3 | Three Previously Proposed Federal Constitutional Amendments

In this chapter, we first present a brief history of troublesome presidential elections.

We then examine the three most prominent approaches to presidential election reform that have been proposed in the form of federal constitutional amendments.

The next chapter (chapter 4) will analyze two approaches that can be enacted entirely at the state level (without a federal constitutional amendment and without action by Congress). Later, chapter 6 will discuss another approach not requiring a federal constitutional amendment, namely the National Popular Vote interstate compact.

The three most discussed proposals involving a federal constitutional amendment are:

- **Fractional Proportional Allocation of Electoral Votes,** in which a state's electoral votes are divided proportionally according to the percentage—*carried out to three decimal places*—of votes received by each presidential slate in that state (section 3.2);
- **District Allocation of Electoral Votes,** in which the voters select one presidential elector for each congressional district and two presidential electors statewide (section 3.3); and
- **Direct Nationwide Popular Election,** in which all the popular votes are added together on a nationwide basis (section 3.4).[1]

The chapter analyzes how each of the above approaches would operate in terms of the following three criteria:

- **Accuracy:** Would the method accurately reflect the nationwide popular vote?
- **Making Every Vote Politically Relevant**: Would the method improve upon the current situation in which two-thirds of the states and two-thirds of the people of the United States are ignored by presidential campaigns?
- **Making Every Vote Equal:** Would the method make every vote equal?

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[1] There are numerous variations on each of the three approaches presented in this chapter. The differences include the extent to which the proposal empowers Congress to adopt uniform federal laws governing particular aspects of presidential elections, whether the casting of electoral votes is made automatic (i.e., the office of presidential elector is eliminated), the percentage of the vote required to trigger a contingent election, and the procedures for a contingent election (e.g., separate voting by the two houses of Congress, voting in a joint session of Congress, or a nationwide popular run-off election).

3.1 BRIEF HISTORY OF TROUBLESOME PRESIDENTIAL ELECTIONS

Interest in reforming the current system of electing the President has peaked following each troublesome presidential election. Thus, before proceeding, we review some of the troublesome elections.

Under the original Constitution, each presidential elector cast two votes. The candidate with the most electoral votes (provided that the candidate had an absolute majority of the electoral votes) became President, and the second-place candidate became Vice President (regardless of whether that candidate had an absolute majority). In the nation's first two presidential elections (1789 and 1792), George Washington received a vote from each presidential elector who voted and was thus elected unanimously.

The problems inherent with giving each presidential elector two votes surfaced as soon as political parties formed.

In 1796, the Federalist members of Congress caucused and nominated Vice President John Adams of Massachusetts for President and Thomas Pinckney of South Carolina for Vice President. Meanwhile, their opponents in Congress (called the "Republicans" or "Democratic Republicans," and later the "Democrats") caucused and nominated Thomas Jefferson of Virginia for President and Aaron Burr of New York for Vice President.

As John Ferling wrote in *Adams vs. Jefferson: The Tumultuous Election of 1800*:

> "The election was overshadowed by the Constitutional Convention's ill-advised notion that electors were to 'vote by ballot for two persons' for the presidency. The electoral college system was a calamity waiting to happen."[2]

The Federalists were strongest in the north, and the Republicans were strongest in the south. Each party had a nominee from both regions. However, Federalist nominee Thomas Pinckney was expected to be able to win electoral votes from his home state of South Carolina (where the legislature appointed the presidential electors), whereas Republican nominee Aaron Burr was not expected to be able to win similar support in the New York legislature.

Given that the election was expected to be close in the Electoral College and that each presidential elector cast two votes in the Electoral College—not differentiated as to whether for President or Vice President—the Federalist Party faced the excruciating dilemma of whether to give its wholehearted support to its own nominees. If 100% of the Federalist presidential electors had cast one of their two votes for Adams and their other vote for Thomas Pinckney, and if Thomas Pinckney had then won the expected additional bloc of electoral votes from South Carolina, Thomas Pinckney

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[2] Ferling, John. 2004. *Adams vs. Jefferson: The Tumultuous Election of 1800*. Oxford, UK: Oxford University Press. Page 887.

would have ended up with more electoral votes than the person (Vice President John Adams) most Federalists wanted to become President. Federalist Thomas Pinckney (instead of Federalist John Adams) would end up as President. As presidential historian Edward Stanwood reports,

> "No less than eighteen [Federalist] electors in New England resolved that Pinckney's vote should not exceed Adam's and withheld their votes from the [Federalist] candidate for Vice president, and scattered them upon others."[3]

This strategic voting by Federalist presidential electors succeeded in ensuring the Presidency to John Adams; however, it simultaneously enabled Republican Thomas Jefferson to end up with the second-highest number of electoral votes. Under the original Constitution, the candidate with the second highest number of electoral votes (regardless of whether it was an absolute majority) became Vice President. Thus, Federalist John Adams was elected President, and his chief critic (Jefferson) became Vice President.[4,5,6]

The problems inherent with giving each presidential elector two undifferentiated votes surfaced again in the nation's second competitive presidential election (1800). Thomas Jefferson and Aaron Burr again were the nominees of the Republican Party. The Republicans won an absolute majority in the Electoral College in 1800. All of the Republican presidential electors loyally voted for both of their party's nominees—thereby avoiding the scattering of electoral votes that had elected the opposing party's nominee in 1796. However, the result of this lockstep loyalty was that Jefferson and Burr each received an equal number of votes in the Electoral College.

Under the Constitution, ties in the Electoral College were to be resolved by a "contingent election" in which the U.S. House of Representatives elects the President and the U.S. Senate elects the Vice President. In the House, each state is entitled to cast one vote for President (with equally divided states being unable to cast a vote). In the Senate, each Senator is entitled to cast one vote for Vice President.

