

**ELECTION
REFORMERS**
NETWORK



The Top-Two Proportional Approach to Fixing the Electoral College

January, 2021



Eight problems with the Electoral College

From the Constitution

All votes are not equal – Voters in small states have more weight than voters in large states.

“Faithless Legislatures” – State legislatures have the power to end popular elections for president, or to intervene and name a competing slate of electors in a “failed” election.

“Thrown to the House” - The contingency for no majority in the Electoral College is very undemocratic, since each state gets one vote. Also, this is a tiebreaker that could fail to break a tie.

From states' choosing “winner-take-all”

Swing-state-dominated campaigns – Presidential campaigns ignore all but a handful of unrepresentative swing states. Presidential policies favor swing states. Voters hardly matter in the rest of the country.

2nd place winner – The candidate with the most popular votes doesn't always win in the Electoral College.

Wasted votes – In 48 states, votes for candidates other than the winner in the state are not reflected in the electoral college.

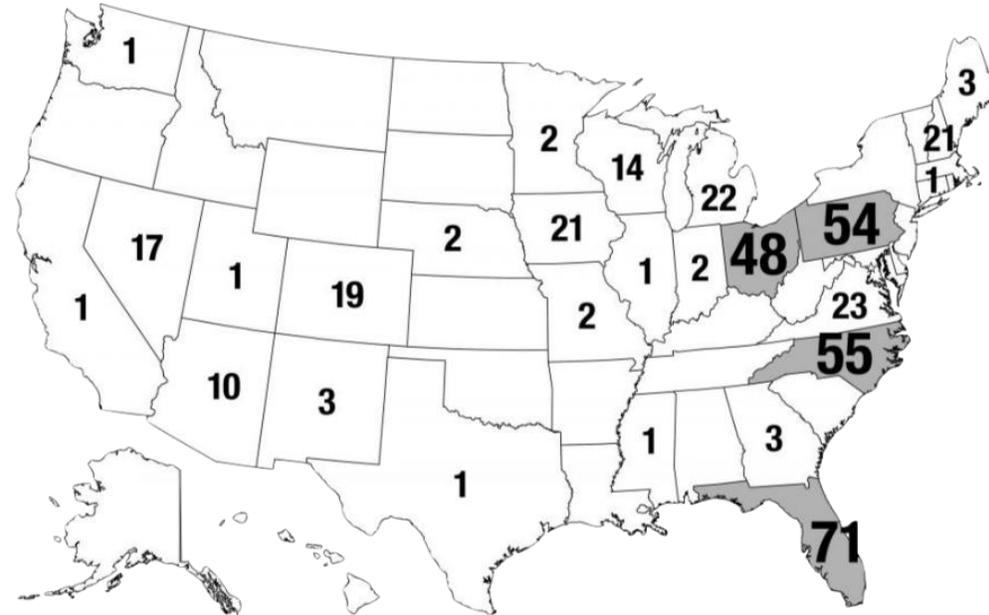
“Spoiler Problem” - Voting for an independent or 3rd party candidate can help a voter's least preferred candidate win.

3rd party can't win - Independent or 3rd party candidates could win under other voting rules, but can't under ours, so they don't run, which reduces choice for voters and blocks evolution of our politics.



Winner-take-all makes presidential elections ignore most Americans

*Presidential General Election
Campaign Visits, 2016
Source: Fairvote*



- Winner-take-all is not in the Constitution, but practically speaking cannot be stopped without an amendment or collective action.
- When the Founders saw winner-take-all in practice, most supported amending the Constitution to prevent it.



Winner-take-all is a much bigger problem than small state advantage

- The 16 smallest states have split 8-8 the last four elections.
- In 2016 Trump won from 2nd place because of smaller margins of victory under winner-take-all rules, not because of the advantage to small states.

2016 Election	Trump	Clinton
Small states won	8	8
Margin of victory, weighted average across all states	12.8%	19.6%

- Ending the advantage for small states goes against the interest of 33 states that would lose impact.



The National Popular Vote Interstate Compact

How it works:

- States agree to give all electoral votes to the popular vote winner nationally.
- The compact goes into effect when states with 270 or more electoral votes ratify the law.

