

Table 4.1 Comparison of seven proposals for presidential election reform

	Guaranteeing the presidency to the national popular vote winner	Making every vote equal	Giving presidential candidates a compelling reason to campaign in every state
Fractional-proportional method	No	No	Yes
Whole-number proportional method	No	No	No
Congressional-district method	No	No	No
Elimination of senatorial electors	No	No	No
Adding 102 at-large bonus electors	No	No	No
Increasing number of electoral votes	No	No	No
Direct election constitutional amendment	Yes	Yes	Yes

We discuss each of these proposed methods in terms of the following three criteria:

- **Guaranteeing the presidency to the national popular vote winner:** Would the method guarantee the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia?
- **Making every vote equal:** Would the method make every voter equal throughout the United States?
- **Giving presidential candidates a compelling reason to campaign in every state:** Would the method improve upon the current situation in which three out of four states and about 70% of voters in the United States are ignored in the general-election campaign for President?

Table 4.1 compares the seven proposals.

4.1. FRACTIONAL-PROPORTIONAL METHOD OF AWARDING ELECTORAL VOTES

4.1.1. Summary

- Under the fractional-proportional method of awarding electoral votes, a federal constitutional amendment would be adopted to divide each state's electoral votes proportionally according to the percentage of popular votes received in that state by each presidential candidate—with the *calculation carried out to three decimal places*.¹
- The fractional-proportional method would not accurately reflect the national popular vote. For example, if this method is applied to the 2000 election returns, George W. Bush would have received *more* electoral votes than Al Gore—even though Gore received 543,816 more popular votes nationwide. Second-place Presidents are the consequence of this method's four significant built-in inequalities in the value of a vote. This shortcoming applies to all five

¹ Note that carrying this fractional calculation out to several decimal places is what distinguishes the fractional-proportional method from the *whole-number* proportional method (section 4.2).

proposed versions of the fractional-proportional method discussed in this chapter, including:

- the original 1950 Lodge-Gossett amendment,
 - the 1969 Cannon amendment,
 - the 2001 Engel amendment that would give electoral votes only to candidates receiving 5% or more of the popular vote,
 - the version that would give electoral votes only to the top-two candidates *nationally*, and
 - the version that would give electoral votes only to *each state's* top-two candidates.
- The fractional-proportional method would not make every voter equal throughout the United States. There are four substantial sources of inequality built into this method.
 - **Senatorial electors:** A 3.81-to-1 inequality in the value of a vote is created by the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population. The vote of the 261 million people living in 22 states (79% of the U.S. population) would be worth *less than a third* of a vote in Wyoming under the fractional-proportional method.
 - **Imprecision in apportionment:** A 1.72-to-1 inequality in the value of a vote is created by imprecision in apportioning U.S. House seats (and hence electoral votes) among the states.
 - **Voter turnout:** A vote in a high-turnout state is worth less than a vote elsewhere. A 1.67-to-1 disparity in the value of a vote is created by differences in voter turnout at the state level.
 - **Intra-decade population changes:** A vote in a fast-growing state is worth less than a vote elsewhere. Intra-decade population changes after each census produce a 1.39-to-1 disparity in the value of a vote.
 - The fractional-proportional method would address one of the major shortcomings of the current state-by-state winner-take-all method of awarding electoral votes. It would make every voter in every state relevant (to some degree) in the general-election campaign for President. It would therefore give presidential candidates a compelling need to campaign in every state.

4.1.2. History of the fractional-proportional method

On February 1, 1950, the U.S. Senate voted 64–27 to approve a federal constitutional amendment to implement this method of electing the President.

The amendment was sponsored by Senator Henry Cabot Lodge, Jr. (R–Massachusetts) and Representative Ed Gossett (D–Texas).

A few weeks later, the House defeated the Lodge-Gossett amendment by almost a two-thirds margin.^{2,3,4,5,6}

Professor Alexander Keyssar recounted the history of the Senate passage and the subsequent House defeat of the Lodge-Gossett Amendment in discussing his 2020 book *Why Do We Still Have the Electoral College?*⁷ at a lecture in Cambridge, Massachusetts.⁸

“[Senator Lodge] really believed in the national popular vote. ... And he also wanted to help the Republican party maybe make some inroads in the South....

“His cosponsor was a guy named Ed Lee Gossett, who was a very right-wing congressman from Texas. ... Gossett’s argument was very different. He wanted to have a proportional system. And he gave speeches on the floor of Congress about this. Because he **wanted to limit the power of Jews, Blacks, and Italians in New York state, who he thought were in effect determining American presidential elections**. Basically, he wanted to break up the power of large cities. And he gave these extraordinary speeches about the Communists, the New York Labor Party, and then these Jews, and then the Italians, and Black people.

“Remarkably, this Amendment gets passed by the Senate in 1950. ... **The liberals were asleep at the switch** about what was going on here. And then after it gets passed, they start paying attention.”

“And then the liberal members of Congress, coupled with some important outside African American advisors, recognized that what this is really aimed at, from Gossett’s point of view, is killing the civil rights movement, in killing Northern support for the civil rights movement, by diminishing the power of key Northern states, and in effect making the South the strongest wing of the Democratic Party.

“So, in the period of 6 weeks, this whole thing turns around. It’s a remarkable political moment, where you go from a constitutional amendment which is passed by a two-thirds vote in the Senate, and six weeks later, or seven

² U.S. Senate Committee on the Judiciary. 1949. Election of President and Vice President: Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 81st Congress, 1st Session, on S.J. Res. 2. <https://babel.hathitrust.org/cgi/pt?id=uiug.30112119853536&view=1up&seq=5>

³ Bennett, Emmett L. 1950. The reform of presidential elections: The Lodge amendment. *American Bar Association Journal*. Volume 37. February 1951. Page 89ff.

⁴ Morley, Felix. 1961. Democracy and the Electoral College. *Modern Age*. Fall 1961. Pages 373–388.

⁵ Editorial: Giving the minority vote a voice. *St. Petersburg Times*. August 6, 1951.

⁶ Silva, Ruth C. 1950. The Lodge-Gossett resolution: A critical review. *The American Political Science Review*. Volume 44. Number 1. March 1950. Pages 86–99.

⁷ Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press.

⁸ Keyssar, Alexander. 2020. Lecture at Harvard Book Store. July 31, 2020. *C-SPAN*. <https://www.c-span.org/video/?473814-1/why-electoral-college>

weeks later maybe, it is voted down by about a two-thirds vote in the House of Representatives.”

“But the anti-Communism, the racism, all that feeding into this says something about the anxiety attached to our politics in our discussions of political institutions.”⁹ [Emphasis added]

When the Lodge-Gossett amendment was debated in 1950, New York occupied a dominant role in deciding the presidency that has not been equaled by any state since.

First, New York had the largest number of electoral votes of any state at the time—a whopping 47 electoral votes (out of 531).

Second, New York was a closely divided battleground state at the time.

Third, in addition to being a battleground state, New York was a “swing” state, having voted:

- Republican (for Thomas Dewey) in 1948 by a 46%–45% margin, and
- Democratic (for Franklin D. Roosevelt) in 1944 by a 52%–47% margin.

If there had been a proportional division of New York’s electoral votes in 1944 and 1948, New York would have given its chosen candidate a lead of only about two electoral votes in 1944 and one electoral vote in 1948.

Representative Gossett frequently highlighted the fact that several other large closely divided northern industrial states such as Pennsylvania, Illinois, and Michigan played outsized roles in electing the President at the time.

- Pennsylvania had 35 electoral votes and voted 51%–48% Democratic in 1944 and 47%–51% Republican in 1948.
- Illinois had 28 electoral votes and voted 52%–48% Democratic in 1944 and 50%–49% Democratic in 1948.
- Michigan had 19 electoral votes and voted 50%–49% Democratic in 1944 and 49%–48% Republican in 1948.

Under the fractional-proportional method of awarding electoral votes, these three states would have delivered leads of *only about one electoral vote each* to the candidate who won in 1944 and 1948.

In contrast, under the winner-take-all method of awarding electoral votes:

- New York delivered a 47–0 lead in electoral votes to the state’s winner;
- Pennsylvania delivered a 35–0 lead;
- Illinois delivered a 28–0 lead; and
- Michigan delivered a 19–0 lead.

Together, New York, Pennsylvania, Illinois, and Michigan could deliver a 129–0 lead under the winner-take-all system.

However, they would have been able to deliver a lead of only about four or five electoral votes under the fractional-proportional method.

⁹ Keyssar, Alexander. 2020. Author talk at Harvard Book Store in Cambridge, Massachusetts on the book *Why Do We Still Have the Electoral College? C-SPAN*. July 21, 2020. Timestamp 52:58–55:12 <https://www.c-span.org/video/?473814-1/why-electoral-college>

Meanwhile, the 11 states of the former Confederacy had almost the same combined total number of electoral votes (127) as those four northern industrial states.

The “solid south” was a one-party region at the time. As shown in table 4.2, the 11 southern states delivered 76% of their popular votes in support of the region’s then-dominant party (the Democrats) and in support of the region’s hallmark governmental policy—racial segregation.

This 76% landslide was made possible, in large part, by the fact that virtually no blacks voted in the south under Jim Crow laws that were in place at the time.

If the south’s 127 electoral votes were divided proportionately (that is, 97–30), the south would have delivered a lead of 67 electoral votes to its favored candidate under the fractional-proportional amendment.

A lead of 67 electoral votes would have been far greater than the paltry four-vote or five-vote lead that the four northern industrial states (New York, Pennsylvania, Illinois, and Michigan) could generate together.

In short, the Lodge-Gossett amendment would have dramatically shifted political power in the country, given the political situation at the time.

Representative Gossett was candid about this.

He described the role of Negroes, Jews, Italians, Irish, Poles, organized labor, and Communists in the closely divided northern industrial states in his testimony to a House committee in 1949:

“The Electoral College permits and invites irresponsible control and domination by **small organized minority groups, within the large pivotal States**. It aggravates and accentuates the building up and solidification within these States of **religious, economic, and racial blocs**. Small, definable, minority groups, organized along religious or economic or racial lines, by voting together, can and do hold a balance of power within these pivotal States. As a result, the political strategists in both parties make special appeals to these various groups as such. **These groups have become more and more politically conscious. They know their power.** In many instances, they have no political alignments or philosophy as such, but are simply up for sale to the highest bidder. To encourage economic, racial, and religious group consciousness and group action, is a dangerously undemocratic practice, aside from its other evil consequences.

