

# Civic Discussion

## Should the Electoral College be Abolished?

The U.S. presidential election is decided by the electoral college. Set up by the Constitution, this system gives each state a set number of electors, based on its number of members in the House of Representatives plus its two U.S. senators. These electors vote for president. Thus when you enter the voting booth in a presidential election and vote for candidate X, you are actually voting for a slate of electors who will vote for candidate X in the electoral college. In all but two states, the candidate winning the popular vote wins all of the state's electors.

The electoral college system makes it possible for a candidate to lose the popular vote and win the electoral college. This has happened four times in our history, in 1824, 1876, 1888, and most recently in 2000, when George W. Bush lost the popular vote by more than 500,000 votes, but won the electoral college by 277 to 266 electoral votes.

In addition, if no candidate gets a majority of the electoral votes, then the House of Representatives votes on who will be president. Each state in the House gets one vote. The House has determined the presidency twice, in 1800 and again in 1824.

## Arguments

### **Yes, the electoral college should be abolished.**

The person winning the popular vote should be the president. This is how democracy should work. Under the electoral college system, the candidate winning the popular vote can lose.

The president represents all the people. The president should be elected by popular vote, not by a system relatively few people even understand.

The electoral college system gives small states too much power. In the electoral college, every state gets two electors automatically (as every state has two senators) regardless of its population. If the House decides the election, states representing a small minority of the population could outvote the other states.

With the electoral college, presidential candidates campaign heavily in states that are closely divided and could go either way, the so-called swing states. They barely campaign in other states. If the election process were based on popular vote, this would change because both sides would try to draw out as many votes as possible.

### **No, we should keep the electoral college.**

The electoral college system reflects our federal system. It balances the small and large states, giving all states a voice in the outcome. If candidates just had to win the popular vote, the campaign would focus on the most populous states and ignore many parts of our nation.

The electoral college system is more likely than other systems to give the winner a mandate to govern. The popular vote is often within a few percentage points, but the electoral college usually has a decisive winner.

The electoral college has worked well throughout our history with few exceptions. All the proposed replacements to the electoral college have flaws. A popular vote system, for example, would increase the likelihood of voter challenges and recounts across the nation.

For most of our history, we have had a two-party system. A change to a popular vote system for president would result in third-party challengers and make it less likely any candidate would win a majority of the popular vote and receive a mandate to govern.

# Information Organizer

Name: \_\_\_\_\_

Main Question: \_\_\_\_\_

## STEP 1 CONNECT: Develop Questions and Plan the Investigation

**A.** What do you think is the main argument on the “yes” side of the question?

**B.** What do you think is the main argument on the “no” side of the question?

**C.** As a group, come to agreement about the major points on both sides of the question.

Major Points “YES”	Major Points “NO”

## STEP 2 INVESTIGATE: Apply Disciplinary Concepts and Tools

### Examine Sources and Perspectives

Source A Title: \_\_\_\_\_

Source A Author: \_\_\_\_\_

Summarize the author’s perspective on the main question and key evidence he or she provides to support that view.

Source B Title: \_\_\_\_\_

Source B Author: \_\_\_\_\_

Summarize the author’s perspective on the main question and key evidence he or she provides to support that view.

Source C Title: \_\_\_\_\_

Source C Author: \_\_\_\_\_

Summarize the author's perspective on the main question and key evidence he or she provides to support that view.

Source D Title: \_\_\_\_\_

Source D Author: \_\_\_\_\_

Summarize the author's perspective on the main question and key evidence he or she provides to support that view.

Source E Title: \_\_\_\_\_

Source E Author: \_\_\_\_\_

Summarize the author's perspective on the main question and key evidence he or she provides to support that view.

Source F\* Title: \_\_\_\_\_

Source F Author: \_\_\_\_\_

Summarize the author's perspective on the main question and key evidence he or she provides to support that view.

\*NOTE: Not all Discussions include a Source F

Source G\* Title: \_\_\_\_\_

Source G Author: \_\_\_\_\_

Summarize the author’s perspective on the main question and key evidence he or she provides to support that view.

\*NOTE: Not all Discussions include a Source G

**STEP 3 SYNTHESIZE: Use Evidence to Formulate Conclusions**

**Formulate Compelling Arguments with Evidence**

Work with your group to record the strongest arguments and supporting evidence for your assigned position.

**Present Your Position**

Takes notes in the chart below as you listen to the other side present their arguments and evidence.

