



**MAKING EVERY**  
**VOTE COUNT**

# **Improving Our Electoral College System**

**By Making Every Vote Count Foundation**

NOVEMBER 2023



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## ABOUT MAKING EVERY VOTE COUNT FOUNDATION

MEVC is a nonprofit, nonpartisan organization dedicated to educating the public about the weaknesses of the current presidential election system and possible reforms of that system. We believe that the outcome of a presidential election should reflect the will of the voters, not only because we believe in the principle that all votes should be equal but also because when presidential election outcomes don't reflect the will of the voters or are perceived not to, public distrust of our democracy follows. This has been an increasingly dangerous problem for decades and threatens the integrity of the 2024 and future presidential elections (unless the system is substantially improved).

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# ELECTORAL COLLEGE ISSUES

## A. Why Seek Electoral College Reform Now?

Making Every Vote Count (MEVC), in collaboration with an active working group, is seeking to revive and stimulate a national political conversation about Electoral College reform. Although many (perhaps most) Americans believe—and have long believed—that the nation ought to change the process through which it chooses Presidents, we retain a system that was invented in the late 18<sup>th</sup> century and was regarded as flawed even by some of the Constitution’s framers. Serious efforts to significantly reform or abolish the Electoral College first appeared in the early 19<sup>th</sup> century, and they have periodically occupied a prominent place on the agendas of Congress and state legislatures. On a half dozen occasions, constitutional amendments were approved by one branch of Congress; this occurred as recently as 1969-70 when the House overwhelmingly passed an amendment to adopt a national popular vote—a proposal that was killed by a filibuster in the Senate.

The core reasons for seeking change have been numerous and longstanding; we discuss them below in some detail. But we wish to call attention here to three recent developments that lend urgency to this conversation.

- “Wrong winner” elections (those where the electoral vote winner earned fewer votes nationwide than his or her opponent) are becoming more frequent, which could yield a loss of faith in elections as well as Presidencies that lack the authority of a popular mandate.
- Recent events (particularly around the 2020 election) have made clear that our current presidential election system is alarmingly dysfunctional, and it is likely that the 2024 election will be equally divisive and tumultuous.
- For the last 15 years, the National Popular Vote Interstate Compact (NPVIC) has appeared as the most well-known and popular vehicle for reform, but with increasing political polarization and shifts in the U.S. Supreme Court and lower courts, a substantial number of scholars, lawyers, and other experts are concerned about its limitations, and other reform proposals have recently gained considerable traction.



For all these reasons—both long-standing and recent—MEVC, in collaboration with other groups and thought leaders, is pursuing this collective effort to examine paths to reform.

## **B. Shortcomings of the Electoral College and Reasons To Change How We Elect Presidents**

The current presidential election system is not consistent with fundamental democratic principles that Americans embrace in other electoral contexts. The Electoral College does not accord with the basic tenet that all votes should count equally. The number of electoral votes that each state has does not fairly reflect the population of each state; indeed, the number of individual voters represented by each elector in one state varies dramatically from state to state. Moreover, in the 48 states that have adopted a “winner-take-all” system for assigning electors, votes for candidates other than the winner in the state are not reflected in the Electoral College count at all—Republican voters in California are effectively disenfranchised, as are Democratic voters in Texas.<sup>1</sup>

The most obvious problem with this system is perhaps the “wrong winner” problem: the candidate with the most popular votes nationwide doesn’t always win in the Electoral College, thereby thwarting the will (and expectations) of American voters. This has happened five times (including in 2016) and is increasingly likely to happen in the future.<sup>2</sup> Both parties are vulnerable to this risk; in 2004, George Bush won the national popular vote but would have lost the electoral vote had the outcome of the Ohio election been different. Candidates who win the Presidency but lose the national popular vote lack legitimacy with American voters; some scholars have suggested that this shortcoming adversely affects these administrations’ performance and how they are viewed by the public.

In practice, the current presidential election system creates fundamental distortions in our voting, campaigning, and governing, because voters in only a handful of states matter. Candidates and their campaigns focus only on a few swing states (4 to 10 states representing at most 20% of the population), with anti-democratic and polarizing effects:

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<sup>1</sup> Moreover, in a practical sense, because both California and Texas are (for now) “safe” states, the significance of even a Democratic vote in California or a Republican vote in Texas is not equal to the significance of a vote for either party in a swing state. Even the votes of voters in small states—who ostensibly benefit from the Electoral College—only matter if they are in swing states, and of the 16 smallest states, only New Hampshire is a swing state.

<sup>2</sup> A Princeton Election Consortium study (commissioned by MEVC) predicted that going forward, this disparity will occur in 30% of presidential elections where the difference in the popular vote nationwide is 4% or less. In addition, this has almost happened in multiple additional elections, as the 2004 example (when a shift of 60,000 votes in Ohio would have made John Kerry the “wrong winner”) demonstrates.



