SAVE OUR STATES

POLICY MEMORANDUM

JANUARY 10, 2024

Alternatives to 'Winner Take All' in the Electoral College

Sean Parnell

States have broad discretion in the manner of appointing and allocating presidential electors, and many methods have been used since the first election in 1788. Most states today utilize "winner-take-all" to elect presidential electors. Under winner-take-all, an entire slate of presidential elector candidates receiving the most votes – whether a majority or just a plurality – is elected. Only Maine and Nebraska currently do not use winner-take-all, instead utilizing the "congressional district method" (discussed later).

Each method has benefits and drawbacks. Some critics of the Electoral College – particularly those advocating for the National Popular Vote interstate compact (NPV) – point to the winner-take-all method as the "real problem," making two primary claims:

- It pushes candidates to focus their campaigns, particularly in the final months, on a dozen or so "battleground" states.
- It leaves voters who did not vote for their state's winning slate of electors unrepresented in the Electoral College.

Though these complaints have rebuttals and ignore the benefits that explain why most states use winner-take-all, they are legitimate concerns for policymakers to take into account. Yet there are alternatives to winner-take-all that address these issues while ensuring that a state's electors continue to represent the people of that state. Unlike NPV, these other methods have historical precedents and are clearly constitutional.

Following a short history and discussion of winner-take-all, this memo briefly describes several alternatives to winner-take-all that might be considered, each of which has its own benefits and drawbacks.

Winner Take All

Three states used a version of winner-take-all in the first presidential election: Maryland, New Hampshire, and Pennsylvania. Over the next several elections the number of states using winner-take-all fluctuated but gradually increased until by 1836 every state but South Carolina used winner-take-all to award electors based on the state's popular vote. With only a handful of exceptions, winner-take-all has been the method used in every presidential election since.

Sean Parnell is senior fellow for Save Our States. Previously, he served as the president of the Center for Competitive Politics (now the Institute for Free Speech) and was vice president for public policy at The Philanthropy Roundtable. He is the author of two books and received a B.A. in Economics from Drake University. Sean can be reached at sean@saveourstates.com.

The principal benefit of winner-take-all is that it maximizes a state's voice in the presidential election– by casting every electoral vote for a single candidate, a state's share of the Electoral College vote, and thus influence over the outcome, is greater than it would be if it split its vote between candidates. This can benefit both "safe" and "battleground" states: for the former, it gives the candidate from the dominant party incentive to care about and tend to the interests of that state in order to prevent it from slipping into the "battleground" category; for the latter, it provides a major incentive for candidates to try to win the state and win all of the state's electoral votes.

As noted earlier, however, the downside can be that "safe" states do not see nearly as much campaign activity as "battleground" states do, and voters for a losing candidate can feel unrepresented in the Electoral College.

Congressional District

Two states, Maine and Nebraska, currently use what is called the congressional district method, and Michigan used it in a single election in 1892. In this system voters in each congressional district elect one elector while the two remaining electors are chosen based on the statewide vote. Maine established its Congressional District system in 1972 and Nebraska enacted its system in 1992. Both states have twice seen the losing statewide candidate win an electoral vote by winning a congressional district, Nebraska in 2008 and 2020 and Maine in 2016 and 2020.

The main benefit of the congressional district method is that it can draw candidates to campaign in states where they might not be competitive statewide but they do have a chance to win a congressional district and thus an electoral vote. Maine and Nebraska received five campaign visits in 2016 and three in 2020 as a result of their congressional district systems. It also can reduce the sense among voters for a losing candidate that they are unrepresented.

The chief downsides are that gerrymandering of congressional districts can affect the outcome of the presidential election and campaigns might focus on just a few parts of a state where there are competitive districts (fewer Americans live in competitive congressional districts than in competitive states). It also is not an option for states that have only a single congressional district. And by not using winner-take-all, the state no longer maximizes its voice on behalf of the candidate who received the most votes in the state.

Congressional District + Legislative Appointment

In the second and third presidential elections (1792 and 1796), Massachusetts' voters chose presidential electors by congressional district. If an elector candidate received a majority of votes cast in the district then they were elected, otherwise the legislature would choose from the top two vote getters. The Massachusetts legislature selected the final two electors. A bill proposing a similar system was introduced in the Arizona legislature in 2022. One presidential elector would be awarded to the winner of each of the state's nine congressional district, but unlike the original Massachusetts plan there would be no runoff if no candidate received a majority. The Arizona legislature would appoint the final two electors.

Like the straight congressional district method, under this plan presidential candidates would have an incentive to campaign in states they might not otherwise visit, and it could also reduce the belief by supporters of the statewide loser that they are not represented in the process. Giving the legislature the power to select two of the electors can push candidates to focus on public policy issues that might be overlooked by the broader public but that are important to state legislators. It also promotes federalism

and the vital role of states.

