

UNITED STATES ELECTORAL COLLEGE

- HISTORY: How and Why it was created in the U.S. Constitution, how it perform its most important and only role in choosing/electing the U.S. president and vice president, its influence on political parties and political campaigns and its relevance to Modern America.

Pablo A. Catangay

March 25, 2021

LET THE PEOPLE PICK THE PRESIDENT

THE CASE FOR
ABOLISHING THE
ELECTORAL COLLEGE

JESSE WEGMAN

MEMBER OF THE NEW YORK TIMES EDITORIAL BOARD

"A well-reasoned blend of sound historical analysis and simple common sense." —EDWIN MEESE III, former U.S. Attorney General

WHY WE NEED THE ELECTORAL COLLEGE

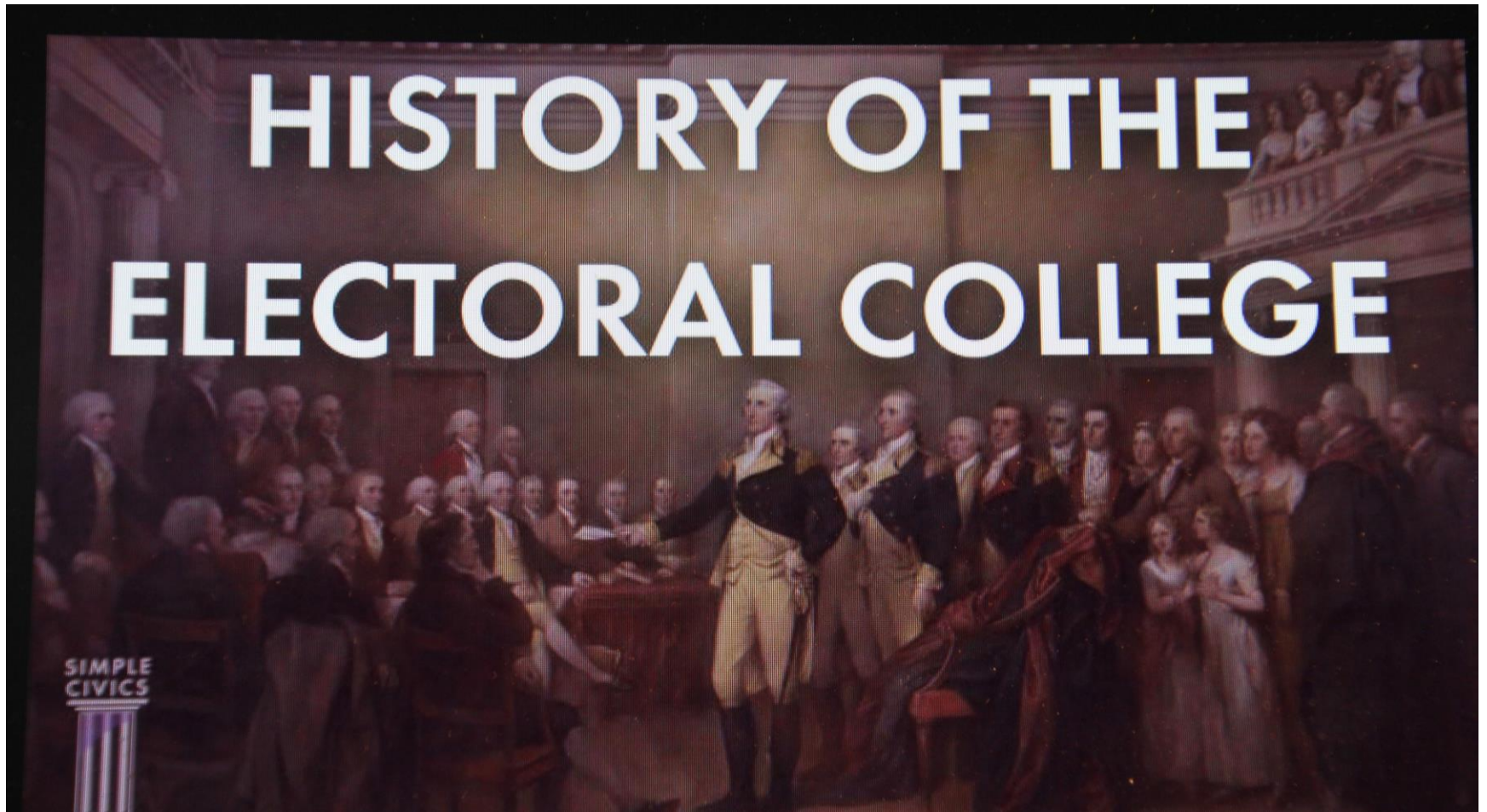
Tara Ross



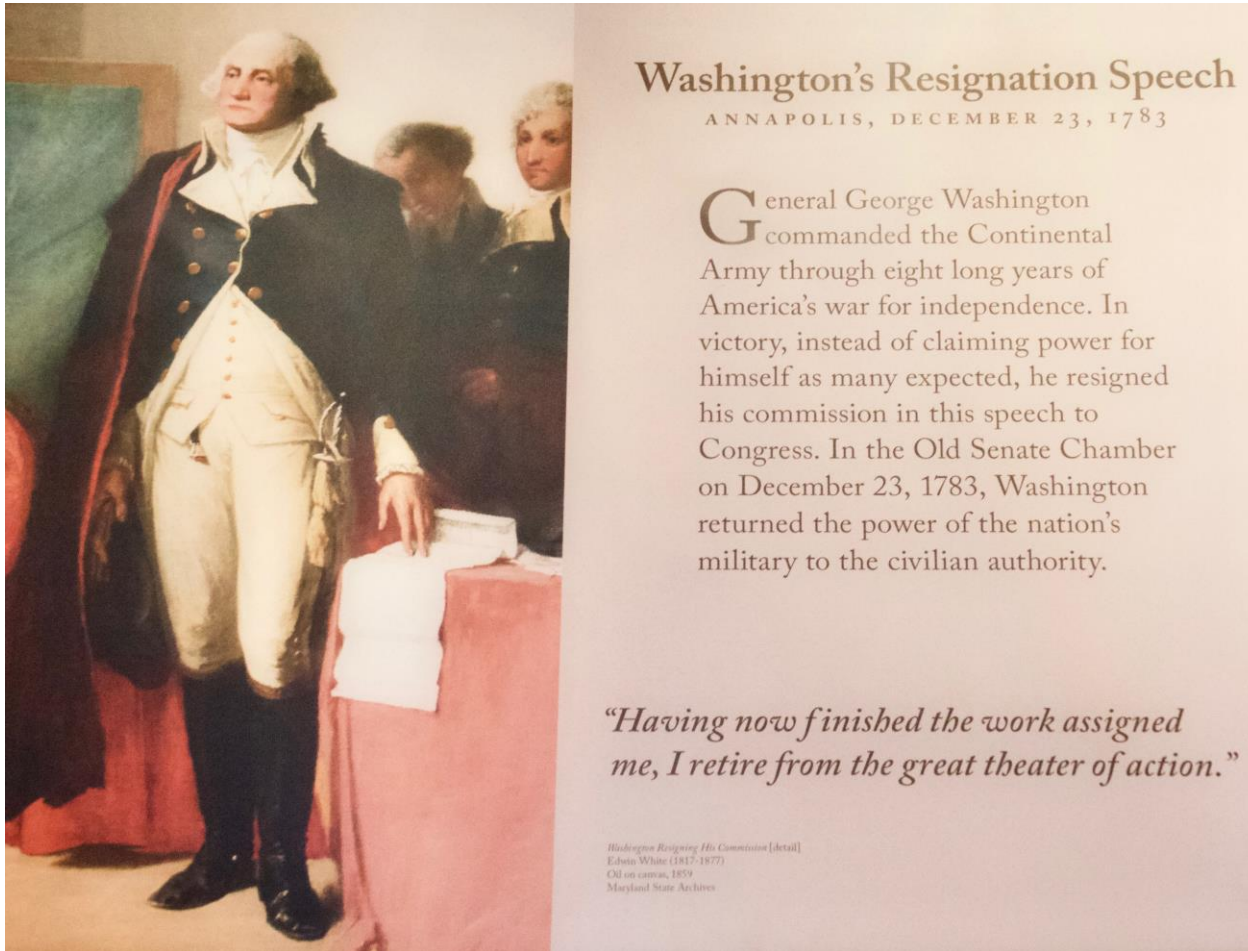
ROBERT W. BENNETT

Taming the Electoral College

The Electoral College



General Washington resigning his commission as Commander-in-Chief



MARYLAND STATE HOUSE



THE SENATE CHAMBER



THE SENATE CHAMBER





MARYLAND STATE HOUSE

BUILT 1772 - 1779

CAPITOL OF THE UNITED STATES

NOVEMBER 26, 1783 - AUGUST 13, 1784

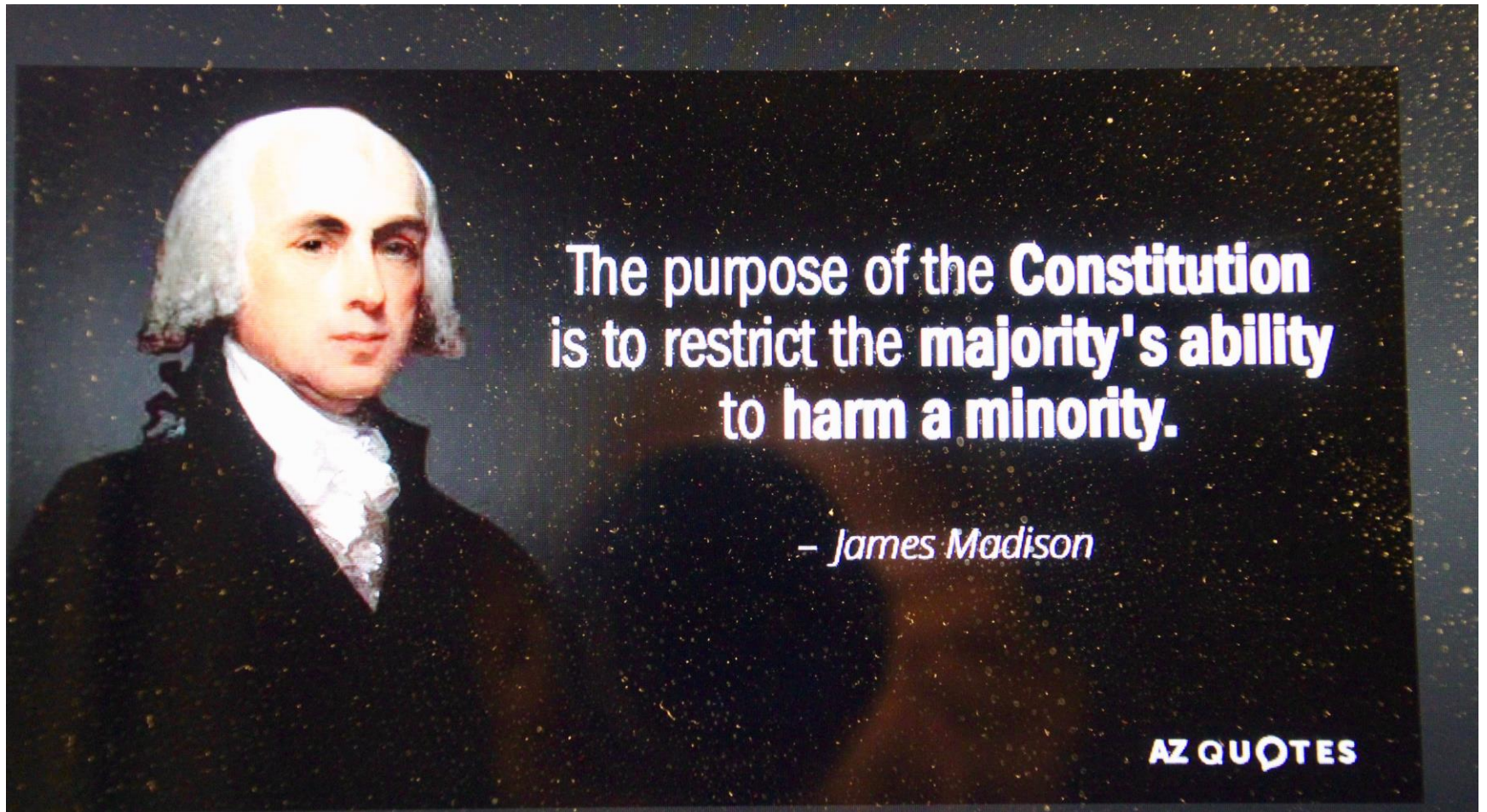
IN THIS STATE HOUSE, OLDEST IN THE NATION STILL IN LEGISLATIVE USE, GENERAL GEORGE WASHINGTON RESIGNED HIS COMMISSION BEFORE THE CONTINENTAL CONGRESS DECEMBER 23, 1783. HERE, JANUARY 14, 1784, CONGRESS RATIFIED THE TREATY OF PARIS TO END THE REVOLUTIONARY WAR AND, MAY 7, 1784, APPOINTED THOMAS JEFFERSON MINISTER PLENIPOTENTIARY. FROM HERE, SEPTEMBER 14, 1786, THE ANNAPOLIS CONVENTION ISSUED THE CALL TO THE STATES THAT LED TO THE CONSTITUTIONAL CONVENTION.