**Switch Sides**

Now record the strongest arguments and evidence for the opposite side and take notes while listening to the other side present their arguments.

<b>COMPELLING ARGUMENTS CHART</b>		
<b>YES</b>	<b>Arguments &amp; Evidence</b>	
		<b>Notes</b>
<b>NO</b>	<b>Arguments &amp; Evidence</b>	
		<b>Notes</b>

**STEP 4 DEMONSTRATE: Communicate Conclusions and Take Informed Action**

**My Point of View**

- A. After considering the various points of view and evidence my point of view on this question at this point in time is:
  
  
  
  
  
  
  
  
  
  
- B. Supporting evidence for my point of view is:
  
  
  
  
  
  
  
  
  
  
- C. My group basically agrees on the following points:

**Assess the Discussion**

- A. Was it valuable to argue both sides of the question? Why or why not?
  
  
  
  
  
  
  
  
  
  
- B. Did you have a point of view that differed from others in your group?
  
  
  
  
  
  
  
  
  
  
- C. Did you change your own point of view over the course of the discussion?
  
  
  
  
  
  
  
  
  
  
- D. What did you learn from participating in this civic discussion about...

The issue and main question?

Working with others?

Discussing an important issue?

Yourself?

# Student Instructions

## Should the Electoral College be Abolished?

Welcome to the Civic Discussion for this Topic. You have been reading about the major defects in the electoral college system and proposed reforms. Because of the defects, some political experts have advocated that the United States abolish the electoral college rather than try to reform it. In this Topic Inquiry, you will break into small groups to examine evidence and discuss this main question: **Should the electoral college be abolished?**

### STEP 1 CONNECT: Develop Questions and Plan the Investigation

#### Launch the Civic Discussion

Your teacher will have you join a small group. Read the Discussion Launch. It will give you background on the main question and an overview of the main arguments on each side of the question.

Pay attention to your first impression about the main question and the arguments.

Now look for the major points in the reading and write down at least two of them.

Share the major points you found with the other members of your group. Come to agreement about the major points. Write the points your group agreed to in your Information Organizer.

### STEP 2 INVESTIGATE: Apply Disciplinary Concepts and Tools and Evaluate Sources

#### Examine Sources and Perspectives

Now you will look at several sources that will allow you to understand different people's perspectives on the main question as well as see what evidence they provide for their views. As you look at sources, keep in mind:

**Author/Creator:** Who created the source? An individual? Group? Government agency?

**Audience:** For whom was the source created?

**Date/Place:** Is there any information that reveals where and when the source was created?

**Purpose:** Why was the source created?

**Relevance:** How does the source support one argument or another in relation to the main question? Look for evidence that supports one side or the other.

As you read and analyze each source, fill in Step 2 of the Information Organizer.

### STEP 3 SYNTHESIZE: Use Evidence to Formulate Conclusions

#### Formulate Compelling Arguments with Evidence

Members of your group will be assigned to take a position of YES or NO on the main question. Work with those on your side to find evidence that supports your assigned position. Come to agreement on what the most compelling arguments are for your assigned position.

Record those arguments and evidence to support them on the Information Organizer.

Evidence may come from the Discussion Launch reading or any of the source readings.



### **Present Yes/No Positions**

Now both sides in each small group will present their arguments and evidence to each other. Remember, this is not a time for debate, but rather a time to listen to each side and to gain information and understanding.

Those assigned YES will present their arguments and their evidence first. As they speak, those assigned NO should listen carefully, take notes on the arguments chart on the Information Organizer, and ask clarifying questions.

Clarifying questions are questions that help the listener better understand the information presented. Examples of clarifying questions are:

- I think you just said [x]. Am I understanding you correctly?
- Can you tell me more about [x]?
- Can you repeat [x]? I am not sure I understand, yet.

When the YES side is finished, it is the NO side's turn to present its arguments and evidence. Those assigned YES should listen carefully, take notes on the arguments chart, and ask their own clarifying questions.

### **Switch Sides**

Now the two sides will switch sides. If you argued YES before, now you will argue the NO position.

Work with your partner to formulate what you think are the strongest arguments and evidence. Use your notes from the argument chart and add any arguments and evidence from the sources that have not already been presented. Those now arguing YES go first.

## **STEP 4 DEMONSTRATE: Communicate Conclusions and Take Informed Action**

### **My Point of View**

Now you will have the opportunity to discuss the main question from your own point of view. As you prepare to discuss, think about:

- The Discussion Launch reading and sources you have examined.
- What you have understood from the discussions so far.
- Your own relevant experiences and knowledge.