- Parties need not craft their platforms or choose their candidates to take account of a broader, national array of voters; instead, parties can and often do choose candidates who ignore policy issues germane to the rest of the country.<sup>3</sup>
- The system discourages independent or third-party candidacies and discourages voters from casting votes for such candidates—because they might end up being “spoilers.”

These effects lead to voter distrust and a lack of confidence in electoral outcomes:

- Voters’ awareness that their votes may count less or not at all depending on where they live impacts turnout: voter turnout in “safe” states has been 14% less than in swing states (depending on the definition of swing state) because informed voters correctly conclude that all votes are not equal in our presidential election system. This likely has down-ballot impacts that harm both parties.
- Voters who live in large urban areas in “safe” states, who are more likely to belong to underrepresented groups, are harmed by the current system disproportionately to White voters nationwide and thus have additional reasons to believe that their interests are not being served.
- As demonstrated by recent events, voters’ disconnection from and skepticism about our complex presidential election processes make it easier for bad actors to persuade voters that election results are illegitimate and discourage civic engagement at all levels of government.<sup>4</sup>

One final problem with the Electoral College system has attracted too little attention in recent years. Under the current system, prescribed in the Constitution, if no candidate wins a majority of electoral votes, the election would be decided by the House of Representatives, with each state’s delegation casting a single vote for President. (The Senate would choose the Vice President.) For example, Vermont with a population of

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<sup>3</sup> This effect continues when the President is elected; swing states receive disproportionately more federal government benefits throughout the winning candidate’s administration (e.g., President Trump’s support for ethanol when Iowa was considered a swing state and Texas, which opposed ethanol subsidies, was not considered a swing state). *See generally* Douglas L. Kriner & Andrew Reeves, *The Particularistic President: Executive Branch Politics and Political Inequality* (2015).

<sup>4</sup> The complexity of the Electoral College system also makes it vulnerable to manipulation or circumvention by hostile foreign governments, which are more able to subvert U.S. elections because they can more easily and less expensively disrupt elections in a few strategic states. The Founders greatly feared the potential influence of foreign powers in American elections, and that threat has been realized with mass media, Internet influence, and now AI in the 21<sup>st</sup> century.



364,000 and Texas with 30.5 million would each have one vote despite the dramatic difference in the number of voters represented. This “contingent election” process is profoundly undemocratic and should be addressed by any reform option.<sup>5</sup>

## REFORM PROPOSALS

### A. Criteria for Evaluating Reforms

**EFFECTIVENESS**      *What benefits might reform achieve as measured against these goals?*

- all votes count equally
- presidential campaigning directed at citizens in every state
- stability/durability of the reform
- suitability for changing circumstances, small to large—e.g., crises—in our volatile political environment
- enhanced legitimacy in the eyes of the public
- more opportunity for emergence of new parties and increased voter choices
- addresses the twin problems of the existing “contingent election” process and the risk of low-plurality winners

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**TIMING**                      *What are the trade-offs between early adoption and extent of benefits?*

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**FEASIBILITY**                *Can the reform be achieved?<sup>6</sup>*

- How easy is it for the public to understand the reform?

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<sup>5</sup> A stand-alone reform that would replace the “contingent election” process with a runoff if no candidate wins more than, say, 40% of electoral votes might attract widespread support and change incentives in valuable ways; it would, however, require a constitutional amendment (see below).

<sup>6</sup> Any assessment of feasibility is, of course, inherently speculative and a changing political environment and/or possible future crises may alter assessment of feasibility.



- What political challenges would the reform face from Republican, Democratic, and Independent voters?
- What legal and constitutional challenges would the reform face/need to overcome?

**SUITABILITY FOR  
STEPPINGSTONE  
STRATEGY**

*To what extent would the reform pave the way for future reforms with greater benefits?*

## **B. Evaluating Proposals for Reform**

### *1. CONSTITUTIONAL AMENDMENT ABOLISHING THE ELECTORAL COLLEGE*

Perhaps the electoral reform with the highest burdens to overcome is amending the U.S. Constitution to abolish the Electoral College. But the benefits of this solution would be immense and would eliminate virtually all the anti-democratic, unequal, and unfair provisions of the existing Electoral College system.

Throughout the country’s history, hundreds of amendments to abolish or modify the Electoral College have been proposed. Only one—the 12<sup>th</sup> Amendment—modified the Electoral College process by stipulating that the Electors had to cast *separate* votes for the offices of President and Vice President. The most recent resolution to replace the Electoral College with a direct vote for President and Vice President was introduced in 2021.<sup>7</sup>

Amending the U.S. Constitution to abolish the Electoral College is the most durable and effective solution and would obviate all credible legal challenges associated with other reform mechanisms. Its operation is straightforward and familiar to American voters in the context of other elections, and it resembles the process for how other presidential republics elect their chief executives. It is also consistent with American values and democratic principles.