A REGISTERED NATIONAL HISTORIC LANDMARK
MARYLAND HISTORICAL SOCIETY

Constitutional Convention- Major Debates:

- ① Representation in Congress.
- ② The power of the President.
- ③ How to elect the President.
- ④ Slave Trade.
- ⑤ The Bill of Rights.

James Madison- father of the Constitution, 4th President

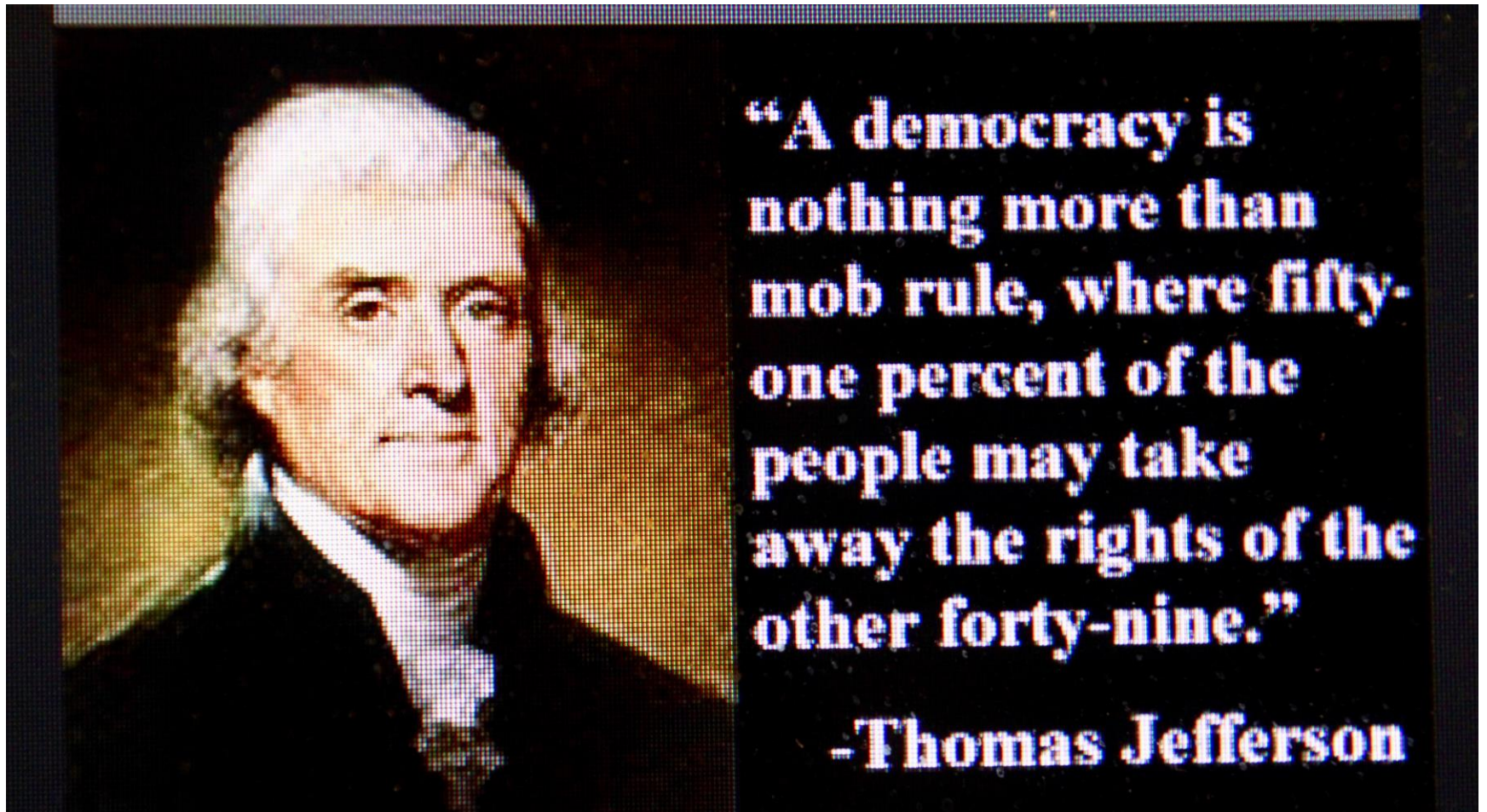


The purpose of the **Constitution**
is to restrict the **majority's ability**
to **harm a minority.**

– *James Madison*

AZ QUOTES

Thomas Jefferson- Author Dec. of Independence, 3rd President



Major Compromises:

- ① Great Compromise also known as the Connecticut Compromise established a bicameral legislature- with proportional representation of the states in the House of Representatives and equal representation of the states in the Senate.
- ② Three-Fifth Compromise: agreement between the Northern States and Southern States that three-fifths of Slave population would be counted for determining direct taxation and representation in the House of Representatives. A black slave will be counted 60% of free white person.
- ③ The Electors (Electoral College) Compromise: a process of electing the president. The founding fathers established in the Constitution in part as compromise between election of the president by a vote in congress or direct popular vote of qualified citizens.

