

# CRS Report for Congress

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## **The Electoral College: How it Works in Contemporary Presidential Elections**

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### **Summary**

When Americans vote for a President and Vice President, they are actually voting for presidential electors, known collectively as the electoral college. It is these electors, chosen by the people, who elect the chief executive. The Constitution assigns each state a number of electors equal to the combined total of the state's Senate and House of Representatives delegations; at present, the number of electors per state ranges from three to 54, for a total of 538. Aside from Members of Congress, and persons holding offices of "Trust or Profit" under the Constitution, anyone may serve as an elector. In each presidential election year, a group (ticket or slate) of candidates for elector is nominated by political parties and other groupings in each state, usually at a state party convention, or by the party state committee. It is these elector-candidates, rather than the presidential and vice presidential nominees, for whom the people vote in the November election, which is held on Tuesday after the first Monday in November (November 7, 2000). In most states, voters cast a single vote for the slate of electors pledged to the party presidential and vice presidential candidates of their choice. The slate winning the most popular votes is elected; this is known as the winner-take-all, or general ticket, system. Maine and Nebraska use the district system, under which two electors are chosen on a statewide, at-large basis, and one is elected in each congressional district. Electors assemble in their respective states on Monday after the second Wednesday in December (December 18, 2000). They are pledged and expected, but not required, to vote for the candidates they represent. Separate ballots are cast for President and Vice President, after which the electoral college ceases to exist for another four years. The electoral vote results are counted and certified by a joint session of Congress, held on January 6 of the year succeeding the election. A majority of electoral votes (currently 270 of 538) is required to win. If no candidate receives a majority, then the President is elected by the House of Representatives, and the Vice President is elected by the Senate, a process known as contingent election.

## Constitutional Origins

The Constitutional Convention of 1787 considered several methods of electing the President, including selection by Congress, by the governors of the states, by the state legislatures, by a special group of Members of Congress chosen by lot, and by direct popular election. Late in the convention, the matter was referred to the Committee of Eleven on Postponed Matters, which devised the electoral college system in its original form.<sup>1</sup> This plan, which met with widespread approval by the delegates, was incorporated into the final document with only minor changes. It sought to reconcile differing state and federal interests, provide a degree of popular participation in the election, give the less populous states some additional leverage in the process by providing “senatorial” electors, preserve the presidency as independent of Congress, and generally insulate the election process from political manipulation.

The Constitution gave each state a number of electors equal to the combined total of its membership in the Senate (two to each state, the “senatorial” electors) and its delegation in the House of Representatives (currently ranging from one to 52 Members). The electors are chosen by the states “in such Manner as the Legislature thereof may direct ...”(U.S. Constitution, Article II, section 1). Qualifications for the office are broad: the only persons prohibited from serving as electors are Senators, Representatives, and persons “holding an Office of Trust or Profit under the United States.”<sup>2</sup> In order to forestall partisan intrigue and manipulation, the electors assemble in their respective states and cast their ballots as state units, rather than meet at a central location. At least one of the candidates for whom the electors vote must be an inhabitant of another state. A majority of electoral votes is necessary to elect, a requirement intended to insure broad acceptance of a winning candidate, while election by the House was provided as a default method in the event of electoral college deadlock. Finally, Congress was empowered to set nationwide dates for choice and meeting of electors.

All the foregoing structural elements of the electoral college system remain in effect currently. The original method of electing the President and Vice President, however, proved unworkable, and was replaced by the 12<sup>th</sup> Amendment, ratified in 1804. Under the original system, each elector cast two votes for President (for different candidates), and no vote for Vice President. The votes were counted; the candidate receiving the most, provided it was a majority of the number of electors, was elected President, and the runner-up became Vice President.<sup>3</sup> The 12<sup>th</sup> Amendment replaced this system with separate ballots for President and Vice President, with electors casting a single vote for each office.

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<sup>1</sup>Although the term is not found in the Constitution, the electors have been known collectively as the electoral college since the early days of the republic, an expression that may be misleading, since the college has no continuing existence, never meets in plenary session, and ceases to exist immediately after the electors have performed their function.

<sup>2</sup>U.S. Constitution, Article II, Section 1. In practice, this formulation also prohibits any person working for the federal government in either a civilian or military capacity from serving as an elector.

<sup>3</sup>For further reading on events leading to the 12<sup>th</sup> Amendment, see: Neal R. Peirce and Lawrence D. Longley, *The People's President: The Electoral College in American History and the Direct Vote Alternative*, rev. ed. (New Haven, CT: Yale University Press, 1981), pp. 33-44.

## The Electoral College Today

Notwithstanding the founders' efforts, the electoral college system almost never functioned as they intended, but, as with so many constitutional provisions, the document prescribed only the system's basic elements, leaving ample room for development. As the republic evolved, so did the electoral college system, and, by the late 19<sup>th</sup> century, the following range of constitutional, federal and state legal, and political elements of the contemporary system were in place.

