

# Congressional Digest

A Pro & Con® Monthly

## The Electoral College PROS & CONS of a National Popular Vote

---

### Should the United States change the way it elects presidents?

#### PRO

Rep. Steve Cohen (D-Tenn.).....	18	Foreword: The Electoral College .....	2
Adam Eichen.....	20	How the Electoral College Works.....	3
<i>Equal Citizens</i>		Does the Electoral College Need Reform?.....	5
Darrell M. West.....	24	The National Popular Vote.....	10
<i>Brookings Institution</i>		States in the National Popular Vote Compact.....	13

#### CON

Jason Pye.....	19	Voter Trends in 2016 .....	14
<i>FreedomWorks</i>		Public Opinion on the Electoral College.....	16
James Wallner.....	23	What Congress Is Doing on the Electoral College.....	17
<i>R Street Institute</i>			
Matthew Spalding.....	27		
<i>Hillsdale College</i>			

#### PRO & CON Extra Topics

Mail-In Voting .....	30
Ending Surprise Medical Billing.....	31

---

# The Electoral College

## Should the United States change the way it elects presidents?

*“He who decides a case without hearing the other side... Tho he decide justly, cannot be considered just.”—Seneca*

---

### F O R E W O R D

---

In June 2019, Oregon Gov. Kate Brown (D) signed a bill that she said would make her reliably blue state “part of the national conversation around presidential elections.” The signing made Oregon the 15th state, along with the District of Columbia, to join the National Popular Vote Interstate Compact, an effort to ditch the Electoral College. Once enough states join the compact, it could change the way the U.S. elects presidents, moving the country towards an electoral system based on the popular vote.

The Electoral College has long been controversial, with critics saying it concentrates presidential campaigns into a handful of swing states and can lead to presidents being elected without a majority of votes. The 2016 election, in which Republican candidate Donald Trump defeated Democrat Hillary Clinton in the Electoral College despite losing the popular vote by more than 2.7 million votes, has prompted a new look at the pros and cons of the Electoral College and has given more momentum to the National Popular Vote campaign.

Under Article II, Section 1 of the Constitution, the president and vice president are chosen by electors who are nominated by their states. The intent was to ensure a national consensus when there were more than two major parties and multiple candidates. Most states have laws that “bind” their electors to vote for the popular vote winner in their state, with a fine for those who fail to do so. Currently, a candidate needs to secure 270 of 538 electoral votes to win.

However, a solid chunk of those 538 votes are in states where the outcome is rarely in doubt. Candidates can effectively ignore those states when campaigning, and the diversity of voices within those states is marginalized.

Although the Electoral College has aligned with the popular vote more than 90% of the time, there have been five elections in which the president did not win a majority. Two of those have come in the past 20 years, each time favoring the Republican candidate, leading Democrats to worry that they could be at a disadvantage as

Midwestern and Rust Belt states grow more conservative. Sen. Elizabeth Warren (D-Mass.), who ran for the 2020 Democratic nomination, even called for the Electoral College to be abolished.

“I believe presidential candidates should have to ask every American in every part of the country for their vote, not just a few random states that happen to be close,” Warren wrote in 2019.

According to a March 2020 poll from the Pew Research Center, 58% of Americans back a national popular vote, up from 51% in a poll immediately following the 2016 election.

Critics say that abolishing the Electoral College would diminish the role of smaller states in presidential politics. Why would a candidate spend time and money in a small state like Nebraska or Wyoming when they could get more votes campaigning in Texas or California? The Electoral College also forces candidates to adopt policies that appeal to centrist voters, rather than simply campaigning to activate a majority of partisan voters.

Some Republicans have dismissed Democrats’ concerns as sour grapes and say there’s no need to overturn a system that has worked for 58 presidential elections.

The Electoral College would have to be replaced through a constitutional amendment, but attempts to move one through Congress have come up short. Even if an amendment passed both chambers of Congress, 38 states would need to ratify it, an unlikely event given the power the Electoral College gives small states.

The National Popular Vote movement, however, sidesteps that process by focusing on state legislatures. It would kick in once states totaling 270 electoral votes approve the measure, ensuring that the popular vote winner would also prevail in the Electoral College under current rules. As of May 2020, states totaling 196 votes have approved it, including the purple state of Colorado (in November 2020, Colorado voters will vote on a ballot measure that could remove the state from the compact).

There’s no chance that the National Popular Vote Interstate Compact will clear enough states ahead of the 2020 election, but the Electoral College debate is sure to stay on the front burner, especially if the winner of the Electoral College loses the popular vote again. ■

---

# How the Electoral College Works

## Who's really voting for the president?

The Founding Fathers established the Electoral College in the Constitution, in part, as a compromise between the election of the President by a vote in Congress and election of the President by a popular vote of qualified citizens. However, the term “Electoral College” does not appear in the Constitution. Article II of the Constitution and the 12th Amendment refer to “electors,” but not to the “Electoral College.”

Since the Electoral College process is part of the original design of the U.S. Constitution it would be necessary to pass a Constitutional amendment to change this system.

The ratification of the 12th Amendment, the expansion of voting rights, and the States’ use of the popular vote to determine who will be appointed as electors have each substantially changed the process.

Many different proposals to alter the Presidential election process have been offered over the years, such as direct nationwide election by the eligible voters, but none has been passed by Congress and sent to the states for ratification as a Constitutional amendment. Under the most common method for amending the Constitution, an amendment must be proposed by a two-thirds majority in both houses of Congress and ratified by three-fourths of the states.

**What proposals have been made to change the Electoral College process?** Reference sources indicate that over the past 200 years more than 700 proposals have been introduced in Congress to reform or eliminate the Electoral College. There have been more proposals for Constitutional amendments on changing the Electoral College than on any other subject. The American Bar Association has criticized the Electoral College as “archaic” and “ambiguous” and its polling showed 69 percent of lawyers favored abolishing it in 1987. But surveys of political scientists have supported continuation of the Electoral College. Public opinion polls have shown Americans favored abolishing it by majorities of 58 percent in 1967; 81 percent in 1968; and 75 percent in 1981.

---

*From the Office of the Federal Register The Electoral College, Dec. 23, 2019. See [archives.gov/electoral-college](https://www.archives.gov/electoral-college).*

Opinions on the viability of the Electoral College system may be affected by attitudes toward third parties. Third parties have not fared well in the Electoral College system. For example, third party candidates with regional appeal, such as [South Carolina] Governor [Strom] Thurmond in 1948 and [Alabama] Governor [George] Wallace in 1968, won blocs of electoral votes in the South, but neither came close to seriously challenging the major party winner, although they may have affected the overall outcome of the election.

The last third party, or splinter party, candidate to make a strong showing was Theodore Roosevelt in 1912 (Progressive, also known as the Bull Moose Party). He finished a distant second in Electoral and popular votes (taking 88 of the 266 electoral votes needed to win at the time). Although Ross Perot won 19 percent of the popular vote nationwide in 1992, he did not win any electoral votes since he was not particularly strong in any one state. In 2016, Gary Johnson, the Libertarian Party candidate, qualified for the ballot in all 50 states and the District of Columbia but also failed to win any electoral votes.

### ■ Distribution of Electoral Votes

**Allocation among the states.** Electoral votes are allocated among the states based on the Census. Every state is allocated a number of votes equal to the number of senators and representatives in its U.S. Congressional delegation—two votes for its senators in the U.S. Senate plus a number of votes equal to the number of its Congressional districts. Under the 23rd Amendment of the Constitution, the District of Columbia is allocated three electors and treated like a state for purposes of the Electoral College.

Each state (which includes the District of Columbia for this discussion) decides how to appoint its electors. Currently all states use the popular vote results from the November general election to decide which political party chooses the individuals who are appointed.

**Allocation within each state.** All states, except for Maine and Nebraska, have a winner-take-all policy where the state looks only at the overall winner of the statewide

---

popular vote. Maine and Nebraska, however, appoint individual electors based on the winner of the popular vote for each Congressional district and then two electors based on the winner of the overall statewide popular vote. Even though Maine and Nebraska don't use a winner-take-all system, it is rare for either state to have a split vote. Each has done so once: Nebraska in 2008 and Maine in 2016.

**Can my state vote for the winner of the national popular vote?** Nothing in the Constitution prevents your state from using something other than your state's popular vote results to appoint electors.

Each state legislature determines how the electors are allocated to candidates. As of the last election, the District of Columbia and 48 states had a winner-takes-all rule for the Electoral College. In these states, whichever candidate received a majority of the popular vote, or a plurality of the popular vote (less than 50 percent but more than any other candidate), took all of the state's electoral votes.

Any state legislature could enact legislation that would change how the Governor (or Mayor of D.C.) appoints its electors. So, a state legislature could require that its electors vote for a candidate who did not receive a majority of the popular vote in its state. There is no Constitutional provision or Federal law that requires electors to vote according to the results of the popular vote in their states, so the states may decide to use something other than their state's popular vote results to direct how their electors vote.

## ■ About the electors

**What are the qualifications to be an elector?** The U.S. Constitution contains very few provisions relating to the qualifications of electors. Article II, section 1, clause 2 provides that no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an elector. As a historical matter, the 14th Amendment provides that state officials who have engaged in insurrection or rebellion against the United States or given aid and comfort to its enemies are disqualified from serving as electors. This prohibition relates to the post-Civil War era.

Each state's Certificates of Ascertainment confirms the names of its appointed electors. A state's certification of its electors is generally sufficient to establish the qualifications of electors.

**Who selects the electors?** First, the political parties in each state choose slates of potential electors sometime before the general election. Second, during the general

election, the voters in each state select their state's electors by casting their ballots.

The first part of the process is controlled by the political parties in each state and varies from state to state. Generally, the parties either nominate slates of potential electors at their state party conventions or they choose them by a vote of the party's central committee. This happens in each state for each party by whatever rules the state party and (sometimes) the national party have for the process. This results in each Presidential candidate having their own unique slate of potential electors.

Political parties often choose individuals for the slate to recognize their service and dedication to that political party. They may be state elected officials, state party leaders, or people in the state who have a personal or political affiliation with their party's Presidential candidate.

The second part of the process happens during the general election. When the voters in each state cast votes for the Presidential candidate of their choice they are voting to select their state's electors. The potential electors' names may or may not appear on the ballot below the name of the Presidential candidates, depending on election procedures and ballot formats in each state.

## **Are there restrictions on who the electors can vote for?**

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, require electors to cast their votes according to the popular vote. These pledges fall into two categories—electors bound by state law and those bound by pledges to political parties.

The U.S. Supreme Court has held that the Constitution does not require that electors be completely free to act as they choose and therefore, political parties may extract pledges from electors to vote for the parties' nominees. Some state laws provide that so-called "faithless electors" may be subject to fines or may be disqualified for casting an invalid vote and be replaced by a substitute elector. The Supreme Court has not specifically ruled on the question of whether pledges and penalties for failure to vote as pledged may be enforced under the Constitution. No elector has ever been prosecuted for failing to vote as pledged. However, several electors were disqualified and replaced in 2016 for failing to vote as pledged.

It is rare for electors to disregard the popular vote by casting their electoral vote for someone other than their party's candidate. Electors generally hold a leadership position in their party or were chosen to recognize years of loyal service to the party. Throughout our history as a nation, more than 99 percent of electors have voted as pledged. ■

---

# Does the Electoral College Need Reform?

## Common critiques of the Electoral College and how to fix them

The electoral college and the system built around it have delivered a President and Vice President in 53 of 54 elections since the Twelfth Amendment was ratified in 1804. It has elected the candidates who received the most popular votes in 49 of those elections. While the system's defenders point to this as a considerable achievement, the electoral college has been criticized for a wide range of alleged failings since the earliest days of the republic.

These criticisms fall generally in one of two categories. The first is essentially philosophical, and centers on the fact that the existing system is indirect, and provides a less-than-fully democratic indirect election of the President and Vice President. The second category addresses perceived constitutional, legislative, and political structural flaws in the system asserted by its critics, focusing on the potential for various dubious procedures and outcomes, and the "biases" it is alleged to confer on certain groups and jurisdictions.

