

# **GOOD NEWS** for the advocates of Electoral College reform: You don't have to change the U.S. Constitution to do it.



# Electoral College

## **By the Numbers**

By John C. Armor

**M**OST PUBLIC POLICY ISSUES ARE, at some point in their checkered careers, described in statistics. The problem isn't a lack of statistics, but the presence of too many conflicting statistics of dubious pedigree. One issue, however, can be described in hard numbers: reform of the Electoral College.

After every close election, especially one in which the president who won in the Electoral College was the "loser" in the popular vote, there's a chorus of demands to reform or abolish the College. The aftermath of the 2000 election followed this predictable pattern, but it wasn't the closest election in the College. In 1876, Rutherford B. Hayes defeated Samuel Tilden by a single vote. Tilden, however, had won the popular vote, 51 percent to 48 percent.

The 2000 election wasn't the widest popular vote "defeat" for the successful candidate, either. In addition to the Hayes-Tilden race, in 1888, Grover Cleveland lost the election to Benjamin Harrison in the College by a landslide, 168-233, though Cleveland had won the popular vote by a margin of 48.6 percent to 47.8 percent. Both these elections produced calls for reform or abolition of the College. Constitutional amendments

to do that were introduced. Nothing happened.

Now, history repeats itself. Again.

There are three theoretical "reforms" of the College. One is mathematically impossible; one is mathematically possible but politically absurd; and the third is quite possible and is under consideration in 12 states as this is being written.

The first is abolition of the College. This can't be done without a constitutional amendment because Article II, Section 1 creates the College and gives each state as many votes as it has senators and representatives. According to Article V of the Constitution, this provision can't be eliminated without a 2/3 vote of both the House and Senate, followed by ratification by 3/4 of the state legislatures. That means 34 senators can block any amendment from passage. It also means that 13 states can block ratification, either by voting against it or simply by not voting on the issue.

Consider Table I. It compares the 17 smallest states (with one, two, or three representatives, and therefore three, four, or five electoral votes) with the four largest states. It demonstrates both why the smaller states have sound reasons to block such an amendment and why they'll succeed in stopping it.

Basically, these 17 smallest states have only 7.28 percent of



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the nation's population, yet they cast 12.3 percent of the electoral votes. On the other hand, the four largest states have 31.9 percent of the population but cast only 27.5 percent of the electoral votes. So the smallest states have 69.0 percent greater College representation than population alone would warrant. The largest states have 13.8 percent fewer College votes than population alone would warrant.

It's not by accident that the smaller states have this advantage. The Connecticut Compromise reached at the Philadelphia Convention of 1787 was designed to keep the smaller states from being overwhelmed by the larger ones, giving each state equal representation in the Senate but apportioned representation by population in the House. The College, of course, reflects this smaller-state advantage.

Just these 17 smallest states have exactly 34 senators, enough to block an amendment to abolish the College. And should such an amendment somehow get through Congress, those 17 states have a wide margin to defeat it in ratification.

The hard numbers tell the story: The Electoral College won't be amended out of the U.S. Constitution.

## The Balkan Option

The second reform is to go to "proportional representation," which would mean that any party would receive College votes in pro-

portion to its votes in each state, including fractional votes. This method of assigning representatives is used in several European nations as well as in Parliament in the United Kingdom, and the Knesset in Israel. It results in almost every party winning something, even if none of its candidates win in any district. (Imagine Pat Buchanan or Ralph Nader in Congress, or having a voice in selecting the president, because they and a few supporters won nothing but were awarded a few offices proportionally. You get the idea.)

The result is the Balkanization of politics, inability to form or keep a governing coalition and the regular fall of governments. Italy demonstrates that under this system it's possible for a civilized nation to function, somehow, with no effective government. But that's not a path down which the United States should go. Nor will it, as long as the Republicans and Democrats jointly dominate the Congress and the state legislatures, and jointly oppose the efforts of the splinter parties of whatever stripe.

While proportional representation could be accomplished without a constitutional amendment, it would require legislation in all states. No legislature will give a leg up to the third-party competitors of the current major parties.

## District Voting

The third proposal, which has been introduced in 12 state leg-

islatures and has passed the Senate in North Carolina, is to reform the Electoral College by going to “district election” of the electors, rather than the current winner-take-all system. Contrary to widespread popular belief, the winner-take-all system is not required by the Constitution; it’s at the discretion of each state legislature.

