

These issue summaries provide an overview of the law as of the date they were written and are for educational purposes only. These summaries may become outdated and may not represent the current state of the law. Reading this material DOES NOT create an attorney-client relationship between you and the American Center for Law and Justice, and this material should NOT be taken as legal advice. You should not take any action based on the educational materials provided on this site, but should consult with an attorney if you have a legal question.

Why isn't the President elected based on popular vote?

The framers of the United States Constitution and our system of government realized that tyranny can be the result of either the combination of power in the hands of the few or in the unrestrained radical mood swings of the populace. To protect against both extremes, the Founders set up a system of "separation of powers" and "checks and balances." One of these checks is the Electoral College. Article II, Section 1 of the Constitution provides that instead of electing whichever candidate gets the single highest number of votes, the President is chosen by the states. Typically, states require that their electors vote in accordance with their state's popular election.

The Electoral College was created in part to prevent state and regional interests from taking precedence over the interest of the United States as a whole. Without an Electoral College, candidates would be motivated to win by simply catering to a high percentage of voters living in the densest population regions, such as coastal cities, while ignoring the interests of Americans in other states and regions. With the Electoral College, candidates must not only win a large portion of the total popular vote, but these votes must garner majorities in enough states across the nation consisting of a diverse array of Americans.

As Alexander Hamilton wrote in defense of the Electoral College in Federalist 68,

The process of election affords a moral certainty, that the office of President will never fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications. Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States. It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters pre-eminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution, by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration.

As some commentators have observed, the Electoral College functions similarly to baseball's World Series. It is crucial to score runs, but the winner is determined by the number of games won, not the aggregate total of runs scored in the series. Likewise, a successful presidential candidate must win consistent support throughout the country, not just intense support from a few regions.

The Electoral College incentivizes candidates to build broader, more diverse coalitions. Candidates seek to win swing-voters in swing-states or states leaning towards the other candidate rather than drum up higher turnout in regions that already support them. The campaigning cycle would look far different under another system. Without the Electoral College, Democratic candidates might be induced to spend the most time and resources pushing for a higher turnout in New York City and California, while Republican candidates try to push for a higher turnout in Texas or certain high population Southern areas. The Electoral College encourages candidates to build a broader coalition in other states once it is clear that the majority of one state supports that candidate.