The amendment process itself is prescribed in the Constitution. Article V of the U.S. Constitution spells out the procedures for proposing constitutional amendments and ratifying constitutional amendments:

<sup>7</sup> [H.J. Res. 14](#) was introduced by Representative Steve Cohen [D, TN-09] and had eight cosponsors at the time. See H.J. Res. 14, “Proposing an Amendment to the Constitution of the United States to Abolish the Electoral College and to and to Provide for the Direct Election of the President and Vice President of the United States.”



**PROPOSING CONSTITUTIONAL  
AMENDMENTS**

Each chamber of Congress proposes an amendment; two-thirds of the members in each chamber must concur.

**OR**

Two-thirds of the state legislatures petition Congress to convene a constitutional convention.

**RATIFYING CONSTITUTIONAL  
AMENDMENTS**

Congress must determine which method the states must follow. Three-fourths of the state legislatures must ratify the proposed amendment.

**OR**

Three-fourths of state ratifying conventions approve the proposed amendment (to date, this mechanism has only been invoked once for the passage of the 21<sup>st</sup> Amendment repealing the 18<sup>th</sup> Amendment [prohibition]).<sup>8</sup>

While this procedure presents its own substantial challenges, it ensures that a successful amendment necessarily would have overwhelming and wide-ranging political support among elected officials and citizens. A constitutional amendment abolishing the Electoral College would also have the benefit of eliminating the extremely undemocratic House and Senate “contingent election” process for selecting the President and Vice President (with one vote for each state’s delegation) if no candidate wins a majority of electoral votes under our existing Electoral College system.

Finally, an amendment abolishing the Electoral College, depending on how it is drafted, could help give voice to third-party candidates and give voters the greater choice they say they want in their elections. Third-party candidates would have real opportunities to gain support and build movements over the long term in the absence of the Electoral College, which entrenches the two-party duopoly.

The path to this reform obviously would be a difficult one. As noted above, a successful amendment must clear several challenging constitutional hurdles. These hurdles will undoubtedly be magnified in an era of polarization and strong political opposition. For example, as the country’s political landscape has become more polarized, the Senate filibuster has increasingly been used as a tool to thwart needed

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<sup>8</sup> See <https://www.law.cornell.edu/constitution-conan/article-5/overview-of-article-v-amending-the-constitution>.



reforms. Indeed, it was used to kill the Birch Bayh-led effort to amend the Constitution in 1969-70.

Moreover, misconceptions about the Electoral College and how it operates would need to be countered effectively with persuasive messaging, particularly with respect to the arguments that small states primarily benefit from the Electoral College (they do not) and Republicans cannot win without keeping the present system (they can). It would also be necessary to consider how to avoid the political instability that might result if the popular vote winner were to receive only a plurality of the votes nationwide; for example, including a runoff provision in the amendment text would ensure that someone cannot win the Presidency without, say, 40 percent of the vote.

Under the best of circumstances, it can take several years to ratify an amendment, and sustaining the public's attention and interest even beyond a single election cycle can be difficult. The public usually focuses on the Electoral College only in the years it produces a "wrong winner," as it did in 2000 and 2016. The question is whether the turmoil following the 2020 election, which will continue deep into next year, and the perils already surfacing in the 2024 presidential election, will qualify as a crisis that will gain the public's sustained attention.

## 2. *PROPORTIONAL ALLOCATION OF ELECTORAL VOTES*

Arguably the most significant problem with the U.S. presidential election system is the states' use of winner-take-all allocation of electors. The consequences of winner-take-all include the parties' selection of their candidates, their policy choices, the dominance of swing states in the campaign, the almost total irrelevance of votes cast by citizens in the other states with 80% or more of the country's population, the lack of opportunity for third parties to feasibly contest for the Presidency, the tendency of presidential administrations to favor swing states throughout their terms in office, and the rapidly growing and dangerous risk that the candidate who earns fewer votes nationwide will become President.

Four proposals for proportional allocation of states' electors are summarized here. Each would retain the existing state-based system of election administration and the greater weight given to smaller states under the Electoral College. As a result, they might attract less opposition than a proposal for a national popular vote, although they could also be criticized by progressives for failing to adhere fully to the principle of all votes counting equally. A proportional allocation system could be adopted by individual states, through state legislative or voter initiative; Maine and Nebraska have done so in recent years and Michigan did so in the 1890s. It is also possible to imagine several pairs of states with different political allegiances, in a less polarized political environment, agreeing to shift together to a proportional system. But the historical record, as well as



current political realities—many “safe” states want to keep winner-take-all—suggests that it would be extremely unlikely for a state-by-state effort to yield nationwide reform. Nationwide reform would only be possible by amending the Constitution; such measures were approved by a branch of Congress numerous times in the 19<sup>th</sup> century and again in 1950.

Four proposed approaches are grouped here under the rubric of proportional allocation, although the first method, allocation by congressional district, is not strictly proportional. The other three do allocate electoral votes proportionately based on the popular vote in each state. Any of these three would make it less likely that a second-place candidate would become President if all states adopted them, or a constitutional amendment required them.<sup>9</sup>

**DISTRICT-BASED**

This system (now used in Maine and Nebraska) allocates two electors to the candidates with the most votes statewide, and the remaining electors to the candidate with the most votes in each congressional district.

