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[HOME](#)



# President Elect

ARTICLES

[USING THIS SITE](#)

[ARTICLES](#)

[ELECTION LAW](#)

[Quick Search](#)

[SEARCH OPTIONS](#)

[ELECTION RESULTS](#)

[2004 - 2000](#)

[1996 - 1992 - 1988](#)

[1984 - 1980](#)

[1976 - 1972 - 1968](#)

[1964 - 1960](#)

[1956 - 1952 - 1948](#)

[1944 - 1940](#)

[1936 - 1932 - 1928](#)

[1924 - 1920](#)

[1916 - 1912 - 1908](#)

[1904 - 1900](#)

[1896 - 1892 - 1888](#)

[1884 - 1880](#)

[1876 - 1872 - 1868](#)

[1864 - 1860](#)

[1856 - 1852 - 1848](#)

[1844 - 1840](#)

[1836 - 1832 - 1828](#)

[1824 - 1820](#)

[1816 - 1812 - 1808](#)

[1804 - 1800](#)

[1796 - 1792 - 1788](#)

[ACKNOWLEDGEMENTS](#)

## Electoral College vs popular vote in 1824, 1876, and 1888

by JAMES R WHITSON < [james@presidentelect.org](mailto:james@presidentelect.org) >  
 posted December 13, 2000

**Electoral College critics** point out the elections of 1824, 1876, and 1888 in their arguments to prove the system doesn't work. In those three elections the candidate who won the Electoral College vote, did not win the popular vote. Besides forgetting the 50 other elections where the Electoral College agrees with the popular vote, critics conveniently ignore the factors that caused these three situations.

1824 - Adams vs Jackson

**THE CRITICS CHARGE:** In this election, critics point out that Andrew Jackson won both the electoral vote and the popular vote, but the House of Representatives circumvented the will of the people and chose John Quincy Adams as President.

**BACKGROUND:** In this election four men, all from the same party, were running for President. Each was popular in a different section of the country: Adams in the Northeast, Jackson in the South/Southwest, Crawford in the South/Mid-Atlantic, and Clay in the West. When the votes were counted, Jackson had won the most electoral and popular votes, but had failed to carry a majority of electoral votes. It fell upon the House of Representatives to choose the president from among the top three electoral vote getters: Jackson, Adams, and Crawford. With Clay throwing his support to Adams (who is rumored to have done so for a cabinet post), Adams carried the vote on the first ballot and was named President.

**WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED:** The critics ignore the fact that the popular vote was not a true indicator of the will of the people in 1824. In fact, popular vote totals weren't even kept for elections before this one. Hardly any state had all four candidates on the ballot; most didn't have three. And six states didn't even have a public vote! Their legislatures chose the electors. This included New York, the largest state at the time, where Adams certainly would have been able to cut into or eliminate Jackson's popular vote lead.

**CONCLUSION:** To say the Electoral College failed in 1824 is incorrect, because this was not a campaign where the candidates went after the popular vote; this campaign was fought for electoral votes.

1876 - Hayes vs Tilden

**THE CRITICS CHARGE:** In this election, critics say the system failed because even though Samuel Tilden had a substantial lead over Rutherford B. Hayes in the popular vote, he still lost by one electoral vote.

**BACKGROUND:** On election night, it appeared that Tilden would win. He led the popular vote 51% to 48%, and led in the Electoral College vote 184-165 with 20 votes still undecided. Tilden only needed one vote to win; Hayes needed all 20. Both parties claimed the disputed votes (Florida's 4 votes, Louisiana's 8 votes, South Carolina's 7 votes, and 1 of Oregon's 3 votes). An Electoral Commission was set up by Congress, who awarded all 20 votes, and the presidency, to Hayes

**WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED:** The 1876 election was filled with so many irregularities, that blaming the Electoral College seems ridiculous. First off, Colorado had just joined the union and decided they didn't have enough money to hold an election so their legislature just sent three electoral votes for Hayes. Secondly, fraud abounded in the states of Florida, Louisiana, and South Carolina. Democrats intimidated blacks in order to keep them from voting, and Republicans, backed by armed troops, got as many blacks as possible to vote, as many times as they could. It's impossible to say who would have legitimately won these states, but most scholars agree Tilden would have won Louisiana and Florida, and Hayes would have won South Carolina. Lastly, the Electoral Commission set up by Congress is not part of the normal Electoral College system. It was composed of 8 Republicans and 7

POLLS

Democrats who voted along political lines to give all the votes to Hayes. It turns out that the Republicans had secretly made a deal with the Democrats. If the Democrats would accept the results of the Electoral Commission, the Republicans would end Reconstruction in the South.