In the contingent election in the House, Republican nominee Thomas Jefferson ran against Republican nominee Aaron Burr.

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[3] Stanwood, Edward. 1924. *A History of the Presidency from 1788 to 1897*. Boston, MA: Houghton Mifflin Company. Page 49.

[4] Peirce, Neal R. 1968. *The People's President: The Electoral College in American History and Direct-Vote Alternative*. New York, NY: Simon and Schuster. Pages 63–64.

[5] Stanwood, Edward. 1924. *A History of the Presidency from 1788 to 1897*. Boston, MA: Houghton Mifflin Company. Pages 49–53. There is considerable historical controversy concerning Alexander Hamilton's possible motives and role in the "strategic voting" by Federalist presidential electors in the 1796 election. The main point, for the purposes of this chapter, is that the original Constitution's provision for double voting by presidential electors was unworkable in the context of political parties and in the context of a competitive presidential election.

[6] John Adams received 71 electoral votes to Jefferson's 68. Adams received an absolute majority (71 out of 138) of the electoral votes. Jefferson received the second highest number of electoral votes but not an absolute majority.

Neither party controlled a majority of the state delegations in the House.

After a prolonged and bitter dispute involving 36 ballots in the House of Representatives, Thomas Jefferson emerged as President.[7,8,9]

Given the demonstrated problems associated with giving each presidential elector two undifferentiated votes in the Electoral College, Congress passed the 12th Amendment specifying that each presidential elector would cast separate votes for President and Vice President. Separate voting enables the winning political party to elect both of its nominees to national office. The states quickly ratified the amendment, and the new procedure was in effect in time for the 1804 election.[10] The 12th Amendment can be viewed as formalizing the central role of political parties in presidential elections and recognizing that the Electoral College was not a deliberative body.

In 1824, there was a four-way race for President. The election was again thrown into the U.S. House and Senate. The House elected John Quincy Adams as President—rejecting Andrew Jackson, the candidate who had received the most popular votes. This controversial election spotlighted various undemocratic practices, including the continued selection of presidential electors by the state legislatures in about a quarter of the states.[11] Within two presidential elections, the laws of all but one of these states (South Carolina) were changed to empower the voters to choose the state's presidential electors directly.

In 1876, Democrat Samuel J. Tilden received 254,694 more popular votes than the 4,033,497 votes received by Rutherford B. Hayes; however, Hayes led by one electoral vote by virtue of carrying a number of states by extremely small margins (e.g., South Carolina by 889 votes, Florida by 922 votes, Oregon by 1,050 votes, Nevada by 1,075 votes, and California by 2,798 votes).[12] Conflicting returns were submitted from three Southern states that still had Reconstruction governments (South Carolina, Florida, and Louisiana). A 15-member electoral commission eventually awarded the presidency to Hayes.[13,14,15] The contested Tilden-Hayes 1876 election led to the passage of

[7] Dunn, Susan. 2004. *Jefferson's Second Revolution: The Elections Crisis of 1800 and the Triumph of Republicanism*. Boston, MA: Houghton Mifflin Company.

[8] Weisberger, Bernard A. 2001. *America Afire: Jefferson, Adams, and the First Contested Election*. William Morrow.

[9] Ferling, John. 2004. *Adams vs. Jefferson: The Tumultuous Election of 1800*. Oxford, UK: Oxford University Press.

[10] Kuroda, Tadahisa. 1994. *The Origins of the Twelfth Amendment: The Electoral College in the Early Republic, 1787–1804*. Westport, CT: Greenwood Press.

[11] Hopkins, James F. 2002. In Schlesinger, Arthur M., Jr., and Israel, Fred L. (editors). *History of American Presidential Elections 1878–2001*. Philadelphia, PA: Chelsea House Publishers. Volume 1. Pages 349–381.

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

[13] Morris, Roy B. 2003. *Fraud of the Century: Rutherford B. Hayes, Samuel Tilden, and the Stolen Election of 1876*. Waterville, ME: Thorndike Press.

[14] Robinson, Lloyd. 1996. *The Stolen Election: Hayes versus Tilden—1876*. New York, NY: Tom Doherty Associates Books.

[15] Rehnquist, William H. 2004. *Centennial Crisis: The Disputed Election of 1876*. New York, NY: Alfred A. Knopf.

federal legislation (the "Electoral Vote Act") governing the procedures for certifying state election results and resolving disputed elections. The federal election laws resulting from the 1876 election evolved into what is now Title 3 of the United States Code (found in appendix B).

In the 1888 election, President Grover Cleveland received 5,539,118 popular votes to Benjamin Harrison's 5,449,825. However, Harrison won in the Electoral College by a substantial 233–168 margin, despite Cleveland's 89,293-vote lead in the popular vote.

In the 1890 mid-term elections, the Democrats won political control of Michigan (then a regularly Republican state). In reaction to the 1888 election, the Democrats passed a law switching Michigan from the statewide winner-take-all system to one in which one presidential elector was to be elected from each of the state's congressional districts and in which the state's two senatorial electors were to be elected from two special districts, each comprising half of the state's congressional districts. Republicans contested the constitutionality of Michigan's change from the statewide winner-take-all system to the district system. In the 1892 case of *McPherson v. Blacker* (discussed in chapter 2), the U.S. Supreme Court upheld Michigan's right to change its law concerning the method of choosing its presidential electors.

