it is today.

Moreover, the perverse effect of many efforts to reform the redistricting process is to create even more noncompetitive districts. The reason is that many reform measures require districts to be geometrically compact, to disrupt as few local government boundaries as possible, and to create "communities with common interests." Districts drawn in compliance with criteria such as these will frequently contain like-minded people—which is another way of saying that they will be politically one-sided and noncompetitive.[142] In many cases, the only way to achieve competitiveness (in the context of the single-member

[140] Note that a state with 13 electoral votes has about 11 times more people than an average congressional district.

[141] In states with divided government, gerrymandering is sometimes done to protect the congressional incumbents of both parties, thereby creating a great many noncompetitive districts.

[142] Gimpel, James G. and Harbridge-Yong, Laurel. 2020, Conflicting Goals of Redistricting: Do Districts That Maximize Competition Reckon with Communities of Interest? *Election Law Journal: Rules, Politics, and Policy*. Volume 19, number 4. https://www.liebertpub.com/doi/10.1089/elj.2019.0576

districts) is to allow the creation of irregularly shaped districts so that competitiveness can be the top priority (after, of course, population equality).[143]

In summary, the congressional-district method:

- *would not* accurately reflect the nationwide popular vote;
- *would worsen* the current situation in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President; and
- *would not* make every vote equal.

4.3.7. Prospects of adoption for the congressional-district method

This method could be adopted either on a state-by-state basis (as Maine and Nebraska have done) or as a federal constitutional amendment.

Adoption on a state-by-state basis

There are two prohibitive practical impediments to the adoption of the congressional-district method on a state-by-state basis.

First, a state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all.

In his January 12, 1800, letter to Virginia Governor (and later President) James Monroe, Thomas Jefferson argued that Virginia should switch from its then-existing district system to a statewide winner-take-all system because of the political disadvantage suffered by states (such as Virgina) that divided their electoral votes by districts in a political environment in which other states used the winner-take-all method:

> "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."[144] [Emphasis added; spelling and punctuation as per original]

Indeed, the now-prevailing winner-take-all method of awarding electoral votes was adopted by Virginia in 1800 and became widespread in the period between 1800 and 1830 precisely because dividing a state's electoral votes diminishes the state's political influence relative to states employing the winner-take-all method.

Once the winner-take-all method became established, state-by-state adoption of this method of awarding electoral votes would penalize first movers and early adopters.

This point was made during a debate in Florida in 1992 on adopting the congressional-district method.

> "[Opponents of the bill] say they are also worried that the proposal would weaken the state's growing political clout. If Florida is the only large state to

[143] A federal law, not the U.S. Constitution, requires the use of single-member congressional districts. The use of multi-member congressional districts in conjunction with ranked-choice voting (RCV) has been proposed as one possible way to make congressional races more competitive.

[144] See section 2.6.1 for more extensive quotations from this letter.

> abolish the winner-take-all system, they argue, candidates will be less inclined to campaign here and take the state's needs into account."[145]

The proposal passed the state House and had the Governor's support, but ultimately failed because of concern that it would reduce the state's political importance in presidential elections.[146]

A second practical impediment to state-by-state adoption of this method of awarding electoral votes is that if a significant number of states ever were to start adopting this method, each additional adherent would increase the influence of the remaining winner-take-all states. That, in turn, would decrease the incentive of the remaining states to adopt the congressional-district method. Thus, a state-by-state adoption process would become a self-arresting process, because each new adherent would increase the influence of the remaining winner-take-all states.

Adoption as a federal constitutional amendment

Both of the above obstacles to adoption of the congressional-district method would, of course, be eliminated if it were adopted in the form of a federal constitutional amendment.

4.4. ELIMINATING SENATORIAL ELECTORS

4.4.1. Summary

- A federal constitutional amendment would be adopted to eliminate the two senatorial electors, thereby aligning each state's number of presidential electors more closely to its population.
- The elimination of each state's senatorial electors would not have changed the outcome in three of the five presidential elections in which the Electoral College winner did not receive the most popular votes nationwide. For example, the candidate who lost the national popular vote in 2016 (i.e., Donald Trump) would still have won the Electoral College by a comfortable margin even if there had been no senatorial electors. The two elections in which elimination of senatorial electors would have mattered were exceptional—namely, those in which the winner's margin was either zero or one electoral vote. In 2020, the elimination of senatorial electoral votes would have reduced Biden's margin by a mere two electoral votes.
- Eliminating each state's two senatorial electors would not make every voter in every state relevant in presidential elections. Given that the state-by-state winner-take-all method of awarding electoral votes would still be in place, the

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[145] Rohter, Larry. 1992. Florida is rethinking the way presidents are elected. *New York Times*. June 7, 1992. https://www.nytimes.com/1992/06/07/us/1992-campaign-electoral-college-florida-rethinking-way-presidents-are-elected.html

[146] As it happened, George W. Bush carried 13 of Florida's 23 congressional districts in the 2000 presidential election, and Gore carried 10. If the congressional-district method had been used in Florida in 2000, Gore would have received 10 of Florida's 25 electoral votes (instead of zero) and would therefore have won a majority of the Electoral College, and would therefore have become President.

general-election campaign would continue to be concentrated on the dozen-or-so closely divided battleground states. The removal of two electoral votes from each state would not alter the list of states that are closely divided—nor their pivotal importance in winning the presidency. Thus, this proposal would not improve upon the current situation in which three out of four states and about 70% of voters in the United States are ignored by the presidential campaigns.

- Eliminating each state's two senatorial electors would not make every vote equal. Four of the current system's sources of inequality—ranging from 1.39-to-1 to 210-to-1—would remain, including those caused by imprecision in apportioning U.S. House seats (and hence electoral votes), voter-turnout differences at the state level, intra-decade population changes, and the power of a vote in deciding the national outcome.

4.4.2. Description of constitutional amendment to eliminate senatorial electors

Currently, the U.S. Constitution gives each state a number of presidential electors equal to its number of U.S. Representatives plus two additional electors (corresponding to the state's U.S. Senators).

Elimination of each state's two senatorial electors would require a constitutional amendment, because the original Constitution specifies the number of electoral votes to which each state is entitled.

The 23rd Amendment (ratified in 1961) specifies the number of electoral votes to which the District of Columbia is entitled.

4.4.3. History of suggestions to eliminate each state's two senatorial electors

In his 2023 book on the Electoral College, Thomas E. Weaver said that one

> "proposed reform is to reduce the number of electors to be equal to the number of Representatives, plus one for the District of Columbia. Currently, all states receive electors based roughly on its population plus two. This 'plus two,' as we have seen, has a distorting impact, giving disproportionate representation to small-population states like Wyoming and North Dakota, while minimizing the influence of large-population states like California."[147]

4.4.4. Eliminating senatorial electors would not create a system that accurately reflects the national popular vote.

The elimination of each state's senatorial electors would not have changed the outcome in three of the five presidential elections in which the winner of the Electoral College did not receive the most popular votes nationwide (2016, 2000, 1888, 1876, and 1824).

We discuss them in detail below.

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[147] Weaver, Thomas E. 2023. *The Electoral College: A Biography of America's Peculiar Creation Through the Eyes of the People Who Shaped It*. New York, NY: Post Hill Press. Page 219.

2016 election

In 2016, if there had been no senatorial electors, Donald Trump, the candidate who lost the national popular vote, would still have won the Electoral College by a comfortable 246–190 majority.

Trump's actual 306–232 margin in the Electoral College in 2016 had nothing to do with senatorial electors. Like almost all presidential victories, it happened because the winning candidate swept the closely divided battleground states—and, in 2016 in particular, the bigger battleground states.

Trump swept eight of the 12 closely divided battleground states by a 125–32 electoral-vote margin. He won Florida (29 electoral votes), Pennsylvania (20), Ohio (18), Michigan (16), North Carolina (15), Arizona (11), Wisconsin (10), and Iowa (6).

In contrast, Clinton won only four of the 12 closely divided battlegrounds states. Moreover, Clinton's states were of modest size, namely Virginia (13 electoral votes), Colorado (9), Nevada (6), and New Hampshire (4).

In 2016, there were three decisive states. Trump won Michigan by 10,704 votes, Wisconsin by 22,748 votes, and Pennsylvania by 44,292 votes—a total of 77,744 votes out of a total of more than 13 million votes cast in these three states.

Trump's electoral-vote margin was 306–232 (with 270 electoral votes being required for election).

Trump won 30 states, while Hillary Clinton won 20 states and the District of Columbia.

If the two senatorial electors were eliminated, there would be only 436 electoral votes (instead of 538), and 219 electoral votes would have constituted a majority of the Electoral College.

Table 4.57 compares the result of the 2016 election—with and without senatorial electors.

- Column 1 shows Trump's percentage of the two-party vote in each state. The table is arranged in descending order of Trump's percentage.
- Column 2 shows the number of general-election campaign events in each state.
- Columns 4 and 5, respectively, show Trump's and Clinton's electoral votes under the actual allocation of electoral votes among the states in 2016.[148]
- Column 6 and 7, respectively, show Trump's and Clinton's electoral votes if each state and the District of Columbia had two fewer electoral votes.[149]

As can be seen from the bottom line of the table, Trump would still have won a comfortable 246–190 majority in the Electoral College in the absence of senatorial electors.

In short, it was the state-by-state winner-take-all method of awarding electoral votes—not the impact of senatorial electors—that elected Trump in 2016.

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[148] See table 1.8 for the 2016 two-party popular-vote counts.

[149] Maine's electoral vote in the last two columns of the table is divided 1–1, because Maine divides its electoral votes by congressional district, and Trump carried the state's 2nd congressional district. The electoral votes in this table do not reflect the electoral votes cast by "grandstanding" faithless electors in 2016 (section 3.7.6).

