

Conceivably, this method could be adopted in the form of a federal constitutional amendment. However, if a constitutional amendment were being considered, the amendment could simply eliminate the contingent election in the House (as the 1950 Lodge-Gossett fractional-proportional amendment would have done).

Moreover, if amending the Constitution were being considered, the whole-number proportional method would be manifestly inferior to the fractional-proportional method in several ways. Specifically, the fractional-proportional method (section 4.1) would:

- make every voter in every state politically relevant in every president election, and
- less frequently give the presidency to a candidate who did not win the national popular vote. Specifically, the fractional-proportional method would not have elected Trump in 2016, although it would have elected George W. Bush in 2000.

### 4.3. CONGRESSIONAL-DISTRICT METHOD OF AWARDING ELECTORAL VOTES

#### 4.3.1. Summary

- Under the congressional-district method of awarding electoral votes, one electoral vote is awarded to the presidential candidate who receives the most popular votes in each of a state's congressional districts. The state's two senatorial electoral votes are awarded on the basis of the statewide vote.
- The congressional-district method could be implemented in two ways, namely by means of a federal constitutional amendment or by state-level legislation enacted by individual states (as Maine did in 1969, Nebraska did in 1992, and many states did in the late 1700s and early 1800s).
- The congressional-district method *would not* accurately reflect the nationwide popular vote even if used nationwide. In three of the six presidential elections between 2000 and 2020, the winner of the most votes nationwide would not have won the presidency if this method had been applied to past election returns.
- The congressional-district method *would not* make every voter in every state politically relevant. It would worsen the current situation 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. Campaigns would be focused only on the small number of congressional districts that are closely divided in the presidential race. In 2020, 31% of the U.S. population lived in the dozen closely divided battleground states where the major-party presidential candidates were within eight percentage points of each other. In contrast, only 17% of the nation's congressional districts (72 of 435) were within eight percentage points of each other in 2020.
- The congressional-district method *would not* make every vote equal. There are six substantial sources of inequality built into this method, namely:
  - 3.81-to-1 inequality because of senatorial electors;
  - 1.72-to-1 inequality because of imprecision in apportioning U.S. House seats (and hence electoral votes);

- 3.76-to-1 inequality in the value of a vote because of voter-turnout differences among congressional districts across the country;
- 1.67-to-1 inequality in favor of voters in low-turnout states;
- 1.39-to-1 inequality because of intra-decade population changes; and
- 7.1-to-1 differences, from district to district within a state, in the number of votes that enable a candidate to win an electoral vote; and
- 210-to-1 inequality in the value of a vote based on its ability to decide the national outcome.
- District allocation of electoral votes would magnify the effects of gerrymandering of congressional districts and increase the incentive to gerrymander.
- Presidential campaigns would not be attracted *to a state* by the congressional-district method but, instead, only to whatever closely divided districts, if any, happen to exist in a given state. For example, recent presidential campaigns paid attention to Nebraska's closely divided 2<sup>nd</sup> congressional district (the Omaha area) while totally ignoring the heavily Republican rural 1<sup>st</sup> and 3<sup>rd</sup> districts. Similarly, recent campaigns paid attention to Maine's closely divided 2<sup>nd</sup> congressional district (the northern part of the state), while ignoring the heavily Democratic 1<sup>st</sup> district (the Portland area).
- The congressional-district method would be difficult to install on a state-by-state basis, because it imposes a substantial disadvantage on first movers and early adopters. A state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all. Moreover, each additional state that adopts this method increases the influence of the states that cling to the winner-take-all method.
- The congressional-district method of awarding electoral votes would make a bad system worse, because it would not accurately reflect the nationwide popular vote, would not make every voter in every state politically relevant, and would not make every vote equal.

### 4.3.2. Description of the congressional-district method

Under this method of awarding electoral votes, one electoral vote is awarded to the presidential candidate who receives the most popular votes in each of a state's congressional districts. Typically, the state's two senatorial electoral votes are awarded on the basis of the statewide vote.

### 4.3.3. History of the congressional-district method

This method could be implemented in two ways.

First, a federal constitutional amendment could implement it on a nationwide basis.

Second, an individual state could enact a law to allocate its electoral votes by district (as Maine did in 1969, as Nebraska did in 1992, and numerous other states have done as far back as the nation's first presidential election in 1789).