Record your own point of view and supporting evidence for your point of view on the Information Organizer. Take turns with the other members of the group expressing what you think and listen carefully to others. Continue using clarifying questions.

Take notes on each point of agreement your small group reaches. Do you all agree on the answer to the main question? If not, on what points do you all agree?

### **Rules for Civic Discussion**

Keep these rules in mind as you discuss the main question.

1. Focus your discussion on the main question and evidence, not on people's personalities.
2. Give every member of your group equal opportunity to speak and be heard.
3. Listen respectfully to the person who is speaking.



4. Refer to the text for evidence to support your opinions.
5. Respect others' opinions, even if you disagree with them.
6. Use clarifying questions to gain understanding.

**Assess the Discussion**

Think about what you have learned through the discussion and answer the questions in Step 4 of the Information Organizer.

This civic discussion has given you the chance to investigate an important issue, consider evidence, and look at and argue for different perspectives on that issue. Being able to understand issues from multiple perspectives and being able to discuss issues using evidence and not just emotion are important skills of informed and engaged citizens.

# Civic Discussion

## The Constitution of the United States

### Article II, Section 1 (1787) and 12th Amendment (1804)

#### Article II

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 follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they 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 the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

#### Amendment XII

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



certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

# Civic Discussion

## Federalist No. 68, The Mode of Electing the President, by Alexander Hamilton, 1788

### To the People of the State of New York:

The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded. I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office. No senator, representative, or other person holding a place of trust or

profit under the United States, can be of the numbers of the electors. Thus without corrupting the body of the people, the immediate agents in the election will at least enter upon the task free from any sinister bias. Their transient existence, and their detached situation, already taken notice of, afford a satisfactory prospect of their continuing so, to the conclusion of it. The business of corruption, when it is to embrace so considerable a number of men, requires time as well as means. Nor would it be found easy suddenly to embark them, dispersed as they would be over thirteen States, in any combinations founded upon motives, which though they could not properly be denominated corrupt, might yet be of a nature to mislead them from their duty.

Another and no less important desideratum was, that the Executive should be independent for his continuance in office on all but the people themselves. He might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice.

All these advantages will happily combine in the plan devised by the convention; which is, that the people of each State shall choose a number of persons as electors, equal to the number of senators and representatives of such State in the national government, who shall assemble within the State, and vote for some fit person as President. Their votes, thus given, are to be transmitted to the seat of the national government, and the person who may happen to have a majority of the whole number of votes will be the President. But as a majority of the votes might not always happen to centre in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that, in such a contingency, the House of Representatives shall select out of the candidates who shall have the five highest number of votes, the man who in their opinion may be best qualified for the office.

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. Though we cannot acquiesce in the political heresy of the poet who says: "For forms of government let fools contest That which is best administered is best," yet we may safely pronounce, that the true test of a good government is its aptitude and tendency to produce a good administration.

# Civic Discussion

## “A Critique of the Top Ten Modern Arguments for the Electoral College,”

by Akhil Reed Amar and Vikram David Amar

*FindLaw*, Dec. 14, 2001

A year ago, Americans watched the loser of the national popular vote win the electoral vote (with a little help from his friends). In a continental republic of equal citizens, why shouldn't every voter's ballot count equally in a single nationwide vote for president? If one person, one vote is the best way to pick a state governor, why isn't it also the best way to pick a national president?

Here, then, are the top ten and the reasons they do not persuade:

### Number 1: The Argument From Political Interest

Some might prefer the electoral college because it advantages a given political interest—say rural voters or racial minorities. But does today's electoral college systematically favor any given faction? Not likely.

True, the electoral college was designed to and did in fact advantage Southern white male propertied slaveholders in the antebellum era. And in election 2000, it again ended up working against women, blacks, and the poor, who voted overwhelmingly for Gore. But it's just as easy to imagine an alternative election 2000 scenario in which Gore won the electoral vote while losing the national popular vote. Indeed, most pundits going into election day thought this the more likely scenario.

Analytically, the electoral college privileges small states by giving every state three electoral votes at the start. This tends to help Republicans, who win among rural whites. But the college also exaggerates the power of big states, via winner-take-all rules. That tends to help Democrats, who win among urban minorities.

In today's world, the two opposing skews largely cancel out. Republicans often win more states overall, but Democrats often win more big states. The net effect is to add to the political deck a pair of jokers—one red and one blue—who randomly surface to mock the equality idea by giving the prize to the candidate who lost the national popular vote.