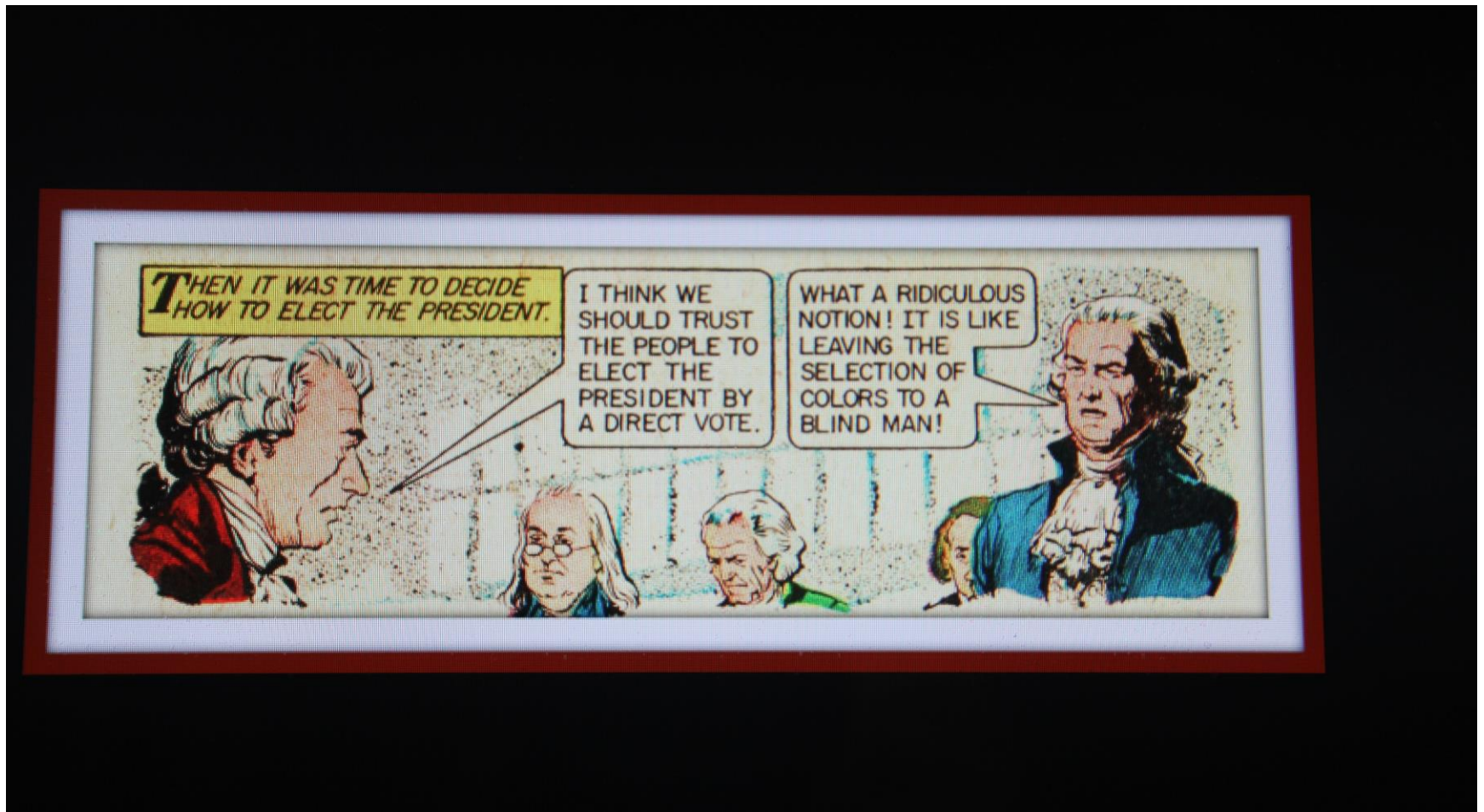
The Great Compromise



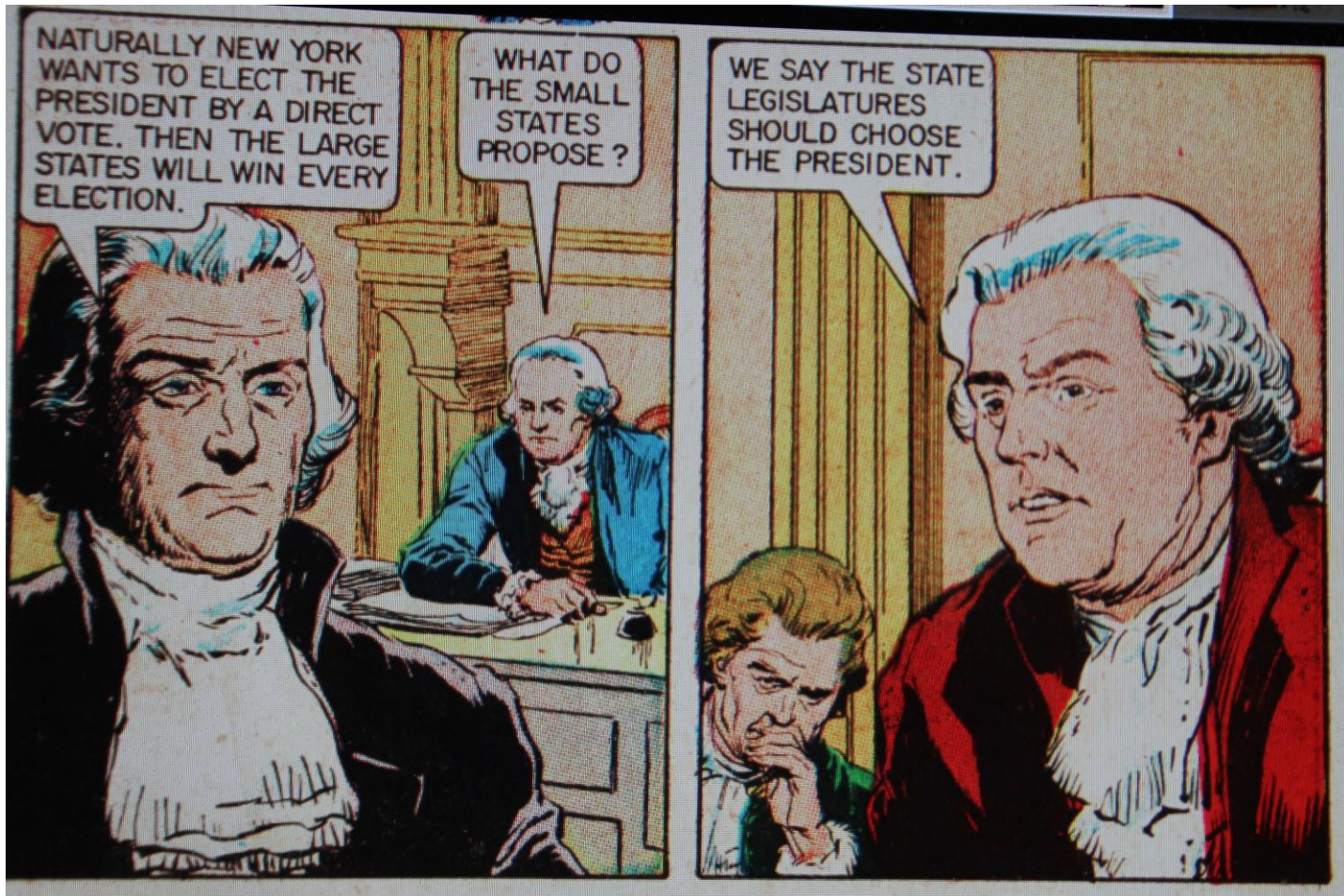
Roger Sherman and Oliver Ellsworth in 1787 drafting The Great Compromise, a plan for representation in Congress.

Photo12/UIG/Getty Images

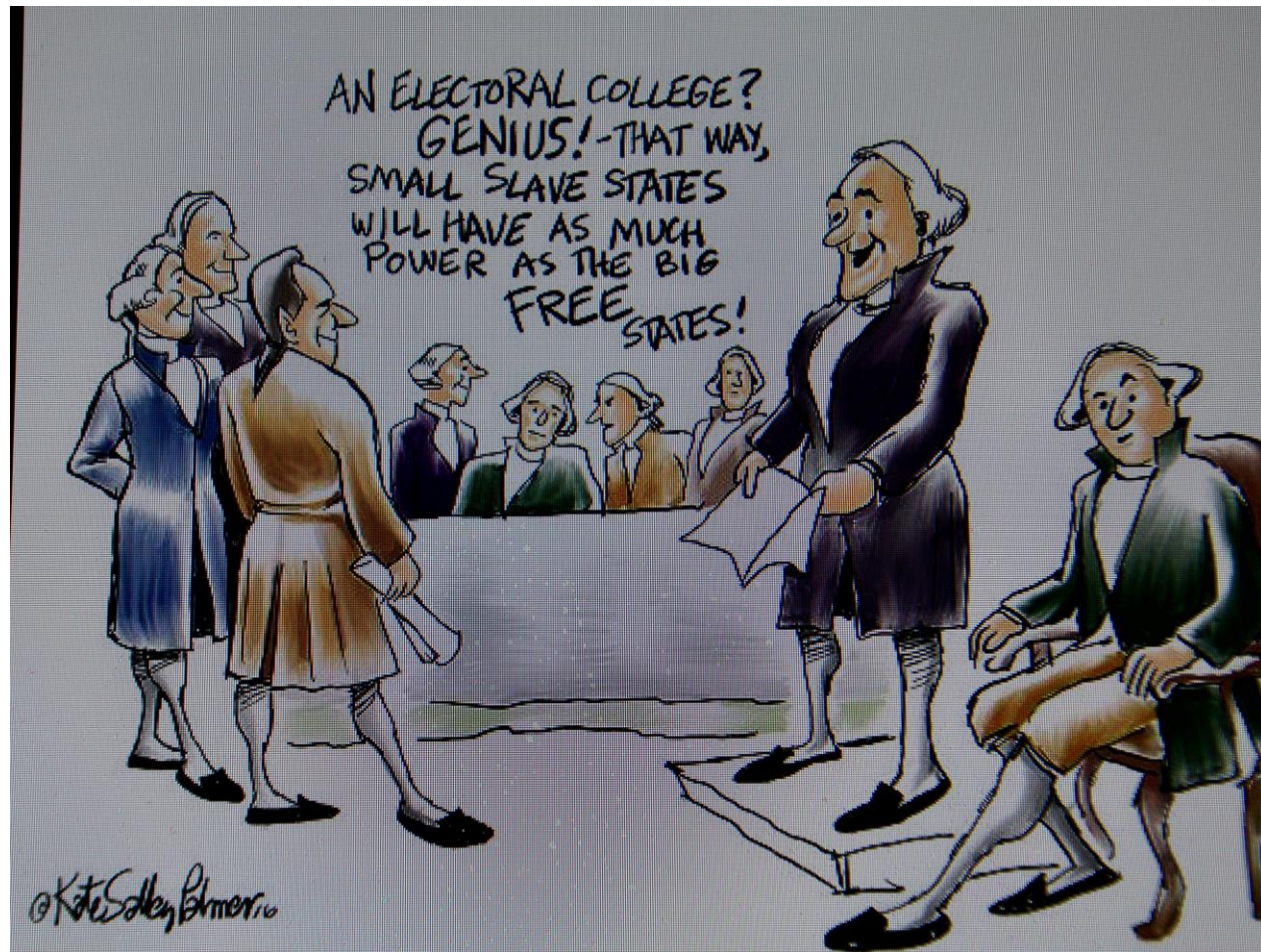
DEBATING THE ELECTORS(ELECTORAL COLLEGE)