In effect, this system utilizes winner-take-all vote counting, but applies it to smaller jurisdictions; as a result, it retains some of the flaws of statewide winner-take-all systems.

A more compelling, and probably fatal, problem with a district-based system is that it would add to existing political incentives to gerrymander—effectively importing our serious problems with gerrymandering into the presidential selection process.

<sup>9</sup> The different options are illustrated via the example below, which shows electoral vote allocation under different systems using 2016 results from Wisconsin (with its 10 electors simplifying the math).

	Trump	Clinton	Johnson	Stein	Others
Share of votes	47.22%	46.45%	3.58%	1.04%	1.70%
Electoral Votes Won Under Different Systems					
District	8	2	0	0	0
Whole number proportional	5	5	0	0	0
Fractional proportional	4.722	4.645	.358	.104	.170
Top – 2 fractional proportional	5.041	4.959	0	0	0



**WHOLE-NUMBER  
PROPORTIONAL**

Each candidate's share of the state vote is multiplied by the number of electors and the result is rounded to the nearest whole number.

This system has the advantage of being easy to understand and of reducing the impact of candidates who receive a tiny proportion of the state's vote, which would correspondingly increase the odds that a candidate would win a majority of the nation's electoral votes.

At the same time, it might disincentivize campaigns from paying attention to all voters in a state, especially in small states with few electoral votes, where it may be unrealistic for a campaign to change a 2-1 expected ratio to 3-0 or 1-2. That problem might be addressed to some extent through the use of ranked choice voting (see below).

**FRACTIONAL  
PROPORTIONAL**

Here too, the share of each candidate's vote would be multiplied by the number of electoral votes, but under this proposal the rounding would be some number of places to the right of the decimal point.<sup>10</sup>

This proposal does a marginally better job of making every vote matter and therefore every state matter, but it is more difficult to understand and more likely to give electoral votes to candidates with tiny totals, thus increasing the likelihood of no one winning a majority.<sup>11</sup>

**TOP-TWO FRACTIONAL  
PROPORTIONAL**

Electoral votes would be allocated proportionally but only to the top two candidates in state. The portion of votes for each of the top two candidates in that state would be equal to their share of the sum of their vote totals.

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<sup>10</sup> It is an open question whether states could direct electors to cast fractional votes. Professor Lawrence Lessig is exploring that issue. If not, fractional allocation systems would require a constitutional amendment.

<sup>11</sup> Fully proportional mechanisms, which give every candidate a share of electors equal to their share of the vote, would have resulted in no majority winner in several past elections, including for example in 1992 (when Ross Perot won 18% and neither Clinton nor Bush were close to 50%).



Rounding would be to some number of places to the right of the decimal point.

This proposal would make the vote in every state that adopts it matter, and it is the least likely of these proposals to give electoral votes to small candidates. It is also well-suited to state-based ranked choice voting that would determine who the top two candidates would be. However, it is the most complicated of these proposals to understand, and votes for candidates who come in third or lower would not matter.

Another key issue to consider:

The adoption of a proportional system would likely increase the number of candidates for President (in at least a few states). As a result of this change, a proportional system would also increase the number of elections in which no candidate receives a majority of electoral votes. In a three-way race, the existing “contingent election” process mandated by the Constitution—under which the House and Senate, respectively, elect the President and Vice President if no candidate receives a majority—could result in the third-place winner (according to the national popular vote) being elected President. Thus, a proportional system would make it even more critical to address the “contingent election” problem via a constitutional amendment.

### 3. *THE NATIONAL POPULAR VOTE INTERSTATE COMPACT*

The National Popular Vote Interstate Compact has attracted more attention and support over the last 15 years than any other proposal for reforming the presidential election system. If implemented, the Compact would dramatically change the existing rules governing how states cast their votes in the Electoral College. States belonging to the Compact would cast their electoral votes for the winner of the national popular vote, rather than for the winner of the popular vote in their individual states. States not members of the Compact would continue to cast their electoral votes as they do now.

Leaving aside other challenges, the Compact would become effective when states with at least 270 electoral votes have adopted it. It has been adopted by 16 states representing 205 electoral votes—seemingly not far distant from the 270 electoral votes necessary for it to become effective in any state.

The proposal has the virtue of not requiring a constitutional amendment; it could thus be put into place by states with a simple majority of electoral votes—rather than by the three-quarters of all states required for a constitutional amendment to implement a national popular vote system or other national reform. Once in effect, the Compact



could serve the same overall purpose as a popular vote amendment; it might also be an important steppingstone for a constitutional amendment with more durability.