### **Using a constitutional amendment to implement the congressional-district method**

The U.S. Senate approved, by a two-thirds vote, a constitutional amendment to implement the district method in 1813, 1819, 1820, and 1822. However, in each case, the amendment failed to pass the House.<sup>93</sup>

The congressional-district method received considerable attention in 1969, when Congress intensively debated various alternative constitutional amendments concerning election of the President, including direct popular election (section 4.7) and the fractional-proportional method (section 4.1).

In 1969, Senator Karl Mundt (R–South Dakota) sponsored a federal constitutional amendment to implement the district method. Senate Joint Resolution 12 of the 91<sup>st</sup> Congress read:

“Section 1. Each State shall choose a number of electors of President and Vice President 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 chosen elector.

“The electors assigned to each State with its Senators shall be elected by the people thereof. Each of the electors apportioned with its Representatives shall be elected by the people of a single-member electoral district formed by the legislature of the State.<sup>94</sup> Electoral districts within each State shall be of compact and contiguous territory containing substantially equal numbers of inhabitants, and shall not be altered until another census of the United States has been taken. Each candidate for the office of elector of President and Vice President shall file in writing under oath a declaration of the identity of the persons for whom he will vote for President and Vice President, which declaration shall be binding on any successor to his office. In choosing electors the voters in each State have the qualifications requisite for electors of the most numerous branch of the State legislature.

“The electors shall meet in their respective States, fill any vacancies in their number as directed by the State legislature, and vote by signed ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the State with themselves....

“Any vote cast by an elector contrary to the declaration made by him shall be counted as a vote cast in accordance with his declaration.”

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<sup>93</sup> Keyssar, Alexander. 2020. *Why Do We Still Have the Electoral College?* Cambridge, MA: Harvard University Press. Page 62.

<sup>94</sup> Although the 1969 Mundt amendment is generally viewed as being based on congressional districts, it did not specifically require that the presidential-electoral districts be the same as the state's congressional districts. Instead, the amendment merely said that the districts would be “single-member electoral district[s] formed by the legislature of the State.”

The 1969 Mundt amendment was sponsored by 18 Senators including:

- Mundt (R–South Dakota)
- Boggs (R–Delaware)
- Byrd (D–West Virginia)
- Cotton (R–New Hampshire)
- Curtis (R–Nebraska)
- Dominick (R–Colorado)
- Fong (R–Hawaii)
- Goldwater (R–Arizona)
- Hansen (R–Wyoming)
- Hruska (R–Nebraska)
- Jordan (R–Idaho)
- Miller (R–Iowa)
- Sparkman (D–Alabama)
- Stennis (D–Mississippi)
- Thurmond (R–South Carolina)
- Tower (R–Texas)
- Williams (R–Delaware)
- Young (R–North Dakota).

A secondary feature of the 1969 Mundt amendment was that it eliminated the possibility of faithless presidential electors, while retaining the position of presidential elector. The Mundt amendment provided that each person nominated for presidential elector must take an oath promising to vote in the Electoral College for a particular candidate for President and Vice President. Then, regardless of how the presidential elector actually voted when the Electoral College met, the elector’s vote would “be counted as a vote cast in accordance with his declaration.”

Passing a constitutional amendment requires an enormous head of steam at the front-end of the process—specifically, getting a two-thirds vote in both houses of Congress. A constitutional amendment then requires ratification by three-fourths of the states. There have been only 17 amendments ratified since the Bill of Rights.<sup>95</sup>

However, the district method of awarding electoral votes could be implemented without a constitutional amendment—that is, it could be implemented unilaterally by individual states, as discussed in the next section.

### **Using state legislation to implement the congressional-district method**

Before we discuss the history of use of the congressional-district method at the state level, note that states have employed districts other than congressional districts to award their electoral votes in the past.

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<sup>95</sup> The most recently approved constitutional amendment was the 27<sup>th</sup> Amendment (congressional salaries), which became part of the Constitution in 1992; however, that amendment had been submitted to the states by the First Congress on September 25, 1789—203 years earlier.

- In the first three presidential elections (1789, 1792, and 1796), Virginia voters chose presidential electors from single-electoral districts. Presidential-electoral districts were also used in North Carolina in 1796, 1800, 1804, and 1808.
- In the nation's first presidential election in 1789, Delaware had three counties and three electoral votes (as it still does today). In 1789, one presidential elector was elected from each of Delaware's three counties.<sup>96</sup>
- In 1792, Massachusetts voters chose presidential electors from four multi-electoral regional districts (with the legislature choosing the state's remaining two electors).

