

Electoral College

By Christopher Hollis

In 1788, the Constitution of the United States was ratified. Within the Constitution, in Article II, Section 1, an electoral college was established, in which every four years a President and Vice President are elected to lead the nation. The number of electors was to be the number of senators and representatives that each state had in Congress. "The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves." (Article II, Section 1) The person with the majority of the votes would become the next President, while the person who came in second with the most votes, would become Vice President. This method of voting by the electors was replaced on June 15, 1804, when Article II, Section 1, was replaced by the 12th Amendment. This Amendment was added to the Constitution after the election in 1800. In that election, an electoral tie between Thomas Jefferson and Aaron Burr took a year to decide. The House of Representatives finally chose Thomas Jefferson. The 12th Amendment makes the electors cast one ballot for president and one ballot for vice-president. The 12th Amendment was created also to better explain what would happen in the case of a tie, and how they would go about finding who would be the next President.

The Presidential election is held every four years, and is held on the Tuesday following the first Monday in November. In the 2000 election, this day was November 7. After all the votes are counted, they are certified. The electors then meet in their respective states, and vote for a President and Vice President. Each party picks their electors. They are usually the most loyal supporters of the party. If that party wins the popular vote, then the electors of that party are the ones that will cast votes when the Electoral College meets. In 24 states, there are no laws saying that that parties electors must vote for their party candidate. Nine times in history, the electors for one party actually voted for the other candidate. No elector has yet to be punished for doing that. In the 26 states that do have laws, like Virginia, their law says that it shall be expected for the electors to vote with the way of the popular vote. The electors are usually very loyal to their party. They have pledged to vote for their candidate, and should be morally bound. In some states, like New Mexico, it is a fourth degree felony for an elector to not vote for the candidate that should have had all the electors for that state. In Oklahoma, it is a misdemeanor, and can have a fine up to \$1000.

Although it is very unlikely, it is possible that one parties Presidential candidate can be elected, and the Vice Presidential candidate from another party can be elected. Each elector votes for a Presidential candidate and a Vice Presidential candidate. They don't have to vote for the Presidential candidate or the Vice Presidential candidate from their party, unless required by law. There is no Constitutional provision, or Federal law, requiring electors to vote in accordance with the popular vote in their States. The Electoral College meets in State capitals on the Monday, following the second Wednesday, in December. In the 2000 election,

that is December 18.

After the general election, the Governor of each State must prepare seven original Certificates of Ascertainment, with the electors of that state listed. They are due before December 18 in the 2000 election, at the latest. Federal law requires that the Certificates of Ascertainment be prepared and authenticated in the following manner:

1. Each Certificate must list the names of the electors chosen by the voters and the number of votes received.
2. Each Certificate must list the names of all other candidates for elector and the number of votes received.
3. Each Certificate must be signed by the Governor and carry the seal of the State.

One of the seven original Certificates of Ascertainment, along with two certified copies (or two additional originals) must be sent by registered mail to John W. Carlin, the current Archivist of the United States. December 27 is the deadline for the receipt of Electoral Votes to the President of the Senate, the Archivist of the United States, and other designated Federal and State officials. The President of the Senate is the Vice President, Al Gore, who happens to be a candidate this year for President. The votes will be officially counted on January 6, when Congress meets in joint session to count the votes. The President of the Senate, Al Gore, "shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." (12th Amendment) Whoever has the majority of the vote, will become the next President. The 12th Amendment had stated that the presidential term ends March 4. The 20th Amendment amended this. It states that on January 20, the presidential term ends. So, if a President has been chosen by that date, he will be inaugurated on this day.

About the electors...

There are five hundred thirty eight electors. A states electors are determined by how many senators a state has, which is 2 for every state, and by how many representatives they have in the House of Representatives, which is based on population. Today, there are a fixed number of representatives in the House of Representatives. There are four hundred and thirty five seats, in which each seat represents six hundred ten thousand persons in the US population. But that only equals five hundred thirty five electors. Although it doesn't have a senator or any representative in the House, Washington D.C. has 3 electors to vote for President and Vice President. The 23rd Amendment ratified on March 29, 1961, says that the District of Columbia is entitled, as if it were a state, to cast votes as if it were equal, but no less, nor no greater, than the smallest of states, which have 3 electoral votes. Washington D.C. can perform the duties as outlined in the 12th Amendment. That's where the missing three came in. A majority of electors would be two hundred seventy. So, whoever had that majority would be the next President. But

what if there was a tie? Let's look at the Constitution.

In the case of a tie, the House of Representatives would vote.

As stated in the 12 Amendment, "if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President." Each state has one vote. The representatives of that state must decide who they will vote for. If they can not come to an agreement on who to vote for, they will forfeit their vote.