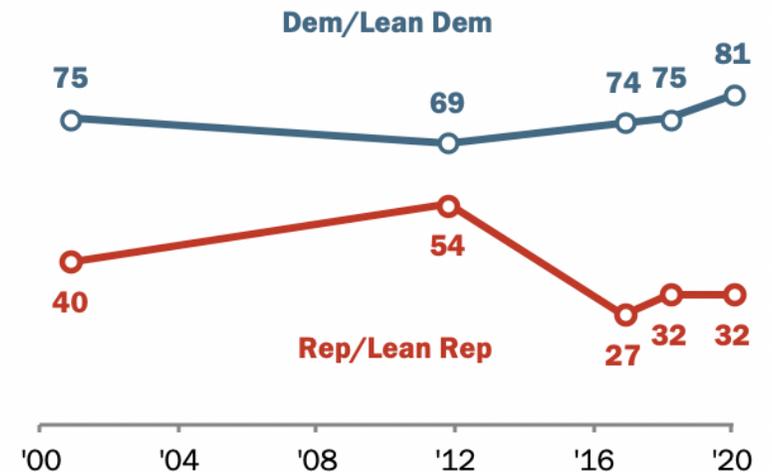
Pros:

- Fixes most of the problems with the current system.
- Does not require an amendment.

Cons:

- Not a permanent solution (states can leave the Compact).
- Politically divisive.
- Could be ruled unconstitutional.
- Implementation challenges: would a state award its electors against the state popular vote? Will it work without national election admin and voting rules?

Support for Presidential Election By National Popular Vote



Notes: 2020 data from Pew Research Center's online American Trends Panel; prior data from telephone surveys. Data for 2016 from CNN; data for 2000-2011 from Gallup. No answer responses not shown.

Source: Survey of U.S. adults conducted Jan. 6-19, 2020.

PEW RESEARCH CENTER



A Plan B: Top-Two Proportional Allocation

A Constitutional amendment with two key provisions:

1. Human electors are replaced with electoral votes that can be expressed in decimal form (no change to how many electoral votes per state).
2. The two candidates with the most votes are awarded the state's electoral votes proportionally.
 - An improved version of the Lodge-Gossett Amendment of 1950, which passed the Senate 64-27.
 - Addresses the concerns of the 65% of Republicans opposed to a popular vote:
 - Keep the advantage for small states, reflecting a founding compromise
 - Keep elections state-based



How “Top-Two” Works

All of a state’s electoral votes are divided proportionally between the two candidates receiving the most votes in that state

Example: Maryland, with 10 electoral votes

Hypothetical Popular Vote:



Resulting Electoral Votes:

Democrat candidate: 6.667
electoral votes

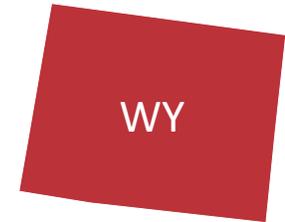
Republican candidate: 3.333
electoral votes



Every State Matters

Proportional allocation makes valuable votes available in every state.

Examples:



2016 electoral votes:

Clinton: 55
Trump: 0

Trump: 38
Clinton: 0

Trump: 6
Clinton: 0

Clinton: 3
Trump: 0

Trump: 3
Clinton: 0



Using top-2 proportional:

Clinton: 36.4
Trump: 18.6

Trump: 20.8
Clinton: 17.2

Trump: 3.9
Clinton: 2.1

Clinton: 1.9
Trump: 1.1

Trump: 2.2
Clinton: .8

2016 campaign events:

1

1

0

0

0

**Votes needed to swing .5
of an electoral vote(≈)**

68,000

64,000

50,000

26,000

21,000



A 2nd place winner becomes highly unlikely

Year	Candidate	% of popular vote	Actual Electoral College results	Results w top-2 proportional
2016	Trump	46.1%	306	265.6
	Clinton	48.2%	232	272.4

Gore wins in a 2000 scenario with RCV incorporated in only 2 states.

