

- 1. Mark your confusion.**
- 2. Show evidence of a close reading.**
- 3. Write a 1+ page reflection.**

The Electoral College Can Pick a President Who Got Fewer Votes. Here's Why and How.

Source: Josh Peter, *USA Today*, October 24, 2020

As the 2020 presidential election nears, one of the most confusing and controversial parts of the nation's political system is yet again front-and-center: the Electoral College. It's the system that, four years ago, made Donald Trump president even though Hillary Clinton won the popular vote handily. That's because the Electoral College, established in Article II, Section 1 of the U.S. Constitution, determines the winner of the presidential election. But come election day, your vote will impact what the Electoral College does. Here's a quick refresher on the subject, which you may not have given serious thought to since middle school:

Why do they call it the Electoral College?

Merriam-webster.com says "electoral" likely makes sense, as the term is clearly related to the election. But what about "college?" Historically, "college" has meant "various groups of people who are associated by a common pursuit or have common interests or duties." In this case, those groups of people are the electors.

What are the basics of the Electoral College?

The Electoral College is comprised of 538 delegates: People who cast the votes that formally elect the president. The total number of electors represent the total number of U.S. senators, 100 (two per state); the total number of state representatives, 435; and three more electors for the District of Columbia.

"When we vote for president, we are actually voting for the electors of our state to go vote for the president," said Erin Merrill, a middle school teacher in Manassas, Virginia, and one of three recipients for the American Civic Education Teachers Award in 2020. "But most of us don't even know who the electors of our state are unless we've done our research."

The state parties appoint electors to cast the electoral ballots on the Monday after the second Wednesday in December of the presidential election – about a month after the Americans cast their ballots in the popular vote.

How are the votes divided? Why is it 'winner take all'?

The Electoral College is widely known as a "winner-take-all" system because the winner of the popular vote in each state gets all of the state's electoral votes. That is, with the exception of Maine and Nebraska, which award their electoral votes more proportionally.

How is a winner selected by the Electoral College?

It takes 270 or more electoral votes to win a presidential election. In 2016, Trump won with 304 electoral votes. It was the fifth time in American history that the winner of the presidential election lost the popular vote. And it was the second time since 2000 – when Al Gore won the popular vote but George W. Bush won the Electoral College – that a candidate lost the popular vote but won the Electoral College.

"I'm very concerned about the Electoral College," said Erwin Chemerinsky, dean of the law school at the University of California at Berkeley and a Constitutional scholar. "We are the only country in the world that thinks of itself as a democracy where the candidate who loses the (popular vote) can become president. I think the electoral college should be abolished and the winner of the popular vote should be the president of the United States."

Why do we keep the Electoral College?

Chemerinsky said a key issue to understand about Electoral College is "it proportionately favors smaller states over larger states." Each state, no matter how big or small, gets the same number of electors for its two senators. That means California, the most populous state in the country, gets no more electors per senator than Wyoming, the least populous state in the country. Based on population, this leaves Wyoming and other smaller states with more electors per resident than California and other big states.

Also at issue: The Electoral College incentivizes presidents to campaign in "swing states" — Florida, Michigan and Pennsylvania to name a few — far more than in big states such as California and Texas where the election outcomes are more predictable. And California, Texas and other big states are forced to live with the system because there are too many smaller states that would fight off a constitutional amendment to abolish the Electoral College, Chemerinsky said. It would take three-quarters of the states to pass a constitutional amendment. "And you're not going to get three-quarters of the states to agree (to the amendment)," Chemerinsky said.

Can the Electoral College be trusted?

Occasionally, rogue electors objecting to the Electoral College outcome have cast their ballot for the candidate who failed to win the popular vote in their state but won the overall popular vote. People were clamoring for electors to do just that after the 2016 election and to cast enough votes to propel Clinton to victory.

Didn't happen then and now it's even more unlikely. In July, the Supreme Court restricted the power of these so-called "faithless electors" by ruling the states can require them to support the winner of the popular vote in those states. In 32 states, rogue electors face fines and the possibility of being replaced.