The Compact’s strengths are widely appreciated, but it has also generated concerns and criticism:

- Many—but not all—legal scholars believe that the Compact could be implemented only with the consent of Congress. Article I, section 10, of the Constitution provides that “No State shall without the Consent of Congress ... enter into any Agreement or Compact with another State ....” Currently, Republican members of Congress would seem unlikely to consent to a change that would fundamentally alter how the country chooses its chief executive (and in a way that many believe would reduce their party’s chance of winning the Presidency).
- The Compact would be challenged in the courts on other grounds. Article II of the Constitution says “Each State shall appoint ... Electors” based on the number of its representatives in Congress. It says nothing about whether states, in assigning their electoral votes, may take into account votes in other states. However, at the Constitutional Convention, the founders considered and rejected a proposal that the President be elected by popular vote and instead adopted the state-by-state Electoral College system. Each state assigning its electoral votes on the basis of a national popular vote—as the Compact demands—would appear to be contrary to the founders’ expressed expectations.
- Such constitutional issues would not be adjudicated until a Compact state had cast its electoral votes; this could lead to a legal and political crisis in the midst and aftermath of a presidential election. This crisis could obstruct a peaceful and timely transfer of power because if the Compact were ruled unconstitutional, the appropriate remedy would probably be to re-run the election according to the rules of the Electoral College system.
- Adoption of the Compact by enough states to meet the 270 electoral votes requirement probably could not be accomplished for quite some time,<sup>12</sup> and even if it were accomplished, the result

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<sup>12</sup> Three states are actively considering passage of Compact legislation: Maine (4 electoral votes), Michigan (15), and Nevada (6). (The Nevada legislature has voted to adopt the Compact, but it must be voted on again after the 2024 presidential election and, therefore, could not go into effect until at least 2028). If these three states adopted the Compact, the electoral vote count would rise to 230. In three other states—with Republican-controlled legislatures—Compact legislation is pending: Wisconsin (10), Arizona (11), and North Carolina (16). If they also adopted the Compact, the Compact’s electoral vote count would rise



would be an inherently unstable presidential election system. The terms of the Compact provide that any member state can withdraw from it up to six months before the presidential election. It further provides that if at that point, states remaining in the Compact no longer have electoral votes that meet the 270 electoral vote requirement, it is no longer effective in any state. As a result, political forces would likely mobilize after each presidential election to persuade member states to withdraw from the Compact prior to the next election. Similar efforts would be made to persuade non-member states to adopt the Compact. If the Compact's membership dropped below 270 electoral votes, the next election would be conducted under old Electoral College rules rather than under Compact rules. Thus, each election cycle would lead to partisan jockeying and uncertainty about how the next election would be conducted.

- It is unclear how the Compact would be enforced. Who would have standing to sue a Compact state or its election officials to force it to cast its electoral votes for the winner of the national popular vote? Would another state, a political party, a candidate, a voter, or Congress have standing? In what court would the litigation be filed? And how would a court order actually be implemented?
- The Compact would lead to resentments and antagonism from citizens of states that had not joined the Compact. We know from experience and polling that states would resist a system where a majority of voters in that state voted for one candidate only to see the state's electoral votes cast for a different candidate. Having the new system imposed on them without their having a say would exacerbate social, political, and regional tensions that are already dangerously elevated. (Notably, no southern or red state has joined the Compact.)

The organizing, messaging, and legislative efforts of the Compact's advocates have been substantial, and their strategy has mobilized support for Electoral College reform in numerous blue states. It is not clear, however, whether the Compact itself is the solution to problems with the Electoral College, although it might pave the way for more lasting reforms.

#### 4. *ENLARGEMENT OF THE HOUSE OF REPRESENTATIVES*

Members of the House of Representatives no longer represent equal numbers of constituents. As a result, the existing Electoral College system, which provides each state

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to 267, three short of the required minimum. All three states are swing states and therefore prime candidates to withdraw from the Compact if they should choose to adopt it in the future.



with one elector for each Representative (as well as one for each Senator), creates major imbalances in the weight afforded the presidential votes of constituents nationally.

In 1929, Congress capped the number of Representatives at 435. Because of vast and uneven population growth since then, House members now represent an average of approximately 800,000 constituents (compared with around 200,000 early in the last century). However, wide disparities in state population size mean that House members, and therefore electors, do not in fact represent anything like that number of constituents. As an example, the vote of each Wyoming resident (and elector) now weighs over 3.5 times more than the vote of each California resident/elector. These disparities will almost certainly increase in the future, depriving millions of voters of the full benefit of their franchise.

Such disparities could be ameliorated, but not fully eliminated, by increasing the size of the House substantially. (The increase necessary to eliminate the disparities completely would be impossibly huge.) Still, a significantly larger House would automatically result in allocating more seats to states with larger populations. Architectural studies have shown that a great many more House seats could be added to the Capitol without the need for an entirely new structure. Bills have already been submitted in the House which, if passed, would add 150 seats or more to the House, and would thus increase the size of the Electoral College as well and reduce disparities to the extent of the increase.