The 1968 presidential election was held in the midst of continuing controversy over recently passed civil rights laws, urban rioting, and the war in Vietnam. Governor George Wallace of Alabama ran for President against Richard Nixon and Hubert Humphrey.[16] Wallace hoped to win enough electoral votes to prevent either major-party nominee from winning a majority of the electoral votes. His primary goal was not to throw the election into the Congress. Instead, he planned to negotiate with one of the major-party candidates before the meeting of the Electoral College in mid-December to extract policy concessions on civil rights and cabinet positions. To aid in his anticipated negotiations, Wallace obtained affidavits (secret at the time) from each of his presidential electors committing them to vote in the Electoral College for Wallace or "for whomsoever he may direct."[17]

In the 1968 election, Wallace won 45 electoral votes by carrying Alabama, Arkansas, Georgia, Louisiana, and Mississippi. Richard Nixon ended up with 43.4% of the popular vote (compared to Hubert Humphrey's 42.7%) as well as a majority of the electoral votes. Although Nixon was elected President by a majority of the Electoral College, a shift of only 10,245 popular votes in Missouri and 67,481 popular votes in Illinois would have left Nixon without a majority of the electoral votes (while still leading Humphrey by more than 300,000 popular votes on a nationwide basis).

Faithless presidential electors emerged as an irritant in presidential politics in several Southern states during the period immediately before and after passage of

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[16] Longley, Lawrence D., and Braun, Alan G. 1972. *The Politics of Electoral College Reform.* New Haven, CT: Yale University Press. Pages 7–21.

[17] Congressional Quarterly. 1979. *Presidential Elections Since 1789.* Second edition. Washington, DC: CQ Press. Page 8.

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. In fact, Nixon suffered the loss of one electoral vote because of a faithless Republican elector on each of the three occasions when he ran for President.

Thus, shortly after taking office as President in 1969, Nixon sent a message to Congress saying:

> "I have in the past supported the proportional plan. 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 popular vote than does the present system . . . making a 40 percent electoral vote plurality sufficient to choose a President."[18]

President Nixon's message ignited a flurry of activity in the 91st Congress. Members of Congress stepped forth and introduced bills to implement each of the three most prominent approaches.

- **Senator Howard Cannon (D–Nevada)** introduced a proposed constitutional amendment for a fractional proportional allocation of each state's electoral votes (section 3.2).
- **Senator Karl Mundt (R–South Dakota)** introduced a proposed constitutional amendment for electing presidential electors by congressional district (section 3.3).
- **Representative Emmanuel Celler (D–New York) and Senator Birch Bayh (D–Indiana)** introduced constitutional amendments for nationwide popular election of the president (section 3.4).

After considerable debate on the three approaches, Celler's proposed constitutional amendment (House Joint Resolution 681 of the 91st Congress) passed in the House of Representatives by a 338–70 vote in 1969. Celler's constitutional amendment satisfied all three of the criteria in Nixon's message to Congress. As a result of the strong bipartisan vote in the House, President Nixon urged the Senate to adopt Celler's proposed amendment. Celler's proposal was, however, filibustered, and it died in the Senate.[19]

Interest in electoral reform was rekindled after the 1976 presidential elections. 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 Carter, President Ford (the losing presidential candidate in 1976), and Senator Robert Dole (the losing vice-presidential candidate in 1976 and the Republican

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[18] February 20, 1969.

[19] Congressional Quarterly. 2002. *Presidential Elections 1789–2002*. Washington, DC: CQ Press. Page 169.

presidential nominee in 1996) publicly supported nationwide popular election of the President. In 1979, a majority (but not two-thirds) of the Senate voted in favor of a proposed constitutional amendment (Senate Joint Resolution 28) sponsored by Senator Birch Bayh that closely resembled the bill that had passed in the House in 1969.

In 1992, there was a flurry of proposals for reforming the method of electing the President as a result of the candidacy of third-party candidate Ross Perot. A June 1992 nationwide poll showed that Perot had 39% support, incumbent President George H. W. Bush had 31%, and Bill Clinton had 25%. Such a division of the popular vote, if it had persisted until Election Day, would have either elected Perot outright or thrown the presidential election into the House of Representatives.[20]

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 59,393 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.

Potential problems with the current statewide winner-take-all system appear to be becoming increasingly common.[21] As shown in table 1.3, there have been six presidential elections—1948, 1960, 1968, 1976, 2000, and 2004—in the past six decades in which the shift of a relatively small number of votes in one or two states would have elected a presidential candidate who had not received the most popular votes nationwide.

Meanwhile, the 2004 presidential election made it clear that the number of closely divided battleground states was steadily decreasing from year to year. Although voter turnout increased in the battleground states in 2004, turnout decreased in spectator states.[22]

On February 23, 2006, the National Popular Vote organization held its first press conference in which it announced its state-based proposal to reform the Electoral College (described in chapter 6) and released the first edition of this book.

We now discuss the three most discussed proposals involving a federal constitutional amendment.

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[20] The 1992 poll was cited in Stanley, Timothy. Why Romney is stronger than he seems. *CNN Election Center*. April 10, 2012.

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

[22] Committee for the Study of the American Electorate (2004). *President Bush, Mobilization Drives Propel Turnout to Post-1968 High*. November 4, 2004.

3.2 FRACTIONAL PROPORTIONAL ALLOCATION OF ELECTORAL VOTES

In the fractional proportional approach (Senator Cannon's proposal), a state's electoral votes are divided proportionally—*carried out to three decimal places*—according to the percentage of votes received in the state by each presidential slate.

Before proceeding, it should be noted that the "fractional proportional" approach discussed in this section differs significantly from the "whole-number proportional" approach (discussed in section 4.1). In the whole-number proportional approach, the office of presidential elector is not abolished and, therefore, the states continue to choose presidential electors. Because presidential electors each have one indivisible vote, it is not possible to divide a state's electoral votes in a fine-grained manner (e.g., to three decimal places, as specified in Senator Cannon's proposed constitutional amendment). Instead, under the whole-number proportional approach, a state's electoral votes must necessarily be rounded off to the nearest whole number. In a nation in which the average state has only 11 electoral votes and the median state has only 7 electoral votes, this rounding-off to the nearest whole number would have a number of unexpected and counter-intuitive effects (as discussed in detail in section 4.1).