**Allocation of Electors and Electoral Votes.** The Constitution gives each state a number of electors equal to the combined total of its Senate membership (two for each state) and House of Representatives delegation (currently ranging from one to 52, depending on population). The 23<sup>rd</sup> Amendment provides an additional three electors to the District of Columbia. The number of electoral votes per state thus currently ranges from three (for seven states and D.C.) to 54 for California, the most populous state. Table 1 provides current electoral vote allocations by state and D.C. These totals are adjusted following each decennial census in a process called reapportionment, which reallocates the number of Members of the House of Representatives to reflect changing rates of population growth (or decline) among the states. Thus, a state may gain or lose electors following reapportionment, but it always retains its two "senatorial" electors, and at least one more reflecting its House delegation. The current allocation among the states remains in effect for the 2000 presidential election; electoral votes will next be reallocated following the 2000 census, and will be in effect for the 2004 election.

**Popular Election of Electors.** Today, all presidential electors are chosen by the voters, but, in the early republic, more than half the states chose electors in their legislatures, thus eliminating any direct involvement by the voting public in the election. This practice changed rapidly after the turn of the 19<sup>th</sup> century, however, as the right to vote was extended to an ever-wider segment of the population. As the electorate continued to expand, so did the number of persons able to vote for presidential electors, to its present limit of all eligible citizens age 18 or older. The tradition that the voters choose the presidential electors thus became an early and permanent feature of the electoral college system, and, while it should be noted that states still theoretically retain the constitutional right to choose some other method, this is extremely unlikely.

The existence of the presidential electors and the duties of the electoral college are so little noted in contemporary society that most American voters believe that they are voting directly for a President and Vice President on election day. In fact, they are actually voting for a slate of candidates for the office of elector nominated by a party or other political group, and pledged to support the candidates of that party. Although candidates for elector may be well known persons, such as governors, state legislators, or other state and local officials, they generally do not receive public recognition as electors. In fact, in most states, the names of individual electors do not appear anywhere on the ballot; instead only those of the various candidates for President and Vice President appear, usually prefaced by the words "electors for." Moreover, electoral votes are commonly referred to as having "been awarded" to the winning candidate, as if no human beings were involved in the process.

**The Electors: Ratifying the Voters' Choice.** Presidential electors in contemporary elections are expected, and, in many cases pledged, to vote for the candidates of the party

that nominated them. While there is evidence that the founders assumed the electors would be independent actors, weighing the merits of competing presidential candidates, they have been regarded as agents of the public will since the first decade under the Constitution.<sup>4</sup> They are expected to vote for the presidential and vice presidential candidates of the party that nominated them. Notwithstanding this expectation, individual electors have sometimes not honored their commitment, voting for a different candidate or candidates than the ones to whom they were pledged; they are known as “faithless” or “unfaithful” electors. In fact, the balance of opinion by constitutional scholars is that, once electors have been chosen, they remain constitutionally free agents, able to vote for any candidate who meets the requirements for President and Vice President.<sup>5</sup> Faithless electors have, however, been few in number (in the 20<sup>th</sup> century, one each in 1948, 1956, 1960, 1968, 1972, 1976, and 1988), and have never influenced the outcome of a presidential election.

**The General Ticket and District Systems.** While the Constitution is silent on the formula for awarding electoral votes, 48 states and the District of Columbia currently use the “general ticket” or “winner-take-all” system. Under this arrangement, each political party or group or independent candidate eligible to be on the ballot nominates a group (“ticket” or “slate”) of elector-candidates equal in number to the state’s total number of electors. Voters then cast a single vote for the ticket pledged to the candidates of their choice; the ticket receiving the most votes statewide (a plurality is sufficient) is elected. Thus, in a hypothetical two-party presidential contest, candidates of Party A (and their slate of electors) may receive 51% of the popular vote, as opposed to 49% for Party B’s candidates. Notwithstanding the closeness of the results, all of Party A’s electors are chosen, and Party A’s presidential candidates normally receive all the state’s electoral votes; Party B gains no electoral votes. The general ticket system has been favored since the 19<sup>th</sup> century, as it tends to magnify the winning candidates’ victory margin within states, and generally guarantees a national electoral college majority for the winners. It has been criticized on the grounds that it effectively negates the votes for the runners up.

One alternative plan that seeks to remedy this perceived failing is the district system, which has been adopted by Maine and Nebraska. Under the district system, two electors are chosen on a statewide, at-large basis, and one is elected in each congressional district. Each voter casts a single vote for President and Vice President, but the votes are counted twice; they are first tallied on a statewide basis, and the two at-large elector-candidates winning the most votes (a plurality) are elected. They are also tallied for each district, where the district elector-candidate winning the most votes is elected. The claimed advantage of the district system is that it more accurately reflects differences in support in various parts of a state, and does not necessarily “disenfranchise” voters who picked the losing ticket.

**Nominating Elector-Candidates: Diverse State Procedures.** Nomination of elector-candidates is another of the many aspects of this system left to state and political party preferences. Most states prescribe one of two methods: 34 states require that

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<sup>4</sup>Peirce and Longley, *The People’s President*, rev. ed., pp. 24, 96-101.

