

Demystifying the Electoral College: 12 Frequently Asked Questions

Tiffany Middleton

As the presidential election of 2012 draws closer, Americans will witness a resurgence of references to the Electoral College in news reports: “Either candidate needs 270 electoral votes to win...” And when we cast our ballots for president and vice president, we will see words like “Electors for” next to candidates’ names. Likewise, discussions of “we don’t elect the president directly anyway” or calls to “abolish the Electoral College” might confuse understandings of an already complex electoral process. Here, “Looking at the Law” hopes to demystify the Electoral College, and refresh many social studies memories—just in time for the next election—with some frequently asked questions about electing the president of the United States.

1. What is the Electoral College?

The Electoral College is a body of people appointed by each U.S. state and the District of Columbia, who elect the president and vice president. Voters in each state and the District of Columbia select electors to be the authorized participants in each presidential election. The electors cast electoral votes *after* the general election and officially elect the president and vice president. Since 1964, there have been 538 electors in each presidential election, comprised of the total number of members of the U.S. House of Representatives (435), plus the total number of U.S. Senators (100), plus three electoral votes for the District of Columbia.

2. What does the U.S. Constitution say about the Electoral College?

Article II, Section I of the U.S. Constitution outlines that each state should appoint electors, sets the number of electors for each state (number of senators + number of representatives = total

representatives in Congress), restricts members of Congress and federal employees from serving as electors, and details both the post-election meeting process within the states and final certification of the election results by Congress.

There are also two amendments to the Constitution related to the Electoral College. The Twelfth Amendment, ratified in 1803, made an important change to the electoral voting protocol. As the Electoral College was outlined in the Constitution, electors in each state cast *two* votes for president, and the candidate who received the most votes would become president while the candidate with the second most votes would become vice president. After the election of 1800, electors cast an equal number of votes for candidates Thomas Jefferson and Aaron Burr. The Electoral College was tied. Who would be president and who would be vice president? Ultimately, the House of Representatives decided in Jefferson’s

favor for the presidency. The Twelfth Amendment, however, stipulates that electors still casting two votes will *specify* one candidate for president and one candidate for vice president. Finally, the Twenty-Third Amendment, ratified in 1961, granted three electoral votes to Washington, D.C.

3. Why do we have an Electoral College in the first place?

The system of each state appointing electors to elect the president was, for the Framers, the most workable solution to a very tricky problem. Just how do we elect a president in a new nation comprised of 13 large and small states, with 13 perspectives about states’ rights and governmental powers? Delegates at the Constitutional Convention in 1787 considered several possible methods of selecting a president. One idea was to have Congress choose the president. This idea was rejected because of fears of division and corruption in Congress, as well as fear of upsetting the balance of power among the three branches of government. A second idea was to have state legislatures select the president. This idea was also rejected out of fear that a president would be beholden to the state legislatures, thereby eroding federal authority. The third idea—presidential election by direct popular vote—also posed concerns because, without sufficient information about



Ballots from the Electoral College are carried into the House Chamber for a joint session of Congress to count the ballots in Washington, D.C., January 8, 2009. Barack Obama was confirmed as president-elect. (Reuters/Joshua Roberts)

candidates from outside their state, people might only vote for candidates from their own states or region, and no candidate would emerge with a majority vote, or the largest and most populous states would control elections.

Finally, delegates assigned to the Committee of Eleven at the Convention proposed an indirect election system aligned with the already approved system of apportioning representation among the states in Congress. The Constitutional Convention approved the Committee's Electoral College proposal on September 6, 1787.

4. Do the electors meet?

The members of the Electoral College never meet as one group. The Constitution mandates, however, that they meet in their respective states and Washington, D.C., on the same day—the first Monday after the second Wednesday in December in all years divisible by four, or presidential election years. State legislatures may determine the location of the meeting, and if it is open to the public.

Procedures in each state vary slightly, but, typically, the meeting is called

to order by the election certification official, often each state's secretary of state or equivalent officer. The official reads aloud the state's Certificate of Ascertainment, a document provided by the governor of each state to the Congress that lists the names of the electors chosen by the voters—typically tied to the political party of the presidential candidate who won the popular vote—and the number of votes received, as well as all other candidates for elector and the numbers of votes received. Electors cast votes in writing for president and vice president and sign the state's Certificate of Vote, a document noting all persons receiving votes for president and vice president. The Certificates of Ascertainment and the Certificates of Vote are then mailed to Congress.

5. Must electors vote for the candidate that received the most popular votes in their state?

No. There is no constitutional provision or federal law that requires electors to vote according to the results of the popular vote in their states. Some states, however, may require electors

to pledge their votes to the winner of the popular vote in the state, and 24 states have laws providing that so-called "faithless actors" may be subject to fines or replaced by a substitute elector. To date, no elector has ever been penalized for casting a faithless vote, so the U.S. Supreme Court has never ruled on the constitutionality of such laws.