Table 4.57 2016 Election with—and without—senatorial electoral votes

R %	Events	State	Actual R-EV	Actual D-EV	R-EV without senatorial electors	D-EV without senatorial electors
76%	0	Wyoming	3		1	
72%	0	West Virginia	5		3	
70%	0	North Dakota	3		1	
69%	0	Oklahoma	7		5	
68%	0	Idaho	4		2	
66%	0	South Dakota	3		1	
66%	0	Kentucky	8		6	
64%	0	Alabama	9		7	
64%	0	Arkansas	6		4	
64%	0	Tennessee	11		9	
64%	2	Nebraska	5		3	
62%	1	Utah	6		4	
61%	0	Kansas	6		4	
61%	0	Montana	3		1	
60%	0	Louisiana	8		6	
60%	2	Indiana	11		9	
60%	2	Missouri	10		8	
59%	1	Mississippi	6		4	
58%	0	Alaska	3		1	
57%	0	South Carolina	9		7	
55%	21	Iowa	6		4	
55%	1	Texas	38		36	
54%	48	Ohio	18		16	
53%	3	Georgia	16		14	
52%	55	North Carolina	15		13	
52%	10	Arizona	11		9	
51%	71	Florida	29		27	
50%	14	Wisconsin	10		8	
50%	54	Pennsylvania	20		18	
50%	22	Michigan	16		14	
49.8%	21	New Hampshire		4		2
49%	2	Minnesota		10		8
49%	17	Nevada		6		4
48%	3	Maine	1	3	1	1
47%	19	Colorado		9		7
47%	23	Virginia		13		11
45%	3	New Mexico		5		3
44%	0	Delaware		3		1
44%	0	Oregon		7		5
43%	1	Connecticut		7		5
43%	0	New Jersey		14		12
42%	0	Rhode Island		4		2
41%	1	Washington		12		10
41%	1	Illinois		20		18
38%	0	New York		29		27
36%	0	Maryland		10		8
35%	0	Massachusetts		11		9
35%	0	Vermont		3		1
34%	1	California		55		53
33%	0	Hawaii		4		2
4%	0	D.C.		3		1
49%	**399**	**Total**	**306**	**232**	**246**	**190**

1888 election

Similarly, if there had been no senatorial electors in 1888, the candidate who lost the national popular vote (Benjamin Harrison) would still have won the Electoral College by a comfortable margin.

In 1888, Harrison won the Electoral College by a margin of 233–168, even though incumbent President Grover Cleveland won the national popular vote.

Harrison won 20 states, while Cleveland won 18.

If the two senatorial electors had been eliminated, Harrison would still have won the Electoral College by the comfortable margin of 193–132.

Harrison's margin in the Electoral College in 1888 did not come from senatorial electors. It was based on winning one state, namely the closely divided battleground state of New York (which had 36 electoral votes at the time). Harrison received 650,338 popular votes (49.2%) in New York, while Cleveland received 635,965 votes (48.1%)—a difference of 14,373 popular votes out of a total of 1,321,270 votes cast in New York.

It was the state-by-state winner-take-all method of awarding electoral votes—not the impact of senatorial electors—that elected Benjamin Harrison in 1888.

1824 election

In 1824, Andrew Jackson received more popular votes nationwide than any of his opponents.

Jackson also led in electoral votes (although he did not win a majority of the electoral votes). Specifically, Jackson received 99 electoral votes, while Adams received 84 and two other candidates received 78.

If there had been no senatorial electors, Jackson still would have led Adams in electoral votes, but still would have not won the required absolute majority of electoral votes. Specifically, Jackson carried eight of the 18 states that permitted their voters to vote for presidential electors, while Adams carried seven. Jackson won one of the six states where the legislature chose the state's presidential electors (South Carolina), and Adams won three such states (Delaware, Vermont, and New York). Jackson and Adams split Louisiana, and William Crawford won Georgia.

The situation in 1824 was admittedly complicated, because there were four major candidates who received electoral votes, because six of the 24 states did not hold popular elections for President, and because the presidential election was eventually thrown into the U.S. House of Representatives (from which John Quincy Adams emerged as President).[150]

Despite this atypical situation, senatorial electors were not the reason that Jackson failed to become President in 1824.

Thus, in three divergent elections (2016, 1888, and 1824), senatorial electors were not even arguably relevant to the fact that the winner of the national popular vote did not win the presidency.

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[150] Ratcliffe, Donald. 2015. *The One-Party Presidential Contest: Adams, Jackson, and 1824's Five-Horse Race*. Lawrence, KS: University Press of Kansas. Page 21.

1876 election

Senatorial electors arguably mattered in two presidential elections in which the winner won with only *one or zero* more electoral votes than the minimum required for election.

In 1876, Rutherford B. Hayes won the Electoral College by a margin of 185–184 electoral votes—with 185 being the minimum required for election. That is, Hayes won the Electoral College with no margin to spare. Specifically, Hayes won 21 states, while Samuel J. Tilden won 17. Thus, Hayes won eight more electoral votes than Tilden because of senatorial electors.

Although senatorial electors were the proximate cause of the national outcome in 1876, they were realistically not the cause-in-fact.

In a practical political sense, the cause-in-fact was the fact that Hayes carried three states (with a combined total of 19 electoral votes) by miniscule popular-vote margins:

- 889 popular votes in South Carolina (7 electoral votes);
- 922 popular votes in Florida (4 electoral votes); and
- 4,807 popular votes in Louisiana (8 electoral votes).[151]

Hayes had a margin of 7,668 popular votes in the three disputed states. Tilden won the national popular vote by a margin of 254,694. Each of these 7,668 votes for Hayes was 33 times more important than the 254,694 votes that Tilden received from voters in other states.

As discussed in Michael Holt's book *By One Vote: The Disputed Presidential Election of 1876*,[152] Hayes won his one-vote lead in the Electoral College after a specially constituted Electoral Commission awarded him all of the disputed states.[153]

Had the Commission sided with Tilden in even one of the disputed states, he would have prevailed.[154]

2000 election

George W. Bush won the Electoral College with 271 electoral votes in 2000—with 270 being required for election.

Bush won 30 states, while Al Gore won 20 states and the District of Columbia—thus giving Bush the advantage of 18 senatorial electors.

Although senatorial electors were the proximate cause of Bush's victory in the Electoral College in 2000, no one views the controversy as revolving around senatorial electors.

The cause-in-fact of the outcome in the Electoral College in 2000, was the extremely

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[151] Congressional Quarterly. 2002. *Presidential Elections 1789–2000*. Washington, DC: CQ Press. Page 125.

[152] Holt, Michael F. 2008. *By One Vote: The Disputed Presidential Election of 1876*. Lawrence, KS: University Press of Kansas.

[153] Morris, Roy B. 2003. *Fraud of the Century: Rutherford B. Hayes, Samuel Tilden, and the Stolen Election of 1876*. Waterville, ME: Thorndike Press.

[154] The eligibility of an Oregon presidential elector and a Vermont presidential elector (both postmasters) was also disputed in 1876. The Commission sided with Hayes on the eligibility issues on both cases. Holt, Michael F. 2008. *By One Vote: The Disputed Presidential Election of 1876*. Lawrence, KS: University Press of Kansas.

close vote in Florida (with 25 electoral votes) and the state-by-state winner-take-all method of awarding electoral votes.

Al Gore won the national popular vote by 543,816 votes. However, Bush won the presidency because he carried Florida by 537 popular votes. Each of those 537 popular votes in Florida was 1,013 times more important than the 543,816 votes cast in other states.

In summary, in three of the five elections in which the national popular vote winner did not win the presidency, senatorial electors played no role. In the two elections in which the winner won with only *one or zero* more electoral votes than the minimum required for election, senatorial electors were the proximate cause, but not the cause-in-fact, of the final outcome.

The University of Texas Electoral College Study has conducted extensive computer simulations of presidential elections. Its study entitled "Inversions in US Presidential Elections: 1836–2016" concluded:

> "Although the '+2' Electors feature has received much attention, reversing it leaves the chance of an inversion almost unchanged in a close election."[155]
>
> "**The probability of an inversion**, within a 1 percentage point [national popular vote] margin **changes negligibly from 42.4 percent to 41.6 percent with the removal of the two senator-linked electors**."[156] [Emphasis added]
>
> "No change to the Electoral College other than a national popular vote would eliminate the risk of electoral inversions [including] removing the two Electors corresponding to Senators."[157] [Emphasis added]

4.4.5. Eliminating senatorial electors would not make every voter in every state politically relevant.

Given that the current state-by-state winner-take-all method of awarding electoral votes would remain in place after eliminating the senatorial electors, the general-election campaign for President would continue to concentrate on the closely divided battleground states. The removal of two electoral votes from each state would not change the list of closely divided states—nor their critical role in winning the presidency.

As can be seen in column 2 of table 4.57, almost all the general-election campaign events were concentrated in states where the two-party vote for President was close. Specifically, the campaign was concentrated on the states in the middle of the table where the two-party vote (column 1 of the table) was in the eight percentage-point range between

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[155] Geruso, Michael; Spears, Dean; and Talesara, Ishaana. 2019. *Inversions in US Presidential Elections: 1836-2016.* University of Texas Electoral College Study Brief No. 2. September 6, 2019. http://utecs.org/wp-content/uploads/Brief2.pdf

[156] Geruso, Michael; Spears, Dean; and Talesara, Ishaana. 2022. Inversions in US Presidential Elections: 1836–2016. *American Economic Journal: Applied Economics*. Volume 14. Number 1. January 2022. Pages 327–357. Page 349. https://www.aeaweb.org/articles?id=10.1257/app.20200210

[157] Geruso, Michael; Spears, Dean; and Talesara, Ishaana. 2019. *Inversions in US Presidential Elections: 1836-2016.* University of Texas Electoral College Study Brief No. 2. September 6, 2019. http://utecs.org/wp-content/uploads/Brief2.pdf

47% and 55%. The popular vote in those states would, of course, have been close even if there were no senatorial electors. Therefore, a 2016 presidential campaign without senatorial electors would have continued to concentrate on these same closely divided battleground states in the middle of the table. Meanwhile, the remaining three-quarters of the states would have continued to be politically irrelevant in the general-election campaign for President.

In summary, the proposal to eliminate senatorial electors would do nothing to improve upon the current situation in which three out of four states and about 70% of voters in the United States are ignored by the presidential campaigns.

4.4.6. Eliminating senatorial electors would not make every vote equal.

Eliminating each state's two senatorial electors would indeed align a state's electoral votes much more closely to its population.