Between 1789 and 1832, presidential electors were elected by congressional district in numerous states in various years.

In the nation's first presidential election in 1789, Massachusetts voters voted on candidates for presidential elector on a congressional-district basis.

Chief Justice Melville Fuller recounted the history of the congressional-district method between 1804 and 1828 in his opinion in *McPherson v. Blacker*:

“The district method obtained in Kentucky until 1824; in Tennessee and Maryland until 1832; in Indiana in 1824 and 1828; in Illinois in 1820 and 1824; and in Maine in 1820, 1824, and 1828. Massachusetts ... used the district system again in 1812 and 1820.... In New York, the electors were elected in 1828 by districts, the district electors choosing the electors at large.”<sup>97</sup>

### **1892 enactment of the congressional-district method in Michigan**

Michigan had given all of its electoral votes to the Republican presidential nominee between the formation of the modern Republican Party in 1856 and the 1888 election.

In 1888, Democrats were outraged when incumbent President Grover Cleveland won the national popular vote while losing the Electoral College to Republican Benjamin Harrison.

“In the off-year election of 1890, Republicans suffered epic landslide losses, nationally and in Michigan. Democrats picked up 75 seats and won control of the U.S. House of Representatives.... Democrats had won eight ... Congressional districts in Michigan.”<sup>98</sup>

Moreover, the Democrats also won control of both houses of the Michigan legislature and the governorship.

In 1891, they repealed Michigan's winner-take-all law for awarding electoral votes. The

<sup>96</sup> The U.S. Supreme Court decision in the 1892 case of *McPherson v. Blacker* contains an error concerning Delaware. In its historical review of the election laws of 1789, the Court (incorrectly) stated, “At the first presidential election, the appointment of electors was made by the legislatures of Connecticut, Delaware, Georgia, New Jersey, and South Carolina.” 146 U.S. 1 at 29. This source of this incorrect statement appears to be page 19 of the plaintiff's brief in the 1892 case. *Brief of F.A. Baker for Plaintiffs in Error in McPherson v. Blacker*. 1892. In fact, Delaware's presidential electors in 1789 were elected on a county basis. See section 2.2.

<sup>97</sup> *McPherson v. Blacker*. 146 U.S. 1 at 32. 1892.

<sup>98</sup> Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 1.

new law provided that one presidential elector would be chosen from each of the state's 12 congressional districts. In addition, the Miner Act created an eastern and western super-district—each consisting of six congressional districts. One electoral vote was awarded to the candidate who received the most popular votes in each super-district.

“Enactment of Miner’s bill meant that Democrats would not be shut out in 1892, and might even be assured of winning six or seven votes, instead of zero electoral votes, from Michigan in the impending presidential election.

“Miner predicted that a system for district elections, if adopted elsewhere, would prevent the election of minority presidents like Harrison.”<sup>99</sup>

This new law in Michigan aroused intense opposition.

In his 1891 State of the Union address to Congress, President Benjamin Harrison—the beneficiary of the winner-take-all system in the 1888 election—criticized Michigan’s adoption of the district system:

“The method of appointment by the States of electors of President and Vice-President has recently attracted renewed interest by reason of **a departure by the State of Michigan from the method which had become uniform in all the States.**”

“**For nearly sixty years all the States save one have appointed their electors by a popular vote upon a general ticket, and for nearly thirty years this method was universal.**”<sup>100</sup> [Emphasis added]

President Harrison then spent 10% of his 16,000-word address to Congress arguing that the use of districts to elect presidential electors would subject the presidency to “the baneful influence of the gerrymander.”

In 1892, the Michigan Republicans challenged the constitutionality of the Miner Act in state courts.

“On June 17, 1892, the Michigan Supreme Court stunned the GOP by unanimously denying the writ of mandamus and upholding the Miner Law. This action came from a Supreme Court that had been elected on a partisan ballot and where Republican justices constituted a majority on the court.”<sup>101</sup>

On appeal, the U.S. Supreme Court unanimously upheld Michigan’s use of the congressional-district method in *McPherson v. Blacker*—the seminal case on the power of state legislatures to choose the method of awarding the state’s electoral votes.

In November 1892, Michigan voters elected seven Republican and five Demo-

<sup>99</sup> Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.

