



Written by [Steve Byas](#) on December 21, 2020

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## The Creation and History of the Electoral College

The Electoral College is today a topic of some controversy, largely because its detractors either do not understand its purpose, or even the purpose of government itself, or are simply opposed to our form of government. The Framers of the Constitution were in general agreement as to the purpose of government, which is to protect our lives, our liberty, and our property. Their differences were more in how best to achieve those goals.



Many issues were quite contentious at the Constitutional Convention of 1787, but in the end the method of selecting the president of the United States — through what is called the Electoral College — drew broad agreement, both at the convention and in the ratification conventions in the states. As Alexander Hamilton expressed it, this method may not have been perfect, but it was “excellent.”

The term “Electoral College” does not actually appear in the Constitution, but was adopted later as a good description of the system the Founding Fathers created wherein state-selected electors choose the president of the United States.

It was decided rather early during the convention that the government needed a unitary chief executive, which they agreed should be called president of the United States. Just how that individual would be selected was not so much a matter of contention as a matter of practicality. In *The Federalist*, No. 39, James Madison explained that the Constitution created a government that was a mixture of national and federal features. Whereas the people voted directly for members of the House of Representatives, the people would only indirectly choose the president through their state government.

Likewise, Alexander Hamilton, writing in *The Federalist*, No. 68, extolled the virtues of choosing the president by electors, chosen by each state by whatever method its legislature determined. First, it had the virtue of being a temporary body, and thus not subject to foreign influence between elections, and second, it would limit any influence that corruption might have on the process.

Although there was some initial sentiment in favor of presidential election by a direct, popular vote, it was deemed impractical, and counter to the federal system of government they were attempting to create. The Framers had solved the question of how to elect congressmen — either by the state legislatures, with each state equally represented, or by the people directly, in which the more populated states would have more representation — by the “Great Compromise.” Oliver Ellsworth of Connecticut was the man most responsible for that compromise. Under its terms, one house (the Senate) of Congress would represent each state equally, and the other (the House of Representatives) would give more representation to the more populated states. Having created such a hybrid for the legislative branch, it was logical to do something similar for the executive. Ellsworth argued powerfully against direct election of the president on the basis that such a method would be unfair to the states with less population. (It should be noted that those who mistakenly argue that the Electoral College and the Senate were created for the benefit of the slave states should recognize that both institutions’ most



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powerful advocate was an anti-slavery delegate from Connecticut.)

## Delegates Struggle: How to Choose the President

But how to select the president was up for debate. Various suggestions were offered. Elbridge Gerry of Massachusetts suggested letting the governors of the states elect the president. In *Miracle at Philadelphia*, Catherine Drinker Bowen wrote, “No fewer than sixty ballots were needed before the method of selecting the president was decided; repeatedly, delegates fell upon it as if never before debated. Five times the convention voted in favor of having the President appointed by Congress. Once they voted against that, once for electors chosen by state legislators, twice against that, and voted again and again to reconsider the whole business.”

James Wilson of Pennsylvania called the problem of picking a president “in truth, one of the most difficult of all we have to decide.” He even offered the odd proposal that members of Congress draw colored balls out of a jar, with those drawing golden balls retiring to a locked room to elect the president. As time went on, both the idea of having anyone from Congress choose the president and the idea of direct popular election gave way to a new approach. Gerry argued that popular election would be “radically vicious,” and Madison said that indirect election by a group of electors would afford less “opportunity for cabal, or corruption.”



**Gaming the system:** The Constitution stipulates that a presidential elector cannot vote for a person for president and another for vice president who are both from the elector’s home state. To circumvent this provision, Dick Cheney (right) — who was, like George W. Bush, a resident of Texas — re-registered to vote in Wyoming just before Bush announced that he was selecting Cheney to be his vice-presidential running mate. Cheney had not lived in Wyoming for several years. *(Photo credit: AP Images)*

Finally, the convention created an 11-man committee (which included Madison) to present a plan for choosing the government’s chief executive through a system of special electors. They met from late August until early September (the convention adopted the Constitution on September 17), and presented the plan that then was written into the Constitution. It faced no significant opposition, as by this time it had become clear that such a method of electing the president was preferable to either congressional or popular election. St. George Tucker, writing in his 1803 book *View of the Constitution of the United States*, said little about the Electoral College, other than it provided for the “tranquility”



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of the election of the chief executive of the U.S. government. Hamilton, writing in *The Federalist*, No. 83, said, “The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents.”