### ■ **Philosophical Criticism: The Electoral College Provides Indirect Election of the President**

Perhaps the fundamental contemporary criticism of the Founders' creation is philosophical. Proponents of change maintain that the electoral college system is intrinsically undemocratic—it provides for "indirect" election of the President and Vice President. They assert that this is an 18th century anachronism, dating from a time when communications were poor, the literacy rate was much lower, and the nation had yet to develop the durable, sophisticated, and inclusive democratic political system it now enjoys. They maintain that only direct popular election of the President and Vice President is consistent with modern democratic values and practice.

Defenders of the electoral college system reject this suggestion; they maintain that while it may be indirect, it is not undemocratic—electors are chosen by the voters in free elections. They argue that the system prescribes a

*From the Congressional Research Service report Electoral College Reform: Contemporary Issues for Congress, Oct. 6, 2017. See [fas.org/sgp/crs/misc/R43824.pdf](https://fas.org/sgp/crs/misc/R43824.pdf).*

federal election of the President with votes tallied in each state, noting that the United States is a federal republic, not a plebiscitary democracy. The states, they assert, are long-established entities: distinct political, social, and economic communities that exercise substantial authority in many areas of governance, including presidential elections. The Founders, they note, intended that choosing the President would be an action Americans take both as citizens of the United States and as members of their state communities.

### ■ **Structural Criticisms of the Electoral College System: Constitutional Issues**

**The Minority President: An Electoral College "Misfire."** Perhaps the most widely cited structural criticism of the electoral college system is that it can lead to the election of Presidents and Vice Presidents who win a majority of the electoral vote, but who have gained fewer popular votes nationwide than their major opponents. This result has been variously referred to as "wrong winner" or an electoral college "misfire," particularly among reform advocates, and has occurred four times in the nation's history, 1876, 1888, 2000, and most recently in 2016. In one other election, that of 1824, no candidate received a majority of electoral votes, leading to contingent election in Congress.

Proponents of direct election claim this potentially violates a fundamental democratic principle that the candidate winning the most popular votes should be elected. Electoral college supporters defend the system on the grounds that it is a federal election rather than a national plebiscite, and further note the system has delivered "the people's choice" in 49 of 54 elections since ratification of the Twelfth Amendment, a rate of 90.7%.

**Failure to Gain an Electoral College Majority: Contingent Election.** If the presidential and/or vice presidential candidates fail to receive a simple majority of the electoral college votes, the Twelfth Amendment to the Constitution provides that the House of Representatives chooses the President and the Senate chooses the Vice President by contingent election. In a contingent election, however,

---

each state casts a single vote for President in the House, while each Senator casts a single vote for Vice President.

Critics of contingent election generally argue that it removes the choice of President and Vice President one step further from the voters. That is, members of the House and Senate are free to exercise their choice without regard to the winners of the popular vote in their districts, states, or in the nation at large. Moreover, by effectively granting each state an equal vote, they claim that contingent election fails to account for great differences in population—and the number of popular votes cast—in the various states.

Finally, it may be noted that the Twelfth Amendment does not provide for District of Columbia participation in a contingent election in the House and Senate. While the ratification of the Twenty-third Amendment in 1961 granted the District of Columbia three votes in the electoral college, the nation's capital would be effectively disenfranchised in a contingent election, as it is not a state and sends neither Senators nor Representatives to Congress. Defenders might counter by noting that contingent election is a “break glass only in case of an emergency” procedure, and has been required only once, under arguably unique circumstances, in the 54 presidential elections since ratification of the Twelfth Amendment.

**The Decennial Census Issue.** An additional structural issue is that the electoral college system bases allocation of electoral votes on the results of each decennial census. After each census, all 435 Members of the House of Representatives are reapportioned among the states: some states gain Representatives, others lose them, and some remain unchanged. Gains or losses in House seats lead to comparable adjustments to state electoral vote allocations following the census. For instance, the most notable adjustments following the 2010 census were Texas, which gained four House seats and whose electoral vote allocation rose from 34 to 38, and New York, which lost two House seats, and whose electoral vote allocation fell from 31 to 29.

The decennial reallocation of electoral votes is reflected in the first presidential election following each census; for instance, electoral college reallocations resulting from the 2010 census were in place for the 2012 and 2016 elections, and will continue for the 2020 election. Supporters of direct election note that decennial reapportionment of electors fails to account for significant population shifts that often occur during the course of a decade. Thus, the allocation of electoral votes for the elections of 2012, 2016, and 2020 reflect the 2010 population distribution among the states, but it makes no provision

for changes during the decade. States that enjoy greater population gains during the current decade will not see those increases translated into more presidential electors until 2024. Until then, they will arguably be under-represented in the electoral college, while by the same logic, those that will ultimately lose seats and electors will be over-represented.

**The Faithless Elector.** [A]lthough nearly all electors since the earliest presidential elections have voted for the candidates to whom they were pledged, from time to time one or more electors have voted against the instructions of the electorate. Since the 1948 presidential election, 16 “faithless” or “unfaithful” electors have cast votes for candidates other than those to whom they were pledged, and one cast a blank ballot. Twenty-six states and the District of Columbia attempt to bind their electors by one of several means, generally by requiring an oath or pledge or requiring electors to vote for the candidates of the political party the elector represents. In 1952, the Supreme Court held in *Ray v. Blair* that political parties could exercise state-delegated authority to require elector-candidates for the office of elector to pledge to support the party's presidential and vice presidential nominees.

The Court did not, however, rule on the constitutionality of state laws that bind electors. Many commentators suggest that binding electors and the pledges that electors make are constitutionally unenforceable, and that electors remain free agents who may vote for any candidate they choose. In the presidential election of 2016, however, three would-be faithless electors were prevented from voting for candidates other than those to whom they were pledged.

## ■ **Structural Criticisms of the Electoral College System: Legislative and Political Issues**

**The General Ticket System—“Winner Take All.”** The general ticket system of awarding electoral votes is cited by critics as a structural failing of the electoral college system, an issue that does not stem from the Constitution, but rather from state laws. At the present time, 48 states and the District of Columbia provide that the ticket of presidential and vice presidential candidates that wins the most popular votes wins all the electoral votes for that jurisdiction. By awarding all of a state's electoral votes to the winner, regardless of the closeness of the popular vote results, the general ticket system is said to discount the votes of citizens who preferred the candidates receiving fewer votes. This asserted inequity is said to be particularly apparent in states where the popular vote is

---

closely divided. Conversely, electoral college defenders claim the general ticket system's "multiplier" effect tends to reinforce the overall election results by magnifying the winning ticket's margin and to deter frivolous challenges to the state-by-state results.

Maine and Nebraska provide the only exceptions to the general ticket system, having established what is referred to as the "district system" of awarding electoral votes . . . Proponents of direct election criticize the district system on the grounds that adding the "senatorial" electors to the statewide winners' total has much the same effect of disadvantaging the losing candidates and their supporters. District system supporters claim that it better reflects geographical differences in candidate support throughout a state, thus delivering an electoral vote that more accurately represents local preferences.

**Alleged Biases of the Electoral College System.** Opponents of the electoral college identify another category of alleged distortion built into the system. These are said to provide an advantage derived from state population or voter characteristics or behavior.

As the composition of the electoral college is partially based on state representation in Congress, some maintain it is inconsistent with the "one person, one vote" principle. The Constitutional Convention agreed on a compromise plan whereby less populous states were assured of a minimum of three electoral votes, based on two Senators and one Representative, regardless of state population. Since electoral college delegations are equal to the combined total of each state's Senate and House delegation, its composition is arguably weighted in favor of the "small," or less populous, states. The two "senatorial" or "at large" electors to which each state is entitled are said to confer on them an advantage over more populous states, because voters in the less populous ones cast more electoral votes per voter.

For instance, in 2016, voters in Wyoming, the least populous state, cast 255,849 popular votes and three electoral votes for President, or one electoral vote for every 85,283 voters. By comparison, Californians cast 14,181,595 popular votes and 55 electoral votes, or one electoral vote for every 257,847 voters. As a result of this distribution of electoral votes among the states, it is argued that "small" states have an advantage over large states because their electoral vote totals are larger in proportion to their population.

While it is generally recognized, as noted above, that small states possess an arithmetical advantage in the electoral college, some observers hold that, conversely, the most populous (large) states enjoy a voting pow-

er advantage, because they control the largest blocs of electoral votes. In combination with the general ticket system, this is said to confer an advantage on voters in these states because the large blocs of electoral votes they control have greater ability to influence the outcome of presidential elections. To use the previously cited example, a voter in Wyoming in 2016 could influence only three electoral votes, 1.1% of the 270 electoral votes needed to win the presidency, whereas a voter in California could influence 55 electoral votes in the same presidential election, 20.4% of the votes needed to gain an electoral college majority. According to this argument, known as the "voting power" theory, the electoral college system actually provides an *advantage* to the most populous states, and disadvantages all other states and the District of Columbia.

Another theory centers on an asserted advantage enjoyed by ethnic minority voters. According to this argument, minority voters, principally African Americans, Latinos, and Jews, tend to be concentrated in populous states with large electoral college delegations. By virtue of this concentration, they are said to exert greater influence over the outcomes in such states because their voting patterns tend to favor candidates whose policies they perceive to be in their interest, thus helping win the states and their electoral votes for these candidates.

A further alleged bias in the electoral college system is said to stem from the constitutional mandate that

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed.

Except for the two "senatorial electors," a state's electoral vote allocation depends on the number of Representatives in Congress apportioned to it. A state's electoral vote is based to this extent on residents, not on citizens, and therefore, it is asserted that states that have high numbers of noncitizen residents counted in the Census enjoy a bias in the allocation of both Representatives and electoral votes.

For instance, the United States Elections Project estimated that in 2016, 16.7% of California's population was noncitizens, the highest proportion of any state, followed by Texas at 13.5% and Nevada at 12.6%. Critics of the current method have argued that counting noncitizens for the purposes of apportionment of Representatives and presidential electors provides an unfair advantage to states with large noncitizen populations. A 2012 Washington Post article discussing this alleged bias concluded

---

that, due to large concentrations of noncitizens, California gained five electors from the 2010 reapportionment that it would not have received if Representatives and electoral votes were allocated according to citizen population, rather than resident population. According to this calculation, Texas gained two additional electors and New York, Florida, and Washington each gained one because Representatives are apportioned according to population. Conversely, the author calculated that Indiana, Iowa, Louisiana, Michigan, Missouri, Montana, Ohio, Oklahoma, and Pennsylvania each lost one elector due to the non-citizen population advantage.

Another alleged advantage or bias of the electoral college centers on differing rates of voter participation in the states. Neal Peirce and Lawrence Longley, writing in *The People's President*, suggested that voters in states that have lower rates of participation may enjoy an advantage because it takes fewer popular votes per elector to win the state and all its electoral votes.

For instance, in the 2016 election, Hawaii, with four electoral votes, had the lowest rate of voter participation: 42.2% of eligible voters participated, casting 428,937 votes for President, a figure that equals 107,234 votes for each elector. By comparison, Minnesota, with 10 electoral votes, had the highest rate of participation, 74.2% of eligible voters, who cast 2,944,813 votes for President, a figure that equals 294,481 votes per elector.

**The “Electoral College Lock.”** A final asserted bias is the so-called “electoral college lock,” a perceived phenomenon identified in the late 1960s that was claimed to provide a long-term election advantage to the candidates of a particular party, originally to Republicans, and later, Democrats, at least through the 2016 election. The lock was loosely defined as a tendency of the system to favor presidential candidates of one party over another. It was said to operate because a bloc of states possessing a large, sometimes decisive, number of electoral votes could be reliably expected to vote in successive elections for the candidates of the political party that tended to dominate those states.

For instance, California is regarded as a reliably Democratic or “blue” state in presidential elections, one that dependably delivers its 55 electoral votes to the Democratic Party presidential candidates. Texas is similarly cited as a “red” state that reliably produces its 36 electoral votes for Republican presidential candidates.

As with other electoral college issues, the electoral college lock was also said to be dependent on the general ticket system, because it delivers a state’s entire electoral vote to the winning candidates.