However, every vote still would not be equal because four of the current system's five sources of inequality would remain, namely the

- 1.72-to-1 inequality in the value of a vote because of the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) among the states;
- 1.67-to-1 inequality in the value of a vote created by voter-turnout differences at the state level;
- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census; and
- 210-to-1 inequality in the value of a vote based on its ability to decide the national outcome.

Inequality because of the imprecision of the process of apportioning U.S. House seats

First, a vote cast in certain states has less weight than a vote cast in certain other states, because of inequalities created by imprecision in apportioning U.S. House seats (and hence electoral votes). The 1.72-to-1 variation in the weight of a vote would remain (table 1.35).

Inequalities because of differences in voter turnout among states

Second, a voter in a low-turnout state has greater voting power than a voter in a high-turnout state.

Differences in voter turnout at the state level create variations of up to 1.67-to-1 in the value of a vote in electing the state's senatorial electors (table 1.41).

Inequalities because of population changes occurring during the decade after each census

Third, another source of variation in the value of a vote from state to state arises from the fact that state populations change during the decade after each census.

These differences create variations of up to 1.39-to-1 in the value of a vote (table 1.40).

Inequalities due to differences in the number of popular votes that enable a candidate to win an electoral vote

Fourth, the elimination of each state's two senatorial electors would not change the current state-by-state winner-take-all method of awarding electoral votes. Therefore, it would do nothing to change the 210-to-1 inequality due to differences in the number of popular votes that enable a candidate to win an electoral vote (section 1.4.5).

4.4.7. Prospects of adoption of a constitutional amendment to eliminate senatorial electors

The system resulting from the elimination of each state's two senatorial electors:

- *would not* accurately reflect the nationwide popular vote;
- *would not* make every vote equal; and
- *would not* improve upon the current state-by-state winner-take-all method of awarding electoral votes in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President.

That is, elimination of senatorial electors would not satisfy any of these three criteria.

As to the first criterion, elimination of senatorial electors would have prevented a divergent election in only two of the five elections where it occurred. Moreover, those two cases (1876 and 2000) were elections in which the eventual winner received only zero or one electoral vote above the minimum required.

The partial delivery of this single benefit seems unlikely to generate sufficient political energy to pass a federal constitutional amendment.

Thirteen states can prevent ratification of a federal constitutional amendment. There are 14 states that have three or four electoral votes after the 2020 census. These 14 states would end up with two fewer electoral votes if the senatorial electors were eliminated. That is, they would end up with one or two electoral votes instead of their current three or four. Thirteen of these 14 states are one-party states in presidential elections (and hence receive no attention from presidential candidates under the current system). The elimination of senatorial electors would, of course, not change the political makeup of these states—that is, it would not make these states politically competitive and therefore politically relevant in presidential elections. As a result, these 14 low-population states would realize no particular benefit from the elimination of senatorial electors.

4.5. THE NATIONAL BONUS PLAN

4.5.1. SUMMARY

- A federal constitutional amendment could be adopted to award 102 at-large (bonus) presidential electors to the candidate receiving the most popular votes in all 50 states and the District of Columbia. All of the other elements of the current system would remain.
- A bonus of 102 at-large electoral votes would not be sufficient to accurately reflect the nationwide popular vote in many plausible election scenarios.

- Because 84% of the electoral votes under the National Bonus Plan (that is, 538 of 640) would still be awarded on a state-by-state winner-take-all basis, presidential candidates would continue to pay significantly more attention to voters in closely divided states, and correspondingly less attention to voters in safe states.
- Because the National Bonus Plan retains all existing features of the current Electoral College, all five of the current system's sources of inequality would remain.

4.5.2. Description of the National Bonus Plan

A federal constitutional amendment would be adopted to award 102 at-large presidential electors to the candidate receiving the most popular votes in all 50 states and the District of Columbia. All the other elements of the current Electoral College would be retained.

4.5.3. History of the National Bonus Plan

On several occasions over several decades, historian Arthur Schlesinger, Jr. and others have advocated a constitutional amendment that would give a bonus of 102 electoral votes to the candidate winning the national popular vote—while retaining all the other elements of the current Electoral College.[158]

The Twentieth Century Fund published several analyses of the National Bonus Plan in the 1970s.[159,160]

In 1978, Senator Birch Bayh (D–Indiana) introduced a constitutional amendment with this 102-electoral-vote bonus feature,[161] and Representative Jonathan Bingham (D–New York) did so in 1979.[162]

In 2001, Representative James A. Leach (R–Iowa) introduced a constitutional amendment with the 102-electoral-vote bonus and some other changes (House Joint Resolution 25).[163]

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[158] See Schlesinger, Arthur Jr. 2000. It's a mess, but we've been through it before. *CNN*. November 13, 2000. http://www.cnn.com/ALLPOLITICS/time/2000/11/20/mess.html

[159] Twentieth Century Fund Task Force. 1977. *The National Bonus Plan*. See also Twentieth Century Fund. 1978. *Winner-take-all*. New York, NY: Holmes & Meier.

[160] For additional comments on the National Bonus Plan, see Jacobson, Arthur J. and Rosenfeld, Michel (editors). 2002. *The Longest Night: Polemics and Perspectives on Election 2000*. Berkeley, CA: University of California Press. Pages 553–554.

[161] Senate Joint Resolution 123. 95th Congress. March 17, 1978. https://www.congress.gov/bill/95th-congress/senate-joint-resolution/123

[162] House Joint Resolution 223. 96th Congress. February 26, 1979. https://www.congress.gov/bill/96th-congress/house-joint-resolution/223

[163] House Joint Resolution 25. 107th Congress. March 1, 2001. https://www.congress.gov/bill/107th-congress/house-joint-resolution/25

4.5.4. The National Bonus Plan may, or may not, accurately reflect the national popular vote.

In evaluating the Leach proposal in 2003:

> "Awarding the 102 national bonus electoral votes to the popular vote winners would eliminate [a divergent election] in almost **every conceivable election scenario**."[164] [Emphasis added]

However, Neale's paper did not actually analyze any specific election scenario—much less a wide-ranging collection of scenarios.

In 2016, Hillary Clinton won 232 presidential electoral votes, and Donald Trump won 306 electoral votes on Election Day.[165]

If the National Bonus Plan had been in place in 2016, there would have been 640 electoral votes (instead of the current 538), and the majority required to win would have been 321 (instead of the current 270).

If Clinton had been given a 102 electoral-vote bonus for winning the national popular vote, the result would have been 334 electoral votes for Clinton—28 more than Trump's 306. That is, the National Bonus Plan would have managed to deliver the presidency to the candidate who received the most popular votes nationwide—but just barely.

Now let's consider a hypothetical scenario that is very close to what actually happened in 2016.

In 2016, the race for President was exceedingly close in New Hampshire (with four electoral votes) and Minnesota (with 10 electoral votes).

- Trump lost New Hampshire by a 49.8%–50.2% margin in the two-party vote.
- Trump lost Minnesota by a 49.2%–50.8% margin in the two-party vote.

If Trump had won those two states with their combined total of 14 electoral votes, the electoral-vote count would have been a 320-320 tie in the Electoral College.

In short, the addition of a 102 electoral-vote bonus would not have prevented a tie in the Electoral College.

If the only change in the Constitution had been the addition of the 102 electoral-vote bonus, the 2016 election would then have been thrown into the U.S. House of Representatives (with each state having one vote). If all the members of the 50 delegations in the newly elected House had voted for their party's nominee in the contingent election on January 6, 2017, Donald Trump would have been elected President.

In short, the addition of a 102 electoral-vote bonus would not have prevented the second-place candidate from becoming President in a scenario based on a very small change in two states (Minnesota and New Hampshire).

The above hypothetical scenario suggests that a more wide-ranging analysis would be necessary to determine whether a bonus of 102 electoral votes is large enough to make the National Bonus Plan reliable.

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[164] Neale, Thomas H. 2003. *The Electoral College: Reform Proposals in the 107th Congress*. Congressional Research Service. February 7, 2003. Page 10.

[165] The 306–332 split in electoral votes does not reflect the votes cast on December 19, 2016, in the Electoral College by "grand-standing" faithless electors from Colorado, Washington State, and Texas.

4.5.5. The National Bonus Plan may, or may not, make every vote equal.

Because the National Bonus Plan retains all existing features of the current Electoral College system, all five of the current system's sources of inequality (section 1.4) would remain with respect to the core 538 electoral votes.

However, if the number of at-large presidential electors were large enough to result in the election of the national popular vote winner in "every conceivable election scenario," every vote throughout the country would, in fact, become equal.

4.5.6. The National Bonus Plan may, or may not, make every voter in every state politically relevant.

Because 84% of the electoral votes under the National Bonus Plan (that is, 538 of 640) would still be awarded on a state-by-state winner-take-all basis, presidential candidates would continue to pay significant attention to voters in closely divided states (and hence and correspondingly less attention to voters in safe states).

However, if the number of bonus presidential electors were large enough to result in the election of the national popular vote winner in "every conceivable election scenario," then every voter in every state would be politically relevant.

4.5.7. Variations in the National Bonus Plan

In 2023, Congressman Sean Casten (D–Illinois) and Congressman Earl Blumenauer (D–Oregon) proposed a constitutional amendment that would add 12 at-large Senators and 12 at-large presidential electors—both to be elected on a nationwide basis.[166]

Given that the addition of 102 presidential electors would be insufficient to eliminate the possibility of a second-place President, the addition of a mere 12 additional electors would be clearly insufficient.

4.5.8. Prospects of the National Bonus Plan

The National Bonus Plan can be described best as an attempt to create something approximating the operation of a national popular vote for President—while retaining the appearance of the current system.

It is clear that 102 at-large presidential electors would not be sufficient to guarantee delivery of the benefits of a national popular vote.

4.6. INCREASING THE NUMBER OF ELECTORAL VOTES

4.6.1. SUMMARY

- Congressman Sean Casten (D–Illinois) has introduced a bill to amend the existing federal law to increase the number of seats in the U.S. House of Representatives from 435 to 573—thereby increasing the number of electoral votes from 538 to 676.