Indeed, the Anti-Federalists (those who opposed the adoption of the Constitution, at least without major revision) offered no opposition to the Electoral College, and it was hardly mentioned at the various state ratification conventions. This may seem strange today, what with the opposition to it centered on the charge that it is “undemocratic.” But when one considers that the delegates at the Constitutional Convention had no intention of creating a unitary democracy, but rather a federal republic, it makes perfect sense. Writing in *The Federalist*, No. 10, Madison took a dim view of pure democracy, arguing, “Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths.”

The Constitution created the elector system of choosing the president in Article II: “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 Constitution stipulates that these electors shall meet in their respective states, and vote by ballot for two persons, “of whom one at least shall not be an inhabitant of the same state as themselves.” While the Electoral College system was modified in 1804 somewhat by the 12th Amendment, which required electors to vote for president and vice president on separate ballots, this provision was retained. Sadly, the spirit of this provision was brazenly circumvented in 2000 when Dick Cheney was the running mate of Texas governor George W. Bush. Cheney had been living in Texas for several years, while the CEO of Halliburton, but once it was decided that Cheney was to be Bush’s running mate, he went to Wyoming (where he had served as a member of the House of Representatives) and changed his voter registration from Texas to Wyoming. An indication of how little the Constitution is regarded, perhaps, is that very little was made of this, even by the Democrats.

## **How the Electoral College Evolved in Practice**

Many conservatives today lament that the Electoral College has not operated as envisioned by the delegates, and that is somewhat true. The Founders expected that the electors would consist of enlightened individuals who would dispassionately cast their votes for the man they considered the best person in the entire country to serve as president. But very early on, the rise of political parties — not provided for in the Constitution itself — and the fact that the state legislatures determine how the electors are chosen — which is in the Constitution — contributed to a modification of the Founders’ ideal.

The first presidential election provided little drama, as it was well understood that George Washington would be elected as our nation’s first president. The original method provided that each elector was to vote for *two* individuals, not just one, with the logic that the runner-up was the second-best candidate and should therefore be vice president. Every elector included Washington on his ballot, while John Adams finished second.



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But even in that first election, a potential problem with the appointment of electors by state legislatures was revealed. New York State, with its bicameral legislature, deadlocked, and ultimately failed to name any electors. In 1792, nine of the 15 state legislatures chose the electors, and in 1800, 10 of 16 did so. And by 1812, only half of the legislatures were directly selecting the electors. Instead, states were conducting popular elections for electors, and by 1824, only six of 24 state legislatures were choosing their state's electors. In 1828, only South Carolina and Delaware continued to choose their electors by a legislative vote. South Carolina, in 1868, was the last state to resort to popular vote in choosing electors. One would have to assume that legislators, who did have to face the voters in a direct popular election, concluded this was the will of the voters in their state and considered it politically prudent.

There continued to be some sporadic legislative appointments, however. When the popular vote produced no majority vote winner in Massachusetts in 1848 (as the law required), the legislature awarded all of its electoral votes to the Whigs, who had won a plurality of the votes. In 1864, Republicans, fearful that their candidate, President Abraham Lincoln, could lose the election, rushed Nevada into statehood. But it was too late to hold a popular vote for president, necessitating that the state's legislature simply name the state's electors. When Florida was declared "reconstructed" in 1868, its legislature named the electors, as it was also too late to hold an election. Colorado, admitted very late in the presidential election year of 1876, also cited time problems in holding a popular election, causing that state's legislature to name its electors.

Although all states now use the popular vote to determine their electors, the Constitution has not changed. A state legislature could still amend its state's laws, and just take over the naming of its electors. Whether that could legally be done after a popular vote has already been held under a law providing for a popular vote election to determine the state's allocation of electors is a question that would probably wind up in court.

There was some discussion in Florida in 2000 by that state's legislature — controlled by the Republican Party — about naming a Republican slate of electors, when it appeared that the state might miss the federal deadline for choosing electors due to the legal issues between the two presidential campaigns.