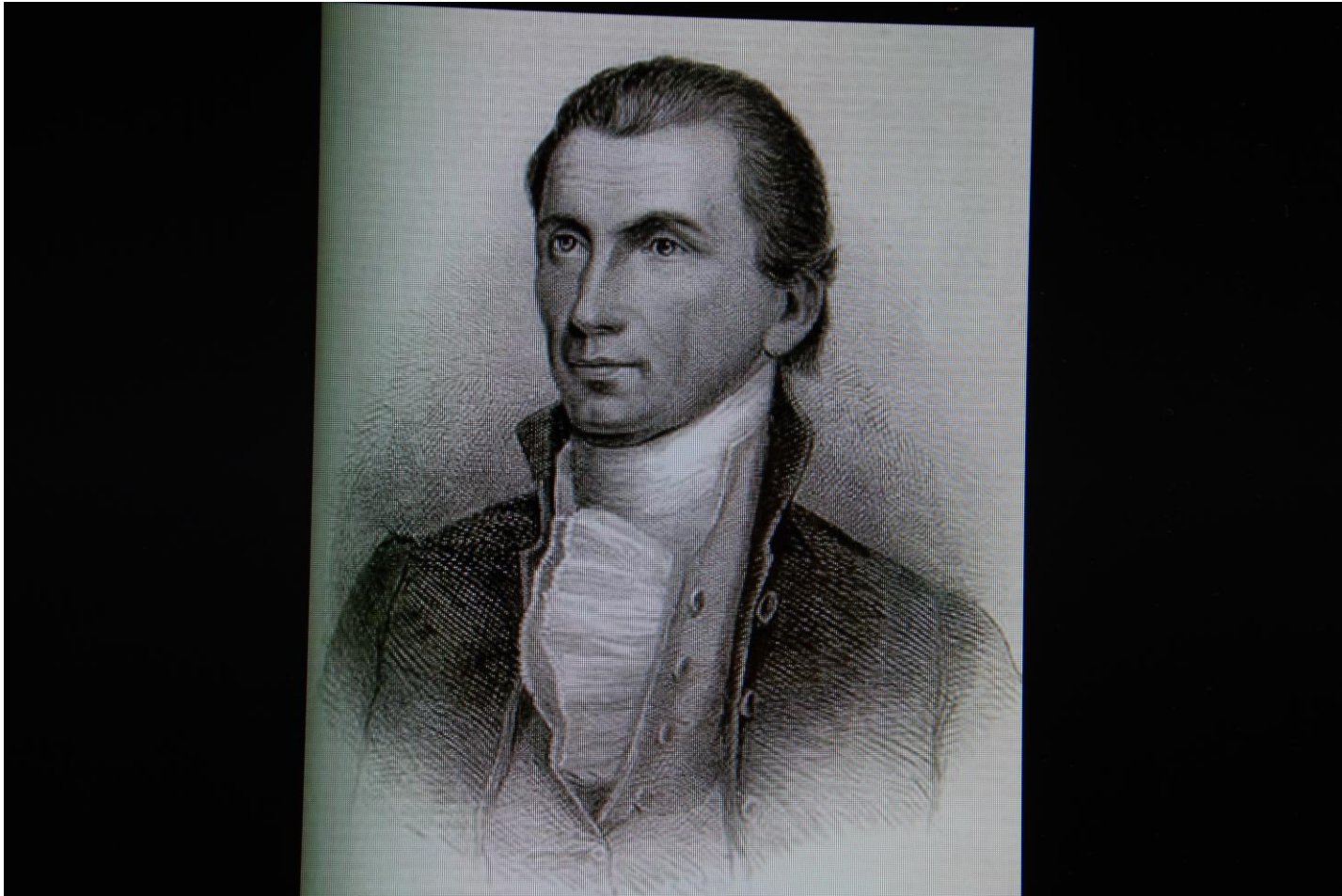
DEBATING THE ELECTORS



DEBATING THE ELECTORS



David Brearley: Chairman- Committee of Unfinished parts



Committee on Unfinished Parts- Resolution

- By late August, the delegates were exhausted and anxious to be done. Some had abandoned the convention for disagreements over the process or the document. A successful convention was still not a sure thing.
- The Committee Resolution: 1) The president would be a single person, would serve a term of four years, and would be eligible for reelection. 2) The manner of election- the resolution called for it to be done not by Congress or state legislatures or the people directly but by specially appointed electors in every state. In the words of Alexander Hamilton, these would be the most enlightened and respectable citizens and would possess the information and discernment necessary for such a solemn task.

Committee Resolution- Electoral College

- 3) Each State would get as many electors as it had senators and members of Congress combined. 4) Every four years, the electors would gather in their respective capitals on a given day and cast their ballots for president. 5) Each elector would vote for two candidates, at least one of whom had to live in a different state from the elector. The candidate with the most votes would become the president. The runner-up would become the vice president. 6) If no candidate won a majority of electors' votes, the Senate would choose the president from among the five vote-getters.

Committee Resolution- Electoral College

- 6) James Wilson- tried to keep election as close as possible to the people and urged that in case of deadlock, the election would be decided by the house and not the Senate. Prior to 1913 (17th Amendment), US Senators were appointed by the legislatures and the Congressman, elected by popular vote.
- On September 6, 1787- the convention voted to approve the committee's proposal.

The final product was clunky, it was complicated and non intuitive

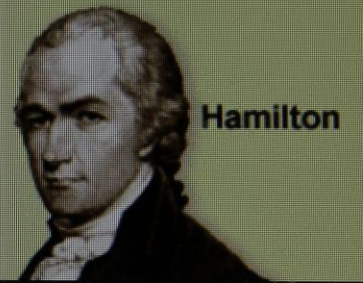
1. The Slave States got an electoral-vote bonus equaling 60% of their slaves, which also serve as incentive to enslave even more people, since more slaves means more electors.
2. The smaller states got to repurpose the two extra votes for their senators in the vote for the president. More important, they got backup plan, which would throw contested election to the House, where small states would be on equal footing with the large states, each state has one delegation.
3. How much the institution of slavery determine the way we choose our president?

Alexander Hamilton

History

Founders started electoral

The Electoral College was established by the founders as a compromise between election for the president by Congress and election by popular vote. Alexander Hamilton was among the first to write about the concept of electors in the Federalist Papers in 1788. The electoral college assumed its present constitutional form in 1804.



The term "electoral college" does not appear in the Constitution. Article II of the Constitution and the 12th Amendment refer to "electors," but not to the "electoral college."

The similarities between the Electoral College and classical institutions are not accidental. Many of the Founding Fathers were well schooled in ancient history and its lessons.

George Washington and signing of the Constitution



The Constitutional Convention: May 14-September 17, 1787

The Constitutional Convention, 1787

- ◆ 55 delegates attended but on a typical day 35 were present
- ◆ 29 held college degrees
- ◆ 34 were lawyers
- ◆ 24 served in the Continental Congress
- ◆ 21 were military officers of the American Revolution



Washington was elected president of the convention based on his integrity and past service to the colonies.

The Electoral College

- ARTICLE II, SECTION 1, CLAUSE 2 OF THE CONSTITUTION STATES: EACH STATE SHALL APPOINT, IN SUCH A 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: BUT NO SENATOR OR REPRESENTATIVE, OR PERSON HOLDING AN OFFICE OF TRUST OR PROFIT UNDER THE UNITED STATES, SHALL BE APPOINTED AS ELECTOR.

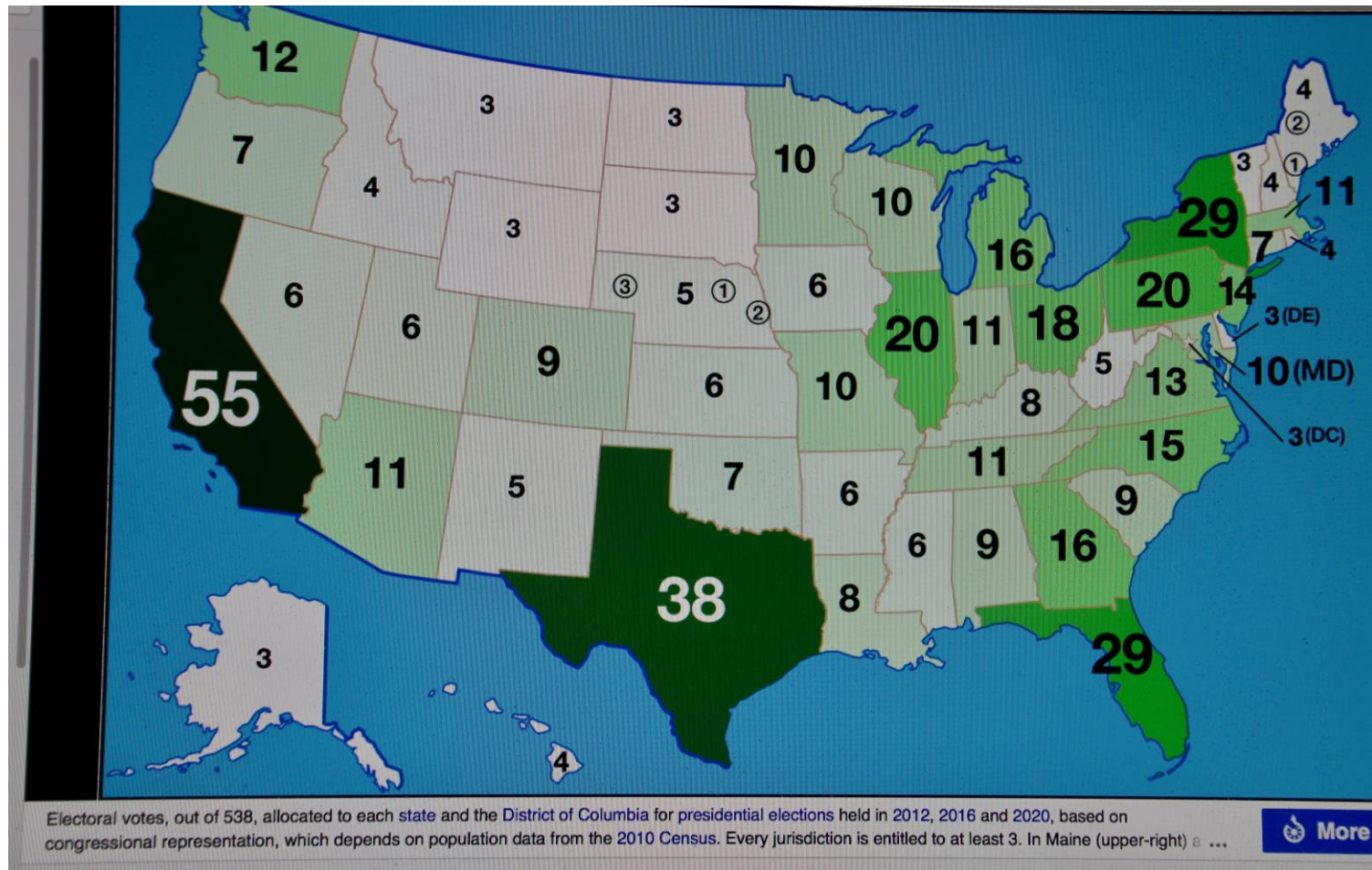
How are Electors chosen

1. Electors can't be member of Congress, or hold federal office, but left it up to individual states to figure out everything else.
2. Electors also can't be anyone who has engaged in insurrection or rebellion against the United States, or given aid or comfort to its enemies.
3. Today, most common method of choosing electors is by state party convention.
4. In some smaller states, electors are chosen by a vote of the state party's central committee.
5. Electors can be elected officials or party leaders in the state, or people who have some kind of personal or professional connection with the party's candidate.