TRIVIA

**CONCLUSION:** To say the Electoral College failed in 1876 is incorrect, because without the rampant fraud in the South OR without a biased Electoral Commission that voted on partisan lines the popular vote winner, Tilden, probably would have won the electoral vote as well.

QUOTES

1888 - Harrison vs Cleveland

LINKS

**THE CRITICS CHARGE:** In this election, critics believe they have their best case against the Electoral College. Grover Cleveland won the popular vote while Benjamin Harrison won the electoral vote. Since no major issues of fraud, voter irregularities, or Congressional meddling is alleged, this is a straight up case of the system being wrong.

**BACKGROUND:** The main issue, if not the only issue, in the campaign was the tariff, brought to the forefront by the incumbent president Cleveland. He proposed lowering it, widely favored in the South; Harrison wanted to keep higher tariffs, widely favored in the North. One of the most civil and boring elections in history was also one of the closest. Cleveland had only a 0.8% lead over Harrison in the popular vote.

**WHY THE ELECTORAL COLLEGE SHOULDN'T BE BLAMED:** While this may be the critics best example to show the Electoral College is flawed, supporters would say this election shows why the system works. The Electoral College system encourages candidates to make their appeal as broad as possible in order to win. Cleveland basically ran a campaign based on one issue supported by a single region of the country and ran up the vote in that region, thereby padding his popular vote. In the six southern states of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Texas, Cleveland received over 65% of the vote. In those six states Cleveland beat Harrison by 425,532 votes. In the other 32 states combined, Harrison beat Cleveland by 334,936 votes.

**CONCLUSION:** To say the Electoral College failed in 1888 is to not understand how the system works. The Electoral College prevents one region of the country voting as a block from unduly directing the outcome of the election to the rest of the country. The real reason Cleveland won the popular vote (by only 90,536 out of 11,379,131 votes cast) but lost the election was because of unusually high support in a single region of the country.

If you have any questions, comments, gripes, error reports, corrections, etc.,

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March 29, 2007

# Frequently Asked Questions

- [View this Week's Questions of the Week](#)
- [How did the terms "Elector" and "Electoral College" come into usage?](#)
- [How does the Electoral College elect the president?](#)
- [How does the Electoral College process work in my State?](#)
- [Can citizens in U.S. Territories vote for President?](#)
- [Is my vote for President and Vice President meaningful in the Electoral College system?](#)
- [Why do we still have the Electoral College?](#)
- [What Federal laws govern the Electoral College system?](#)
- [What proposals have been made to change the Electoral College system?](#)
- [Were any measures introduced in Congress to change the Electoral College process by amending the Constitution?](#)
- [What happens if no presidential candidate gets 270 electoral votes?](#)
- [What impact does a candidate's concession speech have on the Electoral College process?](#)
- [How do the 538 electoral votes get divided among the States?](#)
- [There are 538 members of the Electoral College. How could that number change without amending the Constitution?](#)
- [What is the difference between the Winner-Takes-All Rule and Proportional Voting, and which States follow which rule?](#)
- [How is it possible for the electoral vote to produce a different result than the nation-wide popular vote?](#)
- [What would happen if two candidates tied in a State's popular vote, or if there was a dispute as to the winner?](#)
- [What is the difference between Colorado's proposal to proportionally allocate electoral votes and the current way that Nebraska and Maine proportionally allocate electoral votes?](#)
- [Who selects the electors?](#)
- [What are the qualifications to be an elector?](#)
- [Must electors vote for the candidate who won their State's popular vote?](#)
- [Where do I find the names of the 2004 Presidential electors?](#)
- [May I attend the meeting of my State's electors to watch them vote?](#)
- [How can I check the county by county results of the Presidential election in Ohio?](#)
- [Is there an online source listing the names and voting records of presidential electors for all previous presidential elections back to 1789?](#)
- [How many times has the Vice President been chosen by the U.S. Senate?](#)
- [References](#)

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### How did the terms "Elector" and "Electoral College" come into usage?