The Supreme Court has ruled, however, on the constitutionality of pledge laws. The decision in *Ray v. Blair* (1952) was that it is constitutional for a state to require electors to pledge votes before actually voting because electors are actors of their respective state, not the federal government, and thereby governed by the state. The case officially defined electors as representatives of their respective states even though they are performing a federal function in assisting with a national election.

Electors are required by the Twelfth Amendment, however, to cast at least one vote, for either president or vice president, for a candidate not from their home state. This prevents electors from voting only for "favorite sons or daughters." For this reason, political parties tend not to nominate candidates

and running mates from the same state.

6. If the electors never actually meet together, how do we know who wins the election?

The Twelfth Amendment mandates that the Congress assemble in joint session to count the electoral votes and declare the winners of the election. After all of the Certificates are received from the states and the District of Columbia, they are arranged—unopened—in alphabetical order. The Senate and the House of Representatives each appoint two tellers, who open and read aloud the Certificates for each state, in alphabetical order.

Members of Congress can object to any state's vote count provided that the objection is presented in writing and signed by at least one member of each house of Congress. A state's Certificate of Vote may be rejected only if both houses of Congress vote to accept the objection. If this happens, the votes from the state are simply ignored. Never in our nation's history, however, has Congress voted to reject a state's Certificate of Vote.

After the Certificates from all states are read and the votes counted, the presiding officer announces the final result of the vote and, as long as the required majority of votes is achieved, declares the names of the candidates elected president and vice president. If the requisite majority was not achieved, then the House of Representatives is required to vote to determine the winning candidates. The House of Representatives has selected the president only twice—in 1801 to break a tie in votes and in 1825 because no candidate secured a majority of electoral votes.

7. How do states select electors?

The U.S. Constitution allows each state to decide how to select its respective electors. Initially, some state legislatures appointed electors. Other states selected electors through direct popular vote, either by congressional district, or at large throughout the whole state. By 1860, all states had moved to choosing their electors by a direct statewide

popular vote. Today, all states choose their electors by direct statewide election, except for Maine and Nebraska which (in 1969 and 1991 respectively) changed to selecting two electors by a statewide popular vote and the remainder by the popular vote in each congressional district.

8. How does the “winner-take-all” system fit into this?

Along with the trend toward direct statewide election of electors came the trend toward the “winner-take-all” system of choosing electors. Under this system, the presidential and vice presidential candidates who win the most popular votes within a state win all of that state's electors.

Critics of the winner-take-all system suggest the smaller states possess an influence on the electoral outcome disproportionate to their populations, compared to larger states. They also

suggest that it disenfranchises voters who select electors for candidates who do not win the popular vote within the state.

Today, only Maine and Nebraska are not winner-take-all states. This means that if Candidate A received 60 percent of the popular vote, then he or she would receive 60 percent of the state's electoral votes. Candidate B would receive the remaining 40 percent. Colorado proposed a similar plan for proportional distribution of votes in 2004, but it was defeated when placed on the ballot.

9. Have political parties influenced this process?

Political parties do benefit from the winner-take-all system, as it becomes easier for candidates from one party to win the requisite Electoral College majority. Political parties have most directly influenced the process through



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selection of electors within a state. Prior to the development of political parties, states selected one slate of electors. It became customary for each political party to offer a “slate of electors,” a list of individuals loyal to their candidates for president and vice president and equal in number to that state’s electoral vote. Today, each state has several slates of electors, one for each recognized political party whose presidential and vice presidential candidates appears on the ballot.

Individual candidates for electors are seldom listed on ballots. Generally, the words “Electors for” appear in front of each set of candidates for president and vice president. In selecting candidates, voters are, by default, selecting slates of electors who will support those candidates.

10. Some people propose abolishing the Electoral College. Why?

Critics of the Electoral College system

suggest that it is anachronistic, left from a time when people were not able to learn about all of the candidates. This simply is not a problem in our wired world. Critics suggest that the system makes the national popular vote irrelevant, even disenfranchising individual voters, as their votes are not actually representative of one vote per person for president and vice president, but votes for electors.

The winner-take-all system is also criticized for allowing candidates to

Members of the 2008 Electoral College Reflect on Their Experiences

Michelle Boxell, Indiana

When my name was entered as elector at the state convention, I expected never to hear about it again. After all, the last time Indiana went Democratic in a presidential election was 1964. In the aftermath of the election, I was surprised to receive a handful of letters from angry voters (none from my own state) who demanded that I *not* vote for the person who had, in fact, won the election, Barack Obama. I found their anger and bitterness disturbing. Despite this, being an elector was an amazing experience: going to the Indiana State Capitol, sitting in Chambers and casting our district’s electoral vote for Barack Obama was a tremendous honor.