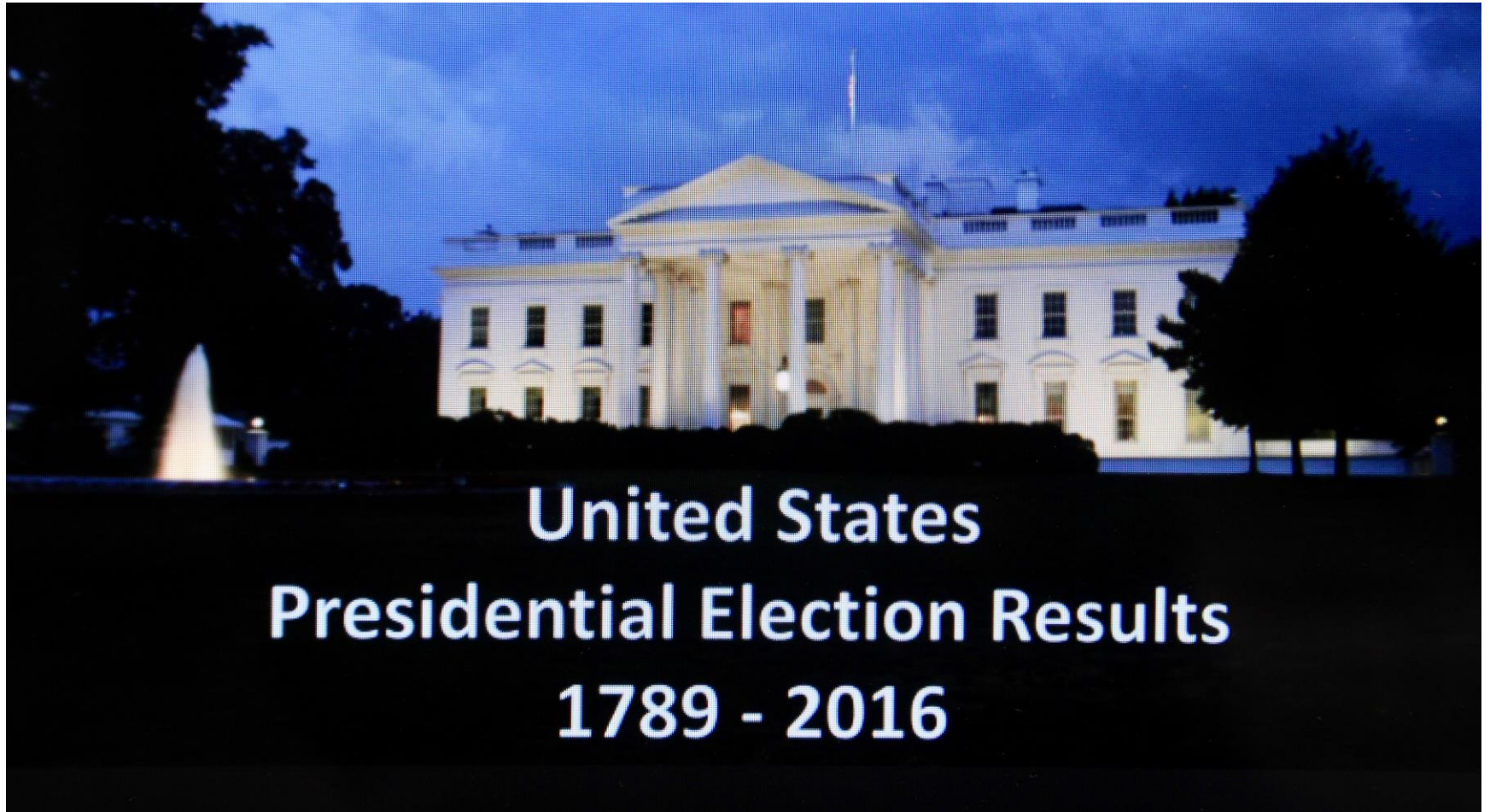
Methods of Choosing Presidential Electors:

1. Popular Vote Method. Winner take-all, a Slate of Electors is pledged to president/vice president (the Electors names may or may not appear on the ballot). The Slate of Electors pledged to the ticket having received the plurality of votes state-wide are chosen, (48 states plus Washington, DC).
2. Congressional District Method: 2 Variations; one used by Maine and Nebraska one Elector for each congressional district won and 2 Electors at large for winner of state-wide plurality, another variation proposed in Virginia but tabled since 2013 (never used)-winner is awarded one Elector vote for each district won (11) and the 2 Electors at large are awarded to the over-all winner of the congressional district.
3. Proportional System.

538 Electoral Votes: winner take-all in 48 states, except Maine and Nebraska



The Presidential Election: 1789-2020



Electoral College in action



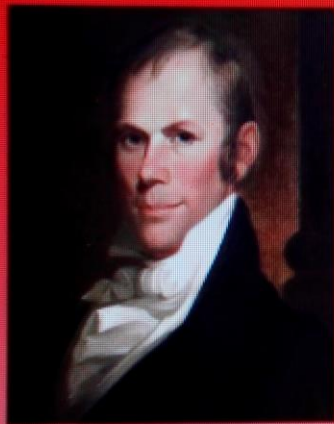
Electoral College in Action

- ① Election of 1788- General Washington was unanimously elected with 69 electoral votes and John Adams had 39 electoral votes as vice president.
- ② 1791- President Washington again unanimously elected.

Contingent Elections- House of Representatives

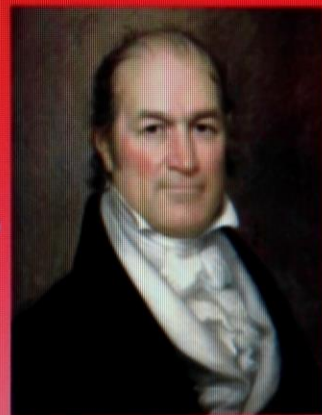
- The election of 1800 between Thomas Jefferson and Aaron Burr. Jefferson was elected on the 36th ballot.
- 12th Amendment, 1804.
- Election of 1824 between Andrew Jackson and John Quincy Adams. Jackson received 41.4%, Adams received 30.9% of popular votes, neither one got 131 electoral votes needed to win (261 members of Electoral College)

The Presidential Election of 1824



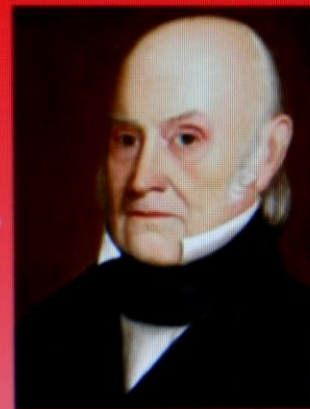
**Henry
Clay**

vs.



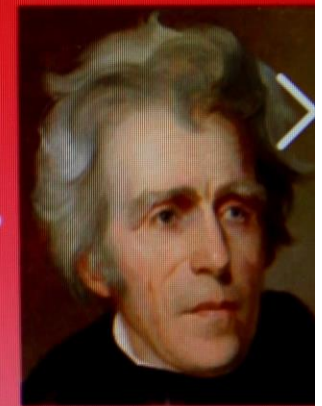
**William
Crawford**

vs.



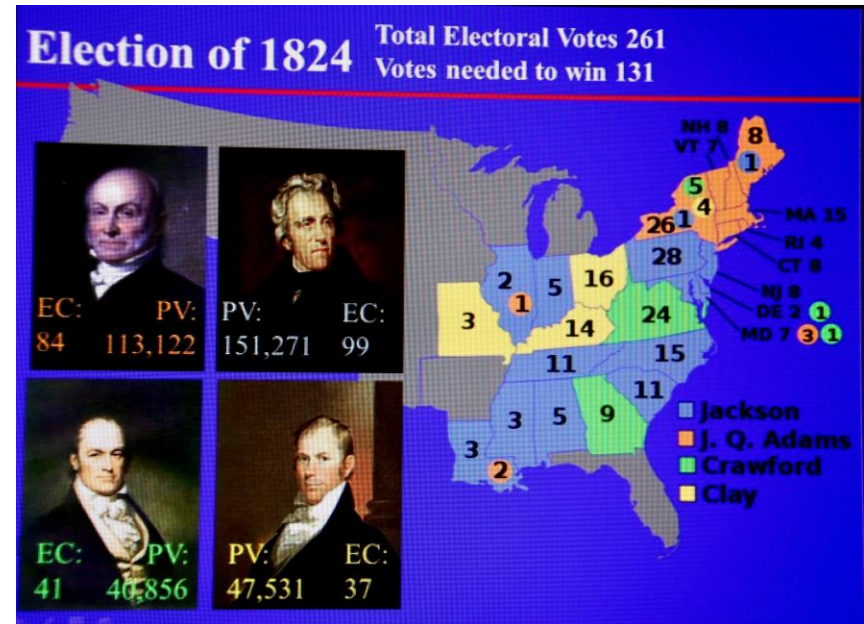
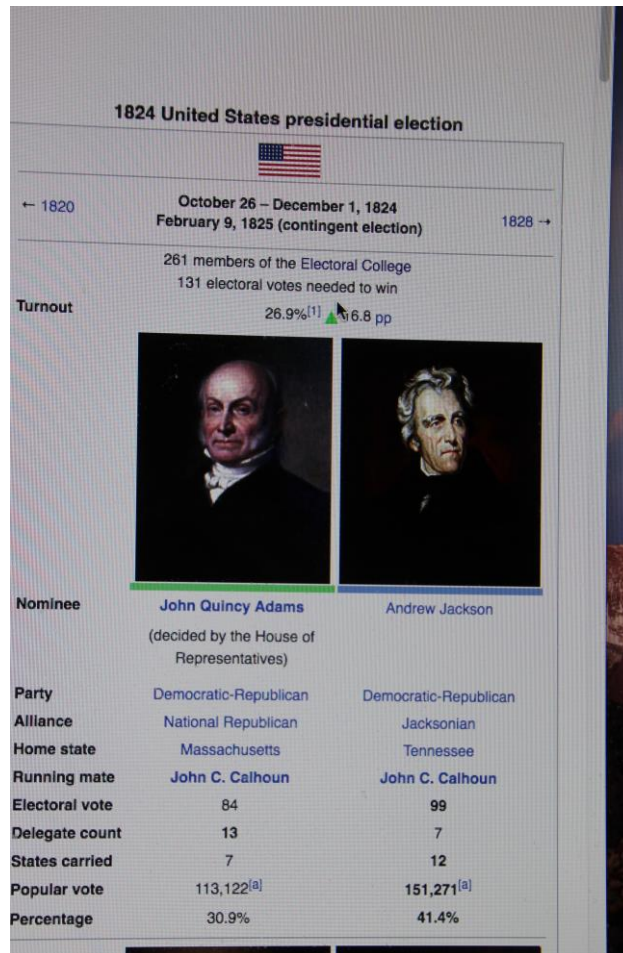
**John Quincy
Adams**

vs.