The term "electoral college" does not appear in the Constitution. Article II of the Constitution and the 12th Amendment refer to "electors," but not to the "electoral college." In the Federalist Papers (No. 68), Alexander Hamilton refers to the process of selecting the Executive, and refers to "the people of each State (who) shall choose a number of persons as electors," but he does not use the term "electoral college."

The founders appropriated the concept of electors from the Holy Roman Empire (962 - 1806). An elector was one of a number of princes of the various German states within the Holy Roman Empire who had a right to participate in the election of the German king (who generally was crowned as emperor). The term "college" (from the Latin collegium), refers to a body of persons that act as a unit, as in the college of cardinals who advise the Pope and vote in papal elections. In the early 1800's, the term "electoral college" came into general usage as the unofficial designation for the group of citizens selected to cast votes for President and Vice President. It was first written into Federal law in 1845, and today the term appears in 3 U.S.C. section 4, in the section heading and in the text as "college of electors."

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### Who selects the Electors?

The process for selecting electors varies throughout the United States. Generally, the political parties nominate electors at their State party conventions or by a vote of the party's central committee in each State. Electors are often selected to recognize their service and dedication to their political party. They may be State elected officials, party leaders, or persons who have a personal or political affiliation with the Presidential candidate. Then the voters in each State choose the electors on the day of the general election. The electors' names may or may not appear on the ballot below the name of the candidates running for President, depending on the procedure in each State.

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### What are the qualifications to be an elector?

The U.S. Constitution contains very few provisions relating to the qualifications of electors. Article II, section 1, clause 2 provides that no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. As a historical matter, the 14th Amendment provides that State officials who have engaged in insurrection or rebellion against the United States or given aid and comfort to its enemies are disqualified from serving as electors. This prohibition relates to the post-Civil War era.

A State's certification of electors on its Certificates of Ascertainment is generally sufficient to establish the qualifications of electors.

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### How does the Electoral College elect the President?

View a summary of the Electoral College process and key dates for election year 2004.

- For a complete explanation, please review A Procedural Guide to the Electoral College

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### How does the Electoral College process work in my State?

For information on the electoral process in your State, you may wish to contact the Secretary of State of your State.

For example, the Secretary of the Commonwealth of Massachusetts has a web page devoted to the electoral college: All About the Electoral College in Massachusetts.

To find your Secretary of State, go to the web site for the National Association of Secretaries of State:  
<http://www.nass.org>.

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### Is my vote for President and Vice President meaningful in the Electoral College system?

Yes, within your State your vote has a great deal of significance. Under the Electoral College system, we do not elect the President and Vice President through a direct nation-wide vote. The Presidential election is decided by the combined results of 51 State elections (in this context, the term "State" includes DC). It is possible that an elector could ignore the results of the popular vote, but that occurs very rarely. Your vote helps decide which candidate receives your State's electoral votes.

The founders of the nation devised the Electoral College system as part of their plan to share power between the States and the national government. Under the Federal system adopted in the U.S. Constitution, the nation-wide popular vote has no legal significance. As a result, it is possible that the electoral votes awarded on the basis of State elections could produce a different result than the nation-wide popular vote. Nevertheless, the individual

citizen's vote is important to the outcome of each State election.

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#### **What Federal laws govern the Electoral College system?**

- [Article II, Section 1 of the U.S. Constitution](#)
- [12th Amendment to the Constitution](#)
- [United States Code, Title 3, Chapter 1 \(3 U.S.C. §§ 1 - 21\)](#)

For more information, see:

- [A Procedural Guide to the Electoral College](#)
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#### **Must electors vote for the candidate who won their State's popular vote?**

There is no Constitutional provision or Federal law that requires electors to vote according to the results of the popular vote in their States. Some States, however, require electors to cast their votes according to the popular vote. These pledges fall into two categories – electors bound by State law and those bound by pledges to political parties.

Which States bind electors to popular vote results? Refer to [Electors Bound by State Law and Pledges](#) to find out.

The Supreme Court has held that the Constitution does not require that electors be completely free to act as they choose and therefore, political parties may extract pledges from electors to vote for the parties' nominees. Some State laws provide that so-called "faithless electors" may be subject to fines or may be disqualified for casting an invalid vote and be replaced by a substitute elector. The Supreme Court has not specifically ruled on the question of whether pledges and penalties for failure to vote as pledged may be enforced under the Constitution. No elector has ever been prosecuted for failing to vote as pledged.