Similar to the simple congressional district method, the main downside is that not every district is going to be competitive, gerrymandering can play a role in outcomes, and the state is no longer maximizing its voice. Giving the legislature the power to select two of the state's electors might also be controversial with the public.

Elector Districts

Rather than elect presidential electors by congressional district, several states in the first few presidential elections drew up special districts, one for each of the state's electors. (In Delaware, voters in each of the state's three counties elected one elector; courts might not allow such a system today due to different populations within the counties.) Illinois, Kentucky, Maryland, North Carolina, and Virginia all used an elector district system at various times between 1788 and 1824. In Maryland, some districts elected two electors.

The primary benefit of using elector districts is that it gives states with only a single congressional district a way to gain the benefits of the congressional district method. Dividing a state like Alaska, Delaware, North Dakota, or Vermont into three elector districts would also allow for more granular focus by candidates on issues of importance to voters in these districts, ensuring they aren't ignored in the presidential election process.

The downsides of this system are largely the same as with the congressional district methods described above, plus the challenge of adding another redistricting process after each decennial census

Proportional

With a proportional method, the electoral votes of a state are divided among the top candidates based on their share of the popular vote. For example, in a state with 10 electoral votes, a candidate receiving 60% of the popular vote would receive six electoral votes, while a runner-up with 40% of the popular vote would receive four. Depending on the rules, a third-party or independent candidate might even receive electoral votes in a proportional system.

The proportional method potentially solves the two main complaints about winner-take-all. In "safe states" it would provide an incentive for all candidates to visit and try to maximize their share of the vote in order to win more electoral votes. It eliminates the problem of voters for the losing candidate feeling as though they are unrepresented. It also avoids two of the downsides of district-base systems: the potential for gerrymandering and the fact that some districts will remain uncompetitive. Instead the whole state could draw campaign attention.

One downside of the proportional method is that it might be of limited benefit to smaller states that have fewer presidential electors. In a larger state, a five or six percent gain in vote share might net one or two additional electoral votes. In less-populous states, however, the same gain might not net any electoral votes. The mathematical formula for choosing electors proportionally would also need to be rigorously evaluated. As with the district-based systems, the proportional method also reduces the magnitude of a state's voice in the Electoral College.

Threshold

Under a threshold system, each state would determine a percentage of the vote that, if the second-

place candidate exceeds that percentage, would award that candidate some specific number of the state's electoral votes. This threshold could be fixed or adjusted based on recent history. For example, in a state with ten electoral votes where the second-place candidate in recent elections averaged 42 percent of the vote, the threshold might be set right at 42 percent, with the second-place candidate receiving three electoral votes if the candidate's vote share exceeds it.

Similar to the proportional method, both major-party candidates would be incentivized to campaign in the state, one to try to keep the other below the threshold and the other to try to surpass it. It also potentially provides representation in the Electoral College vote for supporters of the second-place candidate. Unlike the proportional system, it is suitable for both more-populous and less-populous states because there need not be a large increase in vote share to win electoral votes – simply doing a little better than recent history could be enough to earn electoral votes.

As with the proportional system, the threshold system does not maximize the state's influence in the Electoral College, and if the second-place candidate does not exceed the threshold their voters may still be left feeling unrepresented.

Mixed Elector Ballot

A different kind of reform would be to allow voters to vote for individual electors rather than for an entire slate all pledged to the same candidate. This was once common, and in a few cases split a state's electoral votes between candidates. This happened four times in California history (1880, 1892, 1896, and 1912), and also in Kentucky, Maryland, Ohio, Oregon, and West Virginia.

This change does not necessarily mean eliminating winner-take-all, but it does address some of the concerns raised about that system. In fact, mixed ballots could be paired with winner-take-all, one of the district methods, or be a stand-alone reform. It would provide an opportunity for voters to split their vote by choosing electors pledged to different candidates. New York voters were able to vote for individual electors as recently as 1988.

One of the key benefits of giving voters this power is that it reinforces the understanding of presidential elections as a two-step process in which there is first a popular election for presidential electors followed by a vote of the Electoral College. It also gives voters more options for expressing their views (and thus more information for elected officials and political parties on the views of voters). The election of a mixed slate of electors could provide representation for supporters of the second-place candidate, or at least remind them that they are just as represented when voting for a losing presidential elector candidate as they are in voting for any other losing candidate. It also could open opportunities for unpledged electors able to exercise independent judgment.

Conclusion

Winner-take-all has been the dominant method used by states for allocating electoral votes since 1836. Yet states have used other methods, and Maine and Nebraska continue to do so. For a variety of reasons, including the arguments advanced by National Popular Vote lobbyists, many state legislators and other policymakers are currently questioning whether winner-take-all is the best way to allocate presidential electors. As history shows, there are several options available that preserve each state's unique voice and role while addressing concerns about the winner-take-all method.