Senator Howard Cannon (D–Nevada) introduced the following proposed federal constitutional amendment (Senate Joint Resolution 33 in the 91st Congress) to implement the fractional proportional approach:

> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*
>
> That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States:
>
> > 'Article—
> > '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 of 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 com-

bined 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.'"

The remainder of this section analyzes how Senator Howard Cannon's proposed fractional proportional approach would operate in terms of the following criteria:

- **Accuracy:** Would the method accurately reflect the nationwide popular vote?
- **Making Every Vote Politically Relevant**: Would the method improve upon the current situation in which two-thirds of the states and two-thirds of the people of the United States are ignored by presidential campaigns?
- **Equality:** Would every vote be equal?

In a landslide election, almost any of the commonly discussed electoral systems will result in the election of the candidate who receives the most popular votes nationwide. Thus, the test of accuracy of an electoral system is how it works in a close election. We start our analysis of the fractional proportional approach with data from the very closest recent presidential election, namely the 2000 election.

Table 3.1 shows how the fractional proportional approach would have operated in the 2000 presidential election. Column 2 shows each state's electoral votes (EV) in 2000. Columns 3, 4, and 5 show, for each state, the number of popular votes re-

ceived by the three leading candidates in that race, namely Al Gore, George W. Bush, and Ralph Nader. Column 6 shows, for each state, the number of electoral votes that Gore would have received under the fractional proportional approach (expressed as a fraction with three decimal places of precision, as specified by Senator Cannon's proposal). This number of electoral votes is obtained by dividing Gore's popular vote in the state by the total popular vote received by Gore, Bush, and Nader together, and then multiplying this quotient by the number of electoral votes possessed by the state. Columns 7 and 8 show the same information for Bush and Nader. For each state, the number of electoral votes for the three presidential candidates (columns 6, 7, and 8) adds up to the number of electoral votes possessed by the state (column 2). As can be seen from the bottom line of the table, Al Gore would have received 259.969 electoral votes; George W. Bush would have received 260.323 electoral votes; and Ralph Nader would have received 17.707 electoral votes if the 2000 presidential election had been run under the fractional proportional approach.[23]

For comparison, appendix CC shows, by state, the number of electoral votes won by Bush (271) and Gore (267).

Concerning the accurate reflection of the nationwide popular vote, table 3.1 shows that, if the fractional proportional approach had been in use throughout the country in the 2000 presidential election, it would *not* have awarded the most electoral votes to the candidate receiving the most popular votes nationwide. Gore would have received 0.354 fewer electoral votes than George W. Bush even though Gore led by 537,179 popular votes nationwide. Because Bush would have received "the greatest aggregate number of electoral votes" and such number would have been "at least 40 per centum of the whole number of such electoral votes," Bush would have been elected under the terms of the constitutional amendment proposed by Senator Cannon in 1969 (Senate Joint Resolution 33).

Under a variant of Senator Cannon's proposed fractional proportional approach, no electoral votes would be awarded to a presidential slate receiving less than a specified "cut-off" percentage (e.g., 5%) of a state's popular vote (or the national popular vote). Table 3.2 shows how the fractional proportional approach would have operated in the 2000 presidential election if only the two major political parties are considered. Column 2 shows Gore's popular vote percentage for each state. Columns 3 and 4 show, for each state, the electoral votes (rounded off to three decimal places) that Gore and Bush, respectively, would have received under the fractional proportional approach with a cut-off.

Table 3.2 shows that, if the fractional proportional approach had been used in the

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[23] In this book, all hypothetical analyses of the results of using an alternative electoral system are necessarily based on the actual election returns using the *current* electoral system, even though the authors recognize that the campaign would have been conducted differently if an alternative electoral system had been in effect.

Table 3.1 2000 ELECTION UNDER THE FRACTIONAL PROPORTIONAL APPROACH (TOP THREE PARTIES)