<sup>100</sup> Harrison, Benjamin. 1891. Third Annual Message. *The American Presidency Project*. <https://www.presidency.ucsb.edu/node/205168>

<sup>101</sup> Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.

cratic presidential electors at the district level. The Republicans won both of the state's super-districts.

Michigan voters also elected a Republican Governor and legislature in 1892.

“The very first bill introduced in the state Senate in January of 1893 was a bill to repeal the Miner Law.... On straight party line votes, first in the state Senate and later in the state House, the Miner Law was wiped out of Michigan's statute books.”<sup>102</sup>

Under the restored winner-take-all law, Republican presidential nominee William McKinley won all of Michigan's electoral votes in 1896.

### **1969 enactment of the congressional-district method in Maine**

This method is in use today in Maine as a result of a 1969 state law. Maine awards its two senatorial electoral votes to the candidate who receives the most popular votes statewide.

In the 13 presidential elections between 1972 and 2020 in which Maine used this method, there were only two occasions when the state's electoral votes were divided. In 2016 and 2020, Donald Trump carried Maine's 2<sup>nd</sup> congressional district (the northern part of the state), while the Democratic nominee carried the 1<sup>st</sup> district (the Portland area) and the state as a whole.

### **1992 congressional-district proposal in Florida and seven other states**

The congressional-district method was actively considered by the states of Arizona, Connecticut, Florida, Georgia, Louisiana, Nebraska, New Jersey, North Carolina, and Virginia in 1992.

In 1992, Nebraska enacted a congressional-district law similar to Maine's 1969 law. In the eight presidential elections between 1992 and 2020 in which Nebraska used this method, there were only two occasions when the state's electoral votes were divided. Barack Obama carried Nebraska's 2<sup>nd</sup> congressional district (the Omaha area) in 2008, and Joe Biden carried the 2<sup>nd</sup> district in 2020.

A congressional-district system came close to enactment in Florida in 1992, when the proposal had the support of Governor Lawton Chiles (D) and passed the state House. However, the bill failed to pass the Senate.

### **2011 congressional-district proposal in Pennsylvania**

Just before and after the 2012 presidential election, this method was the subject of considerable debate in various states—notably in Pennsylvania in 2011.

In November 2010, the Republicans won control of both houses of the Pennsylvania legislature and the Governor's office.

The political context of this debate was that the Democratic presidential nominee had won Pennsylvania in the five previous elections. Moreover, it was generally expected that President Obama would win Pennsylvania again in 2012—as indeed he did.

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<sup>102</sup> Ballenger, William S. 2012. Electoral College reform: Return of the Miner Law. *Inside Michigan Politics*. June 3, 2013. Page 2.



Also, it was widely anticipated that the Republican legislature and Republican Governor would enact a congressional redistricting plan that would be highly favorable to their party—as they, in fact, did.

Thus, in September 2011, Pennsylvania Senate Majority Leader Dominic Pileggi (R) introduced a bill that would have replaced Pennsylvania’s existing winner-take-all law with a law similar to the 1969 Maine and 1992 Nebraska laws. Under Pileggi’s proposal, the candidate winning each of Pennsylvania’s congressional districts would receive one electoral vote, and the candidate winning the state would receive the state’s two senatorial electoral votes.

Although Senator Pileggi’s 2011 proposal was not enacted in time for the 2012 election, the issue remained active and resurfaced in 2013.

### **2013 Congressional-district proposals in Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida**

There were six closely divided battleground states in which the Republicans won control of both houses of the legislature and the Governor’s office in the November 2010 midterm elections—Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida.

In 2012, President Obama carried all six states (as he had in 2008), thus giving him a 106–0 margin over Governor Romney in these six states. This 106-vote margin was considerably larger than the 62-vote margin by which President Obama won the Electoral College in 2012.

Thus, the congressional-district method attracted increased attention among Republican state legislators in these six states after the 2012 election.

A *National Journal* article entitled “The GOP’s Electoral College Scheme” in December 2012 reported:

“Republicans alarmed at the apparent challenges they face in winning the White House are preparing an all-out assault on the Electoral College system in critical states, an initiative that would significantly ease the party’s path to the Oval Office.

**“Senior Republicans say they will try to leverage their party’s majorities in Democratic-leaning states in an effort to end the winner-take-all system of awarding electoral votes. Instead, bills that will be introduced in several Democratic states would award electoral votes on a proportional basis.”**