## ■ Electoral College Reform Options

**End It — Direct Popular Election Replaces the Electoral College.** The direct election alternative would abolish the electoral college, substituting a single nationwide count of popular votes. The candidates winning a plurality, or a majority, of the votes cast would be elected President and Vice President.

Most direct election proposals would constitutionally mandate today’s familiar joint tickets of presidential/vice presidential candidates, a feature that is already incorporated in state law. Some would require simply that the candidates that gain the most popular votes be elected, while others would set a minimum threshold of votes necessary to win election — generally 40% of votes cast. Some proposals would require a majority to elect, and if no presidential ticket were to win either a majority or 40% of the popular vote, then the two tickets with the highest popular vote total would compete in a subsequent runoff election. Alternatively, some versions of the direct popular election plan would provide for Congress, meeting in joint session, to elect the President and Vice President if no ticket reached the 40% or majority threshold.

Proponents of direct popular election ... assert that the process would be simple, national, and democratic. They maintain that direct popular election would provide for a single, democratic choice, allowing all the nation’s voters to choose the President and Vice President directly, with no intermediaries. The “people’s choice” would always be elected. According to supporters of direct election, every vote would carry the same weight in the election, no matter where in the nation it was cast. No state or group of voters would be advantaged, nor would any be disadvantaged.

Direct election would eliminate the potential complications that could arise under the current system in the event of a presidential candidate’s death between election day and the date on which electoral vote results are declared, since the winning candidates would become President-elect and Vice President-elect as soon as the popular returns were certified. All other procedures of the existing system, such as provisions in law for certifying the electoral vote in the states and the contingent election process, would be replaced by these comparatively simple requirements.

Critics of direct election and electoral college defenders seek to refute these arguments. Direct election proponents claim their plan is more democratic and provides for “majority rule,” yet most direct election proposals require only a plurality — as little as 40% of the vote — in order to elect the President. Other versions include no



---

minimum vote threshold at all, or provide for election by Congress in these circumstances. How, they might ask, could plurality Presidents or those elected by Congress, a practice that was rejected by the Founders, be reconciled with the ideal of strict majoritarianism? Opponents might further maintain that direct election would result in political fragmentation, as various elements of the political spectrum form competing parties, and regionalism, as numerous splinter candidates claiming to champion the particular interests of various parts of the country, entered presidential election contests.

Further, they assert that direct election would foster acrimonious and protracted post-election struggles, rather than eliminate them. A runoff election would, they might suggest, simply offer more incentives to bargaining and intrigue, thus confirming the founders' worst fears. Under direct election, they suggest, every close election might resemble the bitter post-election contests in 2000, not just in one state, but nationwide, as both parties seek to gain every possible vote. They contend that such rancorous disputes could have profound negative effects on political comity in the nation, and might ultimately undermine public confidence in the legitimacy of the presidency and federal government.

**Mend It — Reform the Electoral College.** Reform measures that would retain the electoral college in some form have included several variants. Most versions of these plans share certain common elements. They would

- eliminate the office of presidential elector while retaining electoral votes;
- award electoral votes directly to the candidates, without the action of electors; and
- retain the requirement that a majority of electoral votes is necessary to win the presidency.

In common with direct election, most would also require joint tickets of presidential-vice presidential candidates, a practice currently provided by state law. The three most popular reform proposals include

- the automatic plan or system, which would mandate the assignment of electoral votes automatically on the current general ticket/winner-take-all basis in each state and the District of Columbia;
- the district plan or system, as currently adopted in Maine and Nebraska, which would automatically award one electoral vote to the winning ticket in each congressional district in each state, but would also automatically assign each state's two additional

“senatorial” electoral votes to the statewide popular vote winners; and

- the proportional plan or system, which would automatically award each state's electoral votes in proportion to the percentage of the popular vote gained by each ticket.

**Leave It Alone.** For nearly 30 years, the issue of electoral college reform held a prominent place on the agenda of successive Congresses. Between the late 1940s through 1979, hundreds of electoral college reform proposals were introduced in both chambers. They embraced a wide range of approaches to the question, but generally followed the outlines set out in the previous section: “ending it” by eliminating the entire electoral college system and establishing direct popular election, or “mending it” by reforming its more controversial provisions.

Proposed amendments were the subject of hearings in the Senate and House Judiciary Committees on 17 different occasions between 1948 and 1979, and, most notably, electoral college reform proposals were debated in the full Senate on five occasions, and twice in the House during this period. Proposals were approved by the necessary two-thirds majority twice in the Senate and once in the House, but never the same amendment in the same Congress.

Following the 1979 defeat of a direct popular election amendment on the Senate floor, and the subsequent departure of prominent congressional advocates, the question of electoral college reform largely disappeared from public attention and Congress's legislative agenda. The Senate's failed vote on a direct popular amendment marked the last occasion on which either chamber took floor action on an electoral college reform measure of any kind. Reform or replacement proposals had been familiar items on the congressional agenda; for instance, 26 amendments were introduced to abolish or reform the electoral college in the 96th Congress (1979-1980). In the ensuing years, however, the number of related constitutional amendments introduced in the House or Senate dropped from an average of eight per Congress for the 101st through 110th Congresses, to none in the 113th Congress (2013-2014).

In 2016, however ... a President and Vice President were elected with a majority of electoral votes, but fewer popular votes than their principal opponents. The recurrence of this outcome in 2016 contributed to renewed interest among some in replacing the electoral college with direct popular election. Following the election, four proposals to establish direct popular election were introduced in the last weeks of the 114th Congress. ■

---

# The National Popular Vote

## How would the interstate compact work?

Here is the entire text of the proposed “Agreement Among the States to Elect the President by National Popular Vote.”

### ■ Article I — Membership

Any State of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

### ■ Article II — Right of the People in Member States to Vote for President and Vice President

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

### ■ Article III — Manner of Appointing Presidential Electors in Member States

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”

The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner.

At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential

slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official’s own state.

If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state’s number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state’s presidential elector certifying official shall certify the appointment of such nominees.

The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

### ■ Article IV — Other Provisions

This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a President’s term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

---

*From the National Popular Vote Text of the National Popular Vote Compact Bill, February 2013. See [nationalpopularvote.com/bill-text](http://nationalpopularvote.com/bill-text).*

---

The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

This agreement shall terminate if the electoral college is abolished.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

## ■ Article V — Definitions

For purposes of this agreement,

- “chief executive” shall mean the Governor of a State of the United States or the Mayor of the District of Columbia;
- “elector slate” shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;
- “chief election official” shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;
- “presidential elector” shall mean an elector for President and Vice President of the United States;
- “presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors;
- “presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;
- “state” shall mean a State of the United States and the District of Columbia; and
- “statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

## ■ Explanation of Article II

Article II of the compact mandates a popular election for President and Vice President in each member state.

From the perspective of the operation of the compact, this clause guarantees that there will be popular votes for President and Vice President to count in each member state. It fortifies the practice of the states (universal since the 1880 election) to permit the people to vote for President. [T]he people of the United States have no federal consti-

tutional right to vote for President and Vice President. The people have acquired the privilege to vote for President and Vice President as a consequence of legislative action by their respective states. Moreover, except in Colorado, the people have no state constitutional right to vote for President and Vice President, and the existing privilege may be withdrawn at any time merely by passage of a state law. Indeed, the voters chose the presidential electors in only six states in the nation's first presidential election (1789). Moreover, state legislatures have occasionally changed the rules for voting for President for purely political reasons. For example, just prior to the 1800 presidential election, the Federalist-controlled legislatures of Massachusetts and New Hampshire — fearing Jeffersonian victories in the popular votes in their states — repealed existing state statutes allowing the people to vote for presidential electors and vested that power in themselves.

Because an interstate compact is a contractual obligation among the member states, the provisions of a compact take precedence over any conflicting law of any member state. This principle applies regardless of when the conflicting law may have been enacted. Thus, once a state enters into an interstate compact and the compact takes effect, the state is bound by the terms of the compact as long as the state remains in the compact. Because a compact is a contract, a state must remain in an interstate compact until the state withdraws from the compact in accordance with the compact's terms for withdrawal.

## ■ Explanation of Article III

Article III of the compact is the heart of the compact. It establishes the mechanics of a nationwide popular election by prescribing the “manner of appointing presidential electors in member states.”

The National Popular Vote compact is state legislation that exercises existing state power under Article II, section 1, clause 2 of the U.S. Constitution:

“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 first three clauses of Article III are the main clauses for implementing nationwide popular election of the President and Vice President.

---

The first clause of Article III of the compact requires that the chief election official obtain statements showing the number of popular votes cast for each presidential slate in each state. Then, this clause requires that the popular votes for each presidential slate from all the states be added together to yield a “national popular vote total” for each presidential slate.

Because the purpose of the compact is to achieve a nationwide popular vote for President and Vice President, the popular vote counts from all 50 states and the District of Columbia are included in the “national popular vote total” regardless of whether the jurisdiction is a member of the compact. That is, the compact counts the popular votes from member states on an equal footing with those from non-member states.

Popular votes can, however, only be counted from non-member states if there are popular votes available to count. Article II of the compact guarantees that each member state will produce a popular vote count because it requires member states to permit their voters to vote for President and Vice President in a “statewide popular election.” Even though all states have permitted their voters to vote for presidential electors in a “statewide popular election” since the 1880 election, non-member states are, of course, not bound by the compact. In the unlikely event that a non-member state were to take the presidential vote away from its own people, there would be no popular vote count available from such a state.

Similarly, in the unlikely event that a non-member state were to remove the names of the presidential nominees and vice-presidential nominees from the ballot and present the voters only with names of candidates for presidential elector (as was the case in 1960 in Alabama), there would be no way to associate the vote counts of the various presidential electors with the nationwide tally being accumulated by any regular “presidential slate” running in the rest of the country.

The compact addresses the above two unlikely possibilities by specifying that the popular votes that are to be aggregated to produce the “national popular vote total” are those that are

“... cast for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election ... .”

In this way, the first clause of Article III of the compact deals with the unlikely possibility of a “one-state veto” preventing the orderly operation of the compact.

The purpose of the second clause of Article III of the

compact is to identify the winner of the presidential election. Because the purpose of the compact is to implement a nationwide popular election of the President and Vice President, it is the national vote total — not each state’s separate statewide vote count — that would determine the national winner. Under the compact, the Electoral College would reflect the nationwide will of the voters — not the voters’ separate statewide choices. Thus, if, for example, the Republican presidential slate is the national popular vote winner, the presidential electors nominated by the Republican Party in all states belonging to the compact would win election as members of the Electoral College in those states.

Suppose that the compact had been in effect in 2004, and that California had been a member of the compact in 2004, and that the Republican Bush–Cheney presidential slate received the most popular votes in all 50 states and the District of Columbia (as indeed was the case in the 2004 presidential election). In that event, the California Secretary of State would have declared the 55 presidential electors who had been nominated by the California Republican Party to be elected as California’s members of the Electoral College. In fact, 55% of California voters favored the Kerry–Edwards slate in 2004. Nonetheless, all 55 Republican candidates for presidential elector (not the 55 Democrats) would have won election as members of the Electoral College in California in 2004 because the specific purpose of the compact is to guarantee the presidency to the presidential slate with the most votes nationwide.