STATE	EV	GORE	BUSH	NADER	GORE-EV	BUSH-EV	NADER-EV
Alabama	9	692,611	941,173	18,323	3.773	5.127	0.100
Alaska	3	79,004	167,398	28,747	0.861	1.825	0.313
Arizona	8	685,341	781,652	45,645	3.625	4.134	0.241
Arkansas	6	422,768	472,940	13,421	2.790	3.121	0.089
California	54	5,861,203	4,567,429	418,707	29.178	22.737	2.084
Colorado	8	738,227	883,748	91,434	3.447	4.126	0.427
Connecticut	8	816,015	561,094	64,452	4.529	3.114	0.358
Delaware	3	180,068	137,288	8,307	1.659	1.265	0.077
DC	3	171,923	18,073	10,576	2.571	0.270	0.158
Florida	25	2,912,253	2,912,790	97,488	12.293	12.295	0.412
Georgia	13	1,116,230	1,419,720	134,322	5.434	6.912	0.654
Hawaii	4	205,286	137,845	21,623	2.251	1.512	0.237
Idaho	4	138,637	336,937	122,922	0.927	2.252	0.822
Illinois	22	2,589,026	2,019,421	103,759	12.087	9.428	0.484
Indiana	12	901,980	1,245,836	185,312	4.639	6.408	0.953
Iowa	7	638,517	634,373	29,374	3.432	3.410	0.158
Kansas	6	399,276	622,332	36,086	2.265	3.530	0.205
Kentucky	8	638,898	872,492	23,192	3.331	4.548	0.121
Louisiana	9	792,344	927,871	20,473	4.097	4.797	0.106
Maine	4	319,951	286,616	37,127	1.988	1.781	0.231
Maryland	10	1,145,782	813,797	53,768	5.691	4.042	0.267
Massachusetts	12	1,616,487	878,502	173,564	7.269	3.950	0.780
Michigan	18	2,170,418	1,953,139	84,165	9.285	8.355	0.360
Minnesota	10	1,168,266	1,109,659	126,696	4.858	4.615	0.527
Mississippi	7	404,614	572,844	8,122	2.874	4.069	0.058
Missouri	11	1,111,138	1,189,924	38,515	5.224	5.595	0.181
Montana	3	137,126	240,178	24,437	1.024	1.794	0.182
Nebraska	5	231,780	433,862	24,540	1.679	3.143	0.178
Nevada	4	279,978	301,575	15,008	1.877	2.022	0.101
New Hampshire	4	266,348	273,559	22,198	1.895	1.947	0.158
New Jersey	15	1,788,850	1,284,173	94,554	8.471	6.081	0.448
New Mexico	5	286,783	286,417	21,251	2.412	2.409	0.179
New York	33	4,107,697	2,403,374	244,030	20.067	11.741	1.192
North Carolina	14	1,257,692	1,631,163	0	6.095	7.905	0.000
North Dakota	3	95,284	174,852	9,486	1.022	1.876	0.102
Ohio	21	2,186,190	2,351,209	117,857	9.862	10.606	0.532
Oklahoma	8	474,276	744,337	0	3.114	4.886	0.000
Oregon	7	720,342	713,577	77,357	3.337	3.305	0.358
Pennsylvania	23	2,485,967	2,281,127	103,392	11.740	10.772	0.488
Rhode Island	4	249,508	130,555	25,052	2.464	1.289	0.247
South Carolina	8	565,561	785,937	20,200	3.298	4.584	0.118
South Dakota	3	118,804	190,700	0	1.152	1.848	0.000
Tennessee	11	981,720	1,061,949	19,781	5.233	5.661	0.105
Texas	32	2,433,746	3,799,639	137,994	12.223	19.084	0.693
Utah	5	203,053	515,096	35,850	1.347	3.416	0.238
Vermont	3	149,022	119,775	20,374	1.546	1.243	0.211
Virginia	13	1,217,290	1,437,490	59,398	5.830	6.885	0.284
Washington	11	1,247,652	1,108,864	103,002	5.580	4.959	0.461
West Virginia	5	295,497	336,475	10,680	2.299	2.618	0.083
Wisconsin	11	1,242,987	1,237,279	94,070	5.311	5.287	0.402
Wyoming	3	60,481	147,947	46,252	0.712	1.743	0.545
Total	**538**	**50,999,897**	**50,456,002**	**2,882,955**	**259.969**	**260.323**	**17.707**

2000 presidential election (with a cut-off percentage excluding all but the two major-party candidates), it would *not* have awarded the most electoral votes to the candidate receiving the most popular votes nationwide. Even though Al Gore led by 537,179 popular votes nationwide, he would have received only 268.766 electoral votes, whereas George W. Bush would have received 269.234 electoral votes. Since 269.234 is more than half of 538, George W. Bush would have been elected President under this variation of the fractional proportional approach.

Concerning making every vote politically relevant regardless of the state in which it is cast, the fractional proportional approach definitely improves upon the current situation in which about four-fifths of states are ignored by presidential campaigns. A presidential candidate could, for example, earn an additional 0.001 electoral vote by winning a hundred or so additional popular votes in any state under the fractional proportional approach. Thus, no state would be written off, or taken for granted, by any presidential candidate. Every voter in every state would, for all practical purposes, be politically relevant. If the percentage calculation were carried out to a few more decimal places, then it could be said, without qualification, that every vote would matter in every state in every presidential election.

On the other hand, not every vote is equal under the fractional proportional approach. In fact, there are three different substantial inequalities inherent in the fractional proportional approach. These inequalities amount to variations of 3.79-to-1, 1.76-to-1, and 1.27-to-1. In particular, these inequalities are considerably larger than the small variations that are considered to be constitutionally tolerable nowadays when congressional and other types of districts are drawn within states.[24]

The inequalities under the fractional proportional approach arise from the

- two bonus electoral votes that each state receives regardless of its population,
- inequalities in the apportionment of the membership of the House of Representatives among the several states, and
- differences in voter turnout in various states.

First, a vote cast in a large state has less weight than a vote cast in a small state because of the two-vote bonus in the Electoral College (corresponding to each state's two U.S. Senators). For example, in the 2000 presidential election, Wyoming (with a population of 453,588 in 1990) had three electoral votes, whereas California (with a population of 29,760,021 in 1990) had 54 electoral votes. As shown in table 3.3, in the presidential elections of 1992, 1996, and 2000, one electoral vote corresponded to 151,196 people in Wyoming but to 572,308 in California. The last column of this table shows the ratio of California's population per electoral vote to that of Wyoming—a 3.79-to-1 variation.

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[24] Of course, if the fractional proportional approach were enacted in the form of a federal constitutional amendment, it could not be successfully challenged in court on the grounds that it countenances inequalities that are greater than those constitutionally allowed for election districts for other offices.