In any event, even assuming it could be shown that the electoral college systemically helps some interest group, this is hardly a principled argument in its favor. Our Constitution should not rig elections to favor any particular faction or party. We should treat all presidential voters equally, just as we do gubernatorial voters within states.

### Number 2: The Tennis Analogy

Electoral college defenders also make the following argument: “A tennis player can win more points overall, and even more games, yet still lose the match. So too with many other sports—for example, a baseball team might get more hits or win more innings but still lose. So what's the problem if something similar happens with the electoral college?”

The problem is that elections are not sporting events. It matters who wins, and the idea is not simply to make the thing exciting or random. All tennis points are not created equal; but all American citizens are. To talk of tennis is simply to sidestep rather than engage the moral principle favoring one person, one vote.

The tennis trope is a silly analogy, not a serious argument. It also proves too much, calling into question our standard mode of picking state governors. Ditto for a variant of the tennis analogy, which casually dismisses direct popular election as “simpleminded majoritarianism.”

### **Number 3: The Media Argument**

Electoral college defenders argue that without the electoral college, candidates will spend all their time trying to rack up big victories in big cities with big media, ignoring the rest of the voters.

But this objection also proves too much. The very same thing might be said of the California governor's election. And the electoral college itself often focuses candidates narrowly on a few swing locations to the detriment of most other regions.

### **Number 4: The Geographic Concentration Argument**

Defenders also contend that the electoral college prevents purely regional candidates from winning by requiring the winner to put together a continental coalition popular in many different regions.

Really? Then how did Lincoln win the electoral college without winning a single Southern state, or even being on the ballot south of Virginia? Didn't the elections of 1796 and 1800 also feature sharp sectional divisions between north and south?

Moreover, if geographic spread is a good argument for a continental electoral college, why isn't it an equally good argument for an intrastate electoral college for vast and populous states like California and Texas?

Finally, under direct election, presidential candidates would continue to wage broad national campaigns appealing to voters in different states and regions: one simply cannot reach 50% without getting lots of votes in lots of places.

### **Number 5: The Argument From Inertia**

Other electoral college defenders have argued that a change in presidential selection rules would radically change the election game: because candidates would no longer care about winning states-only votes-campaign strategies would change dramatically and for the worse.

It's hard to see why. Given that, historically, the electoral college leader has also tended to be the popular vote leader, the strategy for winning shouldn't change dramatically if we switch from one measure to the other.

Granted, had direct election been in place in 2000, the candidates might have run slightly different campaigns. For example, Bush might have tried to rack up even more votes in his home state, while Gore might have avoided badmouthing the state (aka "messing with Texas"). But these likely changes of strategy are neither big nor bad.

Again, why would a system that works so well for state governors fail for the presidency?

### **Number 6: The Senate Anxiety**

Others have claimed that the principle of one person, one vote would likewise doom the equal representation of states in the United States Senate.

This argument at least raises a fair point. The equality idea that favors the abolition of the electoral college does raise questions about Senate malapportionment—why should the thirty four million citizens living in California get no more Senators than the half million citizens living in Wyoming?

But the electoral college issue is nevertheless distinguishable. On election day, Americans vote in 33 (or 34) separate Senate races, each featuring a different candidate match-up. These votes cannot simply be added together. To try to add them up-x% for "the Democrat" and y% for "the Republican" is artificial in the extreme, given that 33 different Democrats are running against 33 different Republicans in 33 different races.

In contrast, presidential votes can be aggregated across America—indeed, it is artificial not to add them together, and the violation of equality is much more flagrant when a person who plainly got fewer votes is nevertheless named the winner.

### **Number 7: The Third Party and Plurality Winner Problem**

Another argument often raised is this one: “Direct election could either lead to a low plurality winner (say, 35%) in a three- or four-way race, or would require a high cutoff (say, 45%) that would require a runoff. Allowing runoffs would encourage third party spoilers.”

But the very same thing is true for states, which manage to elect governors just fine. Moreover, a low plurality winner in a three- or four-way race is possible even with the electoral college (which has also attracted its fair share of spoilers—just ask Ross Perot or Ralph Nader).

Finally, the problem could easily be solved in a direct national election by a system called single transferable voting, in which voters list their 2nd and 3rd choices on the ballot—in effect combining the first heat and runoff elections into a single “instant runoff” transaction.