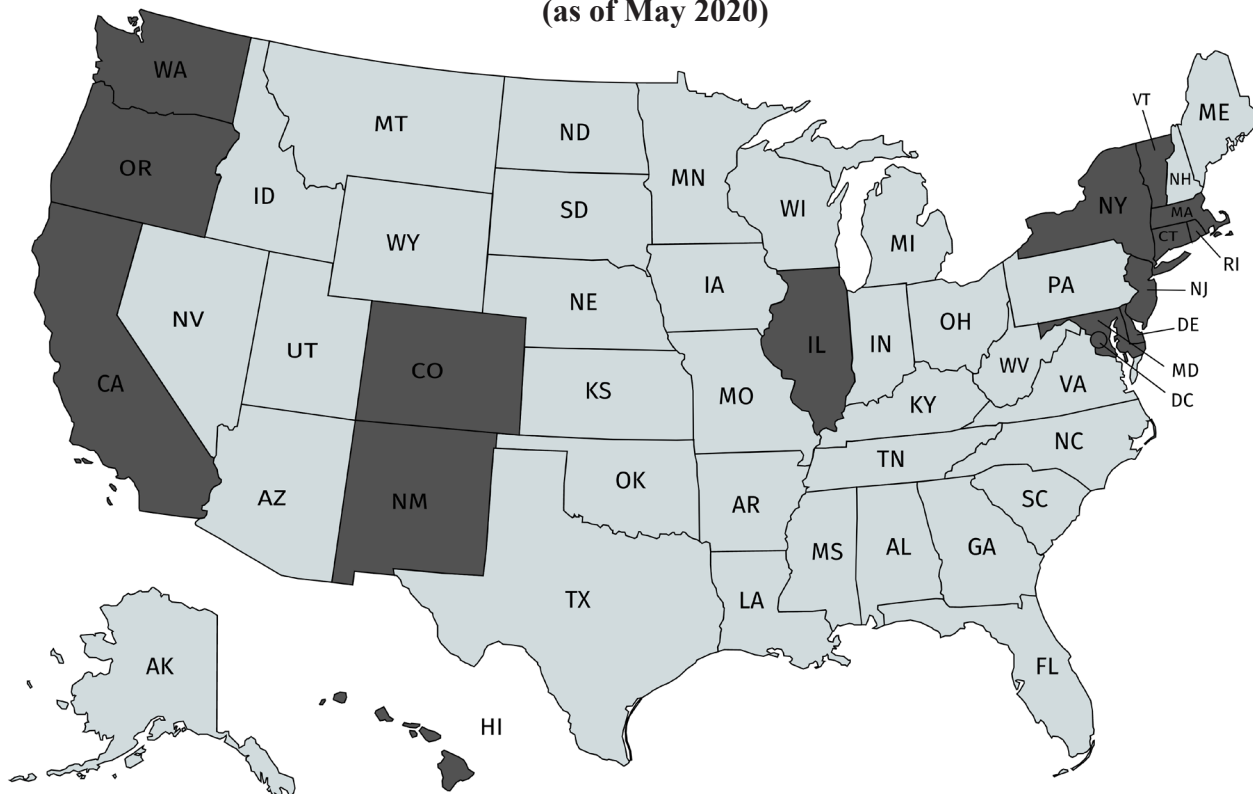
Because the compact becomes effective only when it encompasses states collectively possessing a majority of the electoral votes (i.e., 270 or more of the 538 electoral votes), the presidential slate receiving the most popular votes in all 50 states and the District of Columbia is guaranteed at least 270 electoral votes when the Electoral College meets in mid-December. Given the fact that the Bush–Cheney presidential slate received 3,012,171 more popular votes in the 50 States and the District of Columbia in 2004 than the Kerry–Edwards slate, the compact would have guaranteed the Bush–Cheney slate a majority of the electoral votes in the Electoral College.

Under the compact, the Bush–Cheney slate would have received a majority of the electoral votes even if 59,393 Bush–Cheney voters in Ohio had shifted to the Kerry–Edwards slate in 2004 thereby giving Kerry–Edwards the most popular votes in Ohio. In contrast, under the current system, if the Kerry–Edwards slate had carried Ohio, the Democrats would have received all of the state’s 20 electoral votes and the Kerry–Edwards slate would have been elected to office with 272 electoral votes (to Bush’s 266). ■

# States in the National Popular Vote Compact

## How close is the compact to becoming reality?

**States That Have Enacted National Popular Vote Legislation  
(as of May 2020)**



Between 2006 and the present, every state legislature in the nation has considered a National Popular Vote (NPV) bill. Some legislation has sought to rescind commitments to the NPV compact, although none of these bills has been enacted. To date, 15 states and the District of Columbia have passed NPV bills into law.

### ■ Enacted

- 2019: Colorado (9 electoral votes), Delaware (3), New Mexico (5) and Oregon (7).
- 2018: Connecticut (7).
- 2016: New York (29) made its participation in the compact permanent (previously the state had to renew its participation in 2018).
- 2014: New York.

*From the National Conference of State Legislatures report National Popular Vote. See [ncsl.org/research/elections-and-campaigns/national-popular-vote.aspx](https://ncsl.org/research/elections-and-campaigns/national-popular-vote.aspx).*

- 2013: Rhode Island (4).
- 2011: California (55) and Vermont (3).
- 2010: Massachusetts (11) and Washington, D.C. (3).
- 2009: Washington (12).
- 2008: Hawaii (4) and Illinois (20).
- 2007: Maryland (10) and New Jersey (14).

### ■ Vetoed

- In 2019 the governor vetoed NPV legislation in Nevada.
- NPV bills were vetoed in Rhode Island and Vermont in 2008, but enacted in 2013 and 2011 respectively.
- An NPV bill was vetoed in Hawaii in 2007, and the veto of a second NPV bill was eventually overridden by the Hawaii Legislature in 2008.
- The California legislature passed NPV legislation in 2006 and 2008, but it was vetoed by the governor both times. An NPV bill was finally enacted in California in 2011. ■

---

# Voter Trends in 2016

## Young voters were the only age group to increase turnout

Since 1964, the U.S. Census Bureau has fielded the Voting and Registration Supplement to the Current Population Survey every two years. [This] series of tabulations and data products alongside a public use data file [reflects results for] the November 2016 presidential election.

In addition to the requirement that individuals be at least 18 years old, voters in national elections must also be U.S. citizens. Although the Census Bureau has collected voting and registration data since 1964, the Current Population Survey has gathered citizenship data since 1978.

In 2016, 61.4 percent of the citizen voting-age population reported voting, a number not statistically different from the 61.8 percent who reported voting in 2012.

Voting rates have historically varied by race and Hispanic origin. In 2012, voting rates for non-Hispanic blacks (66.6 percent) were higher than non-Hispanic whites (64.1 percent) for the first time in this series. In 2016, turnout increased to 65.3 percent for non-Hispanic whites, but decreased to 59.6 percent for non-Hispanic blacks.

For the most part, from 1980 to 2012, the share of reported voters who were non-Hispanic white decreased from one presidential election cycle to the next. In 1980, 87.6 percent of reported voters were non-Hispanic white, but by 2012, this number decreased to 73.7 percent. Over this same period, the distribution of voters who reported being either non-white or Hispanic increased in most elections.

However, in 2016, for only the second time in this series, the percentage of voters who were non-Hispanic white (73.3 percent) was not statistically different from the previous presidential election, meaning that the consistently observed year-to-year decrease did not occur in this most recent cycle. Additionally, 2016 was only the second election in this series where the share of non-Hispanic black voters decreased, from 12.9 percent in 2012 to 11.9 percent in 2016.

Voting rates have also historically varied according

---

*From the U.S. Census Bureau Voting in America: A Look at the 2016 Presidential Election, May 10, 2017. See [census.gov/newsroom/blogs/random-samplings/2017/05/voting\\_in\\_america.html](https://www.census.gov/newsroom/blogs/random-samplings/2017/05/voting_in_america.html).*

to age, with older Americans generally voting at higher rates than younger Americans. In 2016, this was once again the case, as citizens 65 years and older reported higher turnout (70.9 percent) than 45- to 64-year-olds (66.6 percent), 30- to 44-year-olds (58.7 percent) and 18- to 29-year-olds (46.1 percent). However, in 2016, young voters ages 18 to 29 were the only age group to report increased turnout compared to 2012, with a reported turnout increase of 1.1 percent. All older age groups either reported small yet statistically significant turnout decreases (45- to 64-year-olds and those age 65 and older) or turnout rates not statistically different from 2012 (30- to 44-year-olds).

When analyzed together, reported turnout by age, race and Hispanic origin differed in 2016 as well. In comparison to 2012, younger non-Hispanic whites between the ages of 18 to 29 and between the ages of 30 to 44 reported higher turnout in 2016, while voting rates for the two oldest groups of non-Hispanic whites were not statistically different.

Meanwhile, for non-Hispanic blacks, turnout rates decreased in 2016 for every age group. For other race non-Hispanics and Hispanics of any race, voting rates between 2012 and 2016 were not statistically different for any age groups.

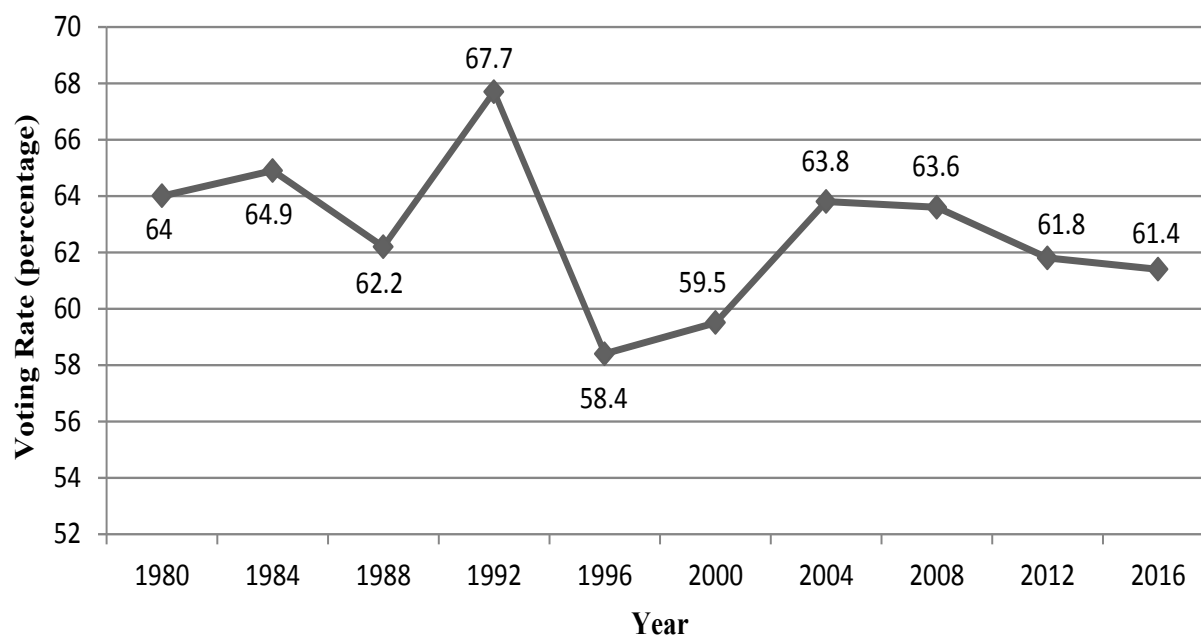
In any given presidential election, the number of reported voters typically increases relative to the previous presidential election, largely as a product of increases in the size of the citizen voting-age population.

Overall, in 2016, there were about 4.6 million more reported voters than in 2012. A majority of these additional voters (3.7 million) were 65 years and older. Remember, despite these additional reported voters, the overall voting rate was not statistically different between the two elections.

When analyzed alongside race and Hispanic origin, in 2016 a large portion of the additional reported voters (2.8 million) were non-Hispanic whites who were also 65 years of age and older.

In addition to race, Hispanic origin and age, reported voting rates varied according to a variety of other social, demographic and economic factors as well. Readers are invited to explore the Census Bureau's additional vot-

## Reported U.S. Voting Rates: 1980-2016



*Source:* U.S. Census Bureau

ing and registration resources for the 2016 election and beyond.

Voting estimates from the Current Population Survey and other sample surveys have historically differed from those based on administrative data, such as the official results reported by each state and disseminated collectively by the Clerk of [the] U.S. House of Representatives and the Federal Election Commission. In general, voting rates from the sample surveys such as the Current Population Survey are higher than official results.

Potential explanations for this difference include item nonresponse, vote misreporting, problems with memory or knowledge of others' voting behavior, and methodological issues related to question wording and survey administration.

Despite these issues, the Census Bureau's November supplement to the Current Population Survey remains the most comprehensive data source available for examining the social and demographic composition of the electorate in federal elections, particularly when examining broad historical trends for subpopulations.

### ■ Comments on voter trends in 2016

"In 2016, we see evidence that the 2008 and 2012 elections may have been exceptions to normal turnout patterns," said Thom File, a Voting and Registration expert

with the U.S. Census Bureau. "Last November the black voting rate actually decreased by about 7 percentage points which is a rather dramatic drop off. Meanwhile turnout for non-Hispanic whites actually increased by about a percentage point, so the 2016 election definitely looked different from 2008 and 2012 in terms of race and turnout."