**Andrew
Jackson**

John Quincy Adams carried 13 states over Jackson's 7 states



Popular vote-winners losing the presidency

Elections in which the popular vote winner lost									
Election ⇅	Election winner			Popular vote winner			Difference ⇅		Turnout ^[6] ⇅
1824	Adams	30.9%	113,122	Jackson	41.4%	157,271	10.5%	44,149	26.9%
1876	Hayes	47.9%	4,034,311	Tilden	50.9%	4,288,546	3.0%	254,235	82.6%
1888	Harrison	47.8%	5,443,892	Cleveland	48.6%	5,534,488	0.8%	90,596	80.5%
2000	Bush	47.9%	50,456,002	Gore	48.4%	50,999,897	0.5%	543,895	54.2%
2016	Trump	46.1%	62,984,828	Clinton	48.2%	65,853,514	2.1%	2,868,686	60.1%

12th Amendment

The Amendment stipulates that each elector must cast distinct votes for president and vice president, instead of two votes for president.

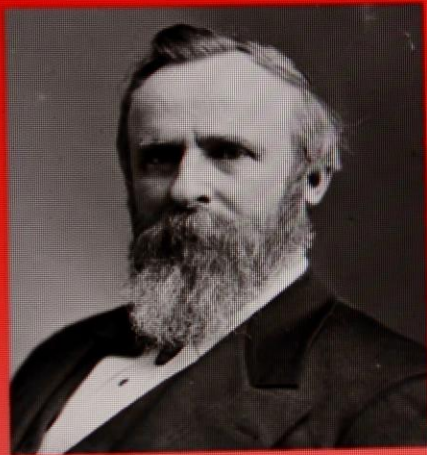
Reconstruction Amendments:

15th Amendment (2/3/1870), The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

- CONSTITUTIONAL RECONSTRUCTION AMENDMENTS:
- The 13th Amendment (12/6/1865), abolished slavery and involuntary servitude except for punishment for a crime.
- 14th Amendment (7/9/1868), granted citizenship and equal civil and legal rights to African Americans and slaves who had been emancipated after the American Civil War, including all persons born or naturalized in the United States.

Election of 1876

The Presidential Election of 1876



Rutherford Hayes

vs.



Samuel Tilden

1876 Election- most contentious presidential election (369 EV)

- Samuel Tilden (Democrat)
- 50.9% of the popular vote, difference of 254,235.
- Electoral Votes-184.
- Rutherford Hayes (Republican)
- 47.9% of the popular votes.
- Electoral Votes- 165.

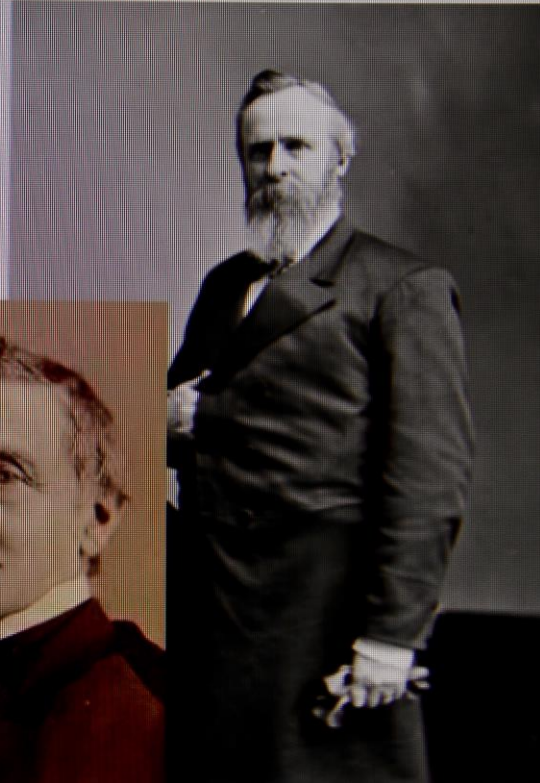
Votes from Florida, Louisiana, SC and Oregon were disputed.

- Each party reported its candidate had won all the states, one elector from Oregon was disqualified (former postmaster general) and replaced, 20 electoral votes in question.
- Congress passed a law and formed 15-member Electoral Commission: 10 members from both houses of congress and 5 members from the Supreme Court.
- The Electoral Commission by 8-7 awarded all 20 electoral votes to Rutherford Hayes.

This compromise effectively stopped the Reconstruction- beginning of Jim Crow era

Compromise of 1877

- 1876 Presidential Election
 - Rutherford B. Hayes vs. Samuel Tilden
 - South upset Tilden didn't win, North wanted Hayes to win
 - In order to please the North and South the Compromise of 1877 was created
 1. Established Rutherford B. Hayes as president
 2. Ended Reconstruction in the South
 - Federal troops were withdrawn from the South





Corrupt Bargain/Compromise of 1877

Final Votes

Rutherford B. Hayes
(Republican)



Political Party	Electoral		Popular	
	#	%	#	%
 Republican	185	50.1	4,033,497	48.0
 Democratic	184	49.9	4,288,191	51.0

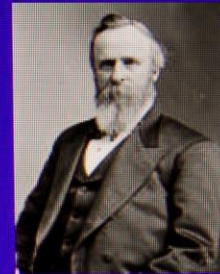
Samuel J. Tilden (Democrate)



Result of the 1876 election

The Election of 1876

- **Presidential Candidates**
 - Rutherford B. Hayes
 - Republican from OH
 - Samuel J. Tilden
 - Democrat from NY
 - Peter Cooper
 - Greenback Labor Party from NY
 - Green Clay Smith
 - Prohibition Party from KY and MT Terr.
 - James A. Walker
 - American Party from VA
- **Electoral College Ballots**
 - Hayes: 185
 - Tilden: 184
 - All others: 0
- **The Controversy:**
 - Most states chose popular elections for electoral states by 1876 (CO excepted)
 - One Oregon elector disqualified (held federal office)
 - Tilden receives 51% of the 'popular vote'
 - Democrats claim fraud in FL, LA, OR, SC
 - Congress appoints electoral commission to investigate



1968 Election- a turning point in US political history (538-Electoral College)

- It saw the end of the New Deal Coalition.
- Lyndon Johnson enjoyed tremendous legislative successes.
- Assassination of Martin Luther and subsequent riots.
- Assassination of Robert Kennedy
- Republicans dominated the presidential election, winning five of the 6 elections; 1968, 1972, 1980, 1984 and 1988.

Concerns over disparity between popular vote and electoral vote, 1968

- Richard Nixon (Rep.):
- Electoral vote-301 (56%).
- Received 511,944 popular votes over Humphrey.
- Hubert Humphrey (Democrat):
- Electoral Vote- 191 (35%)
- George Wallace- 46 (8%)

Disparity between electoral and popular votes

1968 Presidential Election			
Party	Republican	Democrat	American Independent
			
Nominee	Richard Nixon	Hubert Humphrey	George Wallace
Home State	California	Minnesota	Alabama
			
Running Mate	Spiro Agnew	Edmund Muskie	Curtis LeMay
Home State	Maryland	Maine	Ohio
Electoral Vote	301	191	46
States Carried	32	13 + D.C.	5
Popular Vote	31,783,783	31,271,839	9,901,118
Percentage	43.4%	42.7%	13.5%

Bayh-Celler Amendment- to abolish the Electoral College, 1969.

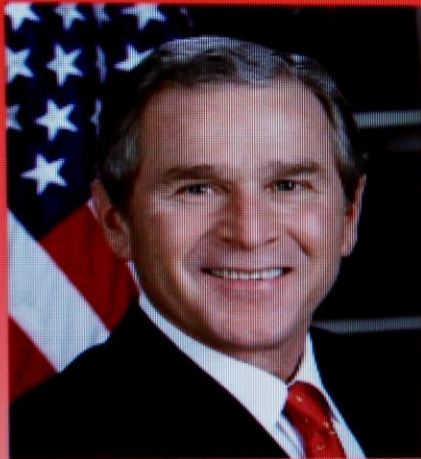
- House Joint Resolution 681- constitutional amendment that would replaced the electoral college with simpler plurality system based on the national popular vote. Candidates running for president and vice president must won 40% of the national popular vote. If no pair received 40% of the votes, a runoff election would be held in which the choice of president and vice president would be made from the two pairs of persons who had received the highest number of votes in the first election.
- President Nixon gave his endorsement for the adoption of the proposal.

Bayh-Celler Amendment

1. The house passed with bipartisan support by a vote of 339-70.
2. The Senate- the debate over proposal was quickly filibustered. The lead objectors to the proposal were mostly Southern senators and conservatives from small states, both Democrats and Republicans, who argued that abolishing the Electoral College will reduce their states political influence.
3. A motion for cloture, ended the filibuster, received 54 to 36 for cloture. Later, a second motion for cloture killed the debate by 53 to 34 vote. The proposed amendment was never considered again and died when the 91st Congress ended Jan.3, 1971.

The 2000 presidential election- one of the closest in history

The Presidential Election of 2000



George W. Bush

vs.



Al Gore

2000 Presidential election

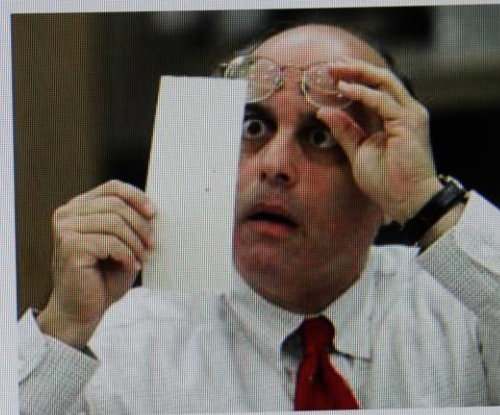
1. One of the closest in history. The recount ended with Bush won Florida by 537 votes.
2. At around 8 pm (election night), just as polls closed CNN, NBC, CBS, and FOX declared Gore won Florida, based on exit polls. At 10 pm, all networks retracted their predictions because Bush began to take a wide lead.
3. In early AM (11/8), Bush had 246 and Gore had 250, with 270 needed to win. Two states; WI with 11 EV and Oregon with 7 EV- too close to call, but Florida's 25 EV would be decisive regardless of other results.
4. At 2:30 AM with 85% of vote, Bush lead Gore by 100,000 Gore conceded, at 4:30 AM. Bush lead dwindled to 300 and Gore withdrew his concession.