The size of the House could be increased solely by congressional legislation, without the need for a constitutional amendment. Nothing in the Constitution would prevent such a change or permit the Supreme Court to strike it down. Some supporters of more limited presidential election reform might prefer a system in which states retain their respective rights to the re-determined number of their electors and their constitutional right to select them in whatever manner they choose. Supporters of abolishing the Electoral College entirely might also support enlarging the size of the House as part of a long-term “democratizing process” that would reduce voting imbalances in the House among states and permit easier access by constituents to their representatives. It could be seen as a stepping stone to other reforms, perhaps more easily accomplished than other proposals, while work on more ambitious reforms continued.

##### 5. *RANKED CHOICE VOTING*

Ranked choice voting was not designed and until recently has not been promoted to address the problems of our presidential election system. It is increasingly being adopted for state and local elections because it does effectively address the problems it



was intended for: primary and general elections in these jurisdictions where polarizing candidates win elections with plurality support but against the will of most voters.

Now it is beginning to be used and proposed to be used in presidential elections combined with innovative ideas suggested by others.<sup>13</sup> The public's enthusiasm for and broadening awareness of ranked choice voting make it an appealing proposal for presidential election reform. But by itself, it does not achieve equal weight for all votes nationwide, leaving in place the winner-take-all problem in our election system, the wrong winner risk, and the nearly exclusive focus of presidential candidates, their campaigns, policies, and administrations when they come to office and thereafter on the ten or so swing states with little regard for the needs and interests of 80% of the country's population that resides in safe states.

That is why the effectiveness of the innovative ideas to be combined with ranked choice voting in presidential elections deserves to be given full and careful consideration.

Even apart from its usefulness in this larger and more ambitious goal, ranked choice voting would combat the risk that in individual states presidential candidates could win their electoral votes because of the fragmentation of the opposition, thereby frustrating the will of the voters.<sup>14</sup> Even if adopted at the federal level, which would require a constitutional amendment, it would, without the benefit of innovative ideas being associated with it, leave intact the distortions of the winner-take-all system in 48 states.

## **OUTREACH, ENGAGEMENT, & EDUCATION**

Engaging and educating a broader swath of the public about the issues and concerns that surround our presidential election system will be necessary for real Electoral College reform. Minority groups and young voters have a major stake in the integrity, fairness, and representativeness of our presidential election system. Indeed, presidential election issues are foundational in that if they cannot be resolved, other major issues like inequality, global warming, extreme regional and societal divisiveness,

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<sup>13</sup> Maine uses a standard RCV system in primary and general elections for federal offices only (a court held that the state constitution would not allow RCV to be used for state office elections). This system was used in the 2020 election, and barring some unexpected change, it will be used again in 2024. In Alaska, an RCV system will be used for the first time in the 2024 general elections for all offices including President. Primaries will be conducted under a nonpartisan, pick-one, final-four system. In Nevada, an RCV system will go into effect for the 2028 presidential election, but only if it is ratified again in 2024 and enacted into the state constitution in 2026 or later. Nevada would also use a primary system that would pick among the top five candidates.

<sup>14</sup> "Final-five" RCV systems do include an instant run-off that determines the majority winner among the top five candidates. See <https://political-innovation.org/final-five-voting/>.



immigration reform, and incendiary foreign policy issues—where reliable continuity is essential—cannot be effectively addressed. Outreach to diverse and underrepresented groups and enlistment of their support will help inform MEVC’s mission and strengthen the chances for meaningful change.

## A. Minority Voters

Groups representing minority voters typically have overflowing agendas and well-established reform priorities that do not focus on short-term or long-term changes to our presidential election system. However, it is well established that the Electoral College has racist origins,<sup>15</sup> and a review of population and voting data demonstrates that its present-day application also has racist effects. The Electoral College system, in conjunction with demographic realities, disproportionately harms racial and ethnic minority groups because it results in serious underrepresentation of minority voters.

As noted earlier in this Report, forty-eight states have “winner-take-all” systems, which provide that the presidential candidate who wins the popular vote in the state receives all of its electoral votes. Thus, so long as minority voters have different political preferences than the majority, they are effectively disenfranchised. If minority voters have similar political preferences to the majority but live in a safe state, the result is still damaging. Because only four to ten swing states determine presidential elections, candidates and parties prioritize these preferences on the campaign trail and once in office. This means that they are largely unaware of or ignore the needs and interests of minority voters. This outcome violates the principle that all votes should count equally.

One study provides an instructive example of how this works in practice. White voters are overrepresented in swing states; indeed, per voter, once the Electoral College is taken into consideration, Whites have 16 percent more voting power than Blacks, 28 percent more power than Latinos, and 57 percent more power than those who fall into the “other” category.<sup>16</sup> Wyoming’s population, for instance, is 92% White while California’s is 37% White—but because the Electoral College disproportionately empowers voters in Wyoming, they have about four times the voting power of Californians (with only a minority of White voters).