“At the danger of stepping on some toes, let’s get down to specific cases. Let’s take a look at the political platforms of both major parties in the presidential campaigns of 1944 and 1948 and see how they were built and designed to appeal to minority groups and blocs in the large pivotal States. First, both parties wrote the FEPC¹⁰ [Federal Employment Practices Committee] into their platforms. **The platform makers of both parties will tell you frankly, off the record of course, that this was done as a bid**

¹⁰ In 1941, the Fair Employment Practices Committee (FEPC), was established by President Franklin D. Roosevelt to help prevent discrimination against African Americans in defense and government jobs. <https://www.britannica.com/topic/Fair-Employment-Practices-Committee>

Table 4.2 Vote for President in 1944 in 11 southern states

State	Democratic percent	Electoral votes
Alabama	81%	11
Arkansas	70%	9
Florida	70%	8
Georgia	82%	12
Louisiana	81%	10
Mississippi	94%	9
North Carolina	67%	14
South Carolina	88%	8
Tennessee	71%	12
Texas	71%	23
Virginia	62%	11
Total	76%	127

for the Negro vote. There are enough Negroes in New York City, when voting in bloc, to determine often how the entire electoral vote of the State of New York is cast; enough in Philadelphia if cast in bloc to probably determine the result of an election in the State of Pennsylvania; enough in Detroit to perhaps decide the vote of the State of Michigan; enough in Chicago to carry the State of Illinois.¹¹[Emphasis added]

Referring to the civil-rights planks of the 1948 platforms of both major parties, Representative Gossett continued:

“Hence, a dangerous and radical proposal in which a majority of neither party believes was written into both platforms as political bait for a minority vote within the large pivotal States.

“A second minority group that was wooed by the platform makers of both parties was **the radical wing of organized labor**. In the large pivotal States above mentioned, the votes controlled by the political action committee of the CIO was a tremendous, potential, political threat. The votes allegedly controlled by this organization in the large pivotal States, if cast in bloc, would be sufficient to swing the votes of such States and perhaps elect a President. Hence, both parties generally speaking wrote platitudinous provisions into their platforms concerning industrial-management relations. Both parties pussyfooted on the labor question because of organized labor’s power through the Electoral College.

“Now, with all due deference to our many fine Jewish citizens, they constitute a third group, to whom a specific overt appeal was made in the platforms of both major parties. There are 2 million Jews in the city of New

¹¹ Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 16–18. <https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21>

York alone. When they vote even substantially in bloc, it means the balance of power in our largest State. The candidate for whom they vote carries New York State and probably the presidency. What did the platform makers of 1944 do? Both of them wrote into their platforms specifically and without equivocation the so-called Palestine resolution, calling upon Great Britain to immediately open Palestine to unrestricted Jewish immigration. Regardless of the merits of the Zionists' cause in Palestine, this was political demagoguery and dangerous meddling with British foreign policy in the Holy Land. As a result of platform endorsements by both major parties, we passed a resolution through the Seventy-Ninth Congress calling upon England to open up Palestine to unrestricted Jewish immigration. Within a few weeks after this resolution was passed, England asked us if we were ready and willing to back up our request with the Army and the Navy if she got into war. We stuck our noses into British foreign policy for purely political reasons and to the detriment of all of our citizens, Jewish and otherwise.

“Then **there are numerous other minority pressure groups** within these large pivotal States to whom continuous political overtures are made by the strategists of both parties. There are more than **1,000,000 Italians in New York City. There are 2,000,000 Irish**, many of whom are still politically conscious where Ireland is concerned. **There are 500,000 Poles** and other large racial groups. Because of the electoral college, **the American Labor Party and the Communist Party in the State of New York** have power and trading position out of all proportion to their numbers, to say nothing of their merit. It is entirely possible that because of this political straitjacket, the electoral college system, that said American Labor Party or the Communist Party will determine someday soon who will be the President of the United States. Of late, we have become rightly alarmed over the activities of the Communist Party in the United States. Strange to say, this party has its greatest following and influence in the aforesaid large pivotal States. This party and its fellow-travelers are shrewd political manipulators. What grim irony it would be if they should swing the balance of power and be responsible for the election of a President of the United States. Again, mention might be made of the undue power and influence given to the big city political machines through the Electoral College. Through, and because of the Electoral College, a few big cities have elected and will probably continue to elect Presidents of the United States. It is largely within these big cities that the racial, religious, and economic blocs are found and in which they operate.”¹² [Emphasis added]

African Americans played a unique role in the national debate over the fractional-proportional (Lodge-Gossett) plan because, at the time, Jim Crow laws in the southern states denied them the right to vote.

¹² Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 16–18. <https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21>

Representative Gossett obliquely acknowledged the relatively small total number of voters who went to the polls in southern states:

“Under our proposal, **it’s of no concern to Texas** how many vote in New York and of no concern **to New York how many vote in Texas**. New York would still have 47 electoral votes, divided, however, in the exact ratio in which they were cast. Texas would still have 23 electoral votes, divided, however, in the exact ratio in which they were cast.”¹³ [Emphasis added]

Thus, African Americans were especially concerned with preserving their political clout in the closely divided northern industrial states where they were able to vote.

If there was any doubt as to whether the concern of African Americans was well placed, Representative Gossett made it very clear why he objected to the winner-take-all method of awarding electoral votes at a congressional hearing in 1949:

“Now, please understand, **I have no objection to the Negro in Harlem voting**, and to his vote being counted, but I do resent that fact that **both parties will spend a hundred times as much money to get his vote, and that his vote is worth a hundred times as much in the scale of national politics as is the vote of a white man in Texas**. I have no objection to a million folks who cannot speak English voting, or to their votes being counted, but I do resent the fact that because they happen to live in Chicago, or Detroit, or New York, that **their vote is worth a hundred times as much as mine because I happen to live in Texas**. Is it fair, is it honest, is it democratic, is it to the best interest of anyone in fact, to place **such a premium on a few thousand labor votes, or Italian votes, or Irish votes, or Negro votes, or Jewish votes, or Polish votes, or Communist votes, or big-city-machine votes**, simply because they happen to be located in two or three large, industrial pivotal States? Can anything but evil come from placing such temptation and such power in the hands of political parties and political bosses? They, of course, will never resist the temptation of making undue appeals to these minority groups whose votes mean the balance of power and the election of Presidents. Thus, both said groups and said politicians are corrupted and the Nation suffers.”¹⁴ [Emphasis added]

Professor Alexander Keyssar’s book *Why Do We Still Have the Electoral College?* provides additional detail on Representative Gossett’s vigorous—and overtly racist—campaign for his amendment.¹⁵

¹³ Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Pages 19. <https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&eq=21>

¹⁴ *Ibid.*

¹⁵ Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press.

4.1.3. The fractional-proportional method would require a constitutional amendment.

Because the fractional-proportional method involves the creation of fractional electoral votes, a federal constitutional amendment would be required to implement it.

The position of presidential elector is established by the U.S. Constitution:

“Each State shall appoint, in such Manner as the Legislature thereof may direct, **a Number of Electors equal to the whole Number** of Senators and Representatives to which the State may be entitled in the Congress....”¹⁶ [Emphasis added]

That is, each state has the power to choose the manner of selecting the specified whole number of persons to serve as presidential electors in the Electoral College.

Under the original Constitution, presidential electors did not differentiate their vote for President from their vote for Vice President.

Under Article II, section 1, clause 3 of the original Constitution, each presidential elector voted for two persons:

“The Electors shall meet in their respective States, and **vote by Ballot for two Persons, of whom one** at least shall not be an Inhabitant of the same State with themselves.”

“The Person having the greatest Number of Votes shall be the President.”

“After the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President.” [Emphasis added]

The problems associated with giving each presidential elector two undifferentiated votes become apparent in the 1796 and 1800 elections (section 2.5 and 2.6).

The 12th Amendment (ratified in 1804) required presidential electors to cast separate ballots for President and Vice President:

“**The Electors** shall meet in their respective states, and **vote by ballot** for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots **the person voted for as President**, and in distinct ballots **the person voted for as Vice-President**, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each ...” [Emphasis added]

The requirement that each presidential elector cast a ballot for “the person” precludes fractional electoral votes.

Thus, a federal constitutional amendment would be necessary to implement the fractional-proportional method.¹⁷

¹⁶ U.S. Constitution. Article II, section 1, clause 2.

¹⁷ In contrast, the whole-number proportional method (section 4.2) would divide each state's electoral votes proportionally in whole-number increments. Therefore it would not require a federal constitutional amendment and could be implemented by state law on a state-by-state basis.

4.1.4. Description of the fractional-proportional method

Under this method of awarding electoral votes, a state's electoral votes would be divided proportionally according to the percentage of popular votes received in the state by each presidential candidate—with this fractional calculation *carried out to three decimal places*.

Five versions of the fractional-proportional amendment have been proposed at various times:

- 1950 Lodge-Gossett amendment,
- 1969 Cannon amendment,
- 2001 Engel amendment,
- nationwide top-two fractional-proportional proposal, and
- state-level top-two fractional-proportional proposal.

Lodge-Gossett amendment of 1950

The Lodge-Gossett amendment to implement the fractional-proportional method passed the U.S. Senate in 1950 (but was defeated in the House). It would have

- retained the existing distribution of electoral votes among the states—that is, each state would have a number of electoral votes equal to its number of U.S. Representatives and Senators,
- awarded each state's electoral votes in proportion to each candidate's share of the state's electoral votes—carried out to three decimal places, and
- made a plurality of electoral votes sufficient for election—thereby eliminating the current procedure wherein the choice of the President and Vice President would be made by Congress.

The 1950 Lodge-Gossett amendment (Senate Joint Resolution 2 of the 81st Congress) reads:

“Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as herein provided.

“The Electoral College system for electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. **Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.**

“Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall

make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. **Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President.** In making the computations, fractional numbers less than one one-thousandth shall be disregarded. **The person having the greatest number of electoral votes for President shall be President.** If two or more persons shall have an equal and the highest number of such votes, then the one for whom the greatest number of popular votes were cast shall be President.

“The Vice-President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice-President of the United States.

“Section 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution and the twelfth article of amendment to the Constitution, are hereby repealed.

“Section 3. This article shall take effect on the tenth day of February following its ratification.

“Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of the submission hereof to the States by the Congress.” [Emphasis added]

Cannon amendment of 1969

While Congress was intensively debating various constitutional amendments for electing the president in 1969, Senator Howard Cannon (D–Nevada) introduced a constitutional amendment that would have:

- retained the existing distribution of electoral votes among the states;
- awarded each state’s electoral votes in proportion to each candidate’s share of the state’s electoral votes—carried out to three decimal places;
- required that a candidate receive at least 40% of the electoral votes in order to win. If this requirement is not satisfied, there would be a contingent election for President and Vice President in a joint session of Congress in which each member of the House and Senate cast one vote.

The proposed 1969 Cannon amendment (Senate Joint Resolution 33 in the 91st Congress) reads:

“Section 1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as provided in this article. No person constitutionally ineligible for the office of President shall be eligible for the office of Vice President.