### **Number 8: The Recount Nightmare**

Other electoral college fans are haunted by the specter of recounts: “If you thought the recount in Florida was a disaster, can you imagine the nightmare of a national recount?”

But if California, Texas, New York, and other large states can handle recounts for governors’ races, a national recount should likewise be manageable, especially with new technology that will make counting and recounting easier in the future.

Moreover, the electoral college does not avoid, and at times can worsen, the recount nightmare: a razor-thin electoral college margin may require recounts in a number of closely contested states even if there is a clear national popular winner. But the recount issue does remind us that direct national election would ideally involve uniform national standards for counting and recounting votes.

### **Number 9: The Modern Federalism Argument**

Many supporters of the electoral college parade under the banners of “federalism” and “states’ rights.” But direct national election would give state governments a better role than they now enjoy.

Under direct election, each state government would have some incentive to make it easier for its citizens to vote—say, by making election day a holiday or by providing paid time off—because the more state voters that turn out, the bigger the states’ overall share in the national tally. Direct national election would thus encourage states to innovate and compete to increase turnout and improve democracy.

Of course, national oversight would be appropriate to keep the innovation and competition within proper bounds: No deceased or infant voters, please! Presidential elections would thus continue to reflect a mix of federal and state laws, and respect proper state innovation within a federal framework—in short, federalism at its best.

### **Number 10: The Futility Argument**

A final argument against reform sounds in *realpolitik*: Adopting direct popular election would require a constitutional amendment, and no such amendment is likely given the high hurdles set out in Article V—two-thirds of the Congress and three-quarters of the states.

But the premise of this argument is wrong. In fact, as few as eleven large states acting together could operationalize direct national election.

# Civic Discussion

## “Defending the Electoral College,” by George F. Will

**ABC News, Nov. 2, 2000**

Political hypochondriacs again are urging Americans to fear and be offended by the system of choosing presidents by electoral votes.

Criticism of this system recurs whenever a close contest poses the possibility that a candidate might win an electoral vote victory while receiving fewer popular votes than his opponent. It is said, with more passion than precision, that this happened three times—1824, 1876, 1888.

Even if that is true, it means that in 50 of 53 elections since 1789—in 94 percent of elections, and in 27 consecutive elections—the system has not produced the outcome that troubles the sleep of its critics. Besides, the assertions about those elections can be true without being pertinent.

In 1824, before the emergence of the two-party system, all four candidates appeared on the ballots in only six of the 24 states. Six states, including New York, had no elections: their state legislatures picked the electors. Nationally, only about 350,000 of the 4 million eligible white males voted. Andrew Jackson received 38,149 more votes than John Quincy Adams, but neither received a majority of electoral votes. So the House of Representatives decided, picking Adams. In 1888 fraud on both sides may have involved more votes than the victory margin (90,596).

There never has been an Electoral College victory by a candidate who lost the popular vote by a substantial margin. And only simple-minded majoritarianism holds that “the nation’s will” would be “frustrated” and democracy “subverted” (this is the language of Electoral College abolitionists) were an electoral vote majority to go to a candidate who comes in a close second in the popular vote count. In such a case, the framers’ objective—a president chosen through state-by-state decisions—would be achieved.

### System Ensures National Campaigns

The Electoral College has evolved, shaping and being shaped by the two-party system, which probably would not survive abandonment of winner-take-all allocation of electoral votes. Direct popular election of presidents, or proportional allocation of states’ electoral votes, would incite minor parties to fractionate the electorate. This might necessitate runoff elections to guarantee that the eventual president got at least 40 percent of the vote—and runoffs might become auctions in which minor parties sold their support.

The electoral vote system shapes the character of winning majorities. By avoiding proportional allocation of electoral votes, America’s system—under which Ross Perot in 1992 got 19 percent of the popular votes and zero electoral votes—buttresses the dominance of two parties, and pulls them to the center, producing a temperate politics of coalitions rather than a proliferation of ideological factions with charismatic leaders.

Furthermore, choosing presidents by electoral votes is an incentive for candidates to wage truly national campaigns, building majorities that are geographically as well as ideologically broad. Consider: Were it not for electoral votes allocated winner-take-all, would candidates campaign in, say, West Virginia? In 1996 Bill Clinton decisively defeated Bob Dole there 52 percent to 37 percent. But that involved a margin of just 93,866 votes (327,812 to 233,946), a trivial amount compared to what can be harvested in large cities. However, for a 5-0 electoral vote sweep, West Virginia is worth a trip or two.