Table 3.2 2000 ELECTION UNDER THE FRACTIONAL PROPORTIONAL APPROACH

STATE	GORE PERCENT	GORE EV	BUSH EV
Alabama	42.393058%	3.815	5.185
Alaska	32.063051%	0.962	2.038
Arizona	46.717401%	3.737	4.263
Arkansas	47.199310%	2.832	3.168
California	56.202990%	30.350	23.650
Colorado	45.514080%	3.641	4.359
Connecticut	59.255658%	4.740	3.260
Delaware	56.740065%	1.702	1.298
DC	90.487694%	2.715	0.285
Florida	49.995391%	12.499	12.501
Georgia	44.016246%	5.722	7.278
Hawaii	59.827296%	2.393	1.607
Idaho	29.151510%	1.166	2.834
Illinois	56.180010%	12.360	9.640
Indiana	41.995217%	5.039	6.961
Iowa	50.162779%	3.511	3.489
Kansas	39.083093%	2.345	3.655
Kentucky	42.272213%	3.382	4.618
Louisiana	46.060754%	4.145	4.855
Maine	52.747842%	2.110	1.890
Maryland	58.470825%	5.847	4.153
Massachusetts	64.789344%	7.775	4.225
Michigan	52.634606%	9.474	8.526
Minnesota	51.286412%	5.129	4.871
Mississippi	41.394515%	2.898	4.102
Missouri	48.288051%	5.312	5.688
Montana	36.343638%	1.090	1.910
Nebraska	34.820519%	1.741	3.259
Nevada	48.143162%	1.926	2.074
New Hampshire	49.332200%	1.973	2.027
New Jersey	58.211409%	8.732	6.268
New Mexico	50.031926%	2.502	2.498
New York	63.087885%	20.819	12.181
North Carolina	43.536003%	6.095	7.905
North Dakota	35.272603%	1.058	1.942
Ohio	48.181568%	10.118	10.882
Oklahoma	38.919329%	3.114	4.886
Oregon	50.235892%	3.517	3.483
Pennsylvania	52.148479%	11.994	11.006
Rhode Island	65.649116%	2.626	1.374
South Carolina	41.846973%	3.348	4.652
South Dakota	38.385287%	1.152	1.848
Tennessee	48.037133%	5.284	5.716
Texas	39.043730%	12.494	19.506
Utah	28.274495%	1.414	3.586
Vermont	55.440351%	1.663	1.337
Virginia	45.852764%	5.961	7.039
Washington	52.944771%	5.824	5.176
West Virginia	46.757926%	2.338	2.662
Wisconsin	50.115068%	5.513	5.487
Wyoming	29.017694%	0.871	2.129
Total	**50.268045%**	**268.766**	**269.234**

Table 3.3 DIFFERENCE IN WEIGHT OF A POPULAR VOTE IN THE NATION'S LARGEST AND SMALLEST STATES

STATE	POPULATION	REPRESENTATIVES	SENATORS	ELECTORAL VOTES	POPULATION CORRESPONDING TO ONE ELECTORAL VOTE	RATIO TO LOWEST
California	29,760,021	52	2	54	572,308	3.79
Wyoming	453,588	1	2	3	151,196	1.00

Second, a vote cast in certain states has less weight than a vote cast in certain other states because of inequalities inherent in the method of apportioning U.S. Representatives among the states. For example, Wyoming (with a population of 453,588 in 1990) and Montana (with a population of 799,065 in 1990) each had one member in the House of Representatives (and hence three electoral votes). As shown in table 3.4, in the presidential elections of 1992, 1996, and 2000, one electoral vote corresponded to 151,196 people in Wyoming but to 266,355 in Montana. The last column of this table shows the ratio of Montana's population per electoral vote to the ratio for Wyoming—a 1.76-to-1 variation. There are numerous other pairs of states with similar variations.[25]

Table 3.4 COMPARISON OF WEIGHT OF A POPULAR VOTE CAST IN TWO STATES WITH THREE ELECTORAL VOTES

STATE	POPULATION	POPULATION CORRESPONDING TO ONE ELECTORAL VOTE	RATIO TO LOWEST
Montana	799,065	266,355	1.76
Wyoming	453,588	151,196	1.00

Third, voter turnout within a voter's own state changes the weight of a given voter's vote. For example, a vote cast in a state with a low turnout has a greater weight than a vote cast in a state where more total votes are cast. Column 4 of table 3.5 shows the number of popular votes cast in the 2000 presidential election in the four states with five electoral votes (Nebraska, New Mexico, Utah, and West Virginia). As can be seen in column 5 of the table, one electoral vote corresponds to 118,900 popular votes in New Mexico but to 150,800 popular votes in Utah. Column 6 shows the ratio of the number of votes representing one electoral vote in each state to that of the lowest in the table (New Mexico). The greatest variation is between Utah and New Mexico—a 1.27-to-1 variation.

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[25] These include pairs of states with more than three electoral votes and pairs of states with different numbers of electoral votes.

Table 3 .5 COMPARISON OF WEIGHT OF A POPULAR VOTE CAST IN FOUR STATES WITH
FIVE ELECTORAL VOTES

STATE	1990 POPULATION	2000 POPULATION	VOTES CAST IN 2000 PRESIDENTIAL ELECTION	POPULAR VOTES CORRESPONDING TO ONE ELECTORAL VOTE	RATIO TO LOWEST
Nebraska	1,578,385	1,711,263	690,182	138,000	1.16
New Mexico	1,515,069	1,819,046	594,451	118,900	1.00
Utah	1,722,850	2,233,169	753,999	150,800	1.27
West Virginia	1,793,477	1,808,344	642,652	128,600	1.08

The total number of votes cast in states with the same number of electoral votes varies for at least two reasons.

- First, the actual population of the state at the moment of the election might have increased or decreased since the last census.
- Second, the number of voters turning out for the particular election depends on the degree of civic participation in the state.

As to the first of these factors, a state's allocation of electoral votes depends on its number of Representatives and Senators. The number of Representatives to which a state is entitled can change every 10 years based on the federal census. For example, the 1992, 1996, and 2000 presidential elections were conducted under the apportionment that resulted from the 1990 census. This means that the 2000 presidential election was conducted using an allocation of electoral votes based on 10-year-old population data. Thus, the weight of a citizen's vote in a rapidly growing state is diminished. Column 2 of table 3.5 shows the population of each state according to the 1990 census. Column 3 shows the population of each state according to the 2000 census. The 2000 census was taken in the spring of 2000 but was not applicable to the 2000 presidential election. These numbers closely approximate each state's population in the 2000 presidential election held a few months later. As can be seen, Utah, a fast-growing state, had 510,319 more people in 2000 than it did in 1990, whereas West Virginia barely grew at all during the 10-year period (only 14,867 more people than in 1990). New Mexico also experienced rapid population growth during the 1990s. Because of the time lag in reallocating electoral votes (a full 10 years in the case of the 2000 election), Utah and New Mexico had the same number of electoral votes in the 2000 presidential election as West Virginia.