Similarly, 56% of Black citizens live in the South and 84% of Black voters identify or lean toward the Democratic Party. However, the political majority in southern states leans heavily Republican (so those states are safely “red”),<sup>17</sup> and with winner-take-all

<sup>15</sup> See, e.g., Wilfred Codrington III, *The Electoral College’s Racist Origins*, *The Atlantic*, Nov. 17, 2019.

<sup>16</sup> See <https://www.vox.com/the-big-idea/2016/11/22/13713148/electoral-college-democracy-race-white-voters>.

<sup>17</sup> Georgia in 2020 presents a different story. In the 2020 election, Georgia, by a narrow margin, voted Democratic, although its legislative and executive branches are still solidly Republican.



systems in place throughout the South, Black voters are effectively disenfranchised, and presidential candidates are likely—even incentivized—to ignore their interests. Moreover, under the contingent election process discussed earlier in this Report (which governs the election outcome if no presidential election candidate receives a majority of electoral votes), since southern states have House delegations dominated by Republicans, each of these state delegations would cast their one vote for the Republican candidate.

The results are similar for other underrepresented groups. Asian-American voters are concentrated primarily in California, New York, Texas, New Jersey, and Washington. None of these states are swing states, so presidential candidates would not take into account Asian-American voter preferences in their messaging or governing strategies. Asian Americans are also the fastest growing demographic in the United States, more than doubling between 2000 and 2019. As the most rapidly growing minority group, they stand to gain substantial influence in an electoral system that more closely reflects the national popular vote. Consequently, our presidential election system disproportionately harms these voters compared to White voters.

About half of the U.S. Latino population is in California, Texas, and Florida. California and Texas are predictable safe states (one blue, one red). Florida was previously considered a swing state with candidates spending significant energy and resources trying to win it. However, Florida is rapidly losing its swing state status and becoming a red state. As a swing state loses its influence in presidential elections when it becomes a safe state, so will minority voters in that state. As the most populous (19.1% of the U.S. population) group of minority voters in the United States, Hispanic voters would be more influential under an election system that more closely approximated the outcome of the national popular vote.

These statistics lead to the conclusion that the damages caused by our presidential election system on so many American voters have a disproportionately higher impact on minority voters. The votes of African-American, Asian-American, and Latino-American voters effectively count less than those of many White voters, and therefore their needs and policy choices are given less attention by presidential candidates and administrations once in office. Whether this disparity is intentional is beside the point—it nevertheless is destructive and unfair and contributes to the extreme divisiveness that plagues and paralyzes our country.

## **B. Youth**

One of the demographics MEVC will enlist in support of presidential election system education and reform is youth, an especially large group concerned about election integrity and government policy, and a potentially powerful force for change as



early as the 2024 election and even more so in the future. As part of our outreach, MEVC is working with the American Constitution Society (ACS), which provided the information below.

1. *American Constitution Society's Perspective on Youth Voting Trends*

The current cohort of youth voters are highly engaged, turning out to vote at higher rates than previous generations, despite a political system that in many communities has become increasingly unresponsive to their preferences. According to post-election analysis from the Center for Information & Research on Civic Learning and Engagement (CIRCLE) of Tufts University, youth turnout (defined by CIRCLE as voters aged 18-29) in the 2022 election was 23% and their impact was felt in competitive elections throughout the country but particularly in battleground states.<sup>18</sup> Current youth voters are voting at higher proportions than previous generations. CIRCLE also found that “states with the highest youth turnout have policies like automatic and same-day registration that make it easier for young people to register and vote” and states with more restrictive election policies experienced lower youth turnout.

While many consider low youth voter turnout to be undesirable, in several states, legislators are purposefully seeking out methods of suppressing the youth vote.<sup>19</sup> For example, in Texas, where the youth voter turnout rate jumped from 8.2% in 2014 to 25.8% in 2018 and 21.5% in 2022, legislators responded first with a massive voter suppression law and introduced bills specifically targeted at student voters.<sup>20</sup> These laws are part of a larger plan to make it harder for youth voters to access the ballot box.<sup>21</sup> However, these efforts are not being pursued in every state. In fact, many states are seeking to remove barriers to the ballot box for voters under the age of 29 and are finding great success. In Minnesota, more than 1,000 teenagers have taken advantage of a law that went into effect of June this year that allows 16- and 17-year-olds to preregister to vote.<sup>22</sup> And in New York, the state has passed a package of reforms aimed at expanding voter access, including a requirement that high schools promote registration and pre-registration during the school year and provide assistance and education about these forms.<sup>23</sup>

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<sup>18</sup> <https://circle.tufts.edu/2022-election-center>.

<sup>19</sup> <https://www.nytimes.com/2019/10/24/us/voting-college-suppression.html>.

<sup>20</sup> <https://www.texastribune.org/2021/09/01/texas-voting-bill-greg-abbott/>;  
<https://www.houstonpublicmedia.org/articles/voting/2023/02/17/444142/polling-sites-voting-texas-college-campuses-banned-under-proposed-bill/>.