## **Modification of the Electoral College**

Hamilton and Madison both were opposed to the early tendency of states to award *all* of their state's electoral votes to the candidate who carried the popular vote in their state. They wanted electors to be chosen by congressional districts, except for the two who would represent the state as a whole. Moreover, Hamilton argued that the electors should be free to choose whom to nominate as president, and not be bound by a popular vote, and that electors not be required to adhere to a "winner-take-all" format. These two Founders even advocated an amendment to the Constitution to make sure that electors were chosen by congressional district. Hamilton was working on this effort when his life was cut short in the duel with Aaron Burr.

Perhaps the principal reason the Founders' plans weren't followed — with electors dispassionately picking the "best man for the job" — was the rise of political parties. Although political parties were not mentioned in the Constitution, and the Founders were uniformly opposed to their creation, differences over the respective power of the states and the newly created federal government inevitably led to their rise. While Hamilton is generally identified with the rise of the Federalist Party, Thomas Jefferson is regarded as the father of what he called the Republican Party (not to be confused with today's



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Republican Party, which was created in 1854).

Because the Constitution required that the top vote-getter in the Electoral College become president, and the person who finished second become vice president, political parties soon realized that they needed electors to vote for the same two people, so as not to divide their vote and possibly allow the other party to win. Unfortunately, Jefferson's Republican electors were so well disciplined that they uniformly voted for both Jefferson and his "running mate," Aaron Burr, creating a tie.

In 1800, Burr refused to step aside for Jefferson. A contingent election in the House of Representatives, however, is not decided by the majority vote of every member of the House, but instead by each state's House delegation, which has one vote for the entire delegation. Today, this would mean that the Republicans would win, because though the Democrats have a narrow majority in the House, the Republicans have a majority of state delegations. In 1800, the lame-duck Federalists still controlled the House. They had lost their majority in the 1800 election, but their terms were not yet up. This created the odd situation where the opposing party (the Federalists) would decide between the two Republicans, Jefferson and Burr.

With the support of Hamilton, Jefferson prevailed, but this led directly to the 12th Amendment, and indirectly to a provision in the 20th Amendment. The 12th Amendment required that electors now vote for one candidate for president, and then vote for another person for vice president, so as to avoid what had happened in the 1800 election. The 20th Amendment placed the beginning of the term of the new Congress to an earlier time, so that the lame-duck House would not be choosing the president were no candidate to have won the Electoral College, but rather the newly elected House, chosen in November.

The 12th Amendment was the last direct change to the Electoral College system created by our Founders, except for the 1961 amendment (the 23rd) that gave the District of Columbia three electoral votes, as though it were a state.

Today, some mistakenly warn that a tie in the Electoral College vote, or in the unlikely event that no candidate receives a majority of the vote, would create a "constitutional crisis"; this is not true. The Constitution explicitly provides that were this to happen, the president would be picked by the House of Representatives. If something is provided for in the Constitution, then clearly it cannot be a "constitutional crisis."

## Historical Worth of the Electoral College

The only other time that the Electoral College failed to elect a president was in 1824. At that time, the Republican Party that Jefferson had created was so dominant that the Federalist Party had largely ceased to exist. Not surprisingly, many former Federalists were now supposedly Republicans. When the party needed for all of its electors to vote uniformly (as in 1800), it was considered necessary for the party to name *one* candidate. But, with just one political party, the method of the party's congressional leaders selecting that one candidate had created something the Founders had sought to avoid: Congress was essentially choosing the president. So, in 1824, other candidates in addition to the congressional caucus' choice, all claiming to be Republicans, rejected the congressional caucus selection (or as they called it, "king caucus"), and ran for president anyway, all as Republicans. Andrew Jackson ran first in the Electoral College, but with four candidates running, he fell far short of a majority, throwing the election into the House of Representatives. The House then chose John Quincy



