



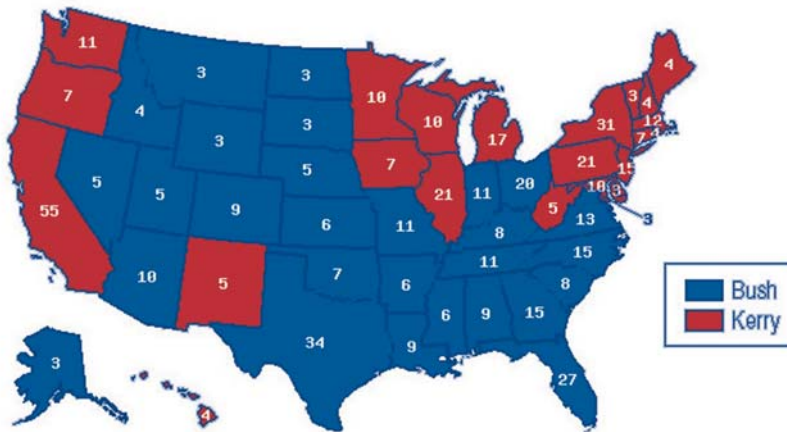
The Institute for Public Policy and Social Research

Policy Brief

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Electing a U.S. President

Figure 1. How an Electoral College Tie Might Look in 2004



To demonstrate how easy it would be for an electoral tie to occur in 2004, this map illustrates 2000 voting by state (using 2004 vote values) with only two states changed (West Virginia and New Hampshire). If states voted in this way, a 269-269 split would result.

About this Issue

While many of us refreshed ourselves on the finer points of the Electoral College following the 2000 election—when the Democratic Presidential Nominee Albert Gore, Jr. narrowly won the popular vote and Republican George W. Bush narrowly won the electoral vote—there are many details of this manner of election which remain unclear to the public.

With approximately two months left until the 2004 Presidential election, all indications point to a very close contest between President Bush and the 2004 Democratic Nominee Senator John F. Kerry. Given the closeness of this election, it seems an opportune time for further review of our nation's electoral process.

This IPPSR Policy Brief provides an overview of the Electoral College including a historical look at how this manner of election has handled some close calls in the past. It is our intent neither to praise nor to criticize this process, but to make it more transparent.

—Douglas B. Roberts, Ph.D., Director

How we Elect a President

According to Article II, Section 1 of the U.S. Constitution, when individuals cast their ballots on Election Day, they are actually casting their vote for slates of electors rather than for a Presidential or Vice Presidential candidate. This procedure was established by the framers

of the Constitution as a compromise between election of the President by the Congress or state legislatures and election by popular vote.

In this system, slates of electors are popularly selected on the Tuesday after the first Monday in November (November 2, 2004). The body consists of 538 individuals; reflecting 435 U.S. Representatives, 100 U.S. Senators, and 3 electors in the District of Columbia.¹ Thereby, each state is assigned a specific number of electors. Michigan has 17 electoral votes based on its 15 U.S. Representatives and 2 U.S. Senators.

The method of choosing the individual electors was intentionally left to the states to allay concerns of an overly-powerful national government.² Generally these individuals are named by political parties within states, but in some cases their names appear on the ballot. There are few restrictions on who may serve as an elector. One exception is that Members of Congress and employees of the federal

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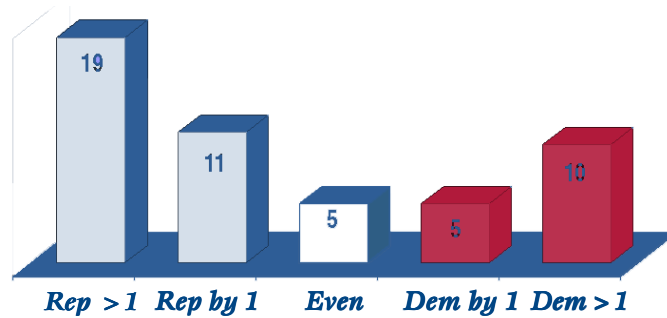
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Figure 2. U.S. House of Representatives Political Party Balance by State



Source: www.house.gov, downloaded August 11, 2004.

*Vermont is counted as "even" as that state's Representative is Independent.