“Section 2. The President and Vice President shall be elected by the people of the several States and the District of Columbia. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that the legislature of any State may prescribe lesser qualifications with respect to residence therein. The electors of the District of Columbia shall have such qualifications as the Congress may prescribe. **The places and manner of holding such election in each State shall be prescribed by the legislature thereof, but the Congress may at any time by law make or alter such regulations.** The place and manner of holding such election in the District of Columbia shall be prescribed by the Congress. The Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin.

“Section 3. Each state shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which each State may be entitled in the Congress. **The District of Columbia shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives in Congress to which such District would be entitled if it were a State, but in no event more than the least populous State.**

“Section 4. Within forty-five days after such election, or at such time as Congress shall direct, the official custodian of the election returns of each State and the District of Columbia shall make distinct lists of all persons for whom votes were cast for President and the number of votes cast for each person, and the total vote cast by the electors of the State or the District for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates and the votes shall then be counted. **Each person for whom votes were cast shall be credited with such proportion of the electoral votes thereof as he received of the total vote cast by the electors therein for President.** In making the computation, fractional numbers less than one one-thousandth shall be disregarded. **The person having the greatest aggregate number of electoral**

votes of the States and the District of Columbia for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes, or if two persons have received an identical number of such electoral votes which is at least 40 per centum of the whole number of electoral votes, then from the persons having the two greatest number of such electoral votes for President, the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined membership of the Senate and House of Representatives shall be necessary for a choice.

“Section 5. The Vice President shall be likewise elected, at the same time, in the same manner, and subject to the same provisions as the President.

“Section 6. The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them. The Congress shall have power to enforce this article by appropriate legislation.

“Section 7. The following provisions of the Constitution are hereby repealed: paragraphs 1, 2, 3, and 4 of section 1, Article II; the twelfth article of amendment; section 4 of the twentieth article of amendment; and the twenty-third article of amendment.

“Section 8. This article shall take effect on the 1st day of February following its ratification, except that this article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress.” [Emphasis added]

Engel amendment with 5% threshold of 2001

The Congressional Research Service observed:

“Many, though not all, proportional plan amendments would also require that candidates gain a minimum of 5% of the popular vote in a state in order to win any share of its electoral votes.”¹⁸

For example, in 2001, Representative Eliot Engel (D–New York) proposed a version of the fractional-proportional method requiring that a candidate receive at least 5% of the popular vote in a state in order to receive any electoral votes.

¹⁸ Neale, Thomas H. 2003. *The Electoral College: Reform Proposals in the 107th Congress*. Congressional Research Service. February 7, 2003. Page 9.

The Engel amendment would have:

- retained the existing distribution of electoral votes among the states;
- required that a candidate receive at least 5% of a state's popular vote in order to get a proportionate share (calculated to three decimal places) of that state's electoral votes;
- contained no minimum number of electoral votes in order to win election (that is, it was like the original 1950 Lodge-Gossett amendment, but unlike the 1969 Cannon amendment, which had a 40% requirement); and
- provided for a contingent election in Congress only in the remote possibility of a 269,000-to-269,000 tie in the nationwide electoral vote.

The Engel amendment (Senate Joint Resolution 17 of the 107th Congress)¹⁹ is as follows:

“Section 1. In an election for President and Vice President, each State shall appoint a number of Electors to vote for each candidate for President or Vice President that bears the same ratio to the total number of Electors of that State as the number of votes received by that candidate bears to the total number of votes cast in that State.

“Each State shall make computations for purposes of carrying out this section in accordance with such laws as it may adopt, including laws providing for the allocation of Electors among more than two **candidates receiving 5 percent or more of the total number of votes cast in the State** under such criteria as the State may by law establish, except that fractional numbers less than one one-thousandth shall be disregarded. The candidate having the greatest number of electoral votes for President shall be the President. The candidate having the greatest number of electoral votes for Vice President shall be the Vice President.

“Section 2. If two or more candidates receive an equal number of electoral votes for President and such number is greater than the number of such votes received by any other candidate, then from the candidates who receive such equal number of votes the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.

“Section 3. If two or more candidates receive an equal number of electoral votes for Vice President and such number is greater than the number of such votes received by any other candidate, then from the candidates who receive such equal number of votes the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

¹⁹ House Joint Resolution 17. 107th Congress. February 13, 2001. <https://www.congress.gov/bill/107th-congress/house-joint-resolution/17>

“Section 4. For purposes of this article other than sections 2 and 3, the District constituting the seat of Government of the United States shall be treated as if it were a State, except that the District may not appoint a number of Electors greater than the number of Electors appointed by the least populous State.

“Section 5. The Congress shall have the power to enforce this article by appropriate legislation.

“Section 6. This article shall apply with regard to any election for President and Vice President that is held more than one year after the date of the ratification of this article.” [Emphasis added]

Nationwide top-two version of the fractional-proportional method

In 2020, Kevin Johnson of the Election Reformers Network described a version of the fractional-proportional method with a nationwide top-two rule:

“Seventy years ago, senators voted 64-27 to amend the Constitution with exactly the features discussed here: replacing human electors with electoral votes, replacing winner-take-all with proportional allocation, and retaining the advantage for small states.

“The version electoral reformers are pushing now is an improvement, because it would **limit the proportional allocation to the top-two vote-getters nationwide.**”²⁰ [Emphasis added]

Thus, this constitutional amendment would:

- retain the existing distribution of electoral votes among the states;
- split each state’s electoral votes between the top-two *nationwide* candidates in proportion to their share of the state’s popular vote—with the fractional calculation carried out to three decimal places.
- apparently (by its silence) leave unchanged the current power of state legislatures to control the manner of conducting presidential elections (that is, it would be like the original 1950 Lodge-Gossett amendment and 2001 Engel amendment, but unlike the 1969 Cannon amendment and various other proposals that would increase the power of Congress over presidential elections).

State-level top-two version of the fractional-proportional method

The *nationwide* top-two approach described above appeals to staunch enthusiasts of the two existing major political parties.

However, it is correspondingly less appealing to those who would like to see more independent or third-party candidates.

²⁰ Johnson, Kevin. 2020. Bloc voting is a bigger problem than electors going rogue. Here’s a fix. *The Fulcrum*. July 10, 2020. <https://thefulcrum.us/electoral-college-votes>

Thus, the Election Reformers Network web site (as of March 2024) proposes a state-level variation of the top-two fractional-proportional method:

“All of a state’s electoral votes are divided proportionally between the two candidates receiving the most votes **in that state.**”²¹ [Emphasis added]

This change allows independent and third-party candidates to accumulate fractional electoral votes from state to state.

However, this change raises the question as to what happens if no presidential candidate wins an absolute majority of 269.001 electoral votes.

This is no small matter, because no candidate received a majority of the national popular vote in four of the eight presidential elections between 1992 and 2020.

Moreover, given the declining number of voters who identify themselves with one of the two established political parties, this outcome could become even more frequent in the future.

If the constitutional amendment is silent on this question, the existing constitutional provision for a contingent election would continue to operate—that is, the choice of the President and Vice President would be thrown into Congress.

4.1.5. The fractional-proportional method would not accurately reflect the national popular vote.

From the point-of-view of the general public, the most conspicuous shortcoming of the current system is that the second-place candidate can become President.

The country is currently in an era of relatively close presidential elections. Indeed, in the eight presidential elections between 1992 and 2020, the average margin of victory for the national popular vote winner has been only 4.3%.²²

In 2000, Al Gore received 543,816 more popular votes nationwide than George W. Bush.

However, Bush would have received *more* electoral votes than Gore under all five versions of the fractional-proportional method and, therefore, would have been elected.

Lodge-Gossett amendment of 1950

In 2000, the national popular vote for President was:

- Al Gore—51,003,926
- George W. Bush—50,460,110
- Ralph Nader—2,883,105
- Pat Buchanan—449,225
- Harry Browne—384,516
- 11 other candidates—236,593²³

²¹ See slide 8. Election Reformers Network. *The Top-two Proportional Approach to Fixing the Electoral College*. Accessed March 10, 2024. https://assets-global.website-files.com/642dcbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

²² The margin of victory for the national popular vote winner was 5.6% in 1992, 8.5% in 1996, 0.5% in 2000, 2.4% in 2004, 7.2% in 2008, 3.9% in 2012, 2.0% in 2016, and 4.0% in 2020.

²³ These 236,593 popular votes were scattered among 11 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for “none of the above.” The total national popular vote for President in 2000 was 105,417,475.

Table 4.3 2000 election results

State	Gore	Bush	Nader	Buchanan	Browne	Others	Total
AL	695,602	944,409	18,349	6,364	5,902	1,925	1,672,551
AK	79,004	167,398	28,747	5,192	2,636	2,583	285,560
AZ	685,341	781,652	45,645	12,373	0	9,102	1,534,113
AR	422,768	472,940	13,421	7,358	2,781	2,513	921,781
CA	5,861,203	4,567,429	418,707	44,987	45,520	28,010	10,965,856
CO	738,227	883,745	91,434	10,465	12,799	4,695	1,741,365
CT	816,015	561,094	64,452	4,731	3,484	9,749	1,459,525
DE	180,068	137,288	8,307	777	774	408	327,622
DC	171,923	18,073	10,576	0	669	653	201,894
FL	2,912,253	2,912,790	97,488	17,484	16,415	6,680	5,963,110
GA	1,116,230	1,419,720	13,432	10,926	36,332	164	2,596,804
HI	205,286	137,845	21,623	1,071	1,477	649	367,951
ID	138,637	336,937	12,292	7,615	3,488	2,652	501,621
IL	2,589,026	2,019,421	103,759	16,106	11,623	2,188	4,742,123
IN	901,980	1,245,836	18,531	16,959	15,530	466	2,199,302
IA	638,517	634,373	29,374	5,731	3,209	4,359	1,315,563
KS	399,276	622,332	36,086	7,370	4,525	2,627	1,072,216
KY	638,898	872,492	23,192	4,173	2,896	2,536	1,544,187
LA	792,344	927,871	20,473	14,356	2,951	7,661	1,765,656
ME	319,951	286,616	37,127	4,443	3,074	606	651,817
MD	1,145,782	813,797	53,768	4,248	5,310	2,575	2,025,480
MA	1,616,487	878,502	173,564	11,149	16,366	6,916	2,702,984
MI	2,170,418	1,953,139	84,165	2,061	16,711	6,217	4,232,711
MN	1,168,266	1,109,659	126,696	22,166	5,282	6,616	2,438,685
MS	404,964	573,230	8,126	2,267	2,009	4,330	994,926
MO	1,111,138	1,189,924	38,515	9,818	7,436	3,061	2,359,892
MT	137,126	240,178	24,437	5,697	1,718	1,841	410,997
NE	231,780	433,862	24,540	3,646	2,245	946	697,019
NV	279,978	301,575	15,008	4,747	3,311	4,351	608,970
NH	266,348	273,559	22,198	2,615	2,757	1,604	569,081
NJ	1,788,850	1,284,173	94,554	6,989	6,312	6,348	3,187,226
NM	286,783	286,417	21,251	1,392	2,058	704	598,605
NY	4,107,907	2,403,374	244,060	31,703	7,702	27,922	6,822,668
NC	1,257,692	1,631,163	0	8,874	12,307	1,226	2,911,262
ND	95,284	174,852	9,497	7,288	671	675	288,267
OH	2,186,190	2,351,209	117,857	26,724	13,475	10,002	4,705,457
OK	474,276	744,337	0	9,014	6,602	0	1,234,229
OR	720,342	713,577	77,357	7,063	7,447	8,182	1,533,968
PA	2,485,967	2,281,127	103,392	16,023	11,248	15,362	4,913,119
RI	249,508	130,555	25,052	2,273	742	982	409,112
SC	566,039	786,426	20,279	3,520	4,888	2,625	1,383,777
SD	118,804	190,700	0	3,322	1,662	1,781	316,269
TN	981,720	1,061,949	19,781	4,250	4,284	4,197	2,076,181
TX	2,433,746	3,799,639	137,994	12,394	23,160	704	6,407,637
UT	203,053	515,096	35,850	9,319	3,616	3,820	770,754
VT	149,022	119,775	20,374	2,192	784	2,161	294,308
VA	1,217,290	1,437,490	59,398	5,455	15,198	4,616	2,739,447
WA	1,247,652	1,108,864	103,002	7,171	13,135	8,921	2,488,745
WV	295,497	336,475	10,680	3,169	1,912	391	648,124
WI	1,242,987	1,237,279	94,070	11,471	6,640	6,160	2,598,607
WY	60,481	147,947	4,625	2,724	1,443	1,131	218,351
Total	51,003,926	50,460,110	2,883,105	449,225	384,516	236,593	105,417,475