Why do we have an Electoral College?

This is what the Founding Fathers agreed upon at the Constitutional Convention in 1787.

"When the Constitution was written, most Americans weren't educated, weren't allowed to vote, or weren't able to know who was running and that's partly why this system was created," said Merrill, the middle school civics teacher from Virginia. "Because they couldn't necessarily trust the average voter to be informed enough to choose the presidents. I wouldn't necessarily say that's true nowadays. However, that's why we're living with our 200-some-year-old legacy."

Slavery also played a role, according to Chemerinsky. If the Founding Fathers had decided the popular vote would determine the presidency, enslaved people would have had no impact on the election because they were not allowed to vote. But the Electoral College allowed slaves to be counted as three-fifths of a person in determining how many electors each state got. "So Southern states got a benefit in the allocation of electors," Chemerinsky said.

To prep her students for what can become a challenging history lesson, Merrill has her students go to iCivics.com and play "Win the White House," an interactive single-player role-playing game that helps understand the Electoral College. Emma Humphries, chief education officer and deputy director of an iCivics program called CivXNow, was delighted to hear this. The nonprofit organization was founded in by retired Supreme Court Justice Sandra Day O'Connor as a way to make civics more engaging. That included spicing up lessons about the Electoral College. "It's one of those topics that's fun to teach," Humphries said. "But it's really hard to teach. It's very conceptual. I remember once trying to teach it to a fifth grade class. I was a guest speaker. Man, you really got to break it down in order to teach it. And I wish back then when I was guest speaking that we had iCivics." So play the game. But a little Constitutional reading helps understand how the Founding Fathers settled on the Electoral College, according to Humphries.

"If you read the Federalist papers — if you're ever having trouble sleeping at night, I highly recommend them — you can start to understand why they did it that way," she said. "So much of our system is built around compromises, so they can get the thing done, so they can get enough signatures at the (Constitutional) Convention and ultimately enough states to ratify it to move it forward."

"The strongest argument against the Electoral College is sort of what we saw 2016, that you have a candidate who does not receive the popular vote is outvoted by 3 million votes and still claims the White House. On the flip side, if we didn't have it, some of those big states on the coast would determine the winner and those mid-Atlantic states and smaller states would feel like they're not represented by the person in the Oval Office."

Why are people interested in the Electoral College now?

This is not the first time the Electoral College has caused consternation. "To the extent it worked before, it was that nobody noticed it," said Michael Brennan, president of the nonpartisan Brennan Center for Justice. "It worked in the sense that it didn't mess everything up."

Brennan cited not-too-ancient history: In 1968, third-party candidate George Wallace, a segregationist from Alabama, stoked fears involving the Electoral College. The worry was that Wallace would keep Republican presidential nominee Richard Nixon and Democratic presidential nominee Hubert Humphrey from getting the necessary 270 electoral votes. At that point, the Electoral College calls for the election to be decided by state-by-state vote in the House of Representatives. There, Wallace could have bargained to end civil rights laws by giving his electoral votes to Nixon or Humphrey, said Brennan.

Those fears were averted when Nixon won 301 electoral votes. But controversy reared its head again in 2000. George W. Bush won about 500,000 fewer votes than did Al Gore, but Bush prevailed because he won 271 electoral votes to 266 electoral votes for Gore. Brennan pointed out that Republicans have won the popular vote only once in the last seven elections yet will have appointed six of the nine Supreme Court justices if Trump nominee Amy Coney Barrett is confirmed.

All thanks to the Electoral College.

"It's been an exploding cigar," Brennan said. "The system has gone haywire."

But Humphries of iCivics said she's torn. "I figure let's see how this election goes," she said. "As someone who's sort of an institutionalist and believes in the promise of our Constitution and our form of government, I worry that too many instances of popular votes and electoral votes that don't match is going to harm the constitutional health of our republic."

Possible Response Questions:

- What are your thoughts about the Electoral College? Explain.
- Pick a word/line/passage from the article and respond to it.
- Discuss a "move" made by the writer in this piece that you think is good/interesting. Explain.