Two states, Maine and Nebraska, have district voting now, meaning that the winner of their statewide presidential elections takes two College votes, and the others are awarded to the winners in Maine’s two and Nebraska’s three congressional districts. A total of 21 states have used this method in the past, and early in America’s history it was the dominant method. Virginia was one of the last states to abandon district voting, in response to the loss of influence in presidential elections. Thomas Jefferson, who believed in government being as “local” as possible, staunchly supported district voting, but reluctantly agreed in 1810 that Virginia had to abandon it because of the actions of the other states. As Jefferson wrote, “All agree that an election by districts would be best if it could be general but while 10 states choose either by their legislatures or by a general ticket, it is folly and worse than folly for the other states not to do it.”

Table 2 shows the results of all the elections since 1952, had all states been using the district election method. It’s constructed from the actual votes in each congressional district. Instead of

51 “districts” for College voting (50 states plus the District of Columbia), there would have been 479. The 100 “senatorial” electors would still be elected statewide. Add the seven states that have only one representative, and D.C., and the total of statewide electors is 110, from 51 “districts.” The remaining electors would be chosen in 428 congressional districts.

The point of all proposals about the Electoral College is to make the College vote “closer to the popular vote” for president. In all but one case, district voting would have done exactly that.

One election result would have been reversed—Nixon would have defeated Kennedy in 1960. And there would have been one election even closer than the actual results of the 2000 election. Gerald Ford and Jimmy Carter would have tied in 1976, throwing the choice of the president into the House of Representatives, where Carter would have won. The swarms of lawyers and the mounds of litigation that occurred in 2000 would have occurred in 1976 instead, since Gerald Ford’s chance of victory would have depended on successfully challenging at least one district result for Carter, knowing that a tie would go into the House, where he would lose. Carter would have had to defend in winning districts and attack in losing districts, to prevent this result.

Statisticians are justifiably leery of “what-if” scenarios. The election strategies of candidates would change if they weren’t seeking to win an entire state, but instead to win as many as possible of the districts within that state. Republicans would not abandon California and New York, as they did in the last election. Democrats would not abandon Texas, nor lose all of Florida, as they did in the last election.

States that are solidly in one column or another are the orphans of presidential elections today, under the winner-take-all system. The candidate of the disfavored party hardly campaigns at all in the “lost” states. Political advertising is limited to “showing the flag” while the serious money goes to states that can be won. Under the district voting plan, almost no states would be relegated to the elective sidelines, because almost all—whatever their statewide tendencies—still have some districts that are competitive and could go the other way.

But there’s a critical problem with district voting, and the numbers demonstrate it. If only a few states act and the others don’t, states taking the lead on this damage their own clout at the national level. This is exactly why Jefferson reluctantly agreed that Virginia should abandon the plan. (Recall that Virginia was once far more dominant in national politics than California is today. In the Census of 1790, Virginia had one-third of the nation’s population.)

Again, the numbers tell the tale. California is now the 700-pound gorilla of national elections. In 2000, 4,567,429 voters there supported Bush. But Californians elected exactly zero electors for Bush. It’s foolhardy for individual states to adopt the district voting method while the largest states do not. (See Table 2.) Florida and Texas should not adopt the plan so long as New York and California are winner-take-all, and vice versa. The flow

of federal grants and contracts into competitive states from the party currently holding the White House, which is regrettable but as predictable as spring rain, would move away from the district voting states and into the winner-take-all states.

### Letting the Numbers Speak

There is a solution to this problem, and it depends on the numbers. States have the power to pass laws that are contingent on future events, and they can do so with respect to the Electoral College. If one or two states the size of Iowa or Minnesota were still out of the fold, the others might well decide that the more “democratic” method of direct elections was appropriate. But as long as several of the larger states, or California alone, were not on board, other states should not let their changes go into effect.

Another factor to consider in deciding whether district elections make sense is election fraud. Assume that there might be election fraud in Cook County, Illinois. (This is not to say that there is fraud there, but follow the assumption.) Under the winner-take-all system, every fraudulent vote cast in the Chicago area affects the award of all of Illinois’ 22 Electoral College votes. Under the district voting system, the Cook County vote would affect only the congressional districts in that county and the two statewide electors.

In short, district voting would do nothing to eliminate election fraud, but it would isolate such fraud and diminish its ability to sway an entire presidential election by controlling an entire state’s

electoral votes. Considering that the oldest political machine in the nation, Tammany Hall in New York City, was founded by Aaron Burr and colleagues before the Constitution was written, a goal of isolating election fraud rather than wiping it from the face of the nation is probably a more realistic objective.