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[166] House Joint Resolution 23. 118th Congress. January 31, 2023. https://www.congress.gov/bill/118th-congress/house-joint-resolution/23/all-info

- Increasing the number of electoral votes would not necessarily result in the Electoral College accurately reflecting the national popular vote. Both Donald Trump in 2016 and George W. Bush in 2000 still would have won a majority in a 676-member Electoral College.
- The creation of additional electoral votes would not alter the list of closely divided states—nor their all-important role in winning the presidency. Thus, the general-election campaign for President would continue to be concentrated on a handful of closely divided battleground states.
- All five of the current system's sources of inequality would remain after the size of the Electoral College was increased to 676.

4.6.2. Description of proposals to increase the number of electoral votes

The number of seats in the U.S. House of Representatives was set at 435 by a 1911 federal law (re-adopted in 1929).[167]

In 2023, Congressman Sean Casten (D–Illinois) introduced a bill (H.R. 643) in Congress to enlarge the House.[168]

Under the Casten bill, the number of seats in the House would be determined by dividing the country's total population by the population of the smallest state (Wyoming).

If this proposal had been in effect after the 2020 census, there would have been 573 members in the House.

Increasing the size of the House from 435 to 573 would increase the number of electoral votes from 538 to 676.

Representative Casten argued that these changes would make it less likely that the results of the electoral vote for president would differ from the popular vote.[169]

4.6.3. History of proposals to increase the number of electoral votes

Over the years, numerous other possible sizes of the House have been bandied about.

In 2023, the Making Every Vote Count Foundation suggested increasing the size of the House by 150 from 435 to 585.[170]

Spokane, Washington, attorney Will Schroeder has filed a lawsuit (dismissed by a U.S. District Court due to lack of standing) to force a change in the size of the U.S. House based on the size of the smallest state.[171]

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[167] An Act to provide for the fifteenth and subsequent decennial census and to provide for apportionment of Representatives in Congress. Approved June 18, 1929. 2 U.S.C. 2a(a). https://uscode.house.gov/view.xhtml?req=(title:2%20section:2a%20edition:prelim)

[168] Casten, Sean. 2023. H.R. 643. *Equal Voice Act*. https://www.congress.gov/bill/118th-congress/house-bill/643?q=%7B%22search%22%3A%22size+of+House+representatives%22%7D&s=1&r=1

[169] Saksa, Jim. 2023. Majority rules? This Democrat wants to talk about anti-majoritarian bias. *Roll Call*. January 31, 2023. https://rollcall.com/2023/01/31/majority-rules-this-democrat-wants-to-talk-about-anti-majoritarian-bias/

[170] Making Every Vote Count Foundation. 2023. *Improving Our Electoral College System*. November 2023. Page 15. https://static1.squarespace.com/static/5a7b7d95b7411c2b69bd666f/t/65b979baf7e8e411b2864a40/1706654139098/MEVC+Report.pdf

[171] Wohlfeil, Samantha. 2024. The U.S. House once had a representative for about every 30,000 people, but now lawmakers serve between 543,000 and 991,000 constituents — what happened? *Inlander*. February

4.6.4. Increasing the number of electoral votes to 676 would not create a system that accurately reflects the national popular vote.

Increasing the size of the U.S. House (and therefore the number of electoral votes) would not necessarily result in the Electoral College accurately reflecting the national popular vote.

Both Donald Trump in 2016 and George W. Bush in 2000 would have won a majority in the Electoral College if the House size had been 573.

In 2016, Donald Trump won the Electoral College by 306–232—36 more than the 270 electoral votes required for election.[172]

In 2000, George W. Bush received 271 electoral votes—only one more than that required for election. If the statutory algorithm for distributing House seats to the states is applied to House sizes between 492 and 598, Al Gore would have won the Electoral College if the House had been any of 73 of these 107 possible sizes, but lost the Electoral College in 34 cases, including a House size of 573 (section 1.3.3).

If the House size had been increased to 585, as suggested by the Making Every Vote Count Foundation, Al Gore would not have won the Electoral College in 2000.

Thus, even when the electoral vote is extremely close (as in 2000), increasing the size of the Electoral College cannot be relied upon to elect the national popular vote winner.

4.6.5. Increasing the number of electoral votes would not make every vote equal.

All five of the current system's sources of inequality (section 1.4) would remain after the size of the House were increased.

4.6.6. Increasing the number of electoral votes would not make every voter in every state politically relevant.

Given that the state-by-state winner-take-all method of awarding electoral votes would remain in place after increasing the number of electoral votes, the general-election campaign for President would continue to concentrate on a handful of closely divided battleground states. The creation of additional electoral votes would not alter the very short list of closely divided states—nor their critical role in winning the presidency.

4.6.7. Prospects for increasing the size of the U.S. House

There may, or may not, be a case for increasing the size of the U.S. House; however, such action has next to nothing to do with improving presidential elections.

15, 2024 https://www.inlander.com/news/the-us-house-once-had-a-representative-for-about-every-30000-people-but-now-lawmakers-serve-between-543000-and-991000-constituents-wha-27462209

[172] In 2016, Trump and Clinton did not actually receive all the electoral votes to which they were entitled, due to the unprecedented number of faithless presidential electors that year. Because of two Republican faithless electors from Texas, Trump actual received only 304 electoral votes when the Electoral College met on December 19, 2016. Because of five Democratic faithless electors (four from Washington State and one from Hawaii), Clinton actually received only 227 votes in the Electoral College. See section 3.7.6 for a discussion of faithless electors.

4.7. DIRECT ELECTION CONSTITUTIONAL AMENDMENT

4.7.1. Summary

- Under the federal constitutional amendment for direct popular election of the President proposed by Senator Birch Bayh (D–Indiana) and Representative Emmanuel Celler (D–New York), the Electoral College would be abolished, and the President would be elected directly by the voters in a nationwide vote.
- In 1969, the U.S. House of Representatives approved the Bayh-Celler constitutional amendment by a bipartisan 338–70 vote. The House-passed Amendment was filibustered in the Senate and never came to a vote. In 1979, a nearly identical amendment failed to receive the required two-thirds vote in the Senate.
- The direct-election amendment would accurately reflect the national popular vote.
- It would make every vote equal.
- It would improve upon the current situation in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President. Every voter in every state would be politically relevant in every presidential election, and candidates would therefore have reason to campaign in every state.

4.7.2. Description of the direct election amendment

The Bayh-Celler amendment had the following features:

- direct popular election of the President and
- a run-off if no candidate receives 40% of the national popular vote.

The constitutional amendment (House Joint Resolution 681 of the 91st Congress)[173] introduced into the House by Representative Emanual Celler (D–New York) provided:

> "Section 1: **The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President.** Each elector shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President. No candidate shall consent to the joinder of his name with that of more than one other person.
>
> "Section 2: The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for electors of President and Vice President, the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

[173] House Joint Resolution 681. 91st Congress. 1969. https://fedora.dlib.indiana.edu/fedora/get/iudl:2402061/OVERVIEW

"Section 3: The pair of persons having the greatest number of votes for President and Vice President shall be elected, **if such number be at least 40 per centum of the whole number of votes cast for such offices. If no pair of persons has such number, a runoff election** shall be held in which the choice of President and Vice President shall be made from the two pairs of persons who received the highest number of votes.

"Section 4: The times, places, and manner of holding such elections and **entitlement to inclusion on the ballot** shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

"Section 5: The Congress may by law provide for the case of the death or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice-President-elect.

"Section 6: The Congress shall have power to enforce this article by appropriate legislation.

"Section 7: This article shall take effect one year after the 21st day of January following ratification." [Emphasis added]

4.7.3. History of the Bayh-Celler direct election amendment

The issue of electing the President by a direct nationwide popular vote acquired considerable momentum following the 1968 presidential election.

The 1968 election occurred in the midst of controversies over civil rights and the Vietnam War as well as urban rioting.

Segregationist Governor George Wallace of Alabama ran against then-Vice President Hubert Humphrey and former Vice President Richard Nixon.[174]

Wallace hoped to win enough electoral votes to prevent the major-party nominees from winning an absolute majority of the electoral votes. He would then have been in a position to extract policy concessions on civil rights from the major-party candidates either:

- by promising to deliver his electoral votes to his chosen candidate when the Electoral College met in December, or
- by negotiating with members of Congress after throwing the choice of President into the U.S. House (with each state casting one vote).

To maximize Wallace's leverage in the anticipated negotiations with the major-party candidates prior to the Electoral College meeting, Wallace obtained signed agreements

[174] Longley, Lawrence D., and Braun, Alan G. 1972. *The Politics of Electoral College Reform*. New Haven, CT: Yale University Press. Pages 7–21.

(secret at the time) from his presidential-elector candidates committing them to vote for Wallace in the Electoral College or "for whomsoever he may direct."[175]

On the other hand, if Wallace had denied the required Electoral College majority to both major-party candidates, he might have directed his presidential electors to vote for him in the Electoral College. In the context of a one-state-one-vote election in the House, Wallace would have expected to be in a position to extract policy concessions on civil rights from one major-party candidate or the other.

The 1968 election was extremely close. Nixon led Humphrey by 510,645 votes nationwide—a 43.4% to 42.7% margin.

Governor Wallace won 45 electoral votes by carrying five southern states (Alabama, Arkansas, Georgia, Louisiana, and Mississippi)—even more than the 39 electoral votes that segregationist Strom Thurmond won in the Truman-Dewey election of 1948.

The prospect of a deadlock in the Electoral College was avoided in 1968, because Nixon won an absolute majority of the electoral votes.

In the absence of Nixon's lead of 20,488 popular votes in Missouri and 134,960 in Illinois, Humphrey would have won in the Electoral College (but with Nixon leading Humphrey in the national popular vote).[176]

The memory of the close call in the 1968 election was fresh in the minds of Congress and the White House in early 1969.

Meanwhile, faithless presidential electors in southern states had been an ongoing irritant during the period immediately before and after passage of the civil rights legislation of the mid-1960s.

In the 1968 presidential election, George Wallace received one electoral vote from a faithless Republican presidential elector from North Carolina.

Moreover, the newly elected President, Richard Nixon, suffered the loss of one electoral vote due to a faithless elector on all three occasions when he ran for President—1960, 1968, and 1972.