Year	Candidate	% of popular vote	Actual Electoral College results	Results w top-2 proportional	Top-2 Proportional + RCV in CA & NY
2000	Bush	47.9%	271	269.2	268.6
	Gore	48.4%	267	268.8	269.4

Year	Candidate	% of popular vote	Actual Electoral College results	Results w top-2 proportional
1888	Harrison	47.8%	233	191.8
	Cleveland	48.6%	168	209.2

Year	Candidate	% of popular vote	Actual Electoral College results	Results w top-2 proportional
1876	Hayes	47.9%	185	179.3
	Tilden	50.9%	184	189.7



Fixing the “spoiler” problem; Adding in RCV

<i>Georgia 1992</i>	Bill Clinton	George Bush	Ross Perot
Share of popular vote:	43.47%	42.88%	13.34%
Winner-take-all result:	13 electoral votes	0 electoral votes	
Top-2 proportional result:	6.54 electoral votes	6.46 electoral votes	

- Proportional allocation significantly reduces the impact of a “spoiler candidate.”
- Spoiler risk can be further reduced by individual states adopting ranked choice voting (RCV).
- RCV integrates easily state-by-state.



What about the no majority in the Electoral College?

Contingency options, in order of preference:

1. Allow a plurality winner (only path to a viable chance for a strong 3rd party or independent candidate)
2. Runoff election (previously proposed by Mitch McConnell!)
3. Keep contingency election in Congress, but change one-vote-per-state in the House to one-vote-per-member-of-Congress



Washington Post Endorsement

The Washington Post
Democracy Dies in Darkness

The U.S. Needs a Democracy Overhaul

(Editorial. January 2, 2010)

“The review must be wide-ranging, beginning with the electoral college itself. The commission should examine ways to reduce the chance that a candidate can win the presidency without winning a majority of popular votes, or for a tied electoral college vote to be decided by the House. Maybe the cleanest way is simply to abolish the electoral college in favor of a straight national popular vote. Or maybe there is another idea — such as **proportional allocation of electoral college votes between the top two candidates in each state** — that makes more sense.”



Something for Everyone

Top-two proportional has something for everyone to like:

Republicans:

- Gain campaign attention to neglected red states
- Keep small-state electoral advantage
- Keep state-based elections
- Take the NPV Compact off the table

Democrats:

- Significantly reduce risk of inverted winner
- Gain results more reflective of national preferences
- More permanent solution than NPV
- Gain campaign attention to neglected blue states

Small states:

- Keep the same electoral college impact
- gain attention from campaigns and presidents

Large states:

- Become important in presidential campaigns

Democracy Advocates

- Fix all problems with the system except making every vote equal



Politicians want their states to be relevant to presidential campaigns

“The presidential candidates, and the elected President, simply didn’t care about the voters that my colleagues and I represented.”

- Ray Haynes, former State Senator (R) California; former Majority Whip; Former Chair of ALEC

“With the battleground states, those votes matter, and everyone else is taken for granted.”

- Jeremy Peterson, State Representative (R) Utah

“Make every state just as relevant as they should be, as opposed to just a handful of battleground states.”

- Rob Johnson, State Senator (R) Oklahoma

“We are now totally irrelevant. And going back for at least four presidential elections, we've been irrelevant.”

- Brian Nestande, former Assemblyman (R) California



Summary Comparison of Top Two and NPV: Top Two fixes more of the existing problems

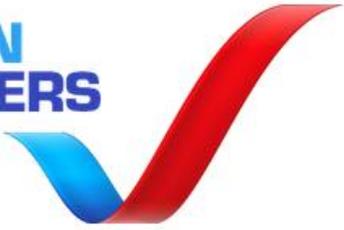
Existing Problem	Fixed under Top Two?	Fixed under NPV?
All votes not equal	No	✓
“Faithless Legislatures”	✓	No
Thrown to the House	✓	✓
Spoiler Problem	✓	No
3 rd party cant win	✓	✓
Swing-state-dominated campaigns	✓	✓
2 nd place winner	✓ (nearly always)	✓
Wasted votes	✓	✓



... without creating new ones

New Problem	under Top Two?	under NPV?
States may have to give all electors to loser in the state	No	Yes
Fundamental change would be implemented without an amendment	No	Yes
A president could be elected with a low plurality of the vote in a crowded field	No	Yes
The presidential election system would be unstable cycle to cycle because states could leave the compact	No	Yes
Election results would be tabulated nationally without national rules or a national election body.	No	Yes

**ELECTION
REFORMERS**
NETWORK



For more information:
electionreformers.org/the-proportional-allocation-solution/
or email: *info@electionreformers.org*