Table 4.4 2000 election under the Lodge-Gossett fractional-proportional method

State	Gore	Bush	Nader	Buchanan	Browne	All others	EV
AL	3.743	5.082	0.099	0.034	0.032	0.010	9
AK	0.830	1.759	0.302	0.055	0.028	0.027	3
AZ	3.574	4.076	0.238	0.065	0.000	0.047	8
AR	2.752	3.078	0.087	0.048	0.018	0.016	6
CA	28.863	22.492	2.062	0.222	0.224	0.138	54
CO	3.391	4.060	0.420	0.048	0.059	0.022	8
CT	4.473	3.075	0.353	0.026	0.019	0.053	8
DE	1.649	1.257	0.076	0.007	0.007	0.004	3
DC	2.555	0.269	0.157	0.000	0.010	0.010	3
FL	12.209	12.212	0.409	0.073	0.069	0.028	25
GA	5.588	7.107	0.067	0.055	0.182	0.001	13
HI	2.232	1.499	0.235	0.012	0.016	0.007	4
ID	1.106	2.687	0.098	0.061	0.028	0.021	4
IL	12.011	9.369	0.481	0.075	0.054	0.010	22
IN	4.921	6.798	0.101	0.093	0.085	0.003	12
IA	3.397	3.375	0.156	0.030	0.017	0.023	7
KS	2.234	3.482	0.202	0.041	0.025	0.015	6
KY	3.310	4.520	0.120	0.022	0.015	0.013	8
LA	4.039	4.730	0.104	0.073	0.015	0.039	9
ME	1.963	1.759	0.228	0.027	0.019	0.004	4
MD	5.657	4.018	0.265	0.021	0.026	0.013	10
MA	7.176	3.900	0.771	0.049	0.073	0.031	12
MI	9.230	8.306	0.358	0.009	0.071	0.026	18
MN	4.791	4.550	0.520	0.091	0.022	0.027	10
MS	2.849	4.033	0.057	0.016	0.014	0.030	7
MO	5.179	5.547	0.180	0.046	0.035	0.014	11
MT	1.001	1.753	0.178	0.042	0.013	0.013	3
NE	1.663	3.112	0.176	0.026	0.016	0.007	5
NV	1.839	1.981	0.099	0.031	0.022	0.029	4
NH	1.872	1.923	0.156	0.018	0.019	0.011	4
NJ	8.419	6.044	0.445	0.033	0.030	0.030	15
NM	2.395	2.392	0.178	0.012	0.017	0.006	5
NY	19.869	11.625	1.180	0.153	0.037	0.135	33
NC	6.048	7.844	0.000	0.043	0.059	0.006	14
ND	0.992	1.820	0.099	0.076	0.007	0.007	3
OH	9.757	10.493	0.526	0.119	0.060	0.045	21
OK	3.074	4.825	0.000	0.058	0.043	0.000	8
OR	3.287	3.256	0.353	0.032	0.034	0.037	7
PA	11.638	10.679	0.484	0.075	0.053	0.072	23
RI	2.440	1.276	0.245	0.022	0.007	0.010	4
SC	3.272	4.547	0.117	0.020	0.028	0.015	8
SD	1.127	1.809	0.000	0.032	0.016	0.017	3
TN	5.201	5.626	0.105	0.023	0.023	0.022	11
TX	12.154	18.976	0.689	0.062	0.116	0.004	32
UT	1.317	3.342	0.233	0.060	0.023	0.025	5
VT	1.519	1.221	0.208	0.022	0.008	0.022	3
VA	5.777	6.822	0.282	0.026	0.072	0.022	13
WA	5.514	4.901	0.455	0.032	0.058	0.039	11
WV	2.280	2.596	0.082	0.024	0.015	0.003	5
WI	5.262	5.237	0.398	0.049	0.028	0.026	11
WY	0.831	2.033	0.064	0.037	0.020	0.016	3
Total	258.271	259.170	14.898	2.425	1.985	1.251	538

Table 4.3 shows, by state, the results of the 2000 presidential election.

Table 4.4 shows the result of applying the Lodge-Gossett fractional-proportional method to the 2000 election returns.²⁴

Columns 2 through 7 of the table show, by state, the number of electoral votes that Gore, Bush, Nader, Buchanan, Browne, and “all others” would have received, respectively. Each candidate’s number of electoral votes is obtained by:

- dividing the candidate’s popular vote in the state by the total popular vote for President in that state,
- multiplying this quotient by the state’s number of electoral votes (found in column 8 of the table), and
- rounding the result off to three decimal places.

The bottom line of the table shows that Al Gore would have received 258.271 electoral votes, while George W. Bush would have received 259.170 electoral votes under the fractional-proportional method in 2000.

That is, the Lodge-Gossett version of the fractional-proportional system would have produced the same second-place President in 2000 as the current state-by-state winner-take-all method of awarding electoral votes.

Cannon amendment of 1969

Similarly, the Cannon version of the fractional-proportional method would have produced the same second-place President in 2000.

Engel amendment with 5% threshold in 2001

The Engel version of the fractional-proportional system would have required that a candidate receive at least 5% of a state’s votes in order to share in the state’s electoral votes.²⁵

In 2000, third-party candidates received the following percentages of the national popular vote for President:

- Ralph Nader—2.73%
- Pat Buchanan—0.43%
- Harry Browne—0.36%
- 11 other candidates—0.22%

Moreover, none of these minor-party candidates received 5% of the popular vote in any state. Therefore, all of their votes would have been extinguished, and none of them would have received any electoral votes under the Engel amendment.

²⁴ In this book, all hypothetical analyses of an alternative electoral system being applied to a past election are necessarily based on the election returns from the actual election conducted under the then-existing electoral system. The authors, of course, recognize that the campaigns would have been conducted differently if a different electoral system had been in effect. For example, George W. Bush led in the vast majority of national polls during most of 2000. That, in turn, suggests that Bush might well have won the national popular vote if the candidates had campaigned nationwide, instead of just in the battleground states.

²⁵ House Joint Resolution 17. 107th Congress. February 13, 2001. <https://www.congress.gov/bill/107th-congress/house-joint-resolution/17>

In particular, Ralph Nader, the minor-party candidate with the greatest support in 2000, would have received no electoral votes as a result of the 5% threshold, whereas he would have received 14,898 electoral votes under the original 1950 Lodge-Gossett proposal (table 4.4).

Table 4.5 shows, by state, the results of the fractional-proportional method with Engel's 5% threshold.

- Columns 2 and 3 show, by state, the number of popular votes received by Gore and Bush, respectively.
- Columns 4 and 5 show the electoral votes that Gore and Bush would have received under the fractional-proportional method with a 5% threshold. This number is obtained by:
 - dividing each candidate's popular vote in a state by the combined Bush–Gore vote in that state,
 - multiplying this quotient by the state's number of electoral votes (column 6), and
 - rounding the result off to three decimal places.

As can be seen in the table, even if all minor-party candidates had been excluded, George W. Bush would have received 269.231 electoral votes, while Gore would have received 268.769.

That is, the Engel version of the fractional-proportional system would have produced the same second-place President in 2000 as the current state-by-state winner-take-all method of awarding electoral votes.

Nationwide top-two version of the fractional-proportional plan

In describing the nationwide top-two version of the fractional-proportional plan, Kevin Johnson of the Election Reformers Network inaccurately asserted in *Governing* magazine that this approach would:

“make a second-place president extremely unlikely.”²⁶

Both versions of the top-two fractional-proportional method would have operated in the same way in 2000 as the Engel amendment (table 4.5), because Bush and Gore were the top-two candidates in every state as well as nationally.

Under both versions, George W. Bush would have received *more* electoral votes than Al Gore with either of the top-two variations. Thus, 2000 would have been a divergent election in which the candidate who became President did not win the most popular votes nationwide.

The Election Reformers Network attempts to dismiss this inconvenient outcome by arguing that their proposal might be further modified so as to give individual states the option to use ranked-choice voting (RCV).