Today, it is rare for electors to disregard the popular vote by casting their electoral vote for someone other than their party's candidate. Electors generally hold a leadership position in their party or were chosen to recognize years of loyal service to the party. Throughout our history as a nation, more than 99 percent of electors have voted as pledged.

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#### **Where do I find the names of the 2004 Presidential electors??**

- The [2004 Certificates of Ascertainment](#) list the approved electors for the 2004 Presidential election.
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#### **May I attend the meeting of my State's electors to watch them vote?**

Generally, each State's electors vote at their respective State capitols. Each State determines whether or not the voting is open to the public.

To find out if your [State's Meeting of Electors](#) is open to the public and if so, what the process is to view the vote, contact your:

- [Governor's Office](#)
- [Secretary of State](#)

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### How is it possible for the electoral vote to produce a different result than the nation-wide popular vote?

It is important to remember that the President is not chosen by a nation-wide popular vote. The electoral vote totals determine the winner, not the statistical plurality or majority a candidate may have in the nation-wide vote totals. Electoral votes are awarded on the basis of the popular vote in each State.

Note that 48 out of the 50 States award electoral votes on a winner-takes-all basis (as does DC). For example, all 55 of California's electoral votes go to the winner of that State election, even if the margin of victory is only 50.1 percent to 49.9 percent.


In a multi-candidate race where candidates have strong regional appeal, as in 1824, it is quite possible that a candidate who collects the most votes on a nation-wide basis will not win the electoral vote. In a two-candidate race, that is less likely to occur. But it did occur in the Hayes/Tilden election of 1876 and the Harrison/Cleveland election of 1888 due to the statistical disparity between vote totals in individual State elections and the national vote totals. This also occurred in the 2000 presidential election, where George W. Bush received fewer popular votes than Albert Gore Jr., but received a majority of electoral votes.

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### What happens if no presidential candidate gets 270 electoral votes?

If no candidate receives a majority of electoral votes, the House of Representatives elects the President from the 3 Presidential candidates who received the most electoral votes. Each State delegation has one vote. The Senate would elect the Vice President from the 2 Vice Presidential candidates with the most electoral votes. Each Senator would cast one vote for Vice President. If the House of Representatives fails to elect a President by Inauguration Day, the Vice-President Elect serves as acting President until the deadlock is resolved in the House.

For more information see:

- [What would happen if two candidates tied in a State's popular vote, or there was a dispute as to the winner?](#)
  - [What is the difference between the winner-takes-all rule and proportional voting, and which States follow which rule?](#)
  - [How is it possible for the electoral vote to produce a different result than the nation-wide popular vote?](#)
  -  [History of the Electoral College](#) on the Federal Election Commission's web site.
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### What impact does a candidate's concession speech have on the Electoral College process?

None. A candidate's concession speech does not impact the States' duties and responsibilities related to the Electoral College system. On [December 13, 2004](#), the electors will meet in each State to cast their ballots.

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### Why do we still have the Electoral College?

The Electoral College process is part of the original design of the U.S. Constitution. It would be necessary to pass a Constitutional amendment to change this system.

Note that the 12th Amendment, the expansion of voting rights, and the use of the popular vote in the States as the vehicle for selecting electors has substantially changed the process.

Many different proposals to alter the Presidential election process have been offered over the years, such as

direct nation-wide election by the People, but none have been passed by Congress and sent to the States for ratification. Under the most common method for amending the Constitution, an amendment must be proposed by a two-thirds majority in both houses of Congress and ratified by three-fourths of the States.

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#### **What proposals have been made to change the Electoral College system?**

Reference sources indicate that over the past 200 years, over 700 proposals have been introduced in Congress to reform or eliminate the Electoral College. There have been more proposals for Constitutional amendments on changing the Electoral College than on any other subject. The American Bar Association has criticized the Electoral College as "archaic" and "ambiguous" and its polling showed 69 percent of lawyers favored abolishing it in 1987. But surveys of political scientists have supported continuation of the Electoral College. Public opinion polls have shown Americans favored abolishing it by majorities of 58 percent in 1967; 81 percent in 1968; and 75 percent in 1981.