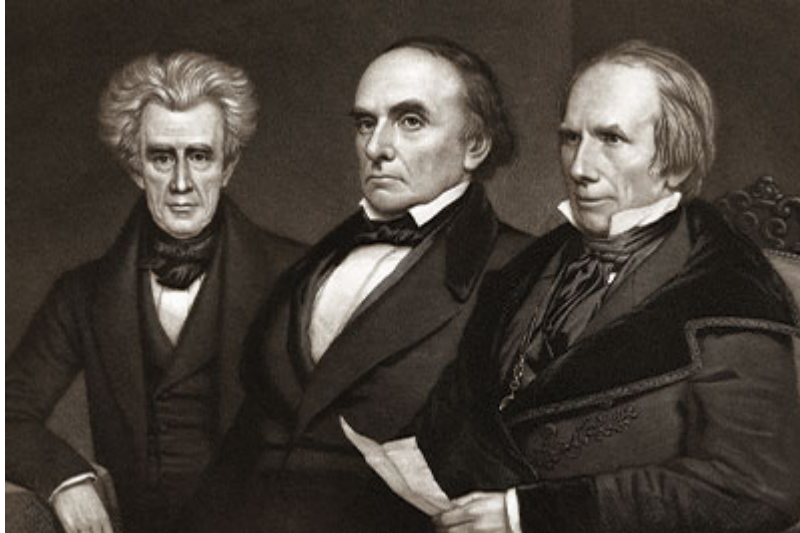
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Adams over Jackson, and this eventually led to a split in Jefferson's original Republican Party. The Jacksonians became the Democratic-Republicans (and eventually, the Democrats), while those who supported Adams and Henry Clay eventually emerged as the National Republicans, and finally the Whig Party. In effect, the rules of the Electoral College had ended the domination of the Congress over presidential selection.

But history demonstrates other instances in which the Electoral College has proved its worth.



**No constitutional crisis if the House picks the president:** Andrew Jackson (on the left) ran first in the 1824 election, in both the popular vote and the Electoral College, although he failed to gain a majority in either. House Speaker Henry Clay (on the right) announced his support for John Quincy Adams over Jackson, and the House followed their leader in picking Adams. This was the last time that an American president was selected by the House of Representatives. *(Photo credit: AP Images)*

Supporters of the Electoral College rightly point to its ability to discourage regionalism. Trent England points out in his book *Why We Must Defend the Electoral College* that the Electoral College rewards candidates who are able to win broader support across the country. For example, Democrat Grover Cleveland won the popular vote in 1888, but lost the electoral vote, because although he won by huge margins in the Solid South, he failed to carry enough states beyond that regional base to win enough electoral votes. Although he had won the popular vote by a little under 100,000 votes, he had carried one state — Texas — by nearly 150,000 votes. He also won six other Southern states by more than 30 percent. Today, the Democrats can count on similarly huge margins in highly populated California (principally Los Angeles and San Francisco), but no matter how much of a margin they win by there, they get no additional electoral votes. Thus running up huge margins in certain cities or regions, but not winning over a broad area of the country, is not rewarded with more electoral votes.

Indeed, as Hamilton put it, the Electoral College is not without its faults, as is the case with all human creations, but it is clearly “excellent.” Writing in *The Constitution: An Introduction*, Michael and Luke Paulsen sum up what the Founders achieved with their Electoral College: “They finally agreed to a somewhat complicated arrangement that was designed to include the states (reflecting the value of federalism), to *exclude* Congress to the maximum extent possible (maintaining the separation of powers), and to avoid cabals — conspiracies or secret deals — that would threaten republican government.”



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All in all, the Electoral College is quite an achievement, and any efforts to subvert this great achievement should be strenuously opposed.



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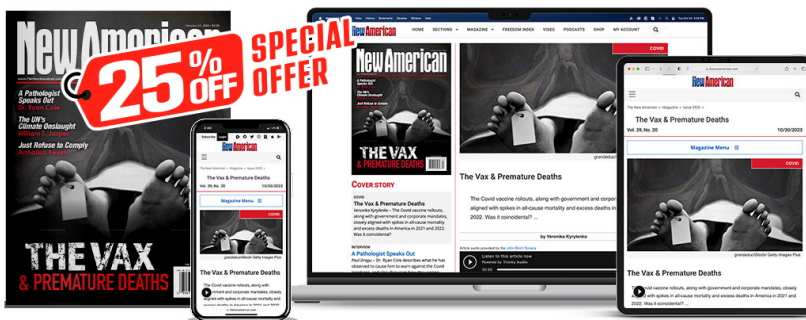
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