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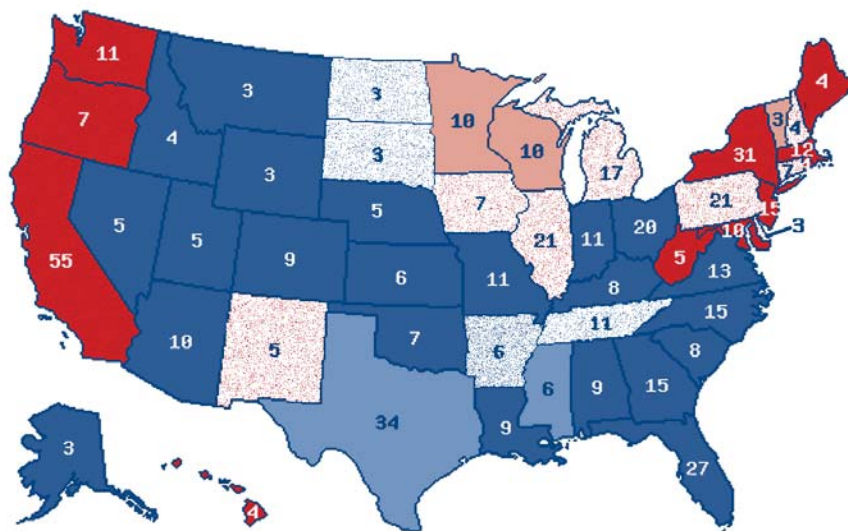
government are prohibited from serving (according to the Constitution); this is to maintain a separation between the legislative and executive branches of government.²

Currently, the most prevalent method for determining a slate of electors is "winner-take-all," in which the entire slate of electors is pledged to the ticket having received the most popular votes. The "district" method is currently in use in Maine and Nebraska. In these states, two at-large votes are awarded to the statewide winner and one vote is given to the winner in each congressional district.³ These voting methods

allow for split slates of electors. Although none have occurred in Maine or Nebraska, one did occur in 1892 when Michigan used this method for the first and only time.

Finally, on the first Monday after the second Wednesday in December (December 13, 2004) slates of electors meet in their states to cast their votes for President and Vice President. These individual meetings were established to avoid the potential for "bribery, corruption, secret dealing, and foreign influence" that framers were concerned about happening at a nationwide meeting.⁴ To be elected, the President and Vice President each need a majority of 270 votes.

Figure 3. How an Electoral Tie Might be Resolved in 2004



| Pop. Vote | House Delegation |
|-----------|------------------|
| Dem. | Dem. |
| Dem. | Even |
| Dem. | Rep. |
| Rep. | Dem. |
| Rep. | Even |
| Rep. | Rep. |

Based on Figure 1. How an Electoral College Tie Might Look in 2004
House delegation source: www.house.gov, downloaded, August 11, 2004.

Electoral College Trivia

Since seven states have only one U.S. Representative, if the House resolved an electoral tie, the election could come down to the decision of a single individual. These states are easy to find on the map since they each have 3 electoral votes.

In the one and only time that Michigan used the "district" method (1892) to determine its electoral votes for President, the electors were split with 9 Republican and 5 Democratic votes.

While electors are pledged to vote for the candidate designated by their state, there is no federal law requiring them to do so.

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It is important to note that there is no federal requirement that electors vote based on the popular result in their state. For example, in 1976, a Washington elector who was expected to vote for President Gerald Ford voted for Ronald Reagan. There are, however, provisions in 29 states and the District of Columbia requiring electors to cast their votes based on the popular vote and some that subject electors who diverge from this vote to fines or disqualification. In Michigan for example, "faithless electors" are disqualified, the vote is not recorded, and the remaining electors must fill the vacancy.⁵

Special Circumstances

A few special circumstances have arisen during the two-century life-span of the Electoral College. Twice in our history, none of the Presidential candidates received a majority of electoral votes (270 or more). In the absence of a majority, the decision of selecting the next President falls to the U.S. House of Representatives. It is important to note that each state casts only ONE vote and an individual needs 26 votes to win.

If no one receives a majority on the first ballot, then the House continues to vote, each House delegation having one vote. If the House fails to come up with a majority by January 20, then the person who received a majority of electoral votes for Vice President is named President. Since electors would probably not split a ticket though, it is

reasonable that a Vice Presidential candidate would not receive a majority. If that happened, then the voting would go to the Senate; two-thirds of the Senators are necessary for a quorum and 51 votes necessary for a majority. The person who won this vote would serve as President until the House reached a majority.

The first time the U.S. House was called into action to resolve an Electoral College tie was the 1800 election between Thomas Jefferson and

Aaron Burr. After 36 rounds of voting, Jefferson became President and the second place finisher, Aaron Burr, became Vice President. The divisive competition prompted the adoption of the 12th Amendment to the Constitution which requires the electors to cast separate votes for each of these offices.