### ■ Comments on youth voter trends in 2016

Young voters were the only age group to show increased turnout between 2012 (45 percent) and 2016 (46.1 percent). All older age groups reported either small, yet statistically significant turnout decreases, or no meaningful change.

"In general older Americans vote at higher rates than younger Americans and in 2016, this was once again the case," said File. "The older the group the higher the voting rate, with the highest being about 71 percent for those 65 and older."

Even though young people reported the lowest overall turnout of any age group, 18- to 29-year olds were the only group to see their turnout increase relative to 2012.

"Here, turnout increased by about a percentage point for this youngest age group, whereas older age groups had rates either slightly lower or the same as in 2012," File said. ■

---

# Public Opinion on the Electoral College

## A growing partisan split emerges

A majority of U.S. adults (58%) say the Constitution should be amended so the presidential candidate who receives the most votes nationwide wins, while 40% prefer to keep the current system in which the candidate who receives the most Electoral College votes wins the election.

Support for amending the Constitution has increased slightly since the period immediately following the 2016 election. In a November 2016 CNN/ORC survey, roughly half of adults (51%) favored amending the Constitution to eliminate the Electoral College. And in a March 2018 Pew Research Center survey, 55% favored taking this step.

The current level of support for eliminating the Electoral College is nearly the same as in 2011, when 62% favored amending the Constitution.

In 2011, about half of Republicans and independents who lean toward the Republican Party (51%) said the Constitution should be amended. Today, nearly two-thirds prefer to keep the current system, a figure that is essentially unchanged over the past two years.

Among Democrats and Democratic leaners, 81% now say the Constitution should be amended, modestly higher than in other recent years.

Women and younger adults are more likely than men or older adults to support amending the Constitution so the candidate who receives the most votes wins the presidency. About six in ten women (63%) say the Constitution should be amended so the candidate with the most votes wins the presidency, compared with 52% of men. And while 65% of those ages 18 to 29 support having the popular vote winner become president, the share falls to 51% among those ages 65 and older.

Gender and age differences in these views are more pronounced among Republicans than Democrats. For example, 41% of Republican women favor amending the Constitution so the winner of the popular vote becomes president, compared with 24% of GOP men.

---

*From the Pew Research Center* A majority of Americans continue to favor replacing Electoral College with a nationwide popular vote, *March, 13 2020*. See [pewresearch.org/fact-tank/2020/03/13/a-majority-of-americans-continue-to-favor-replacing-electoral-college-with-a-nationwide-popular-vote/](https://www.pewresearch.org/fact-tank/2020/03/13/a-majority-of-americans-continue-to-favor-replacing-electoral-college-with-a-nationwide-popular-vote/).

Among Republicans, those who do not have a college degree (36%) are more likely than college graduates (23%) to favor deciding the election with the popular vote. By contrast, Democrats who have not completed college (78%) are somewhat less supportive than Democratic college graduates (86%) of amending the Constitution so the popular vote winner becomes president.

### ■ Views of parties' commitment to fair elections

In addition to having starkly different views about how presidential elections should be conducted, Republicans and Democrats both express low levels of confidence in the other party's commitment to ensuring fair and accurate elections in the United States.

Overall, 52% of adults say the Republican Party is somewhat or very committed to fair and accurate elections, but just 22% say the GOP is very committed to this goal.

A similar proportion of adults (55%) say the Democratic Party is very or somewhat committed to fair elections, with only 20% saying the party is very committed.

Large majorities of both Republicans (87%) and Democrats (83%) have confidence that their own party is committed to fair elections. And equally small shares – 23% in each party – are confident that the opposing party shares this commitment.

### ■ Methodology

The American Trends Panel (ATP), created by Pew Research Center, is a nationally representative panel of randomly selected U.S. adults. Panelists participate via self-administered web surveys. Panelists who do not have internet access at home are provided with a tablet and wireless internet connection. The panel is being managed by Ipsos.

Data in this report are drawn from the panel wave conducted Jan. 6 to Jan. 19, 2020. A total of 12,638 panelists responded out of 15,463 who were sampled, for a response rate of 82%. The margin of sampling error for the full sample of 12,638 respondents is plus or minus 1.3 percentage points. ■



---

# What Congress Is Doing on the Electoral College

## Why advocates are looking to the states for a popular vote

Throughout the 20th century, Congress held numerous hearings and considered bills that would either reform or replace the Electoral College. The most serious effort came after the 1968 presidential election, in which Richard Nixon won a resounding electoral college victory over Hubert Humphrey, despite winning just 43.5% of the popular vote. The House passed a proposed constitutional amendment to elect presidents by a popular vote, requiring that candidates secure at least 40% of votes to be elected. Despite support from Nixon and interest from at least 30 state legislatures, the amendment was defeated in the Senate.

Since the 1980s there has been less interest and debate in Congress, with states taking the lead through the National Popular Vote campaign. The 2016 election, however, has prompted congressional Democrats to put voting rights front and center — including a fresh look at the viability of the Electoral College.

### ■ Abolishing the Electoral College

In March 2019, Sen. Jeff Merkley (D-Ore.) introduced the legislative version of his “Blueprint for Democracy,” an agenda designed to increase voting rights and reduce the influence of money in politics. The package includes a proposed constitutional amendment (S.J. Res. 16) to replace the Electoral College, which he called “profoundly unfair,” with a direct popular vote. Merkley’s package also includes legislation to expand early voting, stop removal of citizens from voter rolls, reduce wait times at polling places and require more disclosure of donations. The package has not received a hearing.

Later in 2019, four Senate Democrats led by Sen. Brian Schatz (D-Hawaii) introduced S.J. Res. 17, a constitutional amendment to abolish the Electoral College. Rep. Steve Cohen (D-Tenn.) also introduced a House resolution (H.J. Res. 7) with 11 Democratic co-sponsors to establish a national popular vote.

### ■ Protecting the Electoral College

On the flip side, 13 Republicans led by Rep. Ted Budd (R-N.C.) introduced a resolution (H. Res. 350) in 2019

#### Selected Internet Sites

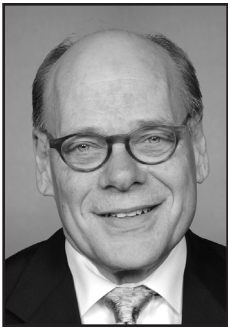
- **U.S. National Archives**  
Electoral College  
[archives.gov/electoral-college](https://www.archives.gov/electoral-college)
- **U.S. Census Bureau**  
Voting and Registration  
[census.gov/topics/public-sector/voting.html](https://www.census.gov/topics/public-sector/voting.html)
- **U.S. Federal Election Commission**  
[fec.gov](https://www.fec.gov)
- **National Popular Vote**  
[nationalpopularvote.com](https://nationalpopularvote.com)
- **Pew Research Center**  
[pewresearch.org](https://www.pewresearch.org)
- **FreedomWorks**  
[freedomworks.org](https://www.freedomworks.org)
- **Equal Citizens**  
[equalcitizens.us](https://www.equalcitizens.us)
- **R Street Institute**  
[rstreet.org](https://www.rstreet.org)
- **Brookings Institution**  
Governance Studies Program  
[brookings.edu/program/governance-studies/](https://www.brookings.edu/program/governance-studies/)
- **Heritage Foundation**  
[heritage.org](https://www.heritage.org)

to recognize the “value and importance” of the Electoral College. In an editorial for the Daily Caller, Budd said it was important to maintain the Electoral College to “prevent the tyranny of big states over smaller states,” adding that Democratic proposals to move to a popular vote might as well lead to the abolition of the U.S. Senate.

### ■ Outlook

Although House Democrats focused on voting rights as their first major piece of legislation in 2019 with the “For the People Act,” they have not tackled the Electoral College. The Republican-controlled Senate is also unlikely to take up the issue. Instead, advocates are focused on getting state legislatures to commit to the popular vote rather than moving a constitutional amendment. ■

**Should the United States change the way it elects presidents?**



### **Honorable Steve Cohen**

**United States Representative, Tennessee, Democrat**

*Rep. Cohen, of Tennessee's Ninth Congressional District, was elected to the U.S. House of Representatives in 2006. Prior to his election to Congress, he served in the Tennessee State Senate for 24 years. He has been a leader on numerous legislative issues including civil rights, universal health care, transportation and education. Currently he is a member of the following House committees: Judiciary; Transportation and Infrastructure; and Science, Space and Technology. The following is from his Jan. 3, 2019, statement introducing a constitutional amendment to eliminate the Electoral College.*

**“... the Electoral  
College ... no  
longer fits our  
nation's needs.”**

Madam Speaker, I rise today in support of a constitutional amendment I introduced today to eliminate the electoral college and provide for the direct election of our nation's President and Vice President.

As Founding Father Thomas Jefferson said, “I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might well as require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.”

In 2016, for the second time in recent memory, and for the fifth time in our history, the national popular vote winner did not become President because of the Electoral College. This has happened twice to candidates from Tennessee: Al Gore and Andrew Jackson. The reason is because the Electoral College, established to prevent an uninformed citizenry from directly electing our nation's President, no longer fits our nation's needs.

When the Founders established the Electoral College, it was in an era of limited nationwide communication. The electoral structure was premised on a theory that citizens would have a better chance of knowing about electors from their home states than about presidential candidates from out-of-state. Electors were supposed to be people of good judgment who were trusted with picking a qualified President and Vice President on behalf of the people. They held the responsibility of choosing a President because it was believed that the general public could not be properly informed of the candidates and the values each held.

That notion — that citizens should be prevented from directly electing the President — is antithetical to our understanding of democracy today, and our electoral process has not evolved to match our abilities to communicate, collect information, and make informed decisions about candidates. The development of mass media and the internet has made information about presidential candidates easily accessible to

*Continued on page 20*

## Should the United States change the way it elects presidents?

### Jason Pye

Vice President of Legislative Affairs, FreedomWorks

*FreedomWorks, founded as Citizens for a Sound Economy in 1984, is an advocacy organization working to promote free markets, individual liberty and limited government. As vice president of legislative affairs, Jason Pye conducts policy and legislative analysis for the organization and covers a variety of policy issues including civil liberties, immigration and criminal justice reform. The following is from his March 12, 2019, commentary titled, “Abolishing the Electoral College Is a Bad Idea,” which was originally published by [FreedomWorks](#).*



Radical changes to federal election law have become cause célèbre of Democrats. The House has already passed the For the Politicians Act [sic], H.R. 1, on party lines. Although H.R. 1 has no chance of passage in the Senate, Democrats are discussing other changes to federal elections, including abolishing the Electoral College.

During a CNN town hall on Monday, Sen. Elizabeth Warren (D-Mass.) called for abolishing the Electoral College. She said that “every vote matters,” adding that “the way we can make that happen is that we can have national voting and that means get rid of the Electoral College.” Sen. Warren isn’t alone.

Rep. Steve Cohen (D-Tenn.) has introduced a constitutional amendment that would make his state virtually irrelevant in presidential elections. H.J. Res. 7 would abolish the Electoral College. The winner of a presidential election would, instead, be determined by the popular vote. The proposed amendment is not the first of its kind, but the effort to abolish the Electoral College has picked up steam over the past several years.

Article II, Section 1 of the Constitution defines the process for the election of the president. Electors are chosen to cast ballots by the respective political parties in their state. Alexander Hamilton explained the thinking behind the Electoral College in Federalist No. 68. This process may vary by state. Although a voter is casting a ballot for president, in reality, he or she is voting on the slate of electors, who will cast their ballots in a manner prescribed by state law.

The day on which electors are required to meet and cast their ballots is in statute, 3 U.S. Code 7, which states: “The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.” Electors for the 2016 presidential election met on December 19.