Thus, on February 20, 1969, Nixon sent a message to Congress offering to support any reform in the presidential election system that satisfied three conditions:

> "I have in the past supported the proportional plan."[177]
>
> "But I am not wedded to the details of this plan or any other specific plan. I will support any plan that moves toward … the **abolition of individual electors** … allocation of presidential candidates of the electoral vote of each state and the District of Columbia in a manner that may **more closely approximate the**

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[175] Congressional Quarterly. 1979. *Presidential Elections Since 1789*. Second edition. Washington, DC: CQ Press. Page 8.

[176] Note that our table 1.4 is based on the popular-vote change in the *smallest* number of states needed to reverse the national outcome. For example, if three states are considered (instead of two), the 1968 election was decided by 106,063 votes (not 155,448). Specifically, the national outcome would have been reversed in the absence of Nixon's margin of 20,488 votes in Missouri, 24,314 in New Hampshire, and 61,261 in New Jersey.

[177] Nixon was referring to the Lodge-Gossett fractional-proportional constitution amendment that passed the U.S. Senate in 1950 (section 4.1).

> **popular vote** than does the present system … making a **40 percent electoral vote plurality** sufficient to choose a President." [Emphasis added]

President Nixon's message ignited a flurry of activity as members of Congress introduced and debated constitutional amendments to implement the fractional-proportional method (section 4.1), the congressional-district method (section 4.3), and nationwide direct popular election of the President.

Extensive hearings were held in the U.S. House and Senate.[178,179,180]

When it was first introduced in 1969, the Celler amendment for direct popular election was co-sponsored by the following 24 Representatives:

- Biester (R–Pennsylvania)
- Cahill (R–New Jersey)
- Conyers (D–Michigan)
- Donohue (D–Massachusetts)
- Edwards (D–California)
- Eilberg (D–Pennsylvania)
- Feighan (D–Ohio)
- Fish (R–New York)
- Hungate (D–Missouri)
- Jacobs (D–Indiana)
- Kastenmeier (D–Wisconsin)
- MacGregor (R–Minnesota)
- McClory (R–Illinois)
- McCulloch (R–Ohio)
- Meskill (R–Connecticut)
- Mikva (D–Illinois)
- St. Onge (D–Connecticut)
- Railsback (R–Illinois)
- Rodino (D–New Jersey)
- Rogers (D–Colorado)
- Ryan (D–New York)

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

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

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

- Sandman (R–New Jersey)
- Smith (R–New York)
- Waldie (D–California).

George H.W. Bush (then a Republican congressman from Texas) spoke in favor of the Celler amendment for nationwide direct popular election of the President on September 18, 1969, saying:

> "Frankly I think this legislation has a great deal to commend it. It will correct the wrongs of the present mechanism because by calling for direct election of the President and Vice President it will eliminate the formality of the Electoral College and by providing for a runoff in case no candidate receives 40 percent of the vote it eliminates the unrealistic ballot casting in the House of Representatives. **Yet, in spite of these drastic reforms, the bill is not, when viewed in the light of current practice, one that will be detrimental to our federal system or one that will change the departmentalized and local nature of voting in this country.**
>
> "In electing the President and Vice President, the Constitution establishes the principle that votes are cast by States. This legislation does not tamper with that principle. It only changes the manner in which the States vote. Instead of voting by intermediaries, the States will certify their popular vote count to the Congress. The states will maintain primary responsibility for the ballot and for the qualifications of voters. In other words, they will still designate the time, place, and manner in which elections will be held. **Thus, there is a very good argument to be made that the basic nature of our federal system has not been disturbed.**
>
> "On the walls of the Jefferson Memorial are written these words that we might well consider today:
>
> > 'I am not an advocate for frequent changes in laws and constitutions, but laws and constitutions must go hand in hand with the progress of the human mind as that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change. With the change of circumstances institutions must advance also to keep pace with the times.'
>
> "The world has changed a great deal since the 12th amendment was approved, and the system it perpetuates is one fraught with a history of fraud, leaves our country open to constitutional crisis, and is clearly unresponsive to the desires of the American people. I do support the proposal before us today because I believe it combines the best features of our current practice with the desirable goal of a simpler, more direct voting system."[181] [Emphasis added]

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[181] *Congressional Record*. September 18, 1969. Pages 25,990–25,991. https://www.congress.gov/bound-congressional-record/1969/09/18/house-section

After lengthy hearings and considerable debate in 1969, the House of Representatives approved—by a bipartisan 338–70 vote—a federal constitutional amendment sponsored by Representative Emmanuel Celler (D–New York) for direct nationwide popular election of the President.

Celler's constitutional amendment satisfied all three of Nixon's criteria. Thus, after the 338–70 vote in the House, President Nixon urged the Senate to adopt the Celler amendment.

Celler's proposal (identical to Senator Bayh's) died in the Senate after a filibuster led by southern segregationists.[182,183]

Senator Birch Bayh (D–Indiana) was the lead sponsor of the direct election amendment in the Senate. He introduced Senate Joint Resolution 1 in the 91st Congress in 1969 (with substantially the same provisions as the Celler amendment) with 39 co-sponsors:

- George D. Aiken (R–Vermont)
- Henry Bellmon (R–Oklahoma)
- Alan Bible (D–Nevada)
- Quentin Burdick (D–North Dakota)
- Robert C. Byrd (D–West Virginia)
- Clifford P. Case (R–New Jersey)
- Frank Church (D–Idaho)
- Marlow Cook (R–Kentucky)
- Alan Cranston (D–California)
- Thomas F. Eagleton (D–Missouri)
- Charles E. Goodell (R–New York)
- Mike Gravel (D–Alaska)
- Fred R. Harris (D–Oklahoma)
- Mark O. Hatfield (R–Oregon)
- Vance Hartke (D–Indiana)
- Daniel K. Inouye (D–Hawaii)
- Henry M. Jackson (D–Washington)
- Jacob K. Javits (R–New York)
- Warren G. Magnuson (D–Washington)
- Mike Mansfield (D–Montana)
- Charles McC. Mathias, Jr. (R–Maryland)
- George McGovern (D–South Dakota)
- Thomas J. McIntyre (D–New Hampshire)
- Lee Metcalf (D–Montana)
- Walter F. Mondale (D–Minnesota)
- Joseph M. Montoya (D–New Mexico)
- Edmund S. Muskie (D–Maine)

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[182] Congressional Quarterly. 2002. *Presidential Elections 1789–2000*. Washington, DC: CQ Press. Page 169.

[183] Wegman, Jesse. 2021. The filibuster that saved the electoral college. *New York Times*. February 8, 2021. https://www.nytimes.com/2021/02/08/opinion/filibuster-electoral-college.html?action=click&module=Opinion&pgtype=Homepage

- Gaylord Nelson (D–Wisconsin)
- Robert W. Packwood (R–Oregon)
- John O. Pastore (D–Rhode Island)
- James B. Pearson (R–Kansas)
- Claiborne Pell (D–Rhode Island)
- William Proxmire (D–Wisconsin)
- Jennings Randolph (D–West Virginia)
- Abraham Ribicoff (D–Connecticut)
- Richard S. Schweiker (R–Pennsylvania)
- Joseph D. Tydings (D–Maryland)
- Harrison A. Williams, Jr. (D–New Jersey)
- Stephen M. Young (D–Ohio).

Throughout the 1970s, Senator Bayh repeatedly introduced constitutional amendments for nationwide popular election of the President with substantially the same terms as the amendment that had been supported by a bipartisan 338–70 vote in the House in 1969.

Extensive hearings were held in 1975,[184] 1977,[185] and 1979.[186]

Interest in electoral reform was rekindled after the 1976 presidential election. A shift of 3,687 popular votes in Hawaii and 5,559 popular votes in Ohio would have elected Gerald Ford, even though Jimmy Carter led Ford by 1,682,970 popular votes nationwide.

President Jimmy Carter, President Gerald Ford (the losing presidential candidate in 1976), and Senator Robert Dole (the losing vice-presidential candidate in 1976 and later the Republican presidential nominee in 1996), and Vice President Walter Mondale publicly supported nationwide popular election of the President.

In 1977, the sponsors of Bayh's Senate Joint Resolution 1 in the 95th Congress in 1977 included 43 Senators.

In 1979, there was considerable debate in Congress on Senator Bayh's amendment. The sponsors of Senate Joint Resolution 28[187] in the 96th Congress in 1979 included the following 37 Senators:

- Baker (R–Tennessee)
- Bayh (D–Indiana)
- Bellmon (R–Oklahoma)

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

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

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

[187] Senate Joint Resolution 28. 96th Congress. January 25, 1979. https://www.congress.gov/bill/96th-congress/senate-joint-resolution/28

- Burdick (D–North Dakota)
- Chafee (R–Rhode Island)
- Cranston (D–California)
- Danforth (R–Missouri)
- DeConcini (D–Arizona)
- Dole (R–Kansas)
- Durenberger (R–Minnesota)
- Ford (D–Kentucky)
- Garn (R–Utah)
- Gravel (D–Alaska)
- Hatfield (R–Oregon)
- Huddleston (D–Kentucky)
- Inouye (D–Hawaii)
- Jackson (D–Washington)
- Javits (R–New York)
- Johnston (D–Louisiana)
- Kennedy (D–Massachusetts)
- Leahy (D–Vermont)
- Levin (D–Michigan)
- Magnuson (D–Washington)
- Mathias (R–Maryland)
- Matsunaga (D–Hawaii)
- Packwood (R–Oregon)
- Pell (D–Rhode Island)
- Proxmire (D–Wisconsin)
- Pryor (D–Arkansas)
- Randolph (D–West Virginia)
- Ribicoff (D–Connecticut)
- Riegle (D–Michigan)
- Stafford (R–Vermont)
- Stevenson (D–Illinois)
- Tsongas (D–Massachusetts)
- Williams (D–New Jersey)
- Zorinsky (D–Nebraska).

Senator Robert E. Dole of Kansas spoke in the Senate on January 15, 1979, in favor of a nationwide popular election of the President, saying:

> "That candidates for these two positions should be selected by direct election is an idea which I have long supported.…
>
> "The Electoral College system was provided for in the Constitution because, at one time, it seemed the most fair way to select the President and Vice President.