The states with only one representative will remain winner-take-all. The decennial political blood-letting now going on in all states for reapportionment as a result of the 2000 Census is a desperate, tooth-and-nail, but necessary struggle. No sane state legislator of any party would want to go through that twice, just to create three brand-new districts for the purpose of electing three electors. They have the power to do this, but wouldn’t touch this issue with a 10-foot pole. Count these seven states and the District of Columbia as having done all they can.

Legislators could put a clause in the law in any state considering using district elections that says, “This law shall go into effect for any presidential election in which not more than 10 percent of the nation’s presidential electors are required by their state’s laws to be chosen in winner-take-all elections as of January 1 in any presidential election year. States with only one congressman, and D.C., are determined to be in compliance with this requirement, already.”

The 10 percent disqualifier is 53.8 electors, which means that California would have to be included to establish district voting nationally. But if the seven states plus D.C. pass resolutions in support of district voting—and if, say, 30 other states join Maine and Nebraska and adopt district voting contingent

on the actions of the remaining states—pressure would build on the remaining states not to stand in the way of a “democratic” reform of the Electoral College.

In some states, the change wouldn’t even depend on the legislature acting. Twenty-four states have the initiative process by which citizens can petition a proposed law on the ballot. If the citizens approve, the bill becomes law. The tens of millions of Americans who were “left out” of any say in the Electoral College because they were in the minority in a winner-take-all vote should support such a change. And either side could easily wind up on the losing end of any future presidential election, as the 2000 election amply demonstrates.

The Gore voters in Texas and Florida were frozen out; despite their efforts and their votes they had no say in the real election that took place in the Electoral College. But exactly the same thing happened to the Bush voters in California and New York. District voting would give most voters a chance to make a difference in the election of their president, even if much of their state votes differently than they do.

Some critics of district elections cite the closeness of the 2000 election and say district voting would trade one set of problems for another. In 2000, five state results between Bush and Gore were within 1 percent. (Four of those, with 30 College votes, went to Gore but weren’t challenged by Bush in court. One, with 25 College votes, went to Bush and was challenged by Gore up to the U.S. Supreme Court, twice.) The critics say that

**TABLE 1.** Comparison of 17 smallest states with 4 largest states, by percent of population and of electoral college vote

(Data from the 2000 Census, U.S. Bureau of Census)

State	Population	% of Pop.	E.C. Votes	% of E.C.
Wyoming	495,304	0.176	3	0.561
Vermont	609,890	0.217	3	0.561
Alaska	628,933	0.223	3	0.561
North Dakota	643,756	0.229	3	0.561
South Dakota	756,874	0.269	3	0.561
Delaware	785,068	0.279	3	0.561
Montana	905,316	0.322	3	0.561
Rhode Island	1,049,662	0.373	4	0.748
Hawaii	1,216,642	0.432	4	0.748
New Hampshire	1,238,415	0.440	4	0.748
Maine	1,277,731	0.454	4	0.748
Idaho	1,297,274	0.461	4	0.748
Nebraska	1,715,369	0.610	5	0.935
West Virginia	1,813,077	0.644	5	0.935
New Mexico	1,823,821	0.648	5	0.935
Nevada	2,002,032	0.711	5	0.935
Utah <sup>1</sup>	2,236,714	0.795	5	0.935
<b>Totals, 17 smallest</b>	<b>20,495,878</b>	<b>7.28%</b>	<b>66</b>	<b>12.3</b>
Florida	16,028,890	5.70	27	5.05
New York	19,004,973	6.75	31	5.79
Texas	20,903,994	7.43	34	6.36
California	33,930,798	12.1	55	10.3
<b>Totals, 4 largest</b>	<b>89,868,655</b>	<b>31.9</b>	<b>147</b>	<b>27.5</b>

Total Apportionment Population 281,424,177<sup>2</sup>  
Total State Electors 535<sup>2</sup>

<sup>1</sup>A case has been filed that would give Utah one more representative, rather than North Carolina, based on the exclusion of overseas Mormon missionaries from the 2000 Census. The difference to be made up is 500 citizens of Utah.

<sup>2</sup>The Census Bureau excluded the District of Columbia from the population since it does not get reapportioned. Its electors are fixed at three, making a total of 538 electors. Also, D.C. would play no part in the passage by Congress or the ratification by the states of any constitutional amendment to abolish the Electoral College.

with 51 state and 428 district elections, there could be close votes in many places, and much of the nation could become littered with lawsuits and lawyers.