Michelle Boxell is a community relations manager for a nonprofit organization, Cardinal Services, in Fort Wayne, Indiana.

Lou Paulson, California

It was a very special experience to be a member of the Electoral College. I am one of the few people in the United States that can say that I actually voted for the president! The day we voted was a wonderful moment that I shared with friends and family; everyone who voted knew that we were a part of history.

The most surprising part of being an elector was being sued! I was part of the lawsuit over the validity of the president’s birth certificate. At first it was a little disconcerting, but as time wore on it became rather funny.

Lou Paulson is president of California Professional Firefighters, the state council for the International Association of Firefighters, in Sacramento.

Tracie Reed, Maine

I had a homemade “Barack Obama for President ‘08” bumper sticker on my car back in 2006 and was involved as a volunteer throughout the campaign organizing for the caucus’ and general election in Maine. I knew I wanted to run for both elector and national delegate at our state convention and was lucky enough to be elected to serve in both capacities despite only being 26 years old. It is funny, most people either don’t know what the Electoral College is, and if they do, are surprised to learn that I cast my ballots here in Maine at the Statehouse. Everyone assumes I traveled to Washington, D.C. I felt such a great sense of pride in casting my vote for President Obama and in what we had accomplished in the campaign. It was a historical day for America, and I felt privileged to be a part of it as a volunteer, voter, and elector. What I’ve taken away from all of my experiences is that getting involved is easy, just do it. You would be surprised at the difference one person can make and where your hard work can take you.

Tracie Reed is an architect in Portland, Maine. She has been working with campaigns since she was old enough to vote.

Susan Thomas, Wyoming

I was elected by the Wyoming Republican State party to be one of three electors for Wyoming. This much and long debated process truly helps small states like ours to play a larger part in the Electoral College. Our population is the smallest in the nation, and would be totally lost if we went to popular vote only. I was honored to participate in our democratic system in this way, and I look forward to the 2012 election as we each practice our incredible right to vote in the United States.

Susan Thomas taught U.S. Government in the Washington, D.C., area for 18 years while her husband, Craig Thomas, served as the U.S. Representative for Wyoming. She will serve as an elector for Wyoming again in 2012.

focus on states with large numbers of electoral votes, or “swing” states whose electoral votes may not be cast for a clear favorite. Other critics suggest the Electoral College system is unnecessarily complex and contributes to low voter turnout or voter apathy.

In our nation’s history, there have been over 700 proposals in Congress to reform or abolish the Electoral College, more than any other subject of constitutional reform. Only two—the Twelfth and Twenty-Third Amendments—ever reached the stage of ratification.

11. What do supporters of the Electoral College say?


Supporters of the Electoral College argue that the system prevents a candidate from winning the presidency by simply winning popular votes in large urban areas, and maintains the federal character of our polity, a system of shared federal and state powers. In order to win, candidates must expand their campaigns to include smaller states and rural areas.

The Electoral College also allows for states to conduct elections using methods it chooses without affecting other states. Likewise, it also isolates the impact of problems such as election fraud and ballot recounts. Supporters argue that a direct popular vote for president would result in comprehensive federal voting statutes that would take power away from the states.

Supporters also suggest that the Electoral College model neutralizes voter turnout disparities among states. Things like weather, high profile campaigns, initiatives, and constitutional amendments at the state level affect voter turnout. Because the allocation of electoral votes is independent of each state’s voter turnout, the Electoral College helps to neutralize disparities between states.

12. Are there any current proposals to reform the Electoral College?

One of the most prominent proposals to reform the Electoral College is the National Popular Vote Interstate

Compact, in which individual states agree to allocate their electoral votes to the winner of the national popular vote. State legislatures of the joining states would organize direct elections, effectively circumventing the Electoral College. Eight states—California, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Vermont, Washington—and the District of Columbia have joined the compact. Together they possess 132 electoral votes, or 49 percent of the 270 needed to enact the compact. 

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SUGGESTED RESOURCES:

C-SPAN Classroom

www.c-spanclassroom.org/

Download free video clips, posters, and lesson plans related to the Electoral College, just in time for Election 2012.

National Archives and Records Administration

www.archives.gov/federal-register/electoral-college/

This site is rich with resources for teachers, including lesson plans, PDF copies of each state’s Certificates of Ascertainment and Certificates of Vote, and formal instructions for state officials coordinating their elector meetings.

National Popular Vote

www.nationalpopularvote.com

Learn more about the proposed compact, where your state stands on its adoption, and what will happen next if it is enacted.

Win the White House

www.icivics.org

From iCivics, a free online interactive game where students at all grade levels run a presidential campaign, then collect electoral votes to win the presidency.



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