> Alexander Hamilton apparently expressed the prevailing view when he wrote that a small number of persons selected from the general population would most likely have the ability and intelligence to select the best persons for the job. I have no doubt but that in the 18th century, the Electoral College was well suited for our country. However, already by the early 19th century, misgivings were being voiced about the College.
>
> "The skepticism seems to be related to the formation of political party candidates and the difference they made in the selection of the President and Vice President. In the years since then, the Electoral College has remained in use. It has served us fairly well—except for three times when it allowed a candidate to gain the presidency who did not have the most popular votes.
>
> "There have been numerous other elections in which a shift of a few thousand votes would have changed the outcome of the Electoral College vote, despite the fact that the would-be winner came in second place in popular votes. Mr. President, I think we are leaving a little too much to chance, and to hope, that we will not witness yet another unrepresentative election."[188]

Senator Dole then specifically addressed the question of the effect of the bonus of two electoral votes that each state receives regardless of its population.

> "Many persons have the impression that the Electoral College benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice-presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.
>
> "Were we to switch to a system of direct election, I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. **Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance.**
>
> "Direct election would give candidates incentive to campaign in States that are perceived to be single party states. For no longer will minority votes be lost. Their accumulated total will be important, and in some instances perhaps even decisive.
>
> "The objections raised to direct election are varied. When they are analyzed, I think many objections reflect not so much satisfaction with the Electoral College, but rather a reluctance to change an established political system.

[188] *Congressional Record.* January 15, 1979. Page 309. https://www.congress.gov/bound-congressional-record/1979/01/15/senate-section

> While I could never advocate change simply for the sake of changing, neither should we defer action because we fear change.
>
> "In this situation, I think the weaknesses in the current system have been demonstrated, and that the prudent move is to provide for direct election of the President and Vice President.
>
> "I hope that the Senate will be able to move ahead on this resolution. As long as we continue with the Electoral College system, we will be placing our trust in an institution which usually works according to design, but which sometimes does not. There are remedies available to us, and I trust the Senate will act to correct this weakness in our political system."[189] [Emphasis added]

In a 1979 Senate speech, Senator Henry Bellmon (R–Oklahoma) described how his views on the Electoral College had changed while he had served as Governor, Senator, national campaign director for Richard Nixon's presidential campaign, and a member of the American Bar Association's commission studying electoral reform.

> "While the consideration of the Electoral College began—and I am a little embarrassed to admit this—I was convinced, as are many residents of smaller States, that the present system is a considerable advantage to less populous States such as Oklahoma, and that it was to the advantage of the small States for the Electoral College concept be preserved.
>
> "I think if any Member of the State has that concept, he would be greatly enlightened by the fact that the Members of the Senate from New York are now actively supporting the retention of the electoral college system."
>
> "Mr. President, as the deliberations of the American Bar Association Commission proceeded and as more facts became known, I came to the realization that the present electoral system does not give an advantage to the voters from the less populous States. Rather, it works to the disadvantage of small State voters who are largely ignored in the general election for President.
>
> "It is true that the smaller States which are allowed an elector for each U.S. Senator and for each Congressman do, on the surface, appear to be favored; but, in fact, the system gives the advantage to the voters in the populous States. The reason is simple as I think our friends from New York understand: A small State voter is, in effect, the means whereby a Presidential candidate may receive a half-dozen-or-so electoral votes. On the other hand, a vote in a large State is the means to 20 or 30 or 40 or more electoral votes. Therefore, Presidential candidates structure their campaigns to appeal to the States with large blocs of electors. This gives special and disproportionate importance

[189] *Congressional Record*. January 15, 1979. Page 309. https://www.congress.gov/bound-congressional-record/1979/01/15/senate-section

to the special interest groups which may determine the electoral outcome in those few large States.

"Here, Mr. President, let me say parenthetically that during 1967 and part of 1968 I served as the national campaign director for Richard Nixon, and I know very well as we structured that campaign we did not worry about Alaska, about Wyoming, or about Nevada or about New Mexico or about Oklahoma or Kansas. We worried about New York, California, Pennsylvania, Texas, Michigan, Illinois, all of the populous States, where there are these big blocs of electors that we could appeal to, provided we chose our issues properly and provided we presented the candidates in an attractive way.

"The result, Mr. President, is that the executive branch of our National Government has grown and is continuing to become increasingly oriented toward populous States, to the disadvantage of the smaller, less populous areas. An examination of past campaign platforms and campaign schedules of the major party candidates will bear out this position. Therefore, it is obvious that any political party or any candidate for President or Vice President will spend his efforts primarily in the populous States. The parties draft their platforms with the view in mind of attracting the voters of the populous States and generally relegate the needs of the smaller States to secondary positions.

"This whole situation would change if we go for a direct election and, therefore, **make the voters of one State equally important with the voters of any other State."**[190] [Emphasis added]

Senator Carl Levin (D–Michigan) spoke in the Senate on June 21, 1979, and said:

"Mr. President, the direct election of the President and the Vice President of the United States is an electoral reform which is long overdue. It is long overdue because of its basic fairness, democratic nature, and its inherent simplicity. There is no principle which is more basic to our concept of democracy than equal treatment under the law. And yet when this Nation goes to the polls every 4 years in the only truly national election that we have, that principle is abrogated. The effect of the Electoral College system on our Presidential election is often drastically unequal treatment of individual voters and their votes. The discrepancies are real and widespread, and they defy our basic sense of fairness.…

"Mr. President, we ask the wrong question when we ask who gains and who loses under the Electoral College, and how will this group lose its advantage under direct election? The function of the President is to serve the interests of all persons, all citizens of this country, and, therefore, all citizens should have an equal say as to who the President will be. In the debate over who will gain

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[190] *Congressional Record*. July 10, 1979. Page 17748. https://www.congress.gov/bound-congressional-record/1979/07/10/senate-section

> and who will lose, there is only one real winner in implementing direct election, and that is the American people who will finally be able to participate in a democratic and fair national election where **each vote counts for as much as every other vote**.
>
> "The American people will also win because we have eliminated the threat which the Electoral College has always posed—that is the possibility that a candidate who has not won the popular vote will, through the mechanisms of the Electoral College, be elevated to the presidency."[191] [Emphasis added]

In a Senate speech on July 10, 1979, Senator Charles McCurdy Mathias, Jr. (R–Maryland) listed the faults of the existing system, including the "state-by-state winner-take-all" system and the possibility of electing the second-place candidate, saying:

> "Direct election is the most effective method to remedy these faults. As the late Senator Hubert Humphrey noted, only direct election ensures that
>
> > 'the votes of the American people wherever cast [are] counted directly and equally in determining who shall be President of the United States.'
>
> "Only by direct election can the fundamental principle of equal treatment under the law for all Americans be incorporated into our Presidential selection process."[192]

After discussing the ever-present possibility that the presidential candidate receiving the most popular votes nationwide might not win the presidency, Senator David Durenberger (R–Minnesota) said:

> "The most damaging effect of the electoral system has already occurred, in **every** State and in **every** Presidential election. For with its 'winner-take-all' requirement, the electoral college effectively disenfranchises every man and woman supporting the candidate who fails to carry their State. Under that system, votes for the losing candidate have no significance whatsoever in the overall outcome of the election. And for this reason, candidates who either pull far ahead or fall far behind in a State have the incentive to 'write it off'—simply ignore it—in planning their campaign appearances. In contrast, **the proposed amendment would grant every vote the same degree of significance in determining the final outcome**. Candidates would be forced to consider their margins in every State, and the tendency to ignore a 'safe' or 'lost' State would be sharply diminished. By restoring the significance of every vote, Senate Joint Resolution 28 increases the incentive to vote, which in itself is a significant argument for passage."

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[191] *Congressional Record*. June 21, 1979. Page 15095. https://www.congress.gov/bound-congressional-record/1979/06/21/senate-section

[192] *Congressional Record*. July 10, 1979. Page 17751. https://www.congress.gov/bound-congressional-record/1979/07/10/senate-section

> "Had the Founding Fathers adopted a direct election system, it is inconceivable that anyone would be rising after 200 years to propose replacing that system with the Electoral College."[193] [Emphasis added]

Appendix E contains the March 14, 1979, speech of Senator Birch Bayh on his proposed constitutional amendment.

On July 20, 1979, 51 senators voted in favor of Senate Joint Resolution 28 (with one additional senator being announced in favor). This total was 16 votes short of the required two-thirds majority.

On February 23, 2006, retired Senator Birch Bayh joined the press conference at the National Press Club formally launching the National Popular Vote Compact. He remained on the Board of Advisors for National Popular Vote until his death in 2019.

Exon amendment in 1992

In 1992, there was a flurry of proposals for reforming the method of electing the President as a result of the candidacy of independent presidential candidate Ross Perot.

The *New York Times* reported that a nationwide poll taken on June 4–8, 1992, showed:

- Ross Perot—39%
- Incumbent President George H.W. Bush—31%
- Bill Clinton—25%.[194]

Such a division of the national popular vote in 1992, if it had persisted until Election Day, would probably have either elected Perot outright or thrown the presidential election into the House of Representatives.

In 1992, Senator J. James Exon of Nebraska introduced a constitutional amendment that was co-sponsored by 13 other Senators:

- Murkowski (R–Alaska)
- Burdick (D–North Dakota)
- Boren (D–Oklahoma)
- Adams (D–Washington)
- D'Amato (R–New York)
- Kennedy (D–Massachusetts)
- Coats (R–Indiana)
- Reid (D–Nevada)
- Dixon (D–Illinois)
- Durenberger (R–Minnesota)
- Glenn (D–Ohio)
- Lieberman (D–Connecticut)
- Hollings (D–South Carolina).

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[193] *Congressional Record*. July 10, 1979. Pages 17706–17707. https://www.congress.gov/bound-congressional-record/1979/07/10/senate-section

[194] On the Trail: Poll gives Perot a clear lead. *New York Times*. June 11, 1992. https://www.nytimes.com/1992/06/11/us/the-1992-campaign-on-the-trail-poll-gives-perot-a-clear-lead.html The same article reported that, in a previous Gallup poll in late May, Bush and Perot were tied at 35 percent each, with Clinton at 25 percent.