2000 Presidential election

- 5) The overseas ballots later boosted Bush margin to 930 votes. Gore requested hand recounts on 4 counties, Sec. of State Harris said recount must be turned on Nov 14, but Florida state supreme court extended deadline to November 26.
- 6) Florida state canvassing board certified Bush as the winner of Florida's elector by 537 votes. Gore contested- state court agreed but Gore and state court ruling was reversed by Florida Supreme Court and ordered recounting 70,000 ballots previously rejected.
- 7) The SCOTUS halted the recounting the following day, with Justice Scalia issuing a concurring opinion that "the counting of votes that are questionable legality does in my view threaten irreparable harm to petitioner" (Bush).
- 8) Then the Supreme Court on December 12, 2000, by vote of 5-4 effectively ended the recount, and the previously certified total held.

Many Sights of 2000-Presidential Election

2000 PRESIDENTIAL ELECTION

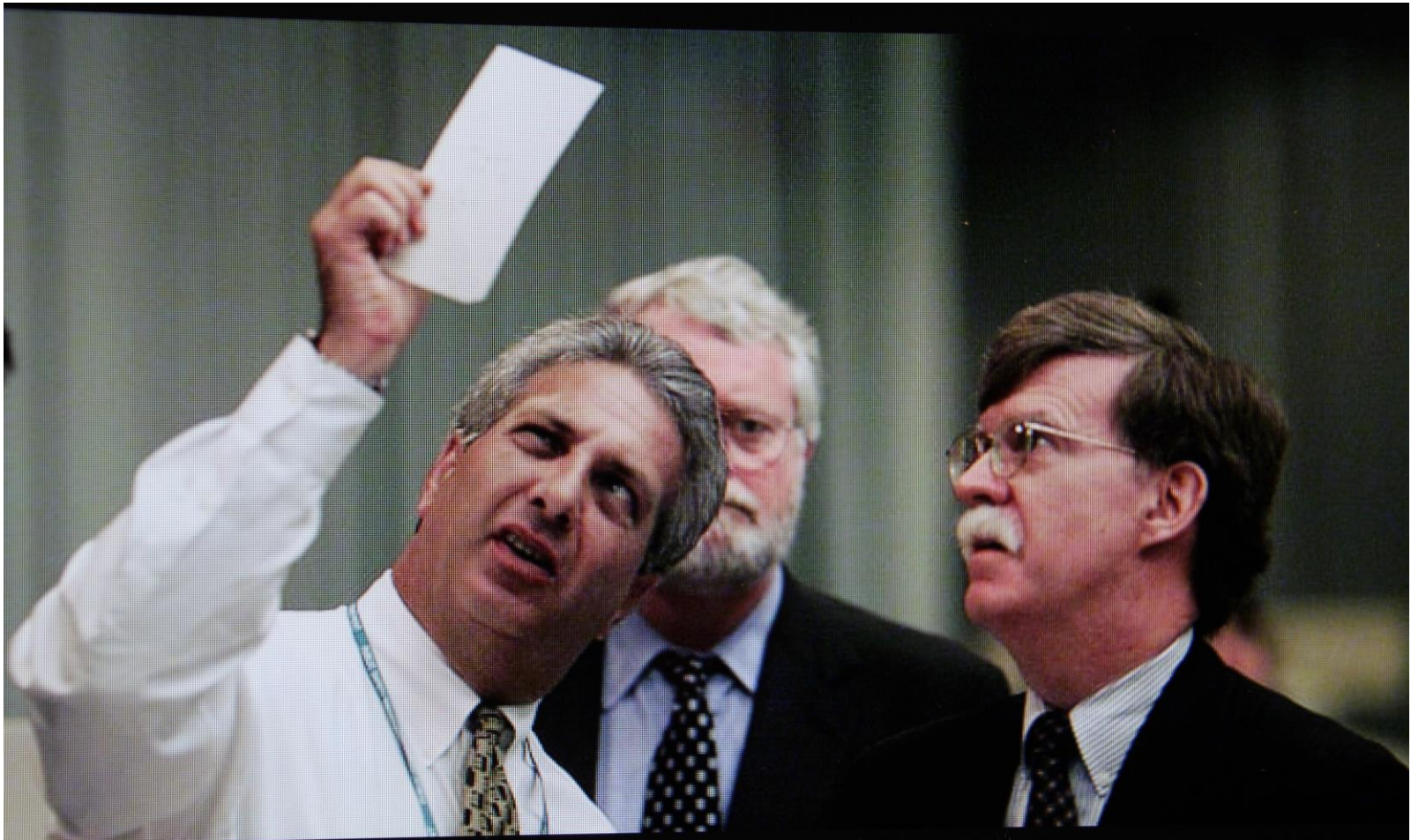


Florida recount

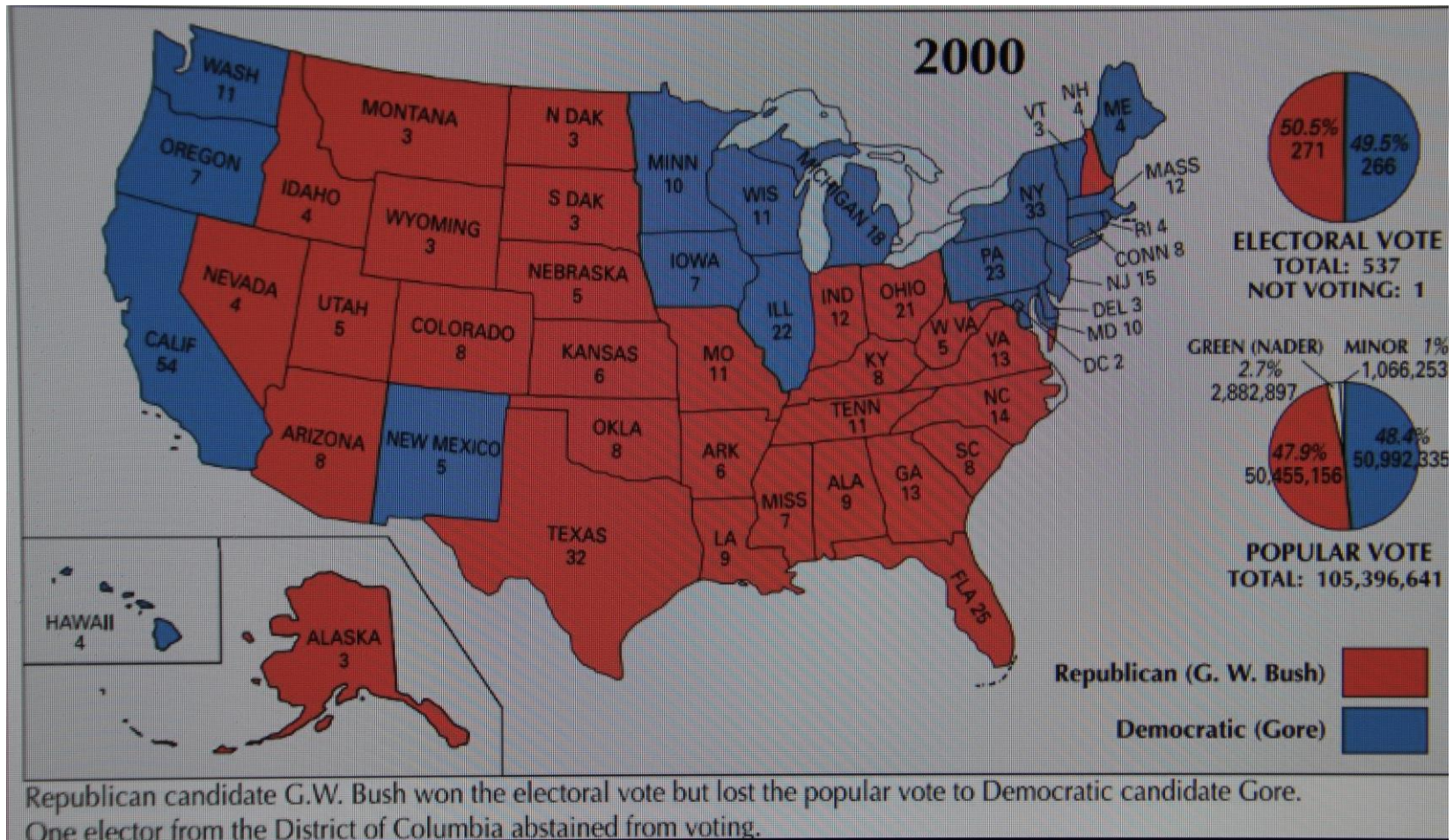


Bush v. Gore, 2000 Supreme Court case

Examining dimpled chad on a punch card ballot



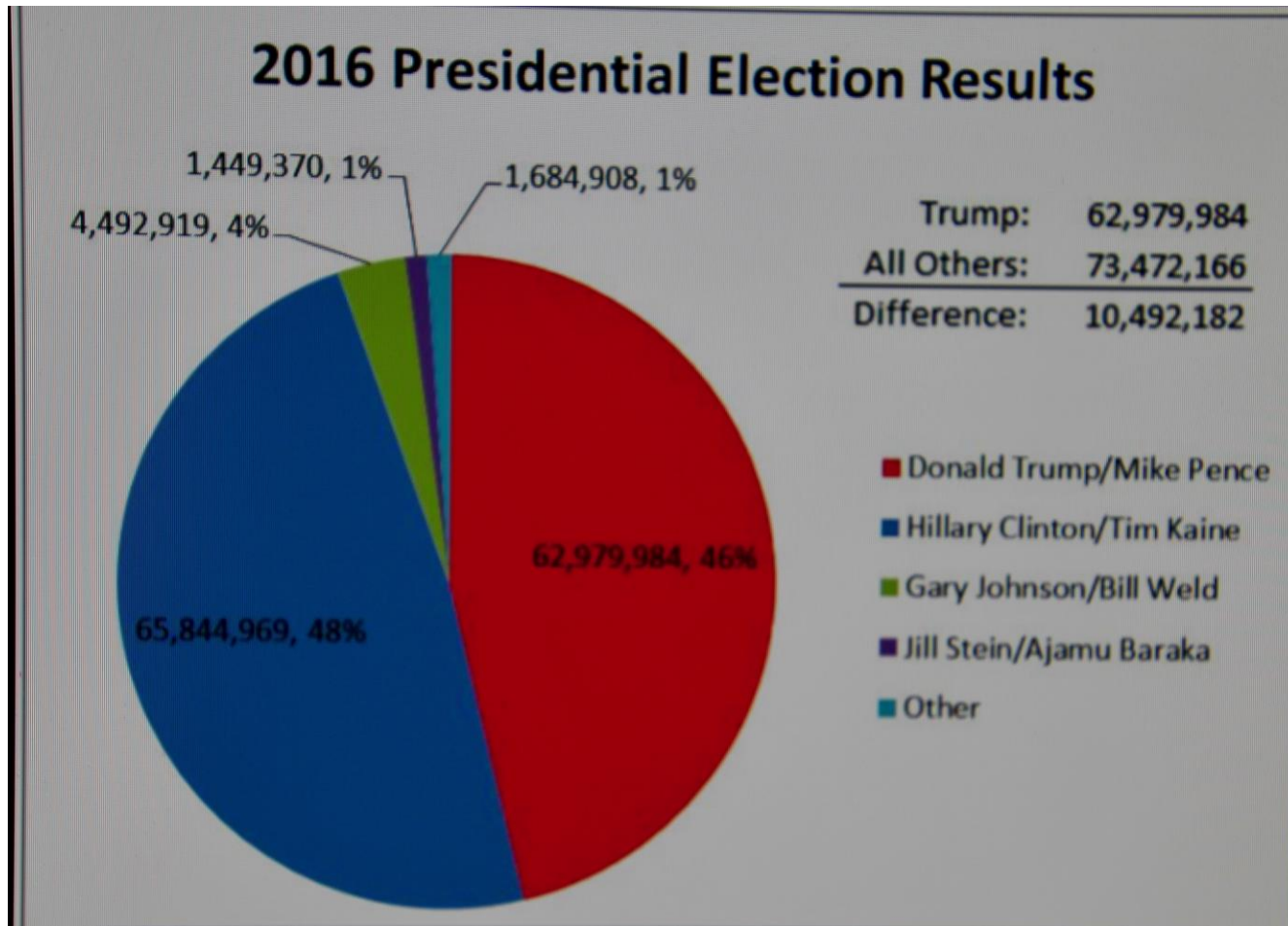
Final Result: 2000 Election



2016 Presidential Election

- Donald J. Trump and Hillary R. Clinton- two of the most “Unpopular” candidates in modern American history.
- Election Eve: Spreadex betting firm had Clinton at an Electoral College spread of 307-322 against Trump’s 216-231. Trump himself expected, based on polling, to lose the election.
- Surprisingly, Trump performed well in all battleground states, especially Ohio, NC, Florida and Iowa. Even in Wisconsin, PA and Michigan that had been predicted to vote Democratic, were won by Trump.

2016 Presidential Election: (304-227)



PROPONENTS OF ELECTORAL COLLEGE:

1. It keeps smaller states relevant in national politics.
2. It provides a clean, widely accepted ending to the election (most of the time).
3. It makes easier for candidates to campaign.
4. It keeps the two party system strong.
5. Founding fathers conceived of the EC as a deliberative body and therefore serve to protect the country from the election of a person who is unfit to be president.

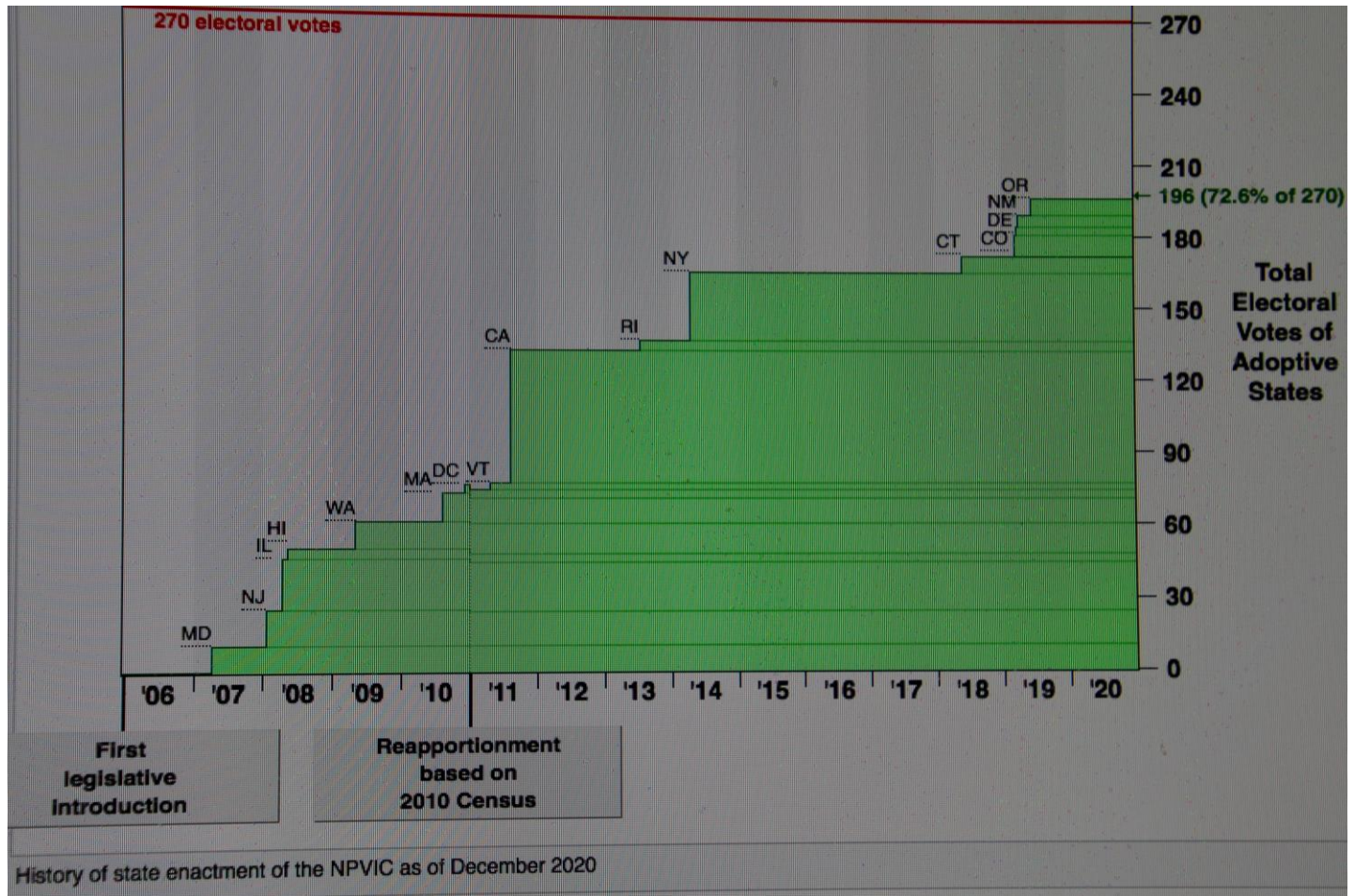
OPPONENTS OF ELECTORAL COLLEGE:

1. The Electoral College violates the democratic principle of “one person one vote.”
2. States with smaller populations have proportionately more voting power than those in larger states.
3. Faithless Electors may not vote in accord with their pledge.
4. Candidates focus their campaigns on just a few swing states.
5. The elections of 1824, 1876, 1888, 2000 and 2016 produced an Electoral College winner who did not received at least a plurality of the nationwide popular vote- did not logically follow the concept of how a democratic system should function.
6. Lack of enfranchisement of U.S. territories, only U.S. states (Article II, Section 1, Clause 2) and Washington D.C (23rd Amendment) are entitled to electors. Puerto Rico, Northern Mariana Islands, US Virgin Islands, American Samoa and Guam do not have a vote in presidential elections.
7. ABA has criticized the Electoral college as “archaic and ambiguous.” and its polling showed 69% of lawyers favored abolishing it in 1987.