The Electoral College has its quirks, of course. The election of 1800 was thrown to the House of Representatives. There was a stalemate between Thomas Jefferson and Aaron Burr, both Democratic-Republicans who each received 73 electoral votes. The House finally selected Thomas Jefferson as president on the 36th ballot after

**“Article II, Section 1 of the Constitution defines the process for the election of the president.”**

*Continued on page 21*

**“We need to amend  
our Constitution to  
empower citizens  
to directly elect  
the President . . .”**

**Cohen,**

*continued from page 18*

U.S. citizens across the country and around the world. The people no longer need the buffer of the electoral college to be knowledgeable about and decide who will be president. Today, citizens have a far better chance of knowing about out-of-state presidential candidates than knowing about presidential electors from their home states. Most people do not even know who their electors are.

While our ability to communicate has evolved so has the Electoral College, but not in a positive way. Electors are now little more than rubber stamps who are chosen based on their political parties and who represent the interests of those political parties, rather than representing the people.

Most states legally bind their electors to vote for whomever wins that state’s popular vote, so electors can no longer exercise individual judgment when selecting a candidate. In our country, “We the People,” are supposed to determine who represents us in elective office. Yet, we use an anachronistic process for choosing who will hold the highest offices in the land.

It is time for us to fix this, and that is why I have introduced this amendment today. Since our nation first adopted our Constitution, “We the People,” have amended it repeatedly to expand the opportunity for citizens to directly elect our leaders:

- The 15th Amendment guarantees the right of all citizens to vote, regardless of race.
- The 19th Amendment guarantees the right of all citizens to vote, regardless of gender.
- The 26th Amendment guarantees the right of all citizens 18 years of age and older to vote.
- [T]he 17th Amendment empowers citizens to directly elect U.S. Senators.

We need to amend our Constitution to empower citizens to directly elect the President and the Vice President of the United States. Working together, I know we can make our Constitution better reflect the “more perfect Union” to which it aspires.



---

**Adam Eichen**

**Campaigns Manager, Equal Citizens**

*Adam Eichen is the campaigns manager at Equal Citizens, a nonprofit, nonpartisan organization that works to promote equal representation, equal dependence and equal freedom to vote in the United States. He is a writer, researcher and organizer whose research focuses on campaign finance, voting rights and comparative election policy. His work has appeared in The Washington Post, The Hill, The Nation and more. The following is from his Aug. 2, 2019, article titled, “The Case Against the Electoral College Is Stronger Than Ever,” which was originally published in [The New Republic](#).*

“Abolish the Electoral College,” [Sen.] Bernie Sanders [I-Vt.] recently tweeted. The Senator’s statement was in response to an op-ed authored by The Cook Political Report’s Dave Wasserman, who posited that though President Donald Trump suffers from a low national approval rating, the Electoral College could still hand him a

*Continued on page 22*

Federalist members from Delaware, Maryland, South Carolina, and Vermont abstained, denying Aaron Burr the White House. The Twelfth Amendment would resolve the issues that came to light during this election. The amendment, which was ratified in 1804, required separate votes for president and vice president. Of course, the Twelfth Amendment didn't solve the (non)issue of presidential candidates who win the popular vote but lose the Electoral College.

Now, 48 states and the District of Columbia have a winner-take-all system. The presidential candidate who wins the most votes in the state wins the electoral votes. Only Maine and Nebraska have, to this point, deviated from this. Both states give two electoral votes for the winner of the popular vote. However, they award electoral votes for the winner of each congressional district. Donald Trump won all three of Nebraska's congressional districts, so he took the state's five electoral votes. Although Hillary Clinton won the popular vote in Maine, Trump won Maine's 2nd Congressional District, allowing him to pick up an electoral vote in the state.

According to National Popular Vote, as of January 2018, 13 states representing 181 electoral votes have passed legislation to award their electoral votes to the winner of the popular vote. The legislation in these states will take effect after states representing 270 [electoral votes] have passed the National Popular Vote Interstate Compact legislation. States that have passed the compact include California, New York, and Illinois. Colorado joined the list of compact states [in March 2019].

Under a popular vote concept, large population centers would [have] the most influence over presidential elections in the states. This is already true under the Electoral College, but this influence is confined to the state's electoral votes. Spreading that influence out nationally ... would give Democrats a leg up on presidential elections.

Perpetuating a national popular vote concept as a way to make sure that "every vote matters" just doesn't pass scrutiny. A review [of] the election data from 2016 reveals that 50.5 percent of the votes that Hillary Clinton received came from the 100 most populous counties in the United States. (California has 15 of these counties, Texas has ten, and Florida and New York have nine each.)

Considering that there are 3,007 counties in the United States, this is an eye-popping statistic. In fact, Clinton won 87 of these counties on her way to winning a plurality of the popular vote. Conversely, Donald Trump received 29.1 percent of his total votes from these counties, and he won only 13 of them.

Another issue with the National Popular Vote Interstate Compact is that it's almost certainly unconstitutional. Article I, Section 10 of the Constitution states, "No state shall, without the consent of Congress...enter into any agreement or compact with another state."

According to the Council on State Governments, more than 200 interstate compacts are currently in effect. "Twenty-two of them are national in scope, including several with 35 or more member states and an independent commission to administer the agreement," the group's fact sheet notes.

A compact for a presidential election would undoubtedly have significant national implications and would be far outside the scope of what Congress has previously approved. "Although states sometimes did submit their compacts to Congress for ratification," Hans von Spakovsky of the Heritage Foundation explained, "there has been an implied understanding that interstate agreements were legitimate as long as they had a limited, specifically local impact and did not affect national prerogatives."

*Continued on page 23*

**"Another issue with the National Popular Vote Interstate Compact is that it's almost certainly unconstitutional."**

**Eichen,***continued from page 20*

**“You can’t have a  
‘more perfect union’  
if you have an  
imperfect election.”**

victory. The New York Times’ Nate Cohn penned a similar analysis, estimating that the president “could win while losing the national vote by as much as five percentage points.” No matter the question — be it “Should we reelect the racist?” or “Is health care a right or a privilege?” — we can’t receive an answer if the election is not an accurate representation of the national will. The likelihood a president will be elected with a minority of the popular vote could increase moving forward, and that would further undermine the legitimacy of the Oval Office — perhaps irreparably.

As both Wasserman and Cohn note, demographics are a driving force behind a potential electoral vote–popular vote split in 2020. But less reported is the effect of the war over voting rights. Across the country, states under Democratic control are passing pro-voter reforms, such as automatic voter registration, same-day voter registration, or preregistration for 16-year-olds. At the same time, GOP-controlled states — including some swing states — have passed regressive, anti-voter legislation. These measures, such as voter ID laws and burdensome registration requirements, when paired with aggressive voter-roll purges, decrease turnout.

This voting-rights divide threatens to become more extreme with additional democracy advances in blue states and repression in red states. When this disparity encounters the Electoral College, it could translate to staggeringly unrepresentative election results. Democrats will continue to expand their popular vote margin while the GOP will hold power disproportionate to their dwindling share of the vote.

Opponents of change argue that the Electoral College was meant to protect smaller, rural states from the tyranny of urban population centers, so there is no cause for alarm. But, because almost all states award electoral votes in a winner-take-all fashion, our presidential elections actually render small and rural states irrelevant. Rather, presidential elections are currently decided by swing states, ones that are less racially diverse than the country as a whole and, in 2016, represented only 35 percent of eligible voters. Last presidential election, 95 percent of candidate appearances and 99 percent of campaign spending went to fourteen states. None of them are particularly rural nor, with the exception of New Hampshire, remotely small.

The swing states, due to their electoral significance, also have a stranglehold on national policies. The coal industry, for example, has outsize influence because of its prominence in Pennsylvania. So, too, does the ethanol industry because of Iowa. Moreover, U.S. tariffs have disproportionately benefited industries located in swing states, and the battleground states have historically received more in federal grants than the rest of the country. You can’t have a “more perfect union” if you have an imperfect election. Republican and Democratic voters should both be able to agree that this anti-democratic system — one that promotes minority rule determined by a random set of swing states — has no place in the twenty-first century. No party should expect to benefit forever from a system that perpetuates inequality and inaccuracy.

The obvious solution is an amendment to the Constitution to abolish the Electoral College. In 1969, there was actually a noteworthy effort to do exactly this, but, after success in the House, it failed in the Senate. Apart from another attempt in 1979, an amendment has been, and continues to be, a pipe dream. Fortunately, there are statutory solutions afoot to get closer to a fair count. The National Popular Vote Interstate Compact, for example, is a coordinated campaign to get states to pledge their electoral votes to the winner of the national popular vote. The agreement would only go into effect once enough states, comprising a majority of electoral votes (270), join.

*Continued on page 24*

*Pye,*  
*continued from page 21*

Supporters of the National Popular Vote Interstate Compact say that approval from Congress isn't needed, although the group is pushing for approval. [Von Spakovsky] explained that the compact would be problematic because it's tantamount to an Article V convention that "deprives non-participating states of their right ... [to] decid[e] whether the Twelfth Amendment, which governs the Electoral College, should be changed."

Many say that the Electoral College is undemocratic and that a popular vote concept is democratic, which is why states should dump the former. Undoubtedly, some who make such statements also believe the Senate is undemocratic because it lacks proportional representation. Put simply, the United States isn't a democracy; it's a constitutional republic.

State legislators should work to defeat National Popular Vote Interstate Compact legislation. The Electoral College isn't perfect, but it has served the United States well. Although partisan voters may not always like the outcome when their candidate loses a presidential election, the system has served the country well and will continue to serve us well as long as we stick to it.

**"The Electoral  
College isn't perfect,  
but it has served the  
United States well."**

---

**James Wallner**  
**Resident Senior Fellow for Governance, R Street Institute**

*James Wallner researches and writes about congressional affairs, the federal policy process and the separation of powers at the R Street Institute, a nonprofit and nonpartisan public policy research organization. He is also a professional lecturer in the Department of Government at American University. Prior to joining R Street, Wallner worked in the U.S. Senate in various roles, including as legislative director for Sen. Pat Toomey (R-Pa.) and former Sen. Jeff Sessions (R-Ala.). The following is from his commentary titled, "Why the Electoral College Should be Preserved," originally published by [The Ripon Society](#) in September 2019.*



[O]pposition to the Electoral College has become more pronounced in recent years due to the controversial outcomes of the 2000 and 2016 elections. In 2000, Al Gore lost to George W. Bush despite winning approximately half a million more votes nationwide. Hillary Clinton similarly lost the 2016 election to Donald Trump despite having won almost 3 million more votes nationwide. In both elections, Bush and Trump became president because they won more votes in the Electoral College.

Earlier this year, [Sen.] Elizabeth Warren, D-Mass., sparked renewed interest in the Electoral College when she proposed abolishing the institution during a presidential town hall. Many congressional Democrats also oppose the institution. In the Senate, Brian Schatz, D-Hawaii, introduced a constitutional amendment recently to abolish it. Steve Cohen, D-Tenn., submitted a similar proposal in the House. The Democrats' opposition to the Electoral College appears to be motivated at least in part by the fact that it disadvantages them vis-a-vis their Republican competitors in presidential elections. Of course, Democrats do not acknowledge that they base their opposition on narrow partisan calculations. They contend instead that the Electoral College is undemocratic and, consequently, that it undermines the federal government's legitima-

*Continued on page 25*

**“The Electoral College has been an ill-fitting layer for a long time . . . it’s time to throw away the coat.”**

***Eichen***

*continued from page 22*

Currently, 15 states and Washington D.C., representing 196 electoral votes, have entered the compact. Four states — Colorado, Delaware, New Mexico, and Oregon — joined [in 2019], a sign of accelerating progress. There is no pathway for the compact to go into effect before the 2020 election — but 2024 remains a possibility.

But each state need not wait for the others to realize concrete changes in advance of 2020. All states can better ensure that every vote counts in presidential elections by implementing what is known as ranked choice voting. Under this voting system, voters are allowed to rank candidates in order of preference. If no candidate receives majority support, the last-place vote-getter is eliminated, and their votes are reallocated according to subsequent preference. This process is repeated until one candidate receives at least 50 percent.

In 2018, Maine became the first state to implement ranked choice voting for primaries and federal (non-presidential) elections. This year, a group of Maine legislators, led by State Senate President Troy Jackson, pushed to expand the program to include the presidential primary and general election. If Jackson’s expansion were to become law, the awarding of Electoral College votes could no longer be skewed or disrupted by third-party candidates. While ranked choice voting would not eliminate the basic inequalities built into the Electoral College, it would ensure that, if states continue to allocate electoral votes via winner-take-all, the candidate that wins a state is actually the candidate that has majority support.