The second example of the Presidency being decided by a vote of the U.S. House of Representatives occurred in 1824 between John Quincy Adams and Andrew Jackson. Given the number of candidates in that election, Adams emerged victorious even though he had received fewer popular and fewer electoral votes.

In three elections, the winner of the Electoral College was not the winner of the popular vote. The first example was the 1876 election between Rutherford B. Hayes and Samuel J. Tilden. In this case, a Congressional commission was appointed to resolve a discrepancy in Electoral College counts in three states. In the end, Hayes was determined to have won the most Electoral College votes although Tilden had received more popular votes.

The other two examples of an electoral vote winner not winning the popular vote were the 1888 election of Benjamin Harrison over Grover Cleveland and the 2000 election of George W. Bush over Albert Gore, Jr. It is interesting to note that twice in our history, the son of a former President has been elected

President winning the electoral vote and losing the popular vote (John Quincy Adams and George W. Bush).

The 2004 Election

Given the closeness of the 2004 election, many are wondering whether another special circumstance will be added to the history of the Electoral College. As Figure 1 (page 1) demonstrates, it is really quite possible for a tie to occur. Only West Virginia and New Hampshire's 2000 voting would have to be changed for an Electoral College deadlock in 2004. Please note that the maps presented in this paper are not meant as forecasts of the election, but are meant to illustrate how another special circumstance could occur.

How a Tie Might be Resolved 2004

If a tie did occur, the U.S. House of Representatives would be called upon to decide the election. Again, each House delegation has one vote and 26 votes are needed to elect a President via this method. Figures 2 and 3 (page 2) have been constructed to illustrate how an electoral tie might be resolved in 2004. It is reasonable to assume that House delegations would vote by party, but they are not required to do so. In addition to considering their party allegiance, they may also determine their selection based on their state's popular vote.

If the House delegations voted based on party allegiance alone, it is likely that Bush would win. If every member of every delegation voted, and did so according to party, 30 states would vote Republican, 5 states

could go either way (1 is Independent and 4 are evenly split), and 15 would vote Democratic. It is interesting to note that 11 of the 30 Republican states have only a 1 person advantage; therefore, if little more than a handful of Republican Representatives abstained from voting, and the split states went to Kerry, then he would win.

If the legislature voted based on a combination of party affiliation and popular vote, Bush is still the more likely winner. Stated

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simply, there are more states that voted Republican in 2000 and more states with Republican-dominated House delegations in 2004. As shown in Figure 3 (page 2), 22 states have Republican-dominated House delegations and voted Republican compared to 11 states which voted Democrat and have Democratic-dominated delegations. If the 5 states in which there is no party advantage in the House cast their votes for the winners of the popular vote, Bush's total would increase to 24 compared to only 14 for Kerry. Bush would need only 3 of the 12 conflict states (designated on the map by red or blue dots) to win, while Kerry would need the entire cohort.

As noted above, if a majority of electoral votes is still unreachable for either of the Presidential candidates by January 20, then the Senate would select an interim President. This person would be chosen from among the top two Vice Presidential candidates (assuming neither had a majority of electoral votes to begin with). Since there are currently 51 Republicans and 48 Democrats in the U.S. Senate, it is likely that a Republican would serve as the interim President, until the House could reach a majority.

Conclusions

To conclude, with all of the pros and cons that have been expressed over the years, the Electoral College is the process that will determine the election of our next U.S. President. While the 2000 election inspired many of us to brush up on how the Electoral College works, there are many details which remain unclear to the electorate. It is not the intent of this *IPPSR Policy Brief* to predict the outcome of the 2004 election, but to help clarify the process by which the election will be conducted.

Endnotes

¹ 23rd Amendment to the U.S. Constitution.

² Federal Election Commission, Office of Election Administration. Kimberling, William C. "The Electoral College."

³ A similar proportional vote method is currently being considered in Colorado.

⁴ Federal Election Commission, "The Electoral College."

⁵ National Conference of State Legislatures Website Available at: www.ncsl.org/programs/legman/elect/ElectoralCollege.htm Downloaded August 11, 2004.

Electoral College Resources

Federal Register: The Office of the Federal Register coordinates the functions of the Electoral College. Process and history on this method of electing the U.S. President is available at: www.archives.gov/federal_register

270toWin.com: This website provides an interactive election map including Electoral College vote values and a history of U.S. Presidential elections.

Federalist Paper Number 68 "The Mode of Electing the President": This paper is one of 85 articles written by James Madison, Alexander Hamilton, and John Jay about their intentions for the new Constitution. Written March 14, 1788, this paper provides insights on the Electoral College. It is available at: Thomas.loc.gov/home/histdox/fed_68.html