Having given states this option, the Election Reformers Network then hypothesizes

²⁶ Johnson, Kevin. 2020. To Fix the Electoral College, Change the Way Its Votes Are Awarded. *Governing*. December 11, 2020. <https://www.governing.com/now/to-fix-the-electoral-college-change-the-way-its-votes-are-awarded.html>

Table 4.5 2000 election under the fractional-proportional method after exclusion of all minor-party candidates

State	Gore	Bush	Gore-EV	Bush-EV	EV
Alabama	695,602	944,409	3.817	5.183	9
Alaska	79,004	167,398	0.962	2.038	3
Arizona	685,341	781,652	3.737	4.263	8
Arkansas	422,768	472,940	2.832	3.168	6
California	5,861,203	4,567,429	30.350	23.650	54
Colorado	738,227	883,745	3.641	4.359	8
Connecticut	816,015	561,094	4.740	3.260	8
Delaware	180,068	137,288	1.702	1.298	3
D.C.	171,923	18,073	2.715	0.285	3
Florida	2,912,253	2,912,790	12.499	12.501	25
Georgia	1,116,230	1,419,720	5.722	7.278	13
Hawaii	205,286	137,845	2.393	1.607	4
Idaho	138,637	336,937	1.166	2.834	4
Illinois	2,589,026	2,019,421	12.360	9.640	22
Indiana	901,980	1,245,836	5.039	6.961	12
Iowa	638,517	634,373	3.511	3.489	7
Kansas	399,276	622,332	2.345	3.655	6
Kentucky	638,898	872,492	3.382	4.618	8
Louisiana	792,344	927,871	4.145	4.855	9
Maine	319,951	286,616	2.110	1.890	4
Maryland	1,145,782	813,797	5.847	4.153	10
Massachusetts	1,616,487	878,502	7.775	4.225	12
Michigan	2,170,418	1,953,139	9.474	8.526	18
Minnesota	1,168,266	1,109,659	5.129	4.871	10
Mississippi	404,964	573,230	2.898	4.102	7
Missouri	1,111,138	1,189,924	5.312	5.688	11
Montana	137,126	240,178	1.090	1.910	3
Nebraska	231,780	433,862	1.741	3.259	5
Nevada	279,978	301,575	1.926	2.074	4
New Hampshire	266,348	273,559	1.973	2.027	4
New Jersey	1,788,850	1,284,173	8.732	6.268	15
New Mexico	286,783	286,417	2.502	2.498	5
New York	4,107,907	2,403,374	20.819	12.181	33
North Carolina	1,257,692	1,631,163	6.095	7.905	14
North Dakota	95,284	174,852	1.058	1.942	3
Ohio	2,186,190	2,351,209	10.118	10.882	21
Oklahoma	474,276	744,337	3.114	4.886	8
Oregon	720,342	713,577	3.517	3.483	7
Pennsylvania	2,485,967	2,281,127	11.994	11.006	23
Rhode Island	249,508	130,555	2.626	1.374	4
South Carolina	566,039	786,426	3.348	4.652	8
South Dakota	118,804	190,700	1.152	1.848	3
Tennessee	981,720	1,061,949	5.284	5.716	11
Texas	2,433,746	3,799,639	12.494	19.506	32
Utah	203,053	515,096	1.414	3.586	5
Vermont	149,022	119,775	1.663	1.337	3
Virginia	1,217,290	1,437,490	5.961	7.039	13
Washington	1,247,652	1,108,864	5.824	5.176	11
West Virginia	295,497	336,475	2.338	2.662	5
Wisconsin	1,242,987	1,237,279	5.513	5.487	11
Wyoming	60,481	147,947	0.871	2.129	3
Total	51,003,926	50,460,110	268.769	269.231	538

that Nader's two best states (California and New York) enacted RCV in 2000. The use of RCV in those two particular states would have extinguished Nader's fractional electoral votes from those two states. As a result, Nader's fractional electoral votes would have then ended up with Gore and Bush in the final round of RCV tabulation. After Nader's electoral votes are zeroed out, Gore would just barely overtake Bush. Election Reformers Network then proclaims:

“Gore wins in a 2000 scenario with RCV incorporated in only 2 states.”²⁷

However, after-the-fact adjusting of the voting laws of *two selected states* cannot be used to dismiss inconvenient historical data.

If it were, apologists for the current winner-take-all system would be entitled to dismiss the outcome of the 2000 election by saying that Gore would have become President if RCV had been in use in just *one selected state*—Florida.²⁸

State-level top-two version of the fractional-proportional method

The state-level top-two version of the fractional-proportional system would have produced the same second-place President in 2000 as the nationwide top-two version, because Bush and Gore were the top-two candidates in every state.

4.1.6. The fractional-proportional method would not make every vote equal.

The aim of democracy reformers since the Constitution was written in 1787 has been to achieve the goal stated in the Declaration of Independence:

“We hold these truths to be self-evident, that all men are created equal.”

It is thus appropriate to evaluate a proposed electoral reform in terms of whether it makes every vote equal.

Every vote would *not* be equal under any of the five proposed versions of the fractional-proportional method.

There are four significant sources of inequality built into this method, including a:

- 3.81-to-1 inequality in the value of a vote created by the two senatorial electoral votes that each state receives in addition to the number of electoral votes warranted by its population;
- 1.72-to-1 inequality in the value of a vote because of the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) among the states;
- 1.68-to-1 inequality in the value of a vote in favor of voters in low-turnout states; and

²⁷ See slide 10 of undated presentation that was accessed March 10, 2024. Election Reformers Network. *The Top-two Proportional Approach to Fixing the Electoral College*. https://assets-global.website-files.com/642dbc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

²⁸ Ralph Nader received 97,488 popular votes in Florida in 2000, while George W. Bush's margin of victory in the state was a mere 537 votes. If RCV had been the law in Florida in 2000, it is a certainty that Gore would have overcome Bush's 537-vote lead after these 97,488 ballots were redistributed according to the second choices of Nader supporters.

- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census.

The magnitude of the inequalities built into the fractional-proportional method can be appreciated by comparing them with the considerably smaller inequalities that courts tolerate when reviewing the constitutionality of congressional, state, and local legislative districts.

The largest allowed deviation in population between congressional districts in the same state after the 2010 census was 0.76%—that is an inequality of 1.0076-to-1.²⁹ Deviations of up to 10% (that is, 1.1-to-1) are generally allowed in state legislative redistricting.³⁰

Moreover, because the fractional-proportional method must necessarily be enacted in the form of a federal constitutional amendment, these four inequalities would be constitutionally enshrined.

Inequality because of the two senatorial electoral votes

First, each state receives two senatorial electoral votes above and beyond the number of electoral votes warranted by its population.

As a result, a vote cast in a large state has less weight than a vote cast in a small state under the fractional-proportional method of awarding electoral votes.

For example, Wyoming (with a population of 576,851 according to the 2020 census) has three electoral votes in the 2024 and 2028 presidential elections, whereas California (population 39,538,223) has 54 electoral votes.

Thus, there is one presidential elector for every 192,283 people in Wyoming, compared to one for every 732,189 people in California.

That is, the ratio of the number of persons per electoral vote for California to that of Wyoming is 3.81-to-1 (table 1.34).

Inequality because of imprecision of the process of apportioning U.S. House seats

Second, the imprecision of the process of apportioning U.S. House seats (and hence electoral votes) introduces significant inequalities in the value of a vote under the fractional-proportional method.

The Constitution specifies that seats in the U.S. House of Representatives are to be apportioned among the states on the basis of population. That process is governed by a mathematical formula known as the “method of equal proportions” specified by a 1941 federal law.³¹

However, because so few seats (435) must be distributed over so many states (50), the process of apportioning House seats—and hence electoral votes—introduces significant differences among the states in the number of people per congressional district.

²⁹ National Conference of State Legislatures. 2012. 2010 Redistricting Table. <https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>

³⁰ Spencer, Doug. 2022. Equal Population. *Prof. Justin Levitt's Doug Spencer's Guide to Drawing Electoral Lines*. Accessed September 4, 2022. <https://redistricting.lls.edu/redistricting-101/where-are-the-lines-drawn>

³¹ U.S. Census Bureau. 2021. *Computing Apportionment*. March 1, 2021. <https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html>.

As a result, even among states possessing the *same* number of House seats (and therefore the *same* number of electoral votes), a vote in some states will have considerably less weight than a vote cast in another state.

The impact of these rough approximations is illustrated by the seven jurisdictions with three electoral votes.

For example, one electoral vote corresponds to 329,983 people in Delaware, but only 192,284 in Wyoming—a 1.72-to-1 variation in the value of a vote (table 1.35).

Similar disparities exist among states in every other cohort of states with the same number of electoral votes (section 1.4.2).

Inequality because of voter-turnout differences

Third, a voter in a low-turnout state has greater voting power under the fractional-proportional method than a voter in a high-turnout state.

Differences in voter turnout at the state level create variations of up to 1.67-to-1 in the value of a vote under the fractional-proportional method (table 1.41).

Inequalities because of population changes occurring during the decade after each census

Fourth, the value of a voter's vote in a fast-growing state declines from year to year, because a state's number of electoral votes is only adjusted every 10 years.

This inequality is relatively small for a presidential election held in the second year of a decade. However, it typically grows as the decade progresses. It is especially large when a presidential election occurs at the end of a decade—such as 2000 and 2020. In such end-of-decade elections, the allocation of electoral votes among the states is based on 10-year-old population data.

These differences create variations of up to 1.39-to-1 in the value of a vote under the fractional-proportional method (table 1.40).

4.1.7. The fractional-proportional method would make every voter in every state politically relevant.

All five versions of the fractional-proportional method would remedy one of the major shortcomings of the current system, namely that three out of four states and 70% of the voters in the United States are ignored in the general-election campaign for President.

In 1949 testimony, Texas Representative Ed Gossett, noted the distorting effects of the current state-by-state winner-take-all method of awarding electoral votes:

“The Electoral College confines and largely restricts national campaigns to a half-dozen pivotal States. The national campaign committees and the political strategists of both parties sit down with a map of the Nation and decide where to do their work and where to spend their money.”³² [Emphasis added]

³² Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Page 11. <https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&seq=21>

He added:

“Most of our citizens outside of the great pivotal states never see a presidential candidate or a campaign speaker, and never hear a campaign speech except by radio. Neither the platforms nor the speeches are designed to appeal to them.

“Furthermore, **millions in these areas refrain from voting** in general elections, knowing that to do so is futile, since their votes will have no bearing on results.”³³ [Emphasis added]

Because electoral votes would be calculated to three decimal places, candidates would have something to gain or lose everywhere in the country and therefore have a compelling reason to campaign in every state.

For example, 324 popular votes would have corresponded to 0.001 of an electoral vote in the nation’s largest state (California) in 2020 under the fractional-proportional method.

In the nation’s smallest state (Wyoming), a candidate could earn an additional 0.001 electoral vote by winning 92 additional popular votes.³⁴

Under the current winner-take-all method of awarding electoral votes, votes for President in California and Wyoming are politically equal—both are irrelevant in presidential elections.

Although the value of a vote would vary significantly between California and Wyoming under the fractional-proportional method, candidates would nonetheless have reason to campaign in both states.

4.1.8. None of the five versions of the fractional-proportional method eliminates the partisan political advantage created by the inclusion of non-citizens in the census.

Professor George C. Edwards III pointed out in his seminal book *Why the Electoral College Is Bad for America*:

“Representation in the House is based on the decennial census, which counts all residents—whether citizens or not. States such as California, Florida, and New York where non-citizens compose a larger percentage of the population receive more electoral votes than they would if electoral votes were allocated on the basis of the number of a state’s citizens.”³⁵

³³ Hearings before Subcommittee No. 1 of the Committee on the Judiciary, United States House of Representatives, 81st Congress, 1949. Page 18. <https://babel.hathitrust.org/cgi/pt?id=pst.000045412301&view=1up&eq=21>

³⁴ Note that if the fractional calculation to a fourth decimal place, a candidate could earn an additional 0.0001 electoral vote by winning 32 additional popular votes in California and 9 additional popular votes in Wyoming.

