The Electoral College: Why We Have It, How It Works, and Prospects for Change

I. Why do we have the electoral college?

A. Compromise between those at the Constitutional Convention who supported selection by Congress and those who supported selection by popular vote.

1. The principal argument for choice by Congress: members of Congress would make a better choice – they would have more information and knowledge about who was qualified than would the average citizen.

2. The electoral college serves as a compromise in that it avoids popular vote but leaves choice of electors – or method of choice of electors – to political leaders in the states (the state legislature).

B. Helped to address concerns of smaller (less populous) states

II. Constitutional Specifications for the Electoral College

A. Original

1. The electoral college is comprised of members from each of the states, with the number of members from each state equal to the number of U.S. representatives and senators in that state.

2. Each state's electors are chosen by method determined by each state legislature.

3. Members of the U.S. House of Representatives and Senate and federal employees cannot be selected as electors.

4. Electors meet in state capitals to vote for president and vice president, and one of these votes must be for someone other than a resident of the elector’s home state.

5. Votes are transmitted to the President of the Senate.

6. The candidate with the greatest number of votes and a majority of votes is elected president. The candidate with the second highest number of votes is elected vice president.

7. If no candidate has a majority of votes or if there is a tie vote, the House of Representatives chooses the president. The House votes by state, with each state having a single vote.

8. The candidate with the most votes is elected president, and the candidate with the second highest total votes becomes vice president.
9. If there is a tie in the House vote, the Senate chooses which candidate becomes vice president.

B. 12th Amendment

1. Vote for president and vice president made separate, to avoid possibility of tie in case where one candidate is clearly intended to be supported for president, but there is equal support for the candidate supported for vice president. This occurred in 1800, when Thomas Jefferson and Aaron Burr received equal votes in the electoral college, when Jefferson was clearly the intended presidential candidate.

2. If no presidential candidate or vice presidential candidate has a majority vote in the electoral college, the House chooses from among the top 3 candidates, with each state having one vote. The candidate who receives at least 50% of the votes is elected president.

3. The Senate chooses the vice president from among the top 2 vice presidential contenders.

III. Legal Specifications Regarding Timing of Electoral College

A. On the Monday following the second Wednesday of December (as established in federal law) each state's electors meet in their respective state capitals and cast their electoral votes.

B. The electoral votes are then sealed and transmitted from each state to the President of the Senate who, on the following January 6, opens and reads them before both houses of the Congress.

IV. Elections of Historical Interest

A. 1824: no majority winner due to votes divided among Andrew Jackson, John Quincy Adams, Henry Clay, and William Crawford.

Jackson received the plurality of the popular vote, but the House chose John Q. Adams as president.

B. 1876: In the contest between Republican presidential candidate Rutherford B. Hayes and Democratic candidate Samuel Tilden, there was not a clear majority winner in the electoral college due to disputed electors.

Tilden was the winner based on the popular vote.
Congress appointed a commission to determine the outcome of the dispute, and a bargain between the Republicans and the Democrats gave the Republicans the presidency and ended Reconstruction.

C. 1888: Incumbent Democratic President Cleveland won the popular vote, but Republican challenger Harrison won electoral vote.

D. 1968: George Wallace’s 3rd-party candidacy made a decision by the House more likely than usual, although Nixon ultimately won both the popular vote and the electoral college vote.

E. 2000: Al Gore won the national popular vote, but George W. Bush received the most votes in the Electoral College, based on the Supreme Court decision in Bush v. Gore.

V. Will the electoral college be changed?

A. Constitutional amendment requires 2/3 vote in both houses of Congress, then ratification by ¾ state legislatures.

B. Relevant point: 28 states have fewer than 9 electoral college votes.

C. Although some 65% of public favors a constitutional amendment to abolish the electoral college, it is unlikely that there would be enough support from small states to pass such an amendment.

D. Intermediate change: state law determines the allocation of the state's electoral college vote -- 48 states have winner-take-all allocation.

2 states, Nebraska and Maine, choose two electors by statewide popular vote and the remainder by the popular vote within each Congressional district. This type of proportional allocation more closely mirrors the popular vote.

If more states moved to proportional allocation, it would make it less likely there would be a difference between the winner of the national popular vote and the winner of the electoral college vote.