To both parties, the words of Thomas Jefferson now serve as a reminder and a warning. “Institutions,” he wrote, “must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.”

The Electoral College has been an ill-fitting layer for a long time. For the sake of our democracy, it’s time to throw away the coat.



**Darrell M. West**

**Vice President and Director of Governance Studies, Brookings Institution**

*Darrell M. West heads the Governance Studies program at Brookings Institution, a public policy think tank based in Washington, D.C. His current areas of research include artificial intelligence, robotics and the future of work. Prior to joining Brookings, he was the director of the Taubman Center for American Politics and Policy at Brown University where he taught classes on campaigns and elections. He has written several books, including “Divided Politics, Divided Nation,” published in 2019. The following is from his essay titled, “It’s time to abolish the Electoral College,” which was originally published by [Brookings](#) on Oct. 15, 2019.*

For years when I taught campaigns and elections at Brown University, I defended the Electoral College as an important part of American democracy. I said the founders created the institution to make sure that large states did not dominate small ones in presidential elections, that power between Congress and state legislatures was balanced, and that there would be checks and balances in the constitutional system.

*Continued on page 26*



cy. They claim that the institution values voters who live in rural, sparsely populated states, more than those who live in populated states such as California or densely populated urban areas like Los Angeles.

Opposition to the Electoral College is not universal. Its proponents, who are predominantly Republican at present, counter that the institution, while complicated, nevertheless incentivizes presidential candidates to assemble super-majority coalitions to win elections. The institution's proponents contend that such coalitions are beneficial because they resemble more closely the country at large, thereby helping the successful candidate govern effectively once in office.

Notwithstanding the merits of their various claims, the Electoral College's opponents and proponents have more in common than they realize. That is, they both ignore the underlying role played by the institution in American politics. The Electoral College, along with the Constitution's other institutional arrangements, exists to safeguard the space where Americans participate in politics to make collective decisions based on equality. Abolishing it would jeopardize that space and, in the process, exacerbate the federal government's current dysfunction.

That both sides in the debate have overlooked this crucial point suggests that Americans of all political stripes — Democrat, Republican, liberal, and conservative — increasingly think about politics in the same way. Americans, especially those active in partisan politics, often do not think about political institutions in ways that transcend their immediate partisan interests. They no longer see politics as an activity in which they participate. Instead, they see it as a means to an end. Put differently, they think about government in terms of progress, not in terms of specific forms (i.e., monarchy, aristocracy, democracy, etc.).

The problem is that thinking about politics as a means to an end distorts our understanding of why the Electoral College matters. In contrast, thinking about politics as an activity forces us to acknowledge the space where that activity occurs. In the process, we gain a deeper appreciation of why the Electoral College matters.

Take, for example, Warren's claim that the Electoral College violates the one person, one vote standard. While Warren is no doubt sincere in her belief, she is nevertheless predisposed to oppose the institution because she thinks about it in terms of progress; as a means to an end. In short, the Electoral College makes it harder for her, or any other Democrat, to win a presidential election given present conditions.

For Warren, abolishing the Electoral College is a means to achieving her end precisely because she believes that there are, at present, more Democratic voters nationwide than Republican voters. In making her argument, Warren overlooks the fact that her proposal, if successful, would change the very nature of the American regime. That is, abolishing the Electoral College and replacing it with a nationwide popular vote would create, for the first time in the nation's history, a single common electorate.

Admittedly, a national electorate may exist symbolically or culturally, presidents may claim nationwide mandates, and elections can be nationalized. But no government official is currently elected by citizens casting votes in one single national electorate. Likewise, no institution in the federal government represents a single, nationwide electorate directly. Many electorates organized by state instead comprise the American electorate. It is important to note that this is not an argument for states' rights. Instead, it is evident in how John Marshall, the nationalist chief justice of the Supreme

**“Opposition to the Electoral College is not universal.”**

*Continued on page 27*

*West,*  
*continued from page 24*

In recent years, though, I have changed my view and concluded it is time to get rid of the Electoral College. Several developments have led me to alter my opinion on this institution: income inequality, geographic disparities, and how discrepancies between the popular vote and Electoral College are likely to become more commonplace given economic and geographic inequities. The remainder of this essay outlines why it is crucial to abolish the Electoral College.

**“Americans by and large still want to do away with the Electoral College, but there now is a partisan divide in views . . .”**

**Why the Electoral College is poorly suited for an era of high income inequality and widespread geographic disparities**

At a time of high income inequality and substantial geographical disparities across states, there is a risk that the Electoral College will systematically overrepresent the views of relatively small numbers of people due to the structure of the Electoral College. As currently constituted, each state has two Electoral College votes regardless of population size, plus additional votes to match its number of House members. That format overrepresents small- and medium-sized states at the expense of large states.

That formula is problematic at a time when a Brookings Metropolitan Policy Program study found that 15 percent of American counties generate 64 percent of America’s gross domestic product. Most of the country’s economic activity is on the East Coast, West Coast, and a few metropolitan areas in between. The prosperous parts of America include about 15 states having 30 senators while the less prosperous areas encapsulate 35 states having 70 senators.

Those numbers demonstrate the fundamental mismatch between economic vitality and political power. Through the Electoral College (and the U.S. Senate), the 35 states with smaller economic activity have disproportionate power to choose presidents and dictate public policy. This institutional relic from two centuries ago likely will fuel continued populism and regular discrepancies between the popular and Electoral College votes. Rather than being a historic aberration, presidents who lose the popular vote could become the norm and thereby usher in an anti-majoritarian era where small numbers of voters in a few states use their institutional clout in “left-behind” states to block legislation desired by large numbers of people.

**Support for direct popular election**

For years, a majority of Americans have opposed the Electoral College. For example, in 1967, 58 percent favored its abolition, while in 1981, 75 percent of Americans did so. More recent polling, however, has highlighted a dangerous development in public opinion. Americans by and large still want to do away with the Electoral College, but there now is a partisan divide in views, with Republicans favoring it while Democrats oppose it.

For instance, POLITICO and Morning Consult conducted a poll in March 2019 that found that 50 percent of respondents wanted a direct popular vote, 34 percent did not, and 16 percent did not demonstrate a preference. Two months later, NBC News and the Wall Street Journal reported polling that 53 percent of Americans wanted a direct popular vote, while 43 percent wanted to keep the status quo. These sentiments undoubtedly have been reinforced by the fact that in two of the last five presidential elections, the candidate winning the popular vote lost the Electoral College.

Yet there are clear partisan divisions in these sentiments. In 2000, while the presidential election outcome was still being litigated, a Gallup survey reported that 73

*Continued on page 28*

*Wallner,*  
continued from page 25

Court, described the Constitution’s ratification process in *McCulloch v. Maryland*: “It is true, they [the people] assembled in their several States,” he wrote, asking, “and where else should they have assembled? No political dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass. Of consequence, when they act, they act in their States.”

According to Marshall’s logic, the existence of the Electoral College does not violate the one person, one vote standard because all votes count equally in the electorates, or states, where they are cast. Both the opponents and proponents of the Electoral College should acknowledge this fact in the debate over whether it should be abolished.

Doing so illuminates the fact that the Electoral College is part of a complex arrangement of constitutional institutions that, working together, ensure that no one group of people rules, whether that group comprises a majority or a minority of the population. To do this, the Constitution established a space that could not be conquered by the majority or the minority and where Americans could participate in politics. That space would not coexist very long with one sovereign people in a single national electorate who could step into the shoes of the king and destroy it, or rule, whenever a majority so chose.

Acknowledging the underlying significance of the Electoral College does not mean that it cannot be reformed. Thinking about politics as an activity should not blind us to the fact that we can always do better. But it does force us to consider where we can do better.

The longevity of the American Republic suggests that its citizens make things better in the space where politics occurs. In reforming that space, we should endeavor not to create a single national sovereign that will have the power to destroy it. Securing minority rights against tyranny in all its forms requires that we prevent any one group of people from ruling.

**“ . . . the existence of the Electoral College does not violate the one person, one vote standard . . . ”**

---

## Matthew Spalding

Dean, Van Andel Graduate School of Government, Hillsdale College

*Matthew Spalding teaches constitutional government at Hillsdale College. He also serves as the vice president for Washington operations, overseeing the Allan P. Kirby, Jr. Center for Constitutional Studies and Citizenship. Prior to joining Hillsdale, he was the vice president of American studies at The Heritage Foundation. Dr. Spalding has written numerous books on the subject of American history and government. The following is his Aug. 7, 2019, commentary titled, “Why the Electoral College is vital, not outdated,” which was originally published by the [Washington Examiner](#).*



Abolishing the Electoral College was once an outrageous suggestion. But with 15 states and counting supporting an interstate agreement to grant their electoral votes to the winner of the popular vote for president, the idea is gaining traction nationwide. Critics call the Electoral College outdated, and see it as an 18th-century relic. This is

*Continued on page 29*

*West,*

*continued from page 26*

percent of Democratic respondents supported a constitutional amendment to abolish the Electoral College and move to direct popular voting, but only 46 percent of Republican respondents supported that view. This gap has since widened as after the 2016 election, 81 percent of Democrats and 19 percent of Republicans affirmatively answered the same question. The March POLITICO and Morning Consult poll also found that 72 percent of Democratic respondents and 30 percent of Republican respondents endorsed a direct popular vote. Likewise, the NBC News and Wall Street Journal poll found that 78 percent of Hillary Clinton voters supported a national popular vote, while 74 percent of Trump voters preferred the Electoral College.

**“It is time to  
move ahead  
with abolishing  
the Electoral  
College . . .”**

### **Ways to abolish the Electoral College**

The U.S. Constitution created the Electoral College but did not spell out how the votes get awarded to presidential candidates. That vagueness has allowed some states such as Maine and Nebraska to reject “winner-take-all” at the state level and instead allocate votes at the congressional district level. However, the Constitution’s lack of specificity also presents the opportunity that states could allocate their Electoral College votes through some other means.

One such mechanism that a number of states already support is an interstate pact that honors the national popular vote. Since 2008, 15 states and the District of Columbia have passed laws to adopt the National Popular Vote Interstate Compact (NPVIC), which is a multi-state agreement to commit electors to vote for candidates who win the nationwide popular vote, even if that candidate loses the popular vote within their state. The NPVIC would become effective only if states ratify it to reach an electoral majority of 270 votes.

[As of October 2019], the NPVIC is well short of that goal and would require an additional 74 electoral votes to take effect. It also faces some particular challenges. First, it is unclear how voters would respond if their state electors collectively vote against the popular vote of their state. Second, there are no binding legal repercussions if a state elector decides to defect from the national popular vote. Third, given the Tenth Circuit decision in the *Baca v. Hickenlooper* case, the NPVIC is almost certain to face constitutional challenges should it ever gain enough electoral votes to go into effect. A more permanent solution would be to amend the Constitution itself. That is a laborious process and a constitutional amendment to abolish the Electoral College would require significant consensus — at least two-thirds affirmation from both the House and Senate, and approval from at least 38 out of 50 states. But Congress has nearly reached this threshold in the past. Congress nearly eradicated the Electoral College in 1934, falling just two Senate votes short of passage.

However, the conversation did not end after the unsuccessful vote, legislators have continued to debate ending or reforming the Electoral College since. In 1979, another Senate vote to establish a direct popular vote failed, this time by just three votes. Nonetheless, conversation continued: the 95th Congress proposed a total of 41 relevant amendments in 1977 and 1978, and the 116th Congress has already introduced three amendments to end the Electoral College. In total, over the last two centuries, there have been over 700 proposals to either eradicate or seriously modify the Electoral College. It is time to move ahead with abolishing the Electoral College before its clear failures undermine public confidence in American democracy, distort the popular will, and create a genuine constitutional crisis.

dead wrong: The Electoral College is vital to the American system of self-government. Yet, their consternation is certainly understandable, considering recent electoral history. In the 2000 presidential election, Al Gore narrowly beat George W. Bush in the popular vote but narrowly lost the electoral college majority. Meanwhile, in 2016, Donald Trump received nearly 3 million fewer total votes than Hillary Clinton but won the vote of the Electoral College nonetheless.