Opinions on the viability of the Electoral College system may be affected by attitudes toward third parties. Third parties have not fared well in the Electoral College system. Candidates with regional appeal such as Governor Thurmond in 1948 and Governor Wallace in 1968 won blocs of electoral votes in the South, which may have affected the outcome, but did not come close to seriously challenging the major party winner. The last third party or splinter party candidate to make a strong showing was Theodore Roosevelt in 1912 (Progressive, also known as the Bull Moose Party). He finished a distant second in electoral and popular votes (taking 88 of the 266 electoral votes needed to win). Although Ross Perot won 19 percent of the popular vote nationwide in 1992, he did not win any electoral votes since he was not particularly strong in any one or several states. Any candidate who wins a majority or plurality of the popular vote has a good chance of winning in the Electoral College, but there are no guarantees (see the [results of 1824, 1876, 1888 and 2000 elections](#)).

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#### **Were any measures introduced in Congress to change the Electoral College process by amending the Constitution?**

Yes, several joint resolutions were introduced in the current Congress and were referred to the Committee on the Judiciary. The proposals, all introduced in the House of Representatives, include the following:

- Voting rights for residents of United States territories and commonwealths [H.J.RES.101.IH]
- Direct election of the President and Vice President by the popular vote [H.J.RES.109.IH]
- Right to vote amendment [H.J.RES.28.IH]
- Every Vote Counts amendment [H.J.RES.103.IH]

To find these Resolutions, go to the [Library of Congress' THOMAS web site](#).

- See Also: [What proposals have been made to change the Electoral College system?](#)
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#### **How do the 538 electoral votes get divided among the States?**

The number of electoral votes allotted to each State corresponds to the number of Representatives and Senators that each State sends to Congress. The distribution of electoral votes among the States can vary every 10 years depending on the results of the United States Census.

One of the primary functions of the Census is to reapportion the 435 members of the House of Representatives among the States, based on the current population. The reapportionment of the House determines the division of electoral votes among the States. In the Electoral College, each State gets one electoral vote for each of its Representatives in the House, and one electoral vote for each of its two Senators.

Thus, every state has at least 3 electoral votes, because the Constitution grants each State two Senators and at

least one Representative. In addition to the 535 electoral votes divided among the States, the District of Columbia has three electoral votes because the 23rd Amendment granted it the same number of votes as the least populated State.

If a State gains or loses a Congressional district, it will also gain or lose an electoral vote. As a result of the Census conducted in 2000, the number of electoral votes allotted to certain States changed for the 2004 election. See, [Allocation of Electoral Votes based on the 1990 Census](#) and [Allocation of Electoral Votes based on the 2000 Census](#).

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**There are 538 members of the Electoral College. How could that number change without amending the Constitution?**

The number of electoral votes is set at 538, based on 435 members of the House of Representatives and 100 members of the Senate, plus 3 electoral votes for the District of Columbia under the [23rd Amendment](#). The Electoral College could become larger if a new State were admitted into the union (adding two new Senators and one or more Representatives until the next redistricting), or if the House of Representatives expanded. The size of the House is set by law, not by the Constitution ([2 U.S.C. 2](#)).

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**What is the difference between the winner-takes-all rule and proportional voting, and which States follow which rule?**

There are 48 States that have a winner-takes-all rule for the Electoral College. In these States, whichever candidate receives a majority of the vote, or a plurality of the popular vote (less than 50 percent but more than any other candidate) takes all of the State's electoral votes.

Only two States, Nebraska and Maine, do not follow the winner-takes-all rule. In those States, there could be a split of electoral votes among candidates through the State's system for proportional allocation of votes. For example, Maine has four electoral votes and two Congressional districts. It awards one electoral vote per Congressional district and two by the state-wide, "at-large" vote. It is possible for Candidate A to win the first district and receive one electoral vote, Candidate B to win the second district and receive one electoral vote, and Candidate C, who finished a close second in both the first and second districts, to win the two at-large electoral votes. Although this is a possible scenario, it has not actually occurred in recent elections.

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**Can citizens in U.S. Territories vote for President?**

No, the Electoral College system does not provide for residents of U.S. Territories, such as Puerto Rico, Guam, the U.S. Virgin Islands and American Samoa to vote for President. Unless citizens in U.S. Territories have official residency (domicile) in a U.S. State or the District of Columbia (and vote by absentee ballot or travel to their State to vote), they cannot vote in the Presidential election. Note that prior to the adoption of the 23rd Amendment, DC residents could not vote in the Presidential election.