### **Founders' Intentions Realized**

Some Electoral College abolitionists argue that a candidate could get elected with just 27 percent of the popular vote—by winning the 11 largest states by just one vote in each, and not getting a single popular vote anywhere else. But it is equally pointless to worry that a candidate could carry Wyoming 220,000 to 0, could lose the other 49 states and the District of Columbia by an average of 4,400 votes, and be the popular vote winner while losing the electoral vote 535 to 3. Serious people take seriously probabilities, not mere possibilities. And abolitionists are not apt to produce what Madison was too sober to attempt, a system under which no unwanted outcome is even theoretically possible.

Critics of the Electoral College say it makes some people's votes more powerful than others'. This is true. In 1996, 211,571 Wyoming voters cast presidential ballots, awarding three electoral votes, one for every 70,523 voters, whereas 10,019,484 California voters awarded 54 electoral votes, one for every 185,546 voters.

So what? Do critics want to abolish the Senate as well? Delaware, the least populous state in 1789, understandably was the first to ratify the Constitution with its equal representation of states in the Senate: Virginia, the most populous, had 11 times more voters. Today Wyoming's senators' votes can cancel those of California's senators, who represent 69 times more people. If that offends you, so does America's constitutional federalism.

The electoral vote system, like the Constitution it serves, was not devised by, and should not be revised by, simple-minded majoritarians.

# Civic Discussion

## “In Defense of the Electoral College,” by Richard A. Posner

**Slate, November 12, 2012**

The Electoral College is widely regarded as an anachronism, a nondemocratic method of selecting a president that ought to be superseded by declaring the candidate who receives the most popular votes the winner. The advocates of this position are correct in arguing that the Electoral College method is not democratic in a modern sense. The Constitution provides that “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress.” And it is the electors who elect the president, not the people. When you vote for a presidential candidate you’re actually voting for a slate of electors.

But each party selects a slate of electors trusted to vote for the party’s nominee (and that trust is rarely betrayed). Because virtually all states award all their electoral votes to the winner of the popular vote in the state, and because the Electoral College weights the less populous states more heavily along the lines of the Senate (two Senators and two Electoral College votes for every state, and then more electoral votes added for each state based on population), it is entirely possible that the winner of the electoral vote will not win the national popular vote. Yet that has happened very rarely. It happened in 2000, when Gore had more popular votes than Bush yet fewer electoral votes, but that was the first time since 1888.

There are five reasons for retaining the Electoral College despite its lack of democratic pedigree; all are practical reasons, not liberal or conservative reasons.

### 1. Certainty of Outcome

A dispute over the outcome of an Electoral College vote is possible—it happened in 2000—but it’s less likely than a dispute over the popular vote. The reason is that the winning candidate’s share of the Electoral College invariably exceeds his share of the popular vote. In last week’s election, for example, Obama received 61.7 percent of the electoral vote compared to only 51.3 percent of the popular votes cast for him and Romney. (I ignore the scattering of votes not counted for either candidate.) Because almost all states award electoral votes on a winner-take-all basis, even a very slight plurality in a state creates a landslide electoral-vote victory in that state. A tie in the nationwide electoral vote is possible because the total number of votes—538—is an even number, but it is highly unlikely.

Of course a tie in the number of popular votes in a national election in which tens of millions of votes are cast is even more unlikely. But if the difference in the popular vote is small, then if the winner of the popular vote were deemed the winner of the presidential election, candidates would have an incentive to seek a recount in any state (plus the District of Columbia) in which they thought the recount would give them more additional votes than their opponent. The lawyers would go to work in state after state to have the votes recounted, and the result would be debilitating uncertainty, delay, and conflict—look at the turmoil that a dispute limited to one state, Florida, engendered in 2000.

### 2. Everyone’s President

The Electoral College requires a presidential candidate to have trans-regional appeal. No region (South, Northeast, etc.) has enough electoral votes to elect a president. So a solid regional favorite, such as Romney was in the South, has no incentive to campaign heavily

in those states, for he gains no electoral votes by increasing his plurality in states that he knows he will win. This is a desirable result because a candidate with only regional appeal is unlikely to be a successful president. The residents of the other regions are likely to feel disfranchised—to feel that their votes do not count, that the new president will have no regard for their interests, that he really isn't their president.

