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The Electoral College Explained

It's the Electoral College, not the national popular vote, that determines who wins the presidency.



By Allyson Waller

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It remains one of the most surprising facts about voting in the United States: While the popular vote elects members of Congress, mayors, governors, state legislators and even more obscure local officials, it does not determine the winner of the presidency, the highest office in the land.

That important decision ultimately falls to the Electoral College. When Americans cast their ballots, they are actually voting for a slate of electors appointed by their state's political parties who are pledged to support that party's candidate. (They don't always do so.)

This leads to an intense focus on key battleground states, as candidates look to boost their electoral advantage by targeting states that can help them reach the needed 270 votes of the total 538 total up for grabs. The Electoral College also inspires many what-if scenarios, some of them more likely than others.

Can a president lose the popular vote but still win the election?

Yes, and that is what happened in 2016: Although Hillary Clinton won the national popular vote by almost 3 million votes, Donald Trump garnered almost 57 percent of the electoral votes, enough to win the presidency.

The same thing happened in 2000. Although Al Gore won the popular vote, George W. Bush earned more electoral votes after a contested Florida recount and a Supreme Court decision.

And in 1888, Benjamin Harrison defeated the incumbent president, Grover Cleveland, in the Electoral College, despite losing the popular vote. Cleveland ran again four years later and won back the White House.

Other presidents who lost the popular vote but won the presidency include John Quincy Adams and Rutherford B. Hayes in the elections of 1824 and 1876.

The House of Representatives picked Adams over Andrew Jackson, who won the popular vote but only a plurality of the Electoral College. A special commission named by the House chose Hayes over Samuel J. Tilden, after 20 electoral votes in Florida, Louisiana and South Carolina were disputed.

The Electoral College has also awarded the presidency to candidates with a plurality of the popular vote (under 50 percent) in a number of cases, notably Abraham Lincoln in 1860, John F. Kennedy in 1960 and Bill Clinton in 1992 and 1996.

What happens in a tie?

Because there is now an even number of electoral votes, a tie is feasible. If that happens in the Electoral College, then the decision goes to the newly seated House of Representatives, with each state voting as a unit.

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Although it's not detailed in the Constitution, each state delegation would vote on which candidate to support as a group, with the plurality carrying the day, said Akhil Reed Amar, a professor of law and political science at Yale University. If there is a tie vote in a state's delegation, the state's vote would not count. A presidential candidate needs at least 26 votes to win.

Currently, Republicans control 26 state delegations, while Democrats control 22. Pennsylvania is tied between Republican and Democratic representatives, and Michigan has seven Democrats, six Republicans and one independent. That could all change on Nov. 3 of course, because all House seats are up for election.

The decision on vice president goes to the newly elected Senate, with each senator casting a vote. Ultimately, any disputes about the procedure could land everything in the Supreme Court.

What if electors break their pledge?

People call them "faithless electors." In 2016, seven electors — 5 Democrats and 2 Republicans — broke their promises to vote for their party's nominee, the most ever in history. They voted for a variety of candidates not on the ballot: Bernie Sanders, Colin Powell and Ron Paul, among others. It did not change the outcome.

Whether electors should be able to change their positions has been heavily debated, so much so that the Supreme Court unanimously ruled in July that states may require electors to abide by their promise to support a specific candidate.

Some scholars have said they do not wholeheartedly agree with the decision, arguing that it endangers an elector's freedom to make decisions they want and that electors are usually picked for their loyalty to a candidate or party.

"They will do as promised if the candidates do a very good job vetting them and picking people who are rock-solid," Professor Amar said.

Thirty-three states and the District of Columbia have laws that require electors to vote for their pledged candidate. Some states replace electors and cancel their votes if they break their pledge.

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Certain penalties exist in other states. In New Mexico, electors can be charged with a felony if they abandon their pledge, and in Oklahoma a faithless elector could face a misdemeanor charge.

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How did this system evolve?

The Electoral College was born at the 1787 Constitutional Convention in Philadelphia.

The nation's founders hoped to quell the formation of powerful factions and political parties, and they wanted a mechanism that did not rely solely on popular majorities or Congress. Despite the name, it is not a college in the modern educational sense, but refers to a collegium or group of colleagues.

The system had some unusual results from the start, as evident in the election of 1800, a tie in which Thomas Jefferson and Aaron Burr received an equal number of electoral votes. Congress broke the tie, and Jefferson became president and Burr became vice president. (Until the ratification of the 12th Amendment in 1804, the candidate with the second-highest number of electoral votes became vice president.)

Today, electors meet in their respective states on the first Monday after the second Wednesday of December — Dec. 14 this year — to cast separate ballots for president and vice president, with the candidates who receive a majority of votes being elected.

Electors are chosen every four years in the months leading up to Election Day by their respective state's political parties. Processes vary from state to state, with some choosing electors during state Republican and Democratic conventions. Some states list electors' names on the general election ballot.

The process of choosing electors can be an "insider's game," said Kimberly Wehle, a professor at the University of Baltimore and the author of "What You Need to Know About Voting and Why." They are often state legislators, party leaders or donors, she said.

How many electoral votes does it take to win?

The important number is 270. A total of 538 electoral votes are in play across all 50 states and Washington, D.C. The total number of electoral votes assigned to each state varies depending on population, but each state has at least three, and the District of Columbia has had three electors since 1961.

Are all states winner-take-all?

Most are, and it helps to think of voting on a state-by-state basis, Professor Amar said.

“It’s just like in tennis,” he said. “It’s how many sets you win and not how many games or points you win. You have to win the set, and in our system, you have to win the state.”

Two exceptions are Maine and Nebraska, which rely on congressional districts to divvy up electoral votes. The winner of the state’s popular vote gets two electoral votes, and one vote is awarded to the winner of the popular vote in each congressional district.

There are arguments that the states with smaller populations are overrepresented in the Electoral College, because every state gets at least 3 electors regardless of population. In a stark example, sparsely populated Wyoming has three votes and a population of about 580,000, giving its individual voters far more clout in the election than their millions of counterparts in densely populated states like Florida, California and New York. And the American citizens who live in territories like Puerto Rico, Guam and the U.S. Virgin Islands are not represented by any electors.

“When you talk about the Electoral College shaping the election, it shapes the election all the time because it puts the focus on certain states and not others,” said Alexander Keyssar, a professor of history and social policy at Harvard University.

Will the system ever change?

For years there have been debates about abolishing the Electoral College entirely, with the 2016 election bringing the debate back to the surface. It was even a talking point among 2020 Democratic presidential candidates.

The idea has public support, but faces a partisan divide, since Republicans currently benefit from the electoral clout of less populous, rural states.

Gallup reports 61 percent of Americans support abolishing the Electoral College in favor of the popular vote. However, that support diverges widely based on political parties, with support from 89 percent of Democrats and only 23 percent of Republicans.

One route would be a constitutional amendment, which would require two-thirds approval from both the House and Senate and ratification by the states, or a constitutional convention called by two-thirds of the state legislatures.

Some hope to reduce the Electoral College’s importance without an amendment. Fifteen states and the District of Columbia, which together control 196 electoral votes, have signed on to an interstate compact in which they pledge to grant their votes to the winner of the national popular vote. The local laws would only take effect once the compact has enough states to total 270 electoral votes.

Lastly, an election-related case could find its way to the Supreme Court, which would lend greater importance to the judicial makeup of the court, Professor Wehle said.

“It only takes five people with life tenure to actually amend this Constitution through a judicial opinion,” she said.