NATIONAL POPULAR VOTE INTERSTATE COMPACT

- Agreement among a group of U.S. states and District of Columbia to award all their electoral votes to whichever presidential candidate wins the overall popular vote in the 50 states and the District of Columbia.
- These states have 196 electoral votes, which is 36% of the Electoral College and 73% of 270 votes needed to give compact legal force.
- As of January 2021, the NPVIC has been adopted by fifteen states and the District of Columbia.
- The agreement would go into effect among participating states only after they collectively represent an absolute majority of votes (currently at least 270) in the Electoral College.
- The Compact would modify the way the participating states implement Article II, Section 1, Clause 2 of the U.S. Constitution.

National Popular Vote Interstate Compact



CONSTITUTIONALITY AND LEGALITY OF THE NPVIC

- The Compact Clause of Article 1, Section X of the U.S. Constitution states that “No State shall, without the Consent of Congress enter into any Agreement or Compact with another State.
- In 2019, the Congressional Research Service (CRS) cited a U.S. Supreme Court ruling that required explicit congressional consent for interstate compacts that are directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.

NPVIC- CONSTITUTIONALITY AND LEGALITY

- Further, legal scholars suggested that NPVIC would require explicit congressional approval because it would remove the possibility of contingent elections for President being conducted by the U.S. House of Representative under the 12th and 20th Amendments, (1800 and 1824 election).
- Proponents of NPVIC- law professors Akhil and Vikram Amar as well as Rep. Jamie Raskin have argued that the states have the plenary power to appoint electors under the Election Clause of Article II, Section I, which states the “Each State shall appoint, in such a Manner as the Legislature thereof may direct, a Number of Electors, equal to the Number of Senators and Representatives to which the State may be entitled in the Congress.

Public support for Electoral College reform

1. Public opinion surveys suggest that majority of Americans support a popular vote for President.
2. Washington Post and Kaiser Family Foundation- 2007 found that 72% favored replacing the EC with a direct election, including 78% Democrats, 60% Republicans and 73% of independent voters.
3. November 2016 Gallup poll following presidential election, American support to abolished EC and replace with national popular vote fell to 49%, with 47% opposed. Republican support for replacing the EC with NPV dropped from 54% in 2011 to 19% in 2016.
4. March 2018- a Pew Research Center poll showed that 55% of Americans supported replacing the EC with NPV, with 41% opposed.
5. September 2020, Gallup poll showed support for amending U.S. Constitution to replace EC with NPV rose to 61% and 38% opposed, although partisan divide continued with support from 89% Democrats and 68% independents, but only 23% Republicans.

Jan. 6, 2021- Mahogany Boxes containing Electoral College votes



PRESIDENTIAL ELECTION 2020



Mahogany Boxes containing the Electoral College vote



Vice President Pence declared Joe Biden- winner of 2020 election