³⁵ Edwards, George C., III. 2011. *Why the Electoral College Is Bad for America*. New Haven, CT: Yale University Press. Second edition. Page 46.

It is true that non-citizens (whether legal residents or undocumented persons) cannot vote in presidential elections under federal law.

Nonetheless, non-citizens significantly impact presidential elections, because they amplify the vote of citizens in the states where they reside.

In an interview with Elon Musk on March 18, 2024, Don Lemon said:

“[Concerning] President Biden’s immigration plan to open up the border ... you said that the President ... and the Democrats are doing it to get more votes.”³⁶

Elon Musk responded:

“The more that come into the country, the more that are likely to vote in that direction. It is, in my view, a simple incentive to increase Democratic voters.”

“The census is based on all people in an area, whether they are citizens or not. So, if there is a concentration of people who came here illegally in a particular state, that state will actually then get an increased number of House seats. So, the House seat apportionment is proportionate to the number of people, not the number of citizens. ... The illegals overwhelmingly go to places like California or New York. And, if you just look at the math, if you look at the apportionment with, and without illegals, I believe ... there would be a net loss of blue states of approximately 20 seats in the House. This also applies to the Electoral College. This also applies to electing the President, because the electoral votes are also done by apportionment the same way that House seats are done.”

“If, as is the case, a disproportionate number of illegal immigrants go to blue states, they amplify the effect of a blue state vote. ... The Democrats would lose approximately 20 seats in the House if illegals were not counted in the census, and that’s also 20 less electoral votes for President. So, illegals absolutely affect who controls the House and who controls the presidency.”³⁷

The U.S. Constitution requires that the census be used to determine each state’s number of seats in the U.S. House of Representatives. Each state receives a number of electoral votes equal to the state’s number of Representatives plus two (representing the state’s two U.S. Senators).

The Constitution specifies that the census count all “persons,” thereby including non-citizens living in the United States in the count:

“Representatives ... shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free **Persons**, including

³⁶ Don Lemon Interview of Elon Musk. *YouTube*. March 18, 2024. Timestamp: 23:20 <https://www.youtube.com/watch?v=hhsfjBpKiTw&t=1399s>

³⁷ *Ibid.* Timestamp: 24:00. <https://www.youtube.com/watch?v=hhsfjBpKiTw&t=1399s>

those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”^{38,39} [Emphasis added]

The Census Bureau uses a mathematical formula (specified by a federal statute adopted in 1941) known as the “method of equal proportions” to apportion seats in the U.S. House of Representatives automatically among the states.⁴⁰

A state with a disproportionately large number of non-citizens (relative to other states) acquires additional U.S. House seats and, hence, additional electoral votes.

Because of the winner-take-all rule, *legal* voters in a state that acquired additional electoral votes by virtue of the disproportionate presence of non-citizens control the disposition of an enlarged bloc of electoral votes to the candidate receiving the most popular votes in their state.

That is, the voting power of the *legal* voters is increased because of the presence of non-citizens in their state.

Professor Leonard Steinhorn of American University has computed the effect of non-citizens on presidential elections. He applied the statutory formula to apportion U.S. House seats among the states to data on the number of citizens and non-citizens in each state from the American Community Survey.⁴¹

In a 2012 article entitled “Without Voting, Noncitizens Could Swing the Election for Obama,” Steinhorn found that non-citizens affected the number of electoral votes possessed by 15 states.

Five states gained between one and five electoral votes, and 10 states each lost one electoral vote because of non-citizens.

Overall, the Democrats had a built-in net advantage of 10 electoral votes in the 2012, 2016, and 2020 presidential elections from the 15 states whose representation was affected by the counting of non-citizens in allocating electoral votes among the states.

Specifically, Democratic non-battleground states gained seven electoral votes from the following states:

- +5 for California
- +1 for New York
- +1 for Washington.

³⁸ U.S. Constitution. Article I, section 2, clause 3. The provisions concerning indentured servants, “Indians not taxed,” and slaves (“other persons”) are not applicable today.

³⁹ No doubt, the reason why the Constitution specified that the census would count “persons,” instead of trying to count eligible voters, was that the states had complicated and widely varying criteria for voter eligibility in 1787. In most states, eligibility depended on property, wealth, and/or income. Moreover, the requirements for voting were often more stringent for the upper house of the state legislature, as compared to the lower house.

⁴⁰ U.S. Census Bureau. 2021. Computing Apportionment. March 1, 2021. <https://www.census.gov/topics/public-sector/congressional-apportionment/about/computing.html>. The U.S. Supreme Court upheld the constitutionality of the “method of equal proportions” in 1992 in *Department of Commerce v. Montana* (112 S.Ct. 1415) and *Franklin v. Massachusetts* (112 S.Ct. 2767).

⁴¹ Steinhorn, Leonard. Without voting, noncitizens could swing the election for Obama. *Washington Post*. October 5, 2012.

Republican non-battleground states lost a net of three electoral votes from the following states:

- +2 for Texas
- -1 for Indiana
- -1 for Missouri
- -1 for Louisiana
- -1 for Montana
- -1 for Oklahoma.

Six states that were presidential battlegrounds in the 2012, 2016, and 2020 elections were also affected. However, battleground states can, by definition, go either way in a presidential election. Thus, the following states did not constitute a systemic advantage to either party at the time:

- +1 Florida
- -1 for Iowa
- -1 for Michigan
- -1 for North Carolina
- -1 for Ohio
- -1 for Pennsylvania.

In December 2019, the Center for Immigration Studies issued a projection of the likely effect of non-citizens on the allocation of electoral votes in the 2024 and 2028 presidential elections.

Excluding U.S.-born minor children (who are U.S. citizens under provisions of the 14th Amendment), the study projected:

“Counting only immigrants themselves (naturalized citizens, legal permanent residents, guest workers, foreign students and illegal aliens), but not their U.S.-born minor children, will redistribute 18 seats in the House in 2020.”^{42,43}

The National Popular Vote Compact and the direct election constitutional amendment (section 4.7) would eliminate the distortion in presidential elections caused by the disproportionate presence of non-citizens in certain states. These proposals would equalize the vote of every legal voter in the country by guaranteeing the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia.

⁴² Camarota, Steven A. and Zeigler, Karen. 2019. The Impact of Legal and Illegal Immigration on the Apportionment of Seats in the U.S. House of Representatives in 2020. Center for Immigration Studies. December 2019. <https://cis.org/Report/Impact-Legal-and-Illegal-Immigration-Apportionment-Seats-US-House-Representatives-2020>.

⁴³ Dorman, Sam. 2019. LBJ-era immigration changes skewed political power toward Dems, away from GOP: study. Fox News. December 24, 2019. <https://www.foxnews.com/politics/study-immigration-electoral-college-house-2020>

4.1.9. The spoiler effect would not be eliminated by the top-two fractional-proportional method.

Kevin Johnson of the Election Reformers Network has claimed:

“This [top-two fractional-proportional] approach would also drastically reduce the ‘spoiler’ problem: A few percentage points to a Libertarian or Green Party candidate would no longer potentially swing [the outcome].”⁴⁴

Advocates of the top-two fractional-proportional method specifically cite the 1992 election involving Bill Clinton, George H.W. Bush, and Ross Perot as demonstrating:

“Proportional allocation significantly reduces the impact of a ‘spoiler candidate.’”⁴⁵

In fact, the fractional-proportional (Lodge-Gossett) approach alone, the top-two method alone, and the top-two fractional-proportional method would do nothing at all to ameliorate the spoiler effect.

The spoiler effect can, however, be ameliorated with ranked choice voting (RCV). Indeed, RCV would also ameliorate the spoiler effect if it were included in the direct election amendment (section 4.7) and the current state-by-state winner-take all method of awarding electoral votes. However, it would be RCV—not the fractional-proportional method—that would be doing the ameliorating.

To disentangle the role played by the top-two fractional-proportional method versus the role played by RCV, let’s examine the 1992 Clinton-Bush-Perot race.

The 1992 election returns were as follows:

- Bill Clinton—44,909,806
- George H.W. Bush—39,104,550
- Ross Perot—19,743,821
- All others—665,816⁴⁶

The state-by-state returns for the 1992 election are shown in table 4.32 later in this chapter.

Table 4.6 shows the number of electoral votes under the fractional-proportional method for Bill Clinton, George H.W. Bush, Ross Perot and all other candidates—before considering the effect of either RCV or top-two.

Ross Perot was a highly successful Republican Texas businessman known for his hawkish views on foreign policy and fiscal conservatism. When he ran for President in 1992 as an independent candidate, budget deficits and foreign-trade imbalances were prominent

⁴⁴ Johnson, Kevin. 2020. To Fix the Electoral College, Change the Way Its Votes Are Awarded. *Governing*. December 11, 2020. <https://www.governing.com/now/to-fix-the-electoral-college-change-the-way-its-votes-are-awarded.html>

⁴⁵ See slide 10 in Election Reformers Network. 2021. *The Top-two Proportional Approach to Fixing the Electoral College*. January 2021. <https://electionreformers.org/wp-content/uploads/2022/01/The-proportional-allocation-approach-to-fixing-the-electoral-college-Jan-2021.pdf> Accessed October 18, 2022.

⁴⁶ The total national popular vote for President in 1992 was 104,423,993. This total included 665,816 popular votes scattered among 20 additional candidates (most of whom were on the ballot in only one state or just a few states), various write-in candidates, and votes cast in Nevada for “none of the above.”

Table 4.6 Fractional-proportional method in 1992

State	Clinton	Bush	Perot	Others	EV
AL	3.679	4.288	0.976	0.056	9
AK	0.909	1.184	0.853	0.055	3
AZ	2.922	3.078	1.903	0.098	8
AR	3.192	2.129	0.626	0.053	6
CA	24.844	17.612	11.138	0.407	54
CO	3.210	2.870	1.866	0.054	8
CT	3.377	2.862	1.726	0.034	8
DE	1.306	1.060	0.613	0.021	3
DC	2.539	0.273	0.128	0.060	3
FL	9.750	10.224	4.954	0.072	25
GA	5.651	5.574	1.734	0.041	13
HI	1.924	1.468	0.569	0.040	4
ID	1.137	1.681	1.082	0.100	4
IL	10.688	7.554	3.662	0.097	22
IN	4.415	5.149	2.373	0.063	12
IA	3.030	2.609	1.310	0.051	7
KS	2.024	2.333	1.619	0.023	6
KY	3.564	3.307	1.093	0.036	8
LA	4.103	3.687	1.063	0.147	9
ME	1.551	1.216	1.217	0.016	4
MD	4.980	3.562	1.418	0.040	10
MA	5.705	3.483	2.736	0.076	12
MI	7.879	6.548	3.473	0.100	18
MN	4.348	3.185	2.396	0.071	10
MS	2.854	3.478	0.610	0.058	7
MO	4.848	3.731	2.386	0.034	11
MT	1.129	1.054	0.783	0.034	3
NE	1.470	2.329	1.181	0.020	5
NV	1.494	1.389	1.047	0.069	4
NH	1.556	1.508	0.903	0.032	4
NJ	6.443	6.087	2.341	0.129	15
NM	2.295	1.867	0.806	0.032	5
NY	16.409	11.179	5.196	0.215	33
NC	5.971	6.082	1.918	0.028	14
ND	0.966	1.326	0.692	0.016	3
OH	8.438	8.053	4.406	0.103	21
OK	2.722	3.412	1.841	0.026	8
OR	2.974	2.277	1.695	0.055	7
PA	10.384	8.309	4.186	0.121	23
RI	1.881	1.161	0.927	0.031	4
SC	3.190	3.842	0.924	0.044	8
SD	1.114	1.220	0.654	0.012	3
TN	5.179	4.668	1.109	0.044	11
TX	11.865	12.979	7.045	0.111	32
UT	1.233	2.168	1.367	0.233	5
VT	1.383	0.913	0.683	0.021	3
VA	5.277	5.846	1.771	0.106	13
WA	4.775	3.516	2.605	0.103	11
WV	2.421	1.770	0.796	0.014	5
WI	4.524	4.045	2.366	0.064	11
WY	1.023	1.191	0.769	0.017	3
Total	230.547	202.334	101.537	3.582	538

components of his platform. That is, the most prominent elements of Perot’s persona were Republican.