Concerning the second of the above factors, voter turnout within a state also affects the relative weight of a vote under the fractional proportional approach. A citizen's vote gets less weight if it happens to be cast in a state with a high degree of civic participation. For example, Utah consistently has high voter turnout in its elections.

In summary, if the fractional proportional approach had been in use throughout the country in the 2000 presidential election,

- it *would not* accurately reflect the nationwide popular vote;
- it *would* improve upon the current situation by virtually making every vote in every state politically relevant in presidential elections, and
- it *would not* make every vote equal.

Senator Cannon's proposed 1969 constitutional amendment operates in substantially the same way as the amendment proposed in 1950 by Massachusetts Senator Henry Cabot Lodge (R) and Texas Representative Ed Gossett (D). The Lodge-Gossett amendment (Senate Joint Resolution 2 of the 81st Congress) passed the U.S. Senate by a 64–27 margin on February 1, 1950, but it died in the House of Representatives.[26,27,28]

The Lodge-Gossett amendment would have retained the distribution of electoral votes among the states based on a state's number of U.S. Senators and Congressmen. It would have made the awarding of electoral votes automatic (that is, the position of presidential elector would have been eliminated). Under the proposed amendment, electoral votes would have been allocated among the candidates in proportion to each candidate's vote in each state, with the calculation carried out to three decimal places. Under the amendment, a plurality would have been sufficient for election. The amendment would have eliminated the "contingent election" for President in the U.S. House of Representatives.[29]

The Lodge-Gossett amendment would not have altered state control over presidential elections.

The Lodge-Gossett amendment provided:

> "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring there-in), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:
>
> "ARTICLE —
>
> "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.

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

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

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

[29] 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.

"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"

3.3 DISTRICT ALLOCATION OF ELECTORAL VOTES

In the district approach, voters elect two presidential electors statewide and one presidential elector for each district.

Senator Karl Mundt (R–South Dakota) was the leading sponsor of a proposed federal constitutional amendment to implement the district system in 1969. Senate Joint Resolution 12 of the 91st Congress provided (in part):

> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*
>
> That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:
>
> > 'Article—
> > '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. 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 bal-

lot 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.'"

Senate Joint Resolution 12 of the 91st Congress in 1969 was sponsored by the following Senators:

- 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),
- Mundt (R–South Dakota),
- Sparkman (D–Alabama),
- Stennis (D–Mississippi),
- Thurmond (R–South Carolina),
- Tower (R–Texas),
- Williams (R–Delaware), and
- Young (R–North Dakota).

The shortcomings of the congressional-district approach are analyzed in detail in section 4.2, where it is demonstrated that

- it *would not* accurately reflect the nationwide popular vote;
- it *would not* improve upon the current situation in which two-thirds of the states and two-thirds of the people of the United States are ignored by presidential campaigns, but, instead, would create a small set of battleground congressional districts (with most districts being written off or taken for granted); and
- it *would not* make every vote equal.

The Mundt proposal was noteworthy in that it retained the office of presidential elector while eliminating the possibility of a faithless presidential elector. First, Mundt's proposed amendment provided that each candidate for presidential elector must take an oath to vote in the Electoral College for particular persons for President and Vice President (and made the original candidate's oath binding on any replacement). Second, Mundt's proposal then stated that regardless of the way the presidential elector actually voted in the Electoral College, his or her vote would "be counted as a vote cast in accordance with his declaration."

3.4 DIRECT NATIONWIDE POPULAR ELECTION

In 1969, the House of Representatives approved, by a bipartisan 338–70 vote, a federal constitutional amendment sponsored by Representative Emmanuel Celler for direct nationwide popular election.

Celler's proposal (House Joint Resolution 681 of the 91st Congress) provided:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

'Article—

'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.

'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.'"

When it was first introduced, House Joint Resolution 681 was sponsored by the following Representatives:

- Biester (R–Pennsylvania),
- Cahill (R–New Jersey),
- Celler (D–New York),
- 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),
- Railsback (R–Illinois),
- Rodino (D–New Jersey),
- Rogers (D–Colorado),
- Ryan (D–New York),
- Sandman (R–New Jersey),
- Smith (R–New York), and
- St. Onge (D–Connecticut),
- Waldie (D–California).

George Herbert Walker Bush (then a Republican congressman from Texas), like many of his colleagues in Congress, supported all three of the prominent approaches to abolish the present Electoral College system. Bush spoke in favor of nationwide direct popular election (House Joint Resolution 681) 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."[30]

Senator Birch Bayh (D–Indiana) introduced Senate Joint Resolution 1 in the 91st Congress in 1969 (with substantially the same provisions as Representative Celler's House Joint Resolution 681). The sponsors of Senate Joint Resolution 1 included the following Senators:

- George D. Aiken (R–Vermont),
- Birch Bayh (D–Indiana),
- 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),
- Vance Hartke (D–Indiana),
- Mark O. Hatfield (R–Oregon),
- 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),

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[30] *Congressional Record*. September 18, 1969. Pages 25,990–25,991.

- 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),
- 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), and
- Stephen M. Young (D–Ohio).

After the 338–70 vote in the House of Representatives in favor of House Joint Resolution 681 in 1969, the House bill was filibustered and died in the Senate.