The Exon amendment (Senate Joint Resolution 302) required that a candidate receive a majority of the votes cast in order to be elected. It read:

> "Section 1. The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President. Each elector shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President.
>
> "Section 2. The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for the electors of President and Vice President, any State may prescribe by law less restrictive residence qualifications and for electors of President and Vice President the Congress may by law establish uniform residence qualification.
>
> "Section 3. The persons joined as candidates for President and Vice President having the greatest number of votes shall be elected President and Vice President, if such number be at least 50 per centum of the whole number of votes cast and such number be derived from a majority of the number of votes cast in each State comprising at least one-third of the several States. If, after any such election, none of the persons joined as candidates for President and Vice President is elected pursuant to the preceding paragraph, a runoff election shall be held within sixty days in which the choice of President and Vice President shall be made from the two pairs of persons joined as candidates for President and Vice President receiving the greatest number of votes in such runoff election shall be elected President and Vice President.
>
> "Section 4. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed by law in each State; but the Congress may by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the times, places, and manner in which the results of such elections shall be ascertained and declared. No such election, other than a runoff election, shall be held later than the first Tuesday after the first Monday in November, and the results thereof shall be declared no later than thirty days after the date on which the election occurs.
>
> "Section 5. The Congress may by law provide for the case of the death, inability, or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of either the President-elect or the Vice President-elect.
>
> "Section 6. Sections 1 through 4 of this article shall take effect two years after ratification of this article.

> "Section 7. The Congress shall have power to enforce this article by appropriate legislation."[195]

Congressional hearings on the topic of reforming the Electoral College were held in 1993[196] and again in 1999.[197]

The 2000 election resulted in the election of a President who had not received the most popular votes nationwide.

After the 2000 election, former Presidents Jimmy Carter and Gerald Ford created a bipartisan commission to make recommendations for improving the nation's electoral system. Many of the reforms proposed by the Carter-Ford Commission became part of the Help America Vote Act (HAVA) of 2002.

In 2004, if 59,152 Ohio voters had voted for John Kerry instead of George W. Bush, Kerry would have been elected President despite Bush's lead of over 3,000,000 votes in the nationwide popular vote. After the 2004 election, former President Jimmy Carter and former Secretary of State James Baker formed another bipartisan commission to make additional recommendations concerning election administration and to review the implementation of HAVA in light of the nation's experience in the 2004 election.

Jackson-Frank amendment in 2005

In 2005, Representatives Jesse Jackson, Jr. (D–Illinois) and Barney Frank (D–Massachusetts) introduced a constitutional amendment for nationwide popular election of the President (House Joint Resolution 36).[198] Like the Exon proposal of 1992, this proposal would have required that a candidate receive a majority of the votes cast in order to be elected.

Feinstein amendment in 2005

Senator Dianne Feinstein (D–California) introduced Senate Joint Resolution 11 in 2005 as follows:

> "Section 1. The President and Vice President shall be elected by the people of the several States and the district constituting the seat of government of the United States. The persons having the greatest number of votes for President and Vice President shall be elected.

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[195] Senate Joint Resolution 302. 102nd Congress. May 13, 1992. https://www.congress.gov/bill/102nd-congress/senate-joint-resolution/302

[196] 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.

[197] 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.

[198] House Joint Resolution 36. 109th Congress. March 2, 2005. https://www.congress.gov/bill/109th-congress/house-joint-resolution/36

> "Section 2. The voters in each State shall have the qualifications requisite for electors of Representatives in Congress from that State, except that the legislature of any State may prescribe less restrictive qualifications with respect to residence and Congress may establish uniform residence and age qualifications. Congress may establish qualifications for voters in the district constituting the seat of government of the United States.
>
> "Section 3. Congress may determine the time, place, and manner of holding the election, and the entitlement to inclusion on the ballot. Congress shall prescribe by law the time, place, and manner in which the results of the election shall be ascertained and declared.
>
> "Section 4. Each voter shall cast a single vote jointly applicable to President and Vice President in any such election. Names of candidates shall not be joined unless both candidates have consented thereto, and no candidate shall consent to being joined with more than one other person.
>
> "Section 5. Congress may by law provide for the case of the death of any candidate for President or Vice President before the day on which the President-elect or the Vice President-elect has been chosen, and for the case of a tie in any such election.
>
> "Section 6. This article shall take effect one year after the twenty-first day of January following ratification."[199]

In contrast to the Exon proposal of 1992 (which called for a run-off election if no presidential candidate received at least 50% of the national popular vote), Feinstein's 2005 proposal required only a plurality of the popular votes.

The 2005 Feinstein proposal also differed from the 1992 Exon proposal concerning the power of the states over the manner of awarding electoral votes. Article II, section 1, clause 2 of the U.S. Constitution currently gives the states exclusive control over the manner of awarding electoral votes.

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors…."[200]

This power contrasts with the power of the states in section 4 of Article I over 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**…." [Emphasis added]

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[199] Senate Joint Resolution 11. 109th Congress. March 16, 2005. https://www.congress.gov/bill/109th-congress/senate-joint-resolution/11

[200] U.S. Constitution. Article II, section 1, clause 2.

As can be seen, Article I currently gives states *primary*—but not *exclusive*—control over congressional elections, whereas Article II gives the states *exclusive* control over the manner of appointing presidential electors.

The Exon proposal in 1992 would have applied Article I's approach to presidential elections:

> "The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed by law in each State; but the Congress may by law make or alter such regulations."

In contrast, the 2005 Feinstein proposal gave Congress exclusive control over the manner of conducting presidential elections.

> "Congress may determine the time, place, and manner of holding the election, and the entitlement to inclusion on the ballot."

Jackson Amendment of 2011 with 24 co-sponsors from the Congressional Black Caucus

In 2011, Representative Jesse Jackson, Jr. (D–Illinois) introduced a constitutional amendment (House Joint Resolution 36)[201] for direct election of the President with 29 co-sponsors, including 24 members of the Congressional Black Caucus:

- Conyers, John, Jr. (D–MI)
- Grijalva, Raúl M. (D–AZ)
- Brown, Corrine (D–FL)
- Davis, Danny K. (D–IL)
- Clay, Wm. Lacy (D–MO)
- Butterfield, G. K. (D–NC)
- Carson, Andre (D–IN)
- Cleaver, Emanuel (D–MO)
- Clyburn, James E. (D–SC)
- Cummings, Elijah E. (D–MD)
- Fattah, Chaka (D–PA)
- Filner, Bob (D–CA)
- Johnson, Henry C. "Hank," Jr. (D–GA)
- Kaptur, Marcy (D–OH)
- Kucinich, Dennis J. (D–OH)
- Lewis, John (D–GA)
- Payne, Donald M. (D–NJ)
- Rangel, Charles B. (D–NY)
- Rush, Bobby L. (D–IL)

[201] https://www.congress.gov/bill/112th-congress/house-joint-resolution/36/all-info?s=1&r=4#cosponsors-content

- Scott, David (D–GA)
- Thompson, Bennie G. (D–MS)
- Towns, Edolphus (D–NY)
- Watt, Melvin L. (D–NC)
- Bass, Karen (D–CA)
- Fudge, Marcia L. (D–OH)
- Jackson Lee, Sheila (D–TX)
- Lee, Barbara (D–CA)
- Green, Gene (D–TX)
- Ellison, Keith (D–MN)

Constitutional amendments introduced in 2019–2020

In the 116th Congress (2019–2020), three amendments for a nationwide popular election of the President were introduced.

Representative Steve Cohen (D–Tennessee) introduced a constitutional amendment for a direct popular election of the President (House Joint Resolution 7) with 11 co-sponsors that was identical to his 2021 proposal.[202]

Senator Jeff Merkley (D–Oregon) introduced a constitutional amendment that was co-sponsored by:

- Sen. Edward Markey (D–Massachusetts)
- Sen. Mazie Hirono (D–Hawaii)

This proposed amendment[203] was identical to the one these same senators introduced in 2022.

Senator Brian Schatz (D–Hawaii) introduced a constitutional amendment for a direct popular election of the President co-sponsored by three Senate Democrats:

- Sen. Richard Durbin (D–Illinois)
- Sen. Dianne Feinstein (D–California)
- Sen. Kirsten Gillibrand (D–New York).

Senator Schatz's Senate Joint Resolution 17[204] of 2019 was identical to Representative Cohen's 2019 proposal.

Constitutional amendments introduced in 2021–2022

Two constitutional amendments were introduced relating to the method of electing the President during the 117th Congress (2021–2022).

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[202] House Joint Resolution 7. 116th Congress. January 3, 2019. https://www.congress.gov/bill/116th-congress/house-joint-resolution/7/

[203] Senate Joint Resolution 16. 116th Congress. March 28, 2019. https://www.congress.gov/bill/116th-congress/senate-joint-resolution/16/

[204] Senate Joint Resolution 17. 116th Congress. April 2, 2019. https://www.congress.gov/bill/116th-congress/senate-joint-resolution/17/

In 2021, Representative Steve Cohen (D–Tennessee) introduced a constitutional amendment for a direct popular election of the President. House Joint Resolution 14[205] of 2021 was co-sponsored by the following eight Democrats:

- Rep. Zoe Lofgren (D–California)
- Rep. Anna Eshoo (D–California)
- Rep. Janice Schakowsky (D–Illinois)
- Rep. Julia Brownley (D–California)
- Rep. Peter DeFazio (D–Oregon)
- Rep. Adriano Espaillat (D–New York)
- Rep. John Garamendi (D–California)
- Rep. Jim Cooper (D–Tennessee)

Representative Cohen's proposed amendment (House Joint Resolution 14 of 2021) read:

> "Section 1. The President and Vice President shall be elected by the people of the several States and the district constituting the seat of government of the United States.
>
> "Section 2. The electors in each State shall have the qualifications requisite for electors of the most populous branch of the legislature of the State; although Congress may establish uniform age qualifications.
>
> "Section 3. Each elector shall cast a single vote for two persons who have consented to the joining of their names as candidates for President and Vice President. No elector shall be prohibited from casting a vote for a candidate for President or Vice President because either candidate, or both, are inhabitants of the same State as the elector.
>
> "Section 4. The pair of candidates having the greatest number of votes for President and Vice President shall be elected.
>
> "Section 5. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be determined by Congress.
>
> "Section 6. The Congress may by law provide for the case of the death or any other disqualification of any candidate for President or Vice President before the day on which the President-elect or Vice President-elect has been chosen; and for the case of a tie in any election.
>
> "Section 7. This article shall take effect one year after the first day of January following ratification.