Most (albeit not all) political observers have concluded that Perot took far more votes from the Republican incumbent President George H.W. Bush than from Clinton—that is, Perot acted as a spoiler who helped Clinton win.

For the sake of argument here, let’s accept that prevailing view so that we can disentangle the role played by the top-two fractional-proportional method versus the role played by RCV.

Because Perot came in third nationally, he would have received no electoral votes under the *nationwide* top-two fractional-proportional method.

Thus, the nationwide version of the top-two fractional-proportional method would not have protected Bush from the spoiler—because Perot’s 19,743,821 voters had *already given* their votes to him. Therefore, this huge Republican-tilted bloc of voters would not have been available to help Bush in his match-up with Clinton.

In other words, the top-two rule would have eliminated the spoiler (Perot)—but not the damaging and decisive impact that the spoiler had on Bush.

The results would have been almost the same under the *state-level* top-two fractional-proportional method. Because Perot came in second in two states, he would have received 1.217 electoral votes from Maine and 1.367 electoral votes from Utah. Nonetheless, the overall result would have been the same—very few of Perot’s huge bloc of votes would have been available to help Bush in his final match-up with Clinton.

It is definitely true that RCV is an excellent way to ameliorate the spoiler problem. If every state were constitutionally required to use RCV in conjunction with the top-two fractional-proportional system, Bush would have received the lion’s share of the second choices made by Perot’s voters (under either the nationwide or state level version), and thus Bush would have emerged as the national winner. However, as will be discussed in the next section, any attempt to incorporate universal use of RCV in a federal constitutional amendment would almost certainly prevent its ratification by three-quarters of the states.

4.1.10. Prospects of adoption for the fractional-proportional method

The fractional-proportional method:

- *would not* accurately reflect the nationwide popular vote,
- *would not* make every vote equal, but
- *would* improve upon the current state-by-state winner-take-all method of awarding electoral votes in which three out of four states and about 70% of the voters in the United States are ignored in the general-election campaign for President.

The fractional-proportional method has the very desirable feature of giving candidates a need to solicit the votes of every voter, in every state, in every presidential election.

However, the fractional-proportional method does not eliminate the most conspicuous shortcoming of the current system from the point-of-view of the general public, namely that the second-place candidate can become President.

If the fractional-proportional method is applied to the 2000 election returns, it would

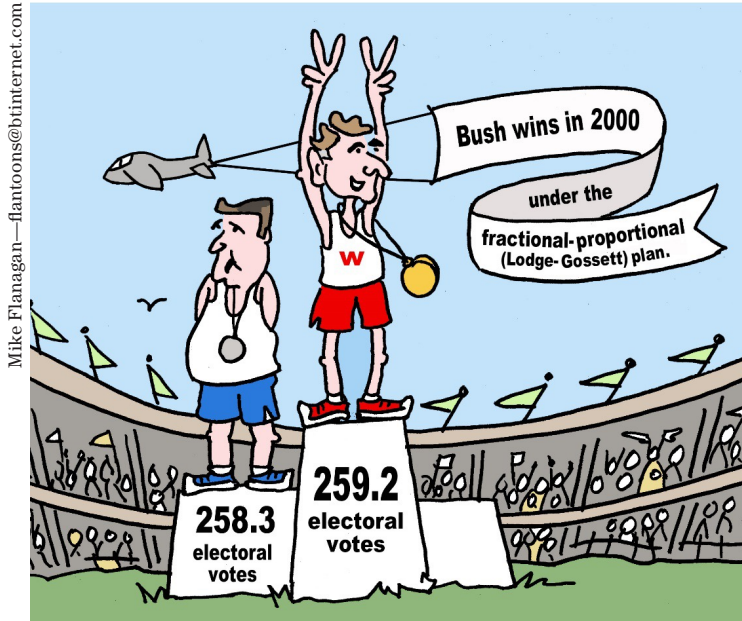


Figure 4.1 George W. Bush would have won under the fractional-proportional method in 2000.

have elected George W. Bush, despite the fact that his opponent received 543,816 more popular votes nationwide, as shown in figure 4.1.

In fact, all five proposed versions of the fractional-proportional method discussed in this chapter would have elected George W. Bush in 2000, including:

- the original 1950 Lodge-Gossett amendment,
- the 1969 Cannon amendment,
- the 2001 Engel amendment that would give electoral votes only to candidates receiving 5% or more of the popular vote,
- the version that would give electoral votes only to the top-two candidates *nationally*, and
- the version that would give electoral votes only to *each state's* top-two candidates.

Moreover, the fractional-proportional method would fail to eliminate any of the four sources of inequality in the value of a vote caused by senatorial electors, imprecision in apportionment of electoral votes among the states, uneven voter turnout, and intra-decade population changes.

In fact, the fractional-proportional method would make these inequalities dramatically worse, because it would convert the *theoretical* advantage conferred by the senatorial electors onto the small states into an *actual* political advantage.

Under the current winner-take-all method of awarding electoral votes, presidential candidates have nothing to gain or lose by campaigning in a state whose outcome is a fore-

gone conclusion. Thus, the theoretically greater value of a vote in smaller states is negated, because almost all of the small states are one-party states in presidential elections. Specifically, only two of the 28 smallest states (Nevada and New Hampshire) are places where the 2024 presidential candidates will campaign.⁴⁷

Thus, the 3.81-to-1 theoretical advantage of a Wyoming voter over a California voter does not currently translate into any real-world clout in favor of Wyoming under the current winner-take-all system, because presidential candidates pay no attention to voters in either state. In a practical political sense, a Wyoming voter is currently equal to a California voter—both are politically irrelevant in the general election campaign for President under the winner-take-all system.

In fact, a voter in 26 of the 28 smallest states is currently as politically irrelevant as a California voter, because the winner-take-all rule causes presidential candidates to ignore all of them.

However, the fractional-proportional method would dramatically change that. Fractional electoral votes would be added together on a nationwide basis, thus converting a Wyoming voter's *theoretical* 3.81-to-1 advantage into an *actual* 3.81-to-1 advantage. Voters in all of the 28 smallest states would instantly become the most avidly courted voters in the country in every presidential election. They would suddenly matter.

In fact, under the fractional-proportional method, the value of vote of 261 million people in 22 states (79% of the U.S. population) would be less than a third of the value of a vote in Wyoming (as shown in figure 4.2).

Table 4.7 shows the value of a vote under the fractional-proportional method, compared to the value of a vote in the smallest state (Wyoming). The combined population of the 28 smallest states (at the top of the table) is 70,022,053 (21% of the U.S. population of 331,449,281). The combined population of the 22 states at the bottom of the table (in bold) is 261,427,228 (79% of the population).⁴⁸

The political effect of the fractional-proportional method would be to substantially enhance the influence of the 28 smallest states (which already enjoy outsized influence in the federal government because of their constitutionally entrenched position in the U.S. Senate and in ratifying constitutional amendments).

The 261 million people in the 22 states whose votes would be worth less than a third of a vote in Wyoming may have something to say about that. They are represented by 341 of the 435 members of the U.S. House (that is, 78%).

A constitutional amendment that devalues voters represented by three-quarters of the House is hardly likely to ever be approved by two-thirds of the House.

That fact alone means that none of the five versions of the fractional-proportional method is ever likely to become part of the U.S. Constitution.

Indeed, several weeks after the U.S. Senate passed the Lodge-Gossett amendment by a 64–27 vote in 1950, more than two-thirds of the House voted against it.

⁴⁷ One of the 14 smallest states (New Hampshire) has been a battleground state in earlier elections, although it ended up in the Democratic column in seven of the eight elections between 1992 and 2020. That is, New Hampshire was a “battleground” state, but not a “swing” state.

⁴⁸ Table 1.34 is similar to this table, except that the comparison is made in terms of persons per electoral votes.

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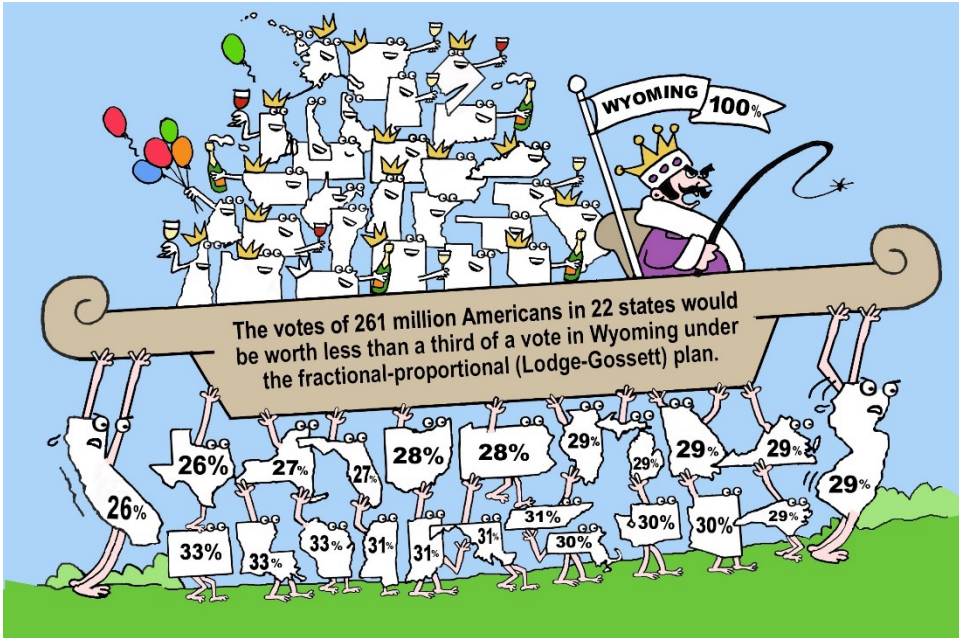


Figure 4.2 The value of the vote of 79% of Americans would be less than a third of that of Wyoming.