But what if they still couldn't decide? Although it is unlikely for it to get this far, the 20th Amendment, which was added January 23, 1933, states what is to be done if no President-elect has been chosen by election day. The 12th Amendment also explains what to do. Let's go over all of the possible scenarios. The House of Representatives votes to break the electoral tie. Two thirds of the states must be represented in the House at the time of the vote. They will choose from the top 3 presidential candidates, which in the case of a tie if it so happened in this election, would be Al Gore, George W. Bush, and Ralph Nader. Each state gets one vote. The representatives of that state must decide how they will cast their vote. If they can not decide who to vote for, that states vote will not count. A majority of the states, which would be twenty six, are needed to win the Presidency. But what if there is still no President? We'll get to that in a minute. Since the President and Vice-President are chosen separately, it is possible for them to be tied as well. If this happens, the Senate will choose the Vice President. Two thirds of the Senate must be present, which would be 67 members. The top two Vice Presidential candidates will be who the Senate can pick from. All 100 members vote. A majority, 51 votes, would be needed to win. As it can be interpreted in the Constitution, Al Gore, as President of the Senate, in the case of a tie, could not vote. A majority of the whole number is needed. If there was a tie, there would be no Vice President who would yet be elected. What if the House can't decide on a President, but the majority of the electors vote for a certain Vice Presidential candidate, or because of a tie, the Senate picked a Vice President? In this case, the Vice President elect would become the active President of the United States until a President qualifies. What "shall have qualified" means is uncertain. It may mean until a President is finally elected in the House. If no Vice President was chosen, the 25th Amendment, which was ratified on February 10, 1967, could be applied. A vacancy in the office of the Vice President can be filled by the President-elect after he becomes the President by nominating someone who qualifies, and having both Houses of Congress confirm this by a majority in both. Most likely however, the Senate would eventually agree on some Vice President.

What if for some reason the House did not elect a President and the Senate did not elect a Vice President? In this rare scenario, Congress could then pass a law that would declare who would be the President, or how they would go about finding one as long as he qualifies, until a President or Vice President shall have qualified.

What shall have qualified means, is unclear.

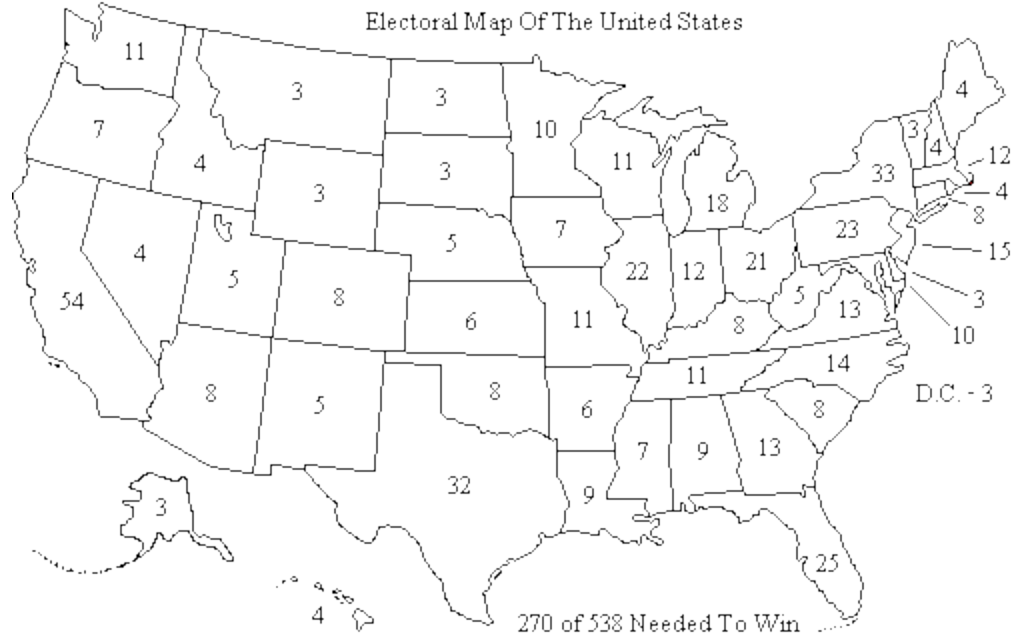
These are rare scenarios. With the current system, none of these have ever occurred. The Constitution does provide the solutions if the situation arose.

Should we get rid of the electoral college?

As I would argue, I think that abolishing the electoral college would solve these problems. Whoever won the national popular vote, like Al Gore, would win. Since it takes 3/4 of the states to amend the Constitution, the electoral college will most likely never be abolished. The smaller states want to be represented electorally, so that they can have a better say in the election. They feel that a candidate would not bother with small states if the national popular vote was the thing that mattered. The Electoral College has never been directly challenged in the Supreme Court. There are no federal laws or cases involving it. According to the records I found, only 18 mentions of the Electoral College are mentioned, but it is not directly involved in the cases. Elections are done by the states, not the government, which is why the Supreme Court, in my opinion, should have no jurisdiction over an election. However, if the Florida state legislature had decided to appoint its own electors, Al Gore, if he hadn't won the Florida Supreme Court fight to stop the state legislature, could have gone through the Atlanta appeals court or even gone straight to the Supreme Court. This would have been the first case involving the Electoral College's electors. George W. Bush's complaint in the Supreme Court had nothing to do with the electors or the Electoral College. The over 40 court cases regarding this election were about other factors not relating to the Electoral College. I feel that a direct national vote is the best way to elect a President, and that the true voice of the people would be heard. The Constitution is outdated. In earlier times, politicians wanted the people to believe they had a vote in the Presidential elections. The electors could always go against the way of the voters. We need a direct vote. Although it has only happened a few times, it has happened that the popular vote winner has lost in the Electoral College, as it turned out in the 2000 election. It's not fair to the American people. That is my opinion.

Maybe you've learned a little more about the Electoral College. We can't stand it, but we'll never get rid of it!

Click [here](#) to get more information on the 2000 election results from the [National Archives and Records Administration](#). If you would like to look at the Constitution and its amendments, click [here](#).



This map shows the allocation of electors in the 2000 election. Click [here](#) to see the new allocation of electors based on the 2000 census data.