Throughout the 1970s, Senator Bayh repeatedly introduced constitutional amendments for nationwide popular election of the President. For example, the sponsors of Bayh's Senate Joint Resolution 1 in the 95th Congress in 1977 included the following Senators:

- Abourezk (R–South Dakota),
- Anderson (D–Minnesota),
- Baker (R–Tennessee),
- Bartlett (R–Oklahoma),
- Bayh (D–Indiana),
- Bellmon (R–Oklahoma),
- Brooke (R–Massachusetts),
- Chafee (R–Rhode Island),
- Church (D–Idaho),
- Clark (D–Iowa),
- Cranston (D–California),
- Danforth (R–Missouri),
- DeConcini (D–Arizona),
- Dole (R–Kansas),
- Ford (D–Kentucky),
- Garn (R–Utah),
- Glenn (D–Ohio),
- Gravel (D–Alaska),
- Hart (D–Michigan),
- Haskell (D–Colorado),
- Hatfield (R–Oregon),
- Hathaway (D–Maine),
- Huddleston (D–Kentucky),
- Humphrey (D–Minnesota),
- Inouye (D–Hawaii),
- Jackson (D–Washington),
- Javits (R–New York),
- Kennedy (D–Massachusetts),
- Leahy (D–Vermont),
- Magnuson (D–Washington),
- Mathias (R–Maryland),
- Matsunaga (D–Hawaii),
- McIntyre (D–New Hampshire),
- Metzenbaum (D–Ohio),
- Packwood (R–Oregon),
- Randolph (D–West Virginia),
- Ribicoff (D–Connecticut),
- Riegle (D–Michigan),

- Schweiker (R–Pennsylvania),
- Stafford (R–Vermont),
- Stevenson (D–Illinois),
- Williams (D–New Jersey), and
- Zorinsky (D–Nebraska).

The sponsors of Senate Joint Resolution 28[31] in the 96th Congress in 1979 included the following Senators:

- Baker (R–Tennessee),
- Bayh (D–Indiana),
- Bellmon (R–Oklahoma),
- 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), and
- Zorinsky (D–Nebraska).

Senator Robert E. Dole of Kansas, the Republican nominee for Vice President in 1976 and later Republican nominee for President in 1996, spoke in the Senate on January 14, 1979, on the subject of nationwide popular election of the President and Vice 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

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[31] Senate Joint Resolution 28 of the 96th Congress in 1979 was substantially the same as Celler's House Joint Resolution 681 that the House of Representatives passed in 1969.

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."[32]

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

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[32] *Congressional Record.* January 14, 1979. Page 309.

system. 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."[33] [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.

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[33] *Congressional Record.* January 14, 1979. Page 309.

Therefore, Presidential candidates structure their campaigns to appeal to the States with large blocs of electors. This gives special and disproportionate importance 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 blocks 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.**"[34] [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. . . .

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[34] *Congressional Record.* July 10, 1979. Page 17748.

"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 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."[35] [Emphasis added]

In a Senate speech on July 10, 1979, Senator Charles McC. 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."[36] [Emphasis added]

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:

"[T]he 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

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[35] *Congressional Record.* June 21, 1979. Page 15095.

[36] *Congressional Record.* July 10, 1979. Page 17751.

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."

"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."[33] [Emphasis added]

Appendix W 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).

Since 1979, numerous other proposed federal constitutional amendments for nationwide popular election of the President have been introduced. Ross Perot's candidacy in 1992 rekindled interest in reforming the method of electing the President.

In 1992, Senator J. James Exon of Nebraska introduced a proposed federal constitutional amendment. The sponsors included the following Senators:

- Adams (D–Washington),
- Boren (D–Oklahoma),
- Burdick (D–North Dakota),
- Coats (R–Indiana),
- D'Amato (R–New York),
- Dixon (D–Illinois),
- Durenberger (R–Minnesota),
- Exon (D–Nebraska),
- Glenn (D–Ohio),
- Hollings (D–South Carolina),
- Kennedy (D–Massachusetts),
- Lieberman (D–Connecticut),
- Murkowski (R–Alaska), and
- Reid (D–Nevada).

The Exon proposal (Senate Joint Resolution 302) reads as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

"That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

'Article—
'SECTION 1. The people of the several States and the District constituting the seat of government of the United States shall elect the President

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[37] *Congressional Record.* July 10, 1979. Pages 17706–17707.

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.'"

In 2005, Representatives Jesse Jackson Jr. (D–Illinois) and Barney Frank (D–Massachusetts) introduced a federal constitutional amendment for nationwide popular election of the President (House Joint Resolution 36). 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.

In addition, Senator Dianne Feinstein (D–California) introduced Senate Joint Resolution 11 in March 2005 as follows:

> "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*
>
> That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission to the States for ratification:
>
> > 'Article—
> > '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.
> >
> > '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.'"

The Exon proposal of 1992 provided that a run-off election would be held if no presidential slate were to receive at least 50% of the popular vote. In contrast, the constitutional amendment introduced by Senator Feinstein in 2005 (Senate Joint Resolution 11) required only a plurality of the popular votes.

"The persons having the greatest number of votes for President and Vice President shall be elected."

The 2005 Feinstein proposal also differed from the 1992 Exon proposal in that the Feinstein proposal provided that

"Congress may determine the time, place, and manner of holding the election, and the entitlement to inclusion on the ballot . . ."

The Exon proposal provided that

"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 2009, proposed constitutional amendments for direct election of the President were introduced by Senator Bill Nelson of Florida (Senate Joint Resolution 4), Representative Jesse Jackson, Jr. of Illinois (House Joint Resolution 36), and Representative Gene Green (House Joint Resolution 9).

Appendix S shows, state by state, members of Congress who have sponsored proposed constitutional amendments for nationwide popular election of the President in recent years or who voted in favor of constitutional amendments in the 1969 roll call in the House of Representatives or the 1979 roll call in the Senate. As shown in appendix S, there has been at least one supporter in Congress from each of the 50 states.

In summary, in terms of the three criteria mentioned at the beginning of this chapter, nationwide popular voting for President

- *would* accurately reflect the nationwide popular vote;
- *would* improve upon the current situation in which two-thirds of the states and two-thirds of the people of the United States are ignored by presidential campaigns; and
- *would* make every vote equal.