<sup>5</sup>U.S. Congress, Senate, *The Constitution of the United States of America, Analysis and Interpretation*, S. Doc. 99-16, 99<sup>th</sup> Cong., 1<sup>st</sup> sess., prepared by the Congressional Research Service (Washington: GPO, 1987), pp. 457-460.

candidates for the office of presidential elector be nominated by state party conventions, while a further ten mandate nomination by the state party's central committee. The remaining states use a variety of methods, including nomination by the governor (on recommendation of party committees), by primary election, and by the party's presidential nominee.

**Joint Tickets: One Vote for President and Vice President.** General election ballots, which are regulated by state election laws and authorities, offer voters joint candidacies for President and Vice President for each political party or other group. Thus, voters cast a single vote for electors pledged to the joint ticket of the party they represent. They cannot effectively vote for a President from one party and a Vice President from another, unless their state provides for write-in votes.

**General Election Day.** Elections for all federal elected officials are held on the Tuesday after the first Monday in November in even-numbered years (November 7, 2000); presidential elections are held in every year divisible by four. Congress selected this day in 1845 (5 Stat. 721); previously, states held elections on different days between September and November, a practice that sometimes led to multiple voting across state lines, and other fraudulent practices. By tradition, November was chosen because the harvest was in, and farmers were able to take the time needed to vote. Tuesday was selected because it gave a full day's travel between Sunday, which was widely observed as a strict day of rest, and election day.<sup>6</sup> Travel was also easier throughout the north during November, before winter had set in.

**The Electors Convene.** The 12<sup>th</sup> Amendment requires electors to meet "in their respective states ..." This provision was intended to deter manipulation of the election by having the state electoral colleges meet simultaneously, but keeping them separate. Congress sets the date on which the electors meet (3 U.S.C. 7), currently the first Monday after the second Wednesday in December (December 18, 2000). The electors almost always meet in the state capital, usually in the capitol building or state house itself. They vote "by ballot"<sup>7</sup> separately for President and Vice President (at least one of the candidates must be from another state). The results are then endorsed, and copies are sent to the Vice President (in his capacity as President of the Senate); the secretary of state of their state; the Archivist of the United States; and the judge of the federal district court of the district in which the electors met (3 U.S.C. 11). Having performed their constitutional duty, the electors adjourn, and the electoral college ceases to exist until the next presidential election.

**Congress Counts and Certifies the Vote.** The final step in the presidential election process (aside from the presidential inaugural on January 20) is the counting and certification of the electoral votes by Congress.<sup>8</sup> The House of Representatives and Senate meet in joint session in the House chamber on January 6 of the year following the

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<sup>6</sup>In most rural areas, the only polling place was at the county seat, frequently a journey of many miles on foot or horseback.

<sup>7</sup>12<sup>th</sup> Amendment; this provision is interpreted to require paper ballots for President and Vice President.

<sup>8</sup>3 U.S.C. 15-18.

presidential election, at 1:00 P.M.<sup>9</sup> The Vice President, who presides in his capacity as President of the Senate, opens the electoral vote certificates from each state, in alphabetical order. He then passes the certificates to four tellers (vote counters), two appointed by each house, who announce the results. The votes are then counted, and the results are announced by the Vice President. The candidates receiving a majority of electoral votes (currently 270 of 538) are declared the winners by the Vice President, an action that constitutes “a sufficient declaration of the persons, if any, elected President and Vice President of the States” (3 U.S.C. 15).<sup>10</sup>

**Table 1. Electoral Vote Allocation by State, 1992-2000**

State	Electors	State	Electors	State	Electors
Alabama	9	Kentucky	8	North Dakota	3
Alaska	3	Louisiana	9	Ohio	21
Arizona	8	Maine	4	Oklahoma	8
Arkansas	6	Maryland	10	Oregon	7
California	54	Massachusetts	12	Pennsylvania	23
Colorado	8	Michigan	18	Rhode Island	4
Connecticut	8	Minnesota	10	South Carolina	8
Delaware	3	Mississippi	7	South Dakota	3
District of Columbia	3	Missouri	11	Tennessee	11
Florida	25	Montana	3	Texas	32
Georgia	13	Nebraska	5	Utah	5
Hawaii	4	Nevada	4	Vermont	3
Idaho	4	New Hampshire	4	Virginia	13
Illinois	22	New Jersey	15	Washington	11
Indiana	12	New Mexico	5	West Virginia	5
Iowa	7	New York	33	Wisconsin	11
Kansas	6	North Carolina	14	Wyoming	3

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<sup>9</sup>Congress occasionally sets a different date for the electoral vote count session, particularly in years when January 6 falls on a Sunday.

<sup>10</sup>If there is no majority, the President is elected in the House of Representatives, and the Vice President in the Senate by the contingent election process. For further information, see CRS Report 92-453 GOV, *Contingent Election: Congress Elects the President and Vice President*.