The political parties may authorize voters in primary elections in Territories to select delegates to represent them at the political party conventions. But that process does not affect the Electoral College system.

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**What would happen if two candidates tied in a State's popular vote, or there was a dispute as to the winner?**

A tie is a statistically remote possibility even in smaller States. But if a State's popular vote were to come out as a tie between candidates, State law would govern as to what procedure would be followed in breaking the tie. A tie would not be known of until late November or early December, after a recount and after the Secretary of State had certified the election results. Federal law would allow a State to hold a run-off election.

A very close finish could also result in a run-off election or legal action to decide the winner. Under Federal law (3 U.S.C. section 5), State law governs on this issue, and would be conclusive in determining the selection of Electors. The law provides that if States have laws to determine controversies or contests as to the selection of Electors, those determinations must be completed six days prior to the day the Electors meet.

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**Is there an online source listing the names and voting records of presidential electors for all previous presidential elections back to 1789?**

We are not aware of a centralized, comprehensive source. This web site has the information for the past three elections:

- [1992 Electoral College Votes](#)
- [1996 Electoral College Votes](#)
- [2000 Electoral College Votes](#)

This web site also offers links to [State web sites](#) relating to the Electoral College. Indiana and Maryland have posted the names and voting records of their electors on their respective web sites:

- [Indiana Electors](#)
  - [Maryland Electors](#)
- 

**How many times has the Vice President been chosen by the U.S. Senate?**

Once. In the Presidential election of 1836, the election for Vice President was decided in the Senate. Martin Van Buren's running mate, Richard M. Johnson, fell one vote short of a majority in the Electoral College. Vice Presidential candidates Francis Granger and Johnson had a "run-off" in the Senate under the 12th Amendment, where Johnson was elected 33 votes to 17.

See also:

- [Electoral Votes for President and Vice President](#)
  - [Electoral College Box Scores](#)
  - [Twelfth Amendment](#)
- 

**How can I check the county by county results of the Presidential election in Ohio?**

Check the Ohio Secretary of State's web site at <http://www.sos.state.oh.us/sos/results/11-02-04.htm>

See also:

- [2004 Certificates of Ascertainment](#)
- 

**What is the difference between Colorado's proposal to proportionally allocate electoral votes and the current way that Nebraska and Maine proportionally allocate electoral votes?**

Both Maine and Nebraska allocate their electors by a district system. For example, Maine has four electoral votes. Two electors are selected on the basis of the statewide vote and two are selected according to outcome of the vote in each of Maine's two Congressional districts. Nebraska's five electoral votes are distributed in the same manner: two based on the statewide vote, and three based on the results in Congressional districts.

Since these States have adopted a proportional system of allocating electoral votes, all the States' electoral votes have gone to only one of the Presidential candidates.

If passed, Colorado's initiative would proportionally allocate electoral votes based on the percentage of votes that each presidential candidate receives. For example, if candidate A gets 55% of the vote and candidate B gets 45%, then candidate A gets 5 electoral votes and candidate B gets 4 electoral votes. If candidate A gets 67%, then candidate A gets 6 electoral votes and candidate B gets 3 electoral votes.

For more information, see:

- [What is the difference between the winner-takes-all rule and proportional voting, and which States follow which rule?](#)
- [What would happen if two candidates tied in a State's popular vote, or there was a dispute as to the winner?](#)

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## References

Read the Federalist Papers at: <http://thomas.loc.gov/home/histdox/fedpapers.html> for the founders' views on the Electoral College:

- Alexander Hamilton's design for the Electoral College in Federalist No. 68
- James Madison's views on the republican form of government in Federalist No. 10

Search the writings of Thomas Jefferson for his views on the Presidency (especially, Letter to George Hay, August 17, 1823) at: <http://etext.lib.virginia.edu/jefferson/quotations/>

Visit our [U.S. Election & Voting Resources](#)

## Often cited reference sources:

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- Michael J. Glennon, "When No Majority Rules: The Electoral College and Presidential Succession," Congressional Quarterly, Inc., 1992;
- Pierce and Longley, "The People's President" (1981);
- William Peters, "A More Perfect Union" (1937);
- Max Ferrand, "The Framing of the Constitution" (1913, reprinted 1987).



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