### **3. Swing States**

The winner-take-all method of awarding electoral votes induces the candidates—as we saw in last week's election—to focus their campaign efforts on the toss-up states; that follows directly from the candidates' lack of inducement to campaign in states they are sure to win. Voters in toss-up states are more likely to pay close attention to the campaign—to really listen to the competing candidates—knowing that they are going to decide the election. They are likely to be the most thoughtful voters, on average (and for the further reason that they will have received the most information and attention from the candidates), and the most thoughtful voters should be the ones to decide the election.

### **4. Big States**

The Electoral College restores some of the weight in the political balance that large states (by population) lose by virtue of the mal-apportionment of the Senate decreed in the Constitution. This may seem paradoxical, given that electoral votes are weighted in favor of less populous states. Wyoming, the least populous state, contains only about one-sixth of 1 percent of the U.S. population, but its three electors (of whom two are awarded only because Wyoming has two senators like every other state) give it slightly more than one-half of 1 percent of total electoral votes. But winner-take-all makes a slight increase in the popular vote have a much bigger electoral-vote payoff in a large state than in a small one. The popular vote was very close in Florida; nevertheless Obama, who won that vote, got 29 electoral votes. A victory by the same margin in Wyoming would net the winner only 3 electoral votes. So, other things being equal, a large state gets more attention from presidential candidates in a campaign than a small states does. And since presidents and senators are often presidential candidates, large states are likely to get additional consideration in appropriations and appointments from presidents and senators before as well as during campaigns, offsetting to some extent the effects of the malapportioned Senate on the political influence of less populous states.

### **5. Avoid Run-Off Elections**

The Electoral College avoids the problem of elections in which no candidate receives a majority of the votes cast. For example, Nixon in 1968 and Clinton in 1992 both had only a 43 percent plurality of the popular votes, while winning a majority in the Electoral College (301 and 370 electoral votes, respectively). There is pressure for run-off elections when no candidate wins a majority of the votes cast; that pressure, which would greatly complicate the presidential election process, is reduced by the Electoral College, which invariably produces a clear winner.

Against these reasons to retain the Electoral College the argument that it is undemocratic falls flat. No form of representative democracy, as distinct from direct democracy, is or aspires to be perfectly democratic. Certainly not our federal government. In the entire executive and judicial branches, only two officials are elected—the president and vice president. All the rest are appointed—federal Article III judges for life.

It can be argued that the Electoral College method of selecting the president may turn off potential voters for a candidate who has no hope of carrying their state—Democrats in Texas,

for example, or Republicans in California. Knowing their vote will have no effect, they have less incentive to pay attention to the campaign than they would have if the president were picked by popular vote, for then the state of a voter's residence would be irrelevant to the weight of his vote. But of course no voter's vote swings a national election, and in spite of that, about one-half the eligible American population did vote in last week's election. Voters in presidential elections are people who want to express a political preference rather than people who think that a single vote may decide an election. Even in one-sided states, there are plenty of votes in favor of the candidate who is sure not to carry the state. So I doubt that the Electoral College has much of a turn-off effect. And if it does, that is outweighed by the reasons for retaining this seemingly archaic institution.

# Civic Discussion

## Source A

### Article II, Section 1, U.S. Constitution (1787) and 12th Amendment (1804)

Article II of the Constitution sets up the electoral college. The 12th Amendment changed the electoral college to make separate ballots for president and vice president. Previously, the person with the most electoral votes was elected president and the second-place vote-getter was vice president. But the election of 1800 resulted in a tie between two Republicans, Thomas Jefferson and Aaron Burr. This amendment addressed this error in the electoral college.

#### Important Points for Students:

- The Constitution set up the electoral college for determining who would be president and vice president.
- The electoral college gives each state votes based on number of members of Congress plus its two senators.
- The electoral college was changed soon after the Constitution was enacted.

## Source B

### The Federalist No. 68: The Mode of Electing the President (1788)

This Federalist explains how the electoral college works, its purpose, and its rationale.

#### Important Points for Students:

- The electoral college elicited little controversy when the Constitution was ratified.
- The electors are chosen by the people, but will make wise, independent choices for president.
- The electoral college functions far differently today than Hamilton imagined. The electors almost always vote according to what the voters wanted.

## Source C

### A Critique of the Top Ten Modern Arguments for the Electoral College (2001)

Ten arguments in favor of the electoral college are rebutted.

#### Important Points for Students:

The article makes these arguments:

- The electoral college does not protect small states, and even if it did, this is not a principled argument in its favor.
- One person, one vote is basic to democracy.
- The electoral college causes too much attention to be paid to swing states.
- Refutes the argument that electoral college cannot be won regionally by pointing out how Abraham Lincoln won the presidency.
- A popular vote system will not dramatically change campaigns.
- Changing the electoral college will not force a change in Senate representation.
- The run-off problem in popular elections could be solved by “single transferable voting.”
- Recounts are actually worse under the electoral college than they would be under a popular vote system.

