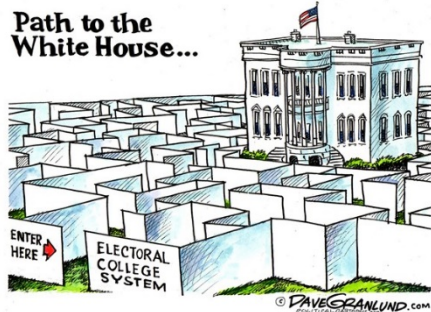


ORANGE COUNTY REGISTER

Reforming the Electoral College

By [ERWIN CHERMERINSKY](#)

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electors to the District of Columbia. The six states with the most electors are California (55), Texas (38), New York (29), Florida (29), Illinois (20) and Pennsylvania (20). The seven smallest states by population – Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming – each have three electors.

The Electoral College emerged as the way of choosing the president late in the deliberations at the Constitutional Convention in 1787. The Electoral College, once proposed, attracted widespread support at the Constitutional Convention.

In part, this reflected the distrust of majority rule on the part of the framers of the Constitution. They had the Senate chosen by state legislatures, Supreme Court justices and lower federal court judges selected by the president with Senate approval and the president determined by the Electoral College. Also, small states strongly favored the Electoral College because it gave them much greater influence than they would have in direct election of the president. In fact, in theory today, states with only 22 percent of the country's population can choose the president.

Each state determines its own method for choosing electors. Now all states select the electors based on who wins the popular vote. The Electoral College does not actually meet. Rather, the electors in each state gather on the Monday after the second Tuesday in December and determine how the state will allocate its electoral votes. In principle, the electors are to vote in accordance with the popular vote in their state. Occasionally, though, there has been an elector who fails to do so.

All states except Nebraska and Maine allocate electors on a winner-take-all basis. In other words, the candidate who wins the popular vote in a state gets all of the electoral votes from that state. Nebraska and Maine allocate electoral votes by congressional district, with the elector for each congressional district voting for the candidate who got the majority of the votes there, and the remaining electors chosen statewide. This means that there is a much more proportional allocation of electoral votes in Nebraska and Maine, compared to all other states where it is winner-take-all.

Because of the allocation of votes in the Electoral College and winner-take-all, there is always a chance that a presidential candidate could win the popular vote, but not get a majority in the Electoral College. This has happened four times in American history, in 1824, 1876, 1888 and in 2000. The U.S. is the only country in the world that uses an Electoral College, and the only country in the world where the candidate who loses the popular vote can be chosen president.

It is easy to imagine scenarios where either Clinton or Trump loses the popular vote but nonetheless wins in the Electoral College. This should be regarded as unacceptable in a democracy, regardless of which political party triumphs.

The ideal solution would be to eliminate the Electoral College. But that would require a constitutional amendment and there is no way that three-fourths of the states would approve of this; small states that benefit from the Electoral College are not going to vote to abolish it. Another, more realistic, possibility would be for Congress to pass a statute requiring that every state allocate its electoral votes in proportion to the popular vote in the state. If a candidate gets 55 percent of the popular vote, he or she should get 55 percent of the electoral vote, not the current 100 percent.

At the very least, that would mean that every vote in every state would have meaning. It also would dramatically lessen the chance that any presidential candidate could be elected without winning the popular vote.

The problem is that people tend to forget about the Electoral College, especially between presidential elections, and particularly after elections where it makes no difference. But the real possibility of a repeat of 2000 should be an impetus for reform, hopefully, before the country again elects a president who lost the election.

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