The fractional-proportional method does not appeal to two of the natural constituencies for electoral reform.

Much of the political energy behind efforts to reform presidential elections comes from democracy advocates who want every voter to have an equal voice.

The fractional-proportional method fails to deliver this.

As the Making Every Vote Count Foundation observes in its 2023 report *Improving Our Electoral College System*, the fractional-proportional method:

“would retain ... the greater weight given to smaller states under the Electoral College. As a result, [it] **could also be criticized by progressives for failing to adhere fully to the principle of all votes counting equally.**”⁴⁹ [Emphasis added]

The Election Reformers Network dismisses the fact that every vote would not be equal under the top-two fractional-proportional method, saying:

“Top-two proportional has something for everyone to like.”

⁴⁹ Making Every Vote Count Foundation. 2023. *Improving Our Electoral College System*. November 2023. Page 7. <https://static1.squarespace.com/static/5a7b7d95b7411c2b69bd666f/t/65b979baf7e8e411b2864a40/1706654139098/MEVC+Report.pdf>

Table 4.7 Value of a vote under the fractional-proportional method, compared to the value of a vote in the smallest state

State	2020 population	Electoral votes 2024–2028	Persons per electoral vote	Value of vote compared to smallest state
Wyoming	576,851	3	192,284	100%
Vermont	643,077	3	214,359	90%
D.C.	689,545	3	229,848	84%
Alaska	733,391	3	244,464	79%
North Dakota	779,094	3	259,698	74%
Montana	1,084,225	4	271,056	71%
Rhode Island	1,097,379	4	274,345	70%
South Dakota	886,667	3	295,556	65%
Delaware	989,948	3	329,983	58%
Maine	1,362,359	4	340,590	56%
New Hampshire	1,377,529	4	344,382	56%
Hawaii	1,455,271	4	363,818	53%
Nebraska	1,961,504	5	392,301	49%
New Mexico	2,117,522	5	423,504	45%
West Virginia	1,793,716	4	448,429	43%
Idaho	1,839,106	4	459,777	42%
Kansas	2,937,880	6	489,647	39%
Mississippi	2,961,279	6	493,547	39%
Arkansas	3,011,524	6	501,921	38%
Connecticut	3,605,944	7	515,135	37%
Nevada	3,104,614	6	517,436	37%
Oregon	4,237,256	8	529,657	36%
Iowa	3,190,369	6	531,728	36%
Utah	3,271,616	6	545,269	35%
Alabama	5,024,279	9	558,253	34%
Kentucky	4,505,836	8	563,230	34%
Oklahoma	3,959,353	7	565,622	34%
South Carolina	5,118,425	9	568,714	34%
Minnesota	5,706,494	10	570,649	34%
Colorado	5,773,714	10	577,371	33%
Louisiana	4,657,757	8	582,220	33%
Wisconsin	5,893,718	10	589,372	33%
Missouri	6,154,913	10	615,491	31%
Indiana	6,785,528	11	616,866	31%
Maryland	6,177,224	10	617,722	31%
Tennessee	6,910,840	11	628,258	31%
Massachusetts	7,029,917	11	639,083	30%
Washington	7,705,281	12	642,107	30%
Arizona	7,151,502	11	650,137	30%
North Carolina	10,439,388	16	652,462	29%
New Jersey	9,288,994	14	663,500	29%
Virginia	8,631,393	13	663,953	29%
Georgia	10,711,908	16	669,494	29%
Michigan	10,077,331	15	671,822	29%
Illinois	12,812,508	19	674,343	29%
Pennsylvania	13,002,700	19	684,353	28%
Ohio	11,799,448	17	694,085	28%
Florida	21,538,187	30	717,940	27%
New York	20,201,249	28	721,473	27%
Texas	29,145,505	40	728,638	26%
California	39,538,223	54	732,189	26%
Total	331,449,281	538	616,077	

“Democracy advocates:

- Fix all problems with the system **except making every vote equal.**⁵⁰
[Emphasis added]

One wonders what it means to be a “democracy advocate,” but not want to see “every vote equal.”

How can a proposal that would have elected the candidate who lost the nationwide popular vote by 543,816 votes in 2000 be said to “fix all problems”?

Another significant constituency for election reform comes from the growing number of independent voters and third-party supporters seeking more choice than is currently offered by the two dominant political parties.

However, the top-two rule as well as Engel’s 5% threshold further entrench the two currently existing major parties.

A proposal that fails to appeal to the natural constituencies for political reform seems unlikely to ever pass two-thirds of both houses of Congress and 38 state legislatures.

The claim that the Republican Party will support the fractional-proportional method because small states give them a political advantage is not based on political reality.

In his 2024 book, Nick Troiano claims that the over-representation of small states would generate Republican support for the top-two fractional-proportional method:

“**As Republicans desire**, it maintains the Electoral College as an institution that ensures national elections are still state-based and ensures that **smaller states can still wield influence** by continuing to award at least three electoral votes per states, regardless of population.”⁵¹ [Emphasis added]

However, this claim is based on a widespread misconception, namely that the small states deliver a partisan political advantage to the Republican Party in presidential elections.

Table 4.8 shows the political facts—namely that the 14 smallest states (those with three or four electoral votes) were divided 7–7 in the five presidential elections between 2004 and 2020.^{52,53}

⁵⁰ Slide 14 of a presentation with no date that was accessed March 10, 2024. Election Reformers Network. *The Top-Two Proportional Approach to Fixing the Electoral College*. https://assets-global.website-files.com/642dc53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

⁵¹ Troiano, Nick. 2024. *The Primary Solution: Rescuing Our Democracy from the Fringes*. Page 200. New York, NY: Simon & Shuster.

⁵² Note that there are 14 states that currently have three or four electoral votes, but that one of them (West Virginia) had five electoral votes before the 2020 census.

⁵³ The table shows which party’s presidential candidate won statewide. Note, however, that Maine awards two of its four electoral votes by congressional district. In 2016 and 2020, Donald Trump won one of Maine’s district-level electoral votes by carrying the state’s 2nd congressional district, while the Democratic nominee won the state as a whole as well as the 1st district.

Table 4.8 Statewide winner of 14 smallest states 2004–2020

State	2004	2008	2012	2016	2020	Total
Delaware	D	D	D	D	D	
District of Columbia	D	D	D	D	D	
Hawaii	D	D	D	D	D	
Maine	D	D	D	D	D	
Rhode Island	D	D	D	D	D	
Vermont	D	D	D	D	D	
New Hampshire	D	D	D	D	D	
Montana	R	R	R	R	R	
Alaska	R	R	R	R	R	
Idaho	R	R	R	R	R	
North Dakota	R	R	R	R	R	
South Dakota	R	R	R	R	R	
West Virginia	R	R	R	R	R	
Wyoming	R	R	R	R	R	
Democratic states	7	7	7	7	7	
Republican states	7	7	7	7	7	
Democratic electoral votes	24	24	24	23	23	118
Republican electoral votes	20	20	20	21	21	102

In fact, the Democrats won slightly more electoral votes than the Republicans from the 14 smallest states in five presidential elections between 2004 and 2020 (for a cumulative 118-to-102 margin for the period).⁵⁴

Kevin Johnson of the Election Reformers Network makes a similar point, namely that divergent elections such as 2016 are the consequence of the state-by-state winner-take-all method of awarding electoral votes—not from the non-existent partisan tilt of the smallest states.

“Donald Trump did not become president because of small states: The 16 least populous split, eight to eight. Instead, Trump won from second place because he carried states with smaller margins of victory than Hillary Clinton did.”^{55,56}

It may not be politically possible to incorporate RCV in a constitutional amendment.

When contemplating a federal constitutional amendment, the relevant political question is whether there is one state legislative chamber in 13 or more states that would oppose the amendment because of the inclusion of ranked choice voting (RCV).

⁵⁴ A similar table covering the eight presidential elections between 1992 and 2020 shows that the Democratic presidential nominee won the 13 smallest states 56 times, compared to 48 times for the Republican, and that the Democratic nominee won 189 electoral votes, compared to 153 for the Republican (table 9.4).

⁵⁵ Johnson, Kevin. 2020. Bloc voting is a bigger problem than electors going rogue. Here’s a fix. *The Fulcrum*. July 10, 2020. <https://thefulcrum.us/electoral-college-votes>

⁵⁶ See slide 4. Election Reformers Network. The Top-two Proportional Approach to Fixing the Electoral College. Accessed March 10, 2024. https://assets-global.website-files.com/642dcb53f522476efc85893/64e5177348271c04f0660665_The%20proportional%20allocation%20approach%20to%20fixing%20the%20electoral%20college.pdf

Advocates of the top-two variation of the fractional-proportional method may not be in a position to incorporate RCV as part of their proposed constitutional amendment.

It is certainly true that RCV has been adopted by an impressive number of state and local jurisdictions in recent years. It is already used statewide by Maine and Alaska. Proposals to adopt RCV will be on the ballot in Oregon and Nevada in November 2024. In addition, proposals to adopt RCV on a statewide basis are expected to be on the statewide ballot in November 2024 in Arizona, Colorado, District of Columbia, and Idaho.

Meanwhile, organized opposition to RCV has grown dramatically since Sarah Palin's loss in the 2022 Alaska congressional election conducted under RCV.

As of July 2024, there are 14 states where at least one house of the state legislature has recently taken a position in opposition to RCV.

Specifically, 10 states have enacted laws prohibiting the use of RCV in their elections:

- Alabama
- Florida
- Idaho
- Kentucky
- Louisiana
- Montana
- Mississippi
- Oklahoma
- South Dakota
- Tennessee.

Similar bills banning RCV have recently passed at least one chamber of the legislatures of four additional states:

- Arizona
- North Dakota
- Texas
- Utah.

The existence of this bloc of 14 states strongly suggests that it may not be politically possible to ratify any federal constitutional amendment that involves the use of RCV.

Moreover, well-funded conservative leader Leonard Leo⁵⁷ has launched a major nationwide effort—centered on Republican-controlled states—to stop the spread of RCV. This development suggests that there will soon be a number of additional states where one or more legislative chambers will go on record as being strongly opposed to RCV as a matter of policy.

Also, a state constitutional prohibition against RCV will be on the statewide ballot in Missouri in November 2024.

⁵⁷ Perez, Andrew. GOP Puppetmaster Expands His Dark-Money Operation. 2024. *Rolling Stone*. February 20, 2024. <https://www.rollingstone.com/politics/politics-features/leonard-leo-dark-money-supreme-court-trump-1234972151/>