- A popular vote system would make states even more important than they are in the electoral college.
- Changing to a popular vote system does not necessarily require a constitutional amendment.

#### **Source D**

##### **Defending the Electoral College (2000)**

George Will argues in favor of the electoral college.

##### **Important Points for Students:**

The article is probably the source of the phrase “simple-minded majoritarianism” cited by Source C. Will’s main arguments are:

- The electoral college has had few controversial elections, and it has never elected a candidate that overwhelmingly lost the popular vote.
- The two-party system depends on the electoral college.
- It ensures national campaigns.

#### **Source E**

##### **In Defense of the Electoral College (2012)**

Judge Richard Posner offers five arguments in favor of the electoral college.

##### **Important Points for Students:**

These are the arguments Posner makes.

- The outcome of the electoral college is usually more decisive than that of the popular vote.
- It tends to make the campaigns more national.
- Swing state voters are more thoughtful because the election rests with them.
- The winner-take-all principle makes up for the system’s bias against the large states.
- The electoral college avoids run-off elections, which a popular vote would probably require.

# Civic Discussion Rubric

SUBSTANTIVE	EXEMPLARY	EFFECTIVE	MINIMAL	UNSATISFACTORY
<ul style="list-style-type: none"> <li>States and identifies issues</li> </ul>	Accurately states and identifies issues	Accurately states an issue	States a relevant factual, ethical, or definitional issue as a question	Does not state any issues
<ul style="list-style-type: none"> <li>Uses foundational knowledge</li> </ul>	Accurately expresses relevant foundational knowledge pertaining to issues raised during the discussion	Accurately expresses relevant foundational knowledge pertaining to issues raised during the discussion	Accurately expresses relevant foundational knowledge pertaining to an issue raised by someone else	Does not express any relevant foundational knowledge
<ul style="list-style-type: none"> <li>Stipulates claims or definitions</li> </ul>	Pursues an issue with a stipulation	Does not stipulate a claim or definition	Does not stipulate a claim or definition	Does not stipulate a claim or definition
<ul style="list-style-type: none"> <li>Elaborates statements with explanations, reasons, or evidence</li> </ul>	Pursues an issue with one or more elaborated statements	Pursues an issue with at least one elaborated statement	Elaborates a statement with an explanation, reasons, or evidence	Does not elaborate any issues
<ul style="list-style-type: none"> <li>Recognizes values or value conflict</li> </ul>	Recognizes values or value conflict	Does not recognize values or value conflict	Does not recognize values or value conflict	Does not recognize values or value conflict
<ul style="list-style-type: none"> <li>Argues by analogy</li> </ul>	Uses analogy to advance the discussion	Does not use analogy to advance the discussion	Does not use analogy to advance the discussion	Does not use analogy to advance the discussion
PROCEDURAL				
<ul style="list-style-type: none"> <li>Invites contributions from others</li> </ul>	Engages others in the discussion by inviting their comments	Invites comments from others	Does not invite comments from others	Does not invite comments from others
<ul style="list-style-type: none"> <li>Acknowledges the statements of others</li> </ul>	Engages others in the discussion by acknowledging their contributions	Does not acknowledge the statements of others	Does not acknowledge the statements of others	Does not acknowledge the statements of others
<ul style="list-style-type: none"> <li>Challenges the accuracy, logic, relevance, or clarity of statements</li> </ul>	Constructively challenges the accuracy, clarity, relevance, or logic of statements made	Responds in a civil manner to a statement made by someone else by challenging its accuracy, clarity, relevance, or logic	Does not challenge the accuracy, clarity, relevance, or logic of statements	Does not challenge the accuracy, clarity, relevance, or logic of statements
<ul style="list-style-type: none"> <li>Summarizes points of agreement and disagreement</li> </ul>	Summarizes points of agreement and disagreement	Does not clearly summarize points of agreement	Does not summarize points of agreement or disagreement	Does not summarize points of agreement or disagreement

Adapted from Harris, David E. "Assessing Discussion of Public Issues: A Scoring Guide." In *Handbook on Teaching Social Issues*, edited by Ronald W. Evans and David Warren Saxe. Washington, D.C.: National Council for the Social Studies (in press).