[205] House Joint Resolution 14. 117th Congress. March 4, 2021. https://www.congress.gov/bill/117th-congress/house-joint-resolution/14

In 2022, Senator Jeff Merkley (D–Oregon) introduced a constitutional amendment for a direct popular election of the President that was co-sponsored by two Democratic Senators:

- Sen. Edward Markey (D–Massachusetts)
- Sen. Mazie Hirono (D–Hawaii)

Senate Joint Resolution 69 of 2022 read:

> "Section 1. The President and Vice President shall be jointly elected by the direct popular vote of the people of the several States and the District constituting the seat of Government of the United States who are over the age of 18.
>
> "Section 2. Congress shall determine the time, place, and manner of holding the election, and the manner in which the results of the election shall be ascertained and declared, and shall establish one day throughout the United States by which any period of voting shall be complete and during which any eligible voter may cast a vote.
>
> "Section 3. Congress shall have the power to enforce this article by appropriate legislation."[206]

No constitutional amendments introduced in 2023 or in early 2024

No constitutional amendments relating to establishing a nationwide popular vote for President were introduced during the first year of the 118th Congress (2023) or up to the end of May 2024.

Additional history

There has been at least one U.S. Senator or U.S. Representative in each of the 50 states who has either sponsored a bill for nationwide popular election or voted for nationwide popular election of the President in a roll call vote in Congress at various times. A list of the members of Congress who have sponsored various proposed constitutional amendments for nationwide popular election of the President in recent years or who voted in favor of the Bayh-Celler constitutional amendment in the House in 1969 or the 1979 roll call in the Senate may be found in appendix S of the 4th edition of this book.[207]

4.7.4. The direct election amendment would accurately reflect the national popular vote.

The direct election amendment would accurately reflect the national popular vote.

4.7.5. The direct election amendment would make every vote equal.

The direct election amendment would make every vote equal throughout the country.

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[206] Senate Joint Resolution 69. 117th Congress. December 15, 2022. https://www.congress.gov/bill/117th-congress/senate-joint-resolution/69

[207] Appendix S of the 4th edition of this book is available on-line at https://www.every-vote-equal.com/4th-edition

4.7.6. The direct election amendment would make every voter in every state politically relevant.

The direct election amendment would improve upon the current situation in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President. It would make every voter in every state politically relevant in every presidential election. It would give candidates a compelling reason to campaign in every state.

4.7.7. Prospects of adoption of a constitutional amendment for direct election of the President

Description of the federal constitutional amendment process

Adoption of a federal constitutional amendment is a two-step process in which the amendment must first be "proposed" at the federal level and then "ratified" by three-quarters of the states (38 of 50).

There are two ways of proposing an amendment and two ways of ratifying an amendment.

Article V of the U.S. Constitution provides:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall **propose** Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when **ratified** by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress … " [Emphasis added]

History of the amendment process

The difficulty of amending the Constitution is demonstrated by the fact that there have been only 17 amendments ratified since the Bill of Rights in 1791.

The last time Congress proposed a constitutional amendment that was ratified by the states was 1971—when Congress passed the 26th Amendment (voting by 18-year-olds).

The most recently ratified constitutional amendment was the 27th Amendment (dealing with the time when increases in compensation to members of Congress may take effect). That amendment was submitted to the states by the 1st Congress on September 25, 1789. It languished in the state legislatures for 203 years and was finally ratified in 1992.

Only two constitutional amendments specifically relating to the process of electing the President have ever been adopted:

- The 12th Amendment (ratified in 1804) required presidential electors to cast separate ballots for President and Vice President.
- The 23rd Amendment (ratified in 1961) gave the District of Columbia votes in the Electoral College.

In addition, there have been only seven occasions when one house of Congress approved an amendment related specifically to the method of electing the President:

- In 1813, 1819, 1820, and 1822, the U.S. Senate approved a version of the district method for electing presidential electors; however, the amendment failed each time in the House.[208] This flurry of activity was a reaction to the increasing number of states that were adopting the winner-take-all method at the time (section 2.13).
- In 1868, the Senate approved an amendment requiring that "the people" choose each state's presidential electors.[209] However, the proposal died in the House.
- In 1950, the Senate approved the fractional-proportional (Lodge-Gossett) amendment (section 4.1). However, the proposal died in the House.
- In 1969, the House approved the Bayh-Celler amendment for direct nationwide popular election of the President. However, the proposal died in the Senate.

Vexatious issues that inevitably arise when constitutional amendments are considered

Whenever a constitutional amendment to establish a nationwide vote for President is discussed, advocates for various related causes inevitably seek to embed their favored policy in the amendment.

Two issues inevitably surface in conjunction with a constitutional amendment to establish a nationwide presidential election:

- the power of states versus Congress in setting the rules governing presidential elections (e.g., the state-based approach currently contained in Article II, approaches that give Congress increased or complete control);
- the inter-related questions about:
  - the voting method (e.g., ranked choice voting);
  - the percentage of the popular vote required for election (e.g., a plurality, an absolute majority, or a minimum percentage such as 40% or 45%); and
  - the procedure to be used in the absence of the required percentage (e.g., a national run-off election, selection by Congress).

The current U.S. Constitution gives the states exclusive power over the choice of method of appointing their presidential electors.

There are, of course, passionate advocates for greater uniformity and federal control over presidential elections, and there are reasonable arguments supporting that position.

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[208] Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press.

[209] The amendment provided, "Each state shall appoint, by a vote of the people thereof qualified to vote for Representatives in Congress, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress … and the Congress shall have the power to prescribe the manner in which electors shall be chosen by the people." *Congressional Globe*. U.S. Senate. 40th Congress. 3rd Session. February 9, 1868. Page 1042–1044. https://memory.loc.gov/ammem/amlaw/lwcglink.html#anchor40

There are also equally passionate advocates for a continuation of the current federalist arrangement that disperses power to the states.

Advocates for greater uniformity point out that the current state-based approach allows state legislatures and Governors in one-party states to suppress or enhance voter turnout for partisan reasons.

Defenders of the current state-based approach to regulation of presidential elections argue that the current federalist arrangement prevents an incumbent President—in conjunction with a compliant Congress—from manipulating the rules governing the President's re-election.

Broadly speaking, there are three distinct approaches to this difficult issue:

- **Make no change in the power of Congress** over the manner of conducting presidential elections—that is, preserve the *status quo* expressed in Article II, section 1, clause 2. The 1969 Mundt amendment (section 4.3.3) followed this approach.
- **Give Congress the same power over presidential elections that it currently has over congressional elections**. The 1969 Bayh-Celler Amendment illustrates this approach. Many find this approach appealing because Congress has historically exercised a "light touch" in overseeing state election laws governing congressional elections. Of course, past performance is no guarantee of future performance. The all-encompassing wording of Article I, section 4, clause 1 gives Congress complete control over every aspect of congressional elections (including, as an extreme example, drawing the congressional districts for every state in the country). It provides:

  > "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**" [Emphasis added]

- **Explicitly give Congress complete control over the control of presidential elections.** This approach is illustrated by, for example, Representative Cohen's House Joint Resolution 14 of 2021, which provides:

  > "The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be determined by Congress."

Those wishing to enhance the authority of Congress over the conduct of elections would inevitably see any constitutional amendment about presidential elections as an opportunity to incorporate their desired changes into the amendment.

On the other hand, those favoring a constitutionally conservative approach would resist allowing any amendment to negate the current federalist arrangement.

Second, a constitutional amendment inevitably opens the door to a discussion of interrelated questions about the voting method and the percentage of the popular vote required for election.

The current system, of course, does not require a presidential candidate to receive any particular minimum percentage of the popular vote—at either the state or national level.

However, it does require that a candidate receive an absolute majority of the elec-

toral votes appointed. Over the years, numerous different suggestions have been made to change, or eliminate, the contingent election of the President by the House.

In fact, support for the Bayh-Celler amendment during the 1979 congressional debate was substantially reduced because of the inter-related questions of third parties, whether to include a minimum percentage of the popular vote in the amendment, what that percentage should be, and what procedure would be used in the absence of the required percentage.

When the Bayh-Celler amendment was seriously debated in Congress between 1969 and 1979, the debate was colored by the fresh memory of the 1968 campaign in which segregationist Alabama Governor George Wallace received 13.5% of the national popular vote, while the major-party nominees were almost tied (Nixon with 43.4% and Humphrey with 42.7%).

With the 1968 election at top-of-mind (and the expectation that George Wallace would run again in 1972), the 1969 Bayh-Celler amendment specified that there would be a nationwide run-off election if no candidate were to receive at least 40% of the national popular vote.

The vexatious nature of questions about the threshold required for election is illustrated by numerous variations contained in proposals in this chapter.

Today, the debate about a constitutional amendment would inevitably include a discussion of voting procedures other than the familiar plurality voting system.

The effect of using, or not using, a different election system (e.g., ranked choice voting) in a given election can, of course, profoundly affect the conduct of the campaign and the outcome of the election. Thus, in discussing a constitutional amendment for a nationwide election of the President, the question arises as to whether an election system such as RCV should be:

- included in the constitutional amendment,
- permitted as an option at the state level, or
- prohibited.

As previously mentioned, when contemplating a federal constitutional amendment, the relevant political question is whether there is one state legislative chamber in 13 or more states that would oppose the amendment.

As of July 2024, there is a bloc of 10 states that have enacted laws prohibiting the use of RCV in their elections as a matter of policy and four additional states where such a prohibition has passed at least one house of the legislature. See section 4.1.10 for additional details as to why it may not be politically possible to incorporate RCV in a federal constitutional amendment.

Given the requirements for a two-thirds vote in both houses of Congress and ratification by 38 of the 50 states, there appears to be little current appetite in Congress for passing a constitutional amendment for direct popular election of the President.