<sup>21</sup> <https://www.washingtonpost.com/nation/2023/04/20/cleta-mitchell-voting-college-students/>.

<sup>22</sup> <https://www.axios.com/local/twin-cities/2023/10/06/minnesota-youth-voter-registration-law>.

<sup>23</sup> <https://legiscan.com/NY/bill/S01733/2023>.



According to a recent poll conducted by the Institute of Politics at Harvard Kennedy School, over half of all youth voters support automatic registration and sending ballots to every voter by mail, while 72% oppose removing polling locations from college campuses.<sup>24</sup> And in states that have implemented pro-voter policies either through legislation or ballot initiative, youth voters are turning out.

Of the five Presidents who have won the Presidency without winning the popular vote, many youth voters have lived through two of their terms. The flaws in the Electoral College are not rare or obscure phenomena to this cohort and they overwhelmingly support reform. A recent Pew Research Center poll found that 70% of youth voters support changing the current electoral system so that the candidate who earns the most votes nationwide becomes President, the highest level of support of any age group.<sup>25</sup> In short, they have the motivation and opportunity to make an important difference, including in the 2024 presidential election.

## 2. *How ACS Can Help*

ACS has some 200 lawyer and law student chapters across the country who host programs on pressing legal issues; coordinate candidate forums; conduct trainings; connect students with progressive thought leaders, lawyers, and judges; and mobilize on their campuses and in their communities. This incredible network of chapters makes ACS both a grassroots and national organization, with ACS's members advancing pro-democracy policy in every state and most major cities. Many of these chapter events and efforts are centered around democracy and voting issues.

To increase network mobilization around democracy issues, ACS launched the Run.Vote.Work. initiative. R.V.W. is aimed at combating the threat of election subversion and educating voters about the importance of democracy and voting issues. With this initiative, ACS deploys its greatest asset—its network of 40,000 progressive lawyers, students, scholars, and advocates—to serve as poll workers, to identify and recruit diverse, qualified candidates to run for down ballot positions, to increase voter education and engagement on these races, and more.

One way that ACS has worked to mobilize its law student network in particular is through the Election Day Class Cancellation project. Through this project, ACS student chapters work with their school administration to get classes cancelled on Election Day. The goal is then for students to volunteer with partner organizations to ensure fair and

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<sup>24</sup> <https://iop.harvard.edu/youth-poll/45th-edition-spring-2023>.

<sup>25</sup> [https://www.pewresearch.org/short-reads/2023/09/25/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/sr\\_23-09-25\\_electoral-college\\_3/](https://www.pewresearch.org/short-reads/2023/09/25/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/sr_23-09-25_electoral-college_3/).



safe elections across the country. ACS has had an enthusiastic response from students looking for ways to learn more about pressing democracy issues and mobilize to fix issues in our system.

MEVC and ACS are collaborating on steps to inform and engage younger voters on vital issues about the country's damaging presidential election system. One step is to share with ACS's network of 200 chapters across the country in-depth information about how our Electoral College system increasingly falls short of and dangerously undercuts the values of American democracy. MEVC will also have the opportunity to connect with ACS chapters interested in engaging with these issues, through potential programming and community engagement. MEVC could help provide speakers—sometimes live, sometimes remote—that are knowledgeable in constitutional and election law both from a historical perspective as well as in today's volatile political context. It can also provide slides, talking points, and other materials and resources as may be helpful.

At the national level, ACS conducts interviews of leading figures in issues of current importance and prominence. It is interested in arranging, around the turn of the new year, an interview with a pre-eminent historian of the Electoral College and efforts to abolish or reform it who has played a central role in MEVC's activities on these issues over the last eight months. ACS also holds other national events involving its chapters over the course of the year where these issues and strategies for addressing them could be discussed.

The ACS-MEVC collaboration will provide important and exciting opportunities for making a difference.

## CONCLUSION

The working group's assessment of the leading presidential reform proposals is a dynamic process, as is its related initiative to enhance citizen outreach, engagement, and education for broader segments of the population. Ongoing feedback from others will continue to shape these projects. So will external political developments, which can be expected to be volatile at least through 2024.

Most Americans (whatever their political allegiances) realize that our country is in serious danger as a result of the disastrous aftermath of the 2020 presidential election and the likelihood that the 2024 election will also be tumultuous. Indeed, there are signs that many members of both parties, including military, sports, and business leaders, are alarmed by the threats of a dysfunctional presidential election system. There should be an especially heightened receptivity to the need for change and an openness to



new and perhaps more ambitious proposals. Real progress is often made when there is shared appreciation of seismic shifts and threats in the political environment and public sentiment.

Though the most meaningful reforms may be quite difficult to accomplish and require long-term focus and efforts, disruptive events over the next fifteen months and beyond may call for emergency fixes to the system. The existence, expertise, and product of the working group could be useful in these circumstances. Finally, even the most far-reaching reform requires first steps—now is the time to take them and to engage a broad swath of the public (including underrepresented communities and young voters) in this urgent cause.