How is this fair? Well, the reasoning behind the creation of the Electoral College is more relevant than ever. The founders considered a national popular vote but deliberately rejected it. Ultimately, they dismissed this idea in favor of the Electoral College, a system in which each state's population votes and is then assigned electoral votes based on its number of representatives in the House (which varies according to population) and in the Senate (which is fixed). To understand why this process remains important today, we have to recognize why the framers chose it in the first place:

**1. It protects the liberty and role of diverse states.** The Constitution assigns states presidential electors in the same way it does representation in Congress — providing for popular participation while protecting the various constituencies, in this case the states, through which that consent is reflected. And that protects the diversity of interests and opinions in states, especially small rural ones in the face of large urban ones, whether it be socialism in Vermont or conservatism in Wyoming.

**2. It stabilizes national politics.** The founders were concerned about fractious disagreements threatening the stability of the union. The Electoral College discourages regional radicalism and encourages political moderation by forcing candidates to draw support from a broad swath of the country rather than just a few, wealthy, vote-rich areas. Without the Electoral College, candidates today would focus almost exclusively on New York, California, and Texas, ignoring Vermont, North Dakota, Wyoming, and all the other small states, possibly threatening the cohesion that maintains the United States.

**3. It limits contested elections and fraud.** An important advantage of the Electoral College is that it keeps election fraud and errors contained within individual states. The 2016 election elevated fears of hacking, fraud, and foreign interference, all of which will only continue to expand with the growth of technology. Right now, all that is contained and mitigated by the Electoral College.

Imagine the criminal chaos of Broward County, Florida, amplified across the entire country. The National Popular Vote scheme encourages such deception by allowing fraudulent voting anywhere to determine the outcome everywhere, and that means more recounts, more litigation and more disputed elections, only further undermining the legitimacy of our electoral system.

And what's next for opponents of the Electoral College? They argue that the system is undemocratic. But if they succeed in defeating it, surely the Senate must go as well. After all, Wyoming gets the same number of senators as California but has far fewer people.

Why not just abolish the states altogether? And what about the Supreme Court? Are there any minority rights that a simple majority does not have the right to override? Make no mistake: An attack on the Electoral College is an attack on the Constitution. Before we get swept into the frenzy of the moment, let's consider what we are throwing away, and defend the Electoral College.

**“An attack on the Electoral College is an attack on the Constitution.”**

---

# Pros & Cons of Mail-In Voting

## Voter access versus fraud concerns

The coronavirus lockdowns this spring that kept millions of Americans at home and away from large crowds crashed headlong into the primary elections around the nation. At least 16 states pushed back their primary dates, prompting renewed calls for voters to have more access to mail-in and early voting options for the November elections.

In late March, Sens. Amy Klobuchar (D-Minn.) and Ron Wyden (D-Ore.) introduced S. 3529, the Natural Disaster and Emergency Ballot Act (NDEBA), which would ensure that voters have 20 days of early voting and no-excuse absentee vote-by-mail options. Under the bill, states would be required to start processing early and mail-in votes 14 days before election day to avoid delays in counting votes. It would also authorize funds to help states cover the cost of implementing the act, including the price of providing absentee ballots and prepaid postage as well as the cost of purchasing absentee ballot drop boxes.

The bill, which would take effect before the 2020 general election, has 26 co-sponsors, including former presidential candidate Bernie Sanders (I-Vt.).

“Americans are facing unprecedented disruptions to their daily lives and we need to make sure that in the midst of this pandemic, Americans don’t also lose their ability to vote,” Klobuchar said in a statement. “As Congress prepares to provide states with medical and economic relief, we should also act swiftly to pass my legislation to ensure that every American has a safe way to participate in our democracy during a national emergency.”

NDEBA came after Ohio, Louisiana, Georgia, Maryland and Kentucky all announced they would postpone their presidential primary elections to avoid crowding during the coronavirus pandemic. However, the bill’s sponsors noted that natural disasters, like hurricanes and wildfires, are happening more frequently and with greater severity, posing another threat to safe voting.

The issue picked up additional momentum in April when Wisconsin forged ahead with in-person voting for elections, despite a statewide stay-at-home order. That prompted former presidential candidate Sen. Elizabeth Warren (D-Mass.) to announce a \$4 billion plan to shore up voting infrastructure in states, require 30 days of early voting and give every registered voter a mail-in ballot

with prepaid postage. The Wisconsin elections, she said, were a “wake-up call” that should spur immediate action on voting access.

House Speaker Nancy Pelosi (D-Calif.) also advocated for \$4 billion to help states secure voting in the 2020 election cycle as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. That number was eventually reduced to \$400 million once the stimulus package passed the Senate in late March.

Republicans, including President Trump, have pushed back against mail-in voting initiatives, saying they would be cumbersome for states at a time when they are managing the health and economic consequences of the coronavirus. In a statement, Rep. Rodney Davis (R-Ill.) said that “imposing additional constraints on states from the federal government is the opposite of what we should be doing right now,” calling the proposals “unnecessary policies” during a national emergency.

In an April 2020 report, researchers at the Bipartisan Policy Center noted the hurdles to a smooth rollout, writing: “Facilitating a well-orchestrated vote-by-mail election is the equivalent of a logistical nightmare. And with a global pandemic sweeping the country, this logistical nightmare can only get worse.”

President Trump, meanwhile, echoed concerns of some Republicans that mail-in voting could also lead to an increase in voter fraud, despite limited evidence of fraud in states that use mail-in ballots. During an April 3 White House press briefing, he stated it allows people to “cheat” and voiced support for voter ID requirements. “It shouldn’t be mailed in, you should vote at the booth, and you should have voter ID,” he said. “Because when you have voter ID, that’s the real deal.”

Trump has also warned that mail-in voting would hurt his party’s electoral chances, writing on Twitter that it “doesn’t work out well for Republicans.”

Five U.S. states — Colorado, Washington, Hawaii, Oregon and Utah — currently default to mail-in voting. Whether that expands nationwide will be up to Congress, although many more states are expected to explore their options ahead of the November elections.

For more background, see the May 2019 issue of Congressional Digest on “Voting, Campaign Finance, and Ethics Reform” and the October 2018 issue on the “Voting Rights Act.” ■

---

# Pros & Cons of Ending Surprise Medical Billing

## With the burden no longer on patients, who should cover the cost?

As the U.S. continues to battle the coronavirus pandemic, there have been growing concerns about surprise medical bills, the unexpected charges that patients receive after unscheduled or emergency out-of-network medical services.

An August 2019 study in the *Journal of the American Medical Association* found that the percentage of emergency room visits with surprise bills jumped 10% between 2010 and 2016, while the number of inpatient admissions that resulted in surprise bills rose nearly 16%. The cost of those bills has also increased, often leading to significant financial strain on patients.

Twenty-eight states have enacted consumer protections against surprise medical billing, according to the Commonwealth Fund, but those laws can only go so far. For example, they do not apply to consumers treated by out-of-state providers. The coronavirus has increased the need for tests and emergency treatment, and experts warn that more Americans could receive unexpected medical bills this year.

The issue had been a growing concern in Congress even before the pandemic hit. As of early 2020, at least three bills aimed at curbing surprise medical billing were making their way through Congress, each with a different approach to the problem.

In February, the House Ways and Means Committee approved the Consumer Protections Against Surprise Medical Bills Act (H.R. 5826), which would establish a dispute resolution process in which medical providers and insurance plans would have 30 days to negotiate payment for out-of-network services. If no agreement is reached, they would enter a mediation process with an independent arbiter. The bill, which was introduced by Ways and Means Chairman Richard Neal (D-Mass.) and ranking member Kevin Brady (R-Texas), would also require that patients receive an advanced explanation of benefits at least three days in advance.

Medical providers have largely backed that approach. “We applaud the committee for protecting patients from surprise medical bills and for developing a workable approach for determining the patient’s cost-sharing amount so they can be ‘taken out of the middle’ of any discussions between the health plan and the provider regarding reimbursement,” Richard Pollack, president and CEO of the American Hospital Association, said in a statement.

The group also backed the dispute resolution process outlined in the bill but encouraged the committee to consider adding additional stipulations to the mediation process, such as directing mediators not to consider Medicare reimbursement rates, which are often below the actual cost of care.

The House Education and Labor Committee, meanwhile, approved the Ban Surprise Billing Act (H.R. 5800) from Chairman Bobby Scott (D-Va.) and ranking member Virginia Foxx (R-N.C.). Their bill proposes that for bills up to \$750, health insurers pay out-of-network providers the median in-network rate for a geographic area. For charges greater than \$750, insurers and providers could request an arbitration process.

At least one Education and Labor Committee member, Rep. Donna Shalala (D-Fla.), says she prefers the Ways and Means version and wants to amend H.R. 5800 before voting for it on the floor. Shalala, a former Health and Human Services secretary, voiced concern that the bill favors insurance providers and could hurt hospitals, which are the largest employers in her district.

H.R. 5800 is similar to a bipartisan compromise proposal announced in December 2019 by the House Energy and Commerce and the Senate Health, Education, Labor and Pensions committees, which also approved the creation of a payment standard with dispute resolution as an option for higher-cost bills. The members who crafted that December proposal say the new House bills show the bipartisan interest in solving the problem and have said it is incumbent on Congress to find a solution that can reach the president’s desk.

Some Republicans have requested the December compromise proposal be included in a coronavirus stimulus package.

In the interim, the Trump administration has taken steps to protect Americans from the surprise bills if they seek treatment for COVID-19. In March, President Trump signed a law ensuring free testing for anyone who needs it, regardless of insurance status. In April, the administration also announced that medical providers cannot access money from the \$2 trillion stimulus bill unless they agree not to send surprise medical bills to COVID-19 patients.

For more background, see the October 2016 issue of *Congressional Digest* on “Obamacare Update.” ■

**Congressional Digest**

PO Box 240  
Boys, MD 20841-0240

Periodicals Postage  
Paid at Boys, MD,  
and additional offices

ADDRESS CORRECTION REQUESTED



**TWO SIDES, ONE SOURCE**  
**Congressional Digest and Supreme Court Debates**  
Pro & Con® Online Service

**Congressional Digest**  
**Since 1921**

(ISSN 0010-5899) is an independent publication featuring controversies in Congress, Pro & Con.  
It is not an official organ, nor is it controlled by any party, interest, class, or sect. Published monthly except for July and August.  
Searchable index available at: CongressionalDigest.com. Indexed in Readers' Guide and others.

Founder: Alice Gram Robinson    Publisher: Page Robinson    Editors: Lai King Lam; Jason Plautz; Katie Bascuas

© Copyright 2020 Published by Congressional Digest Corporation

## Recent Issues

### Congressional Digest

**Homelessness Policy**  
May 2020

**Facial Recognition**  
April 2020

**Food Stamps**  
March 2020

**Clean Cars**  
February 2020

**Holding Tech Companies Accountable**  
January 2020

**Marijuana Legislation**  
December 2019

**Gun Control**  
November 2019

**Preventing Election Hacking**  
October 2019

**U.S. Arms Sales to Foreign Governments**  
September 2019

### Supreme Court Debates

**Abortion Clinic Regulations**  
April 2020

**The Insanity Defense**  
March 2020

**State Aid to Religious Schools**  
February 2020

**Transporting Handguns**  
January 2020

**Donald Trump's DACA Repeal**  
December 2019

**Transgender Rights in the Workplace**  
November 2019

**Warrantless Blood Tests**  
October 2019

**Political Gerrymandering**  
September 2019

**Citizenship and the Census**  
May 2019

**SUBSCRIPTIONS** 10 issues/year (monthly except for July and August)  
1 year \$425 (2nd copy \$275); 2 years \$625 (2nd copy \$499); 3 years \$890 (2nd copy \$749)

**Single Copy** \$19 available for PDF download at CongressionalDigest.com

**Congressional Digest Debates and Supreme Court Debates PRO & CON Online Service** starting at \$735

**Customer Service:** info@CongressionalDigest.com Fax: (240) 599-7679