Two sets of facts belie this assertion. Congressional districts are more likely to be homogenous and less likely to be close in results. If district elections were proportionally as close as statewide ones, there would have been 43 House election contests within 1 percent last year. In fact, there were only six, and not all of these had recounts. It’s in the joint interest of Republicans and Democrats to make most congressional districts “safe” for one party or the other. Under district elections in 2000, there would have been no recounts anywhere, even all of them taken together, which would have placed the presidency in the balance on those recounts.

Again, there’s a built-in assumption. It’s that presidential races in districts would be as “safe” as congressional races there. This

**TABLE 2.** Comparison of popular vote, actual electoral college vote, and college vote assuming district voting by percent, 1952–2000.

Year	Candidates	Percent Pop. Vote	Percent E.C. Vote	Percent If Dist. Vote	Winner's Edge Pop. Vote	Winner's Edge E.C. Vote	Winner's Edge If Dist. Vote,
1952	Eisenhower-R Stevenson-D	55.1 44.4	83.2 16.8	70.5 29.5	10.8	66.4	41.0
1956	Eisenhower-R Stevenson-D Other	57.4 42.0 0.7	86.1 13.7 0.2	76.9 22.8 0.4	15.4	72.4	54.1
1960	Kennedy-D Nixon-R Other	49.7 49.5 0.7	56.4 40.8	46.8 52.2	0.2	15.6	-5.2
1964	Johnson-D Goldwater-R Other	61.1 38.5 0.5	90.3 9.7	86.5 13.5	22.6	80.6	73.0
1968	Nixon-R Humphrey-D Other	43.4 42.7 13.9	55.9 35.5 8.6	54.5 35.1 10.4	0.7	20.4	19.4
1972	Nixon-R McGovern-D Other	60.7 37.5 1.8	96.7 3.2 0.2	88.5 11.5	23.2	93.5	77.0
1976	Carter-D Ford-R Other	50.1 48.0 1.9	55.2 44.6 0.2	50.0 50.0	2.1	10.4	0.0
1980	Reagan-R Carter-D Other	50.7 41.0 8.2	90.9 9.1	73.6 26.4	9.7	81.8	47.2
1984	Reagan-R Mondale-D Other	58.8 40.6 0.7	97.6 2.4	87.0 13.0	18.2	95.1	74.0
1988	Bush-R Dukakis-D Other	53.4 45.6 1.0	79.2 20.6 0.2	69.9 30.1	7.8	58.6	39.8
1992	Clinton-D Bush-R Other	43.0 37.4 19.5	68.8 31.2	60.0 40.0	5.6	37.6	20.0
1996	Clinton-D Dole-R Other	49.2 40.7 10.1	70.4 29.6	64.1 35.9	8.5	40.8	28.2
2000	Bush=R Gore-D Other	48.1 48.3 3.7	50.4 49.6	53.5 46.5	-0.2	0.8	7.0 <sup>2</sup>

<sup>1</sup>Data for this Table comes from "Electoral College Warfare: The Coming Battle in the Trenches," by Clark Bensen, Esq., published by POLIDATA in March 2001, and available on the Internet at [www.polidata.com](http://www.polidata.com). Based on Mr. Bensen's background and prior work for other publishers of district-voting results, this author believes his data are correct, and recommends his entire statistical analysis, but not necessarily all of his political conclusions. Mr. Bensen's results are in accord with other analyses the author has reviewed on the Internet.

<sup>2</sup>The only one of these 13 elections in which the district voting assumption did not produce a result closer to the popular vote results ("more democratic") was in 2000.

may not be true, as the power of incumbency protects members of Congress more than it does presidents. There's also the "Blue Dog" factor—House districts in the South that routinely return Democratic incumbents to Washington, but routinely vote for Republican presidential candidates.

The final consideration is a matter of simple fairness inherent in the change to district elections. As a result of reapportionment in 2001, California is going up to 55 representatives. Add the two statewide electors and, if that state remains winner-take-all, every voter who goes to the polls in California in 2004 will cast a ballot to elect 57 electors.

In Wyoming and the other smallest states, each voter will cast a ballot to elect only three electors. Under district voting, every voter would cast a ballot affecting just three electors - one from his or her congressional district and two who are chosen statewide. That would be true no matter where in the nation those voters live. And many more of those voters could expect

to have the candidates campaign in their districts, and address issue ads to their interests. (Of course, this offers no guarantee that such ads will be better or more honest, only that the effort to speak to these voters will increase.)

One vote per citizen. Three electors per vote. Fair is fair. And this result requires no amendment to the Constitution, and would produce more "democratic" results. That's the best result that is realistically possible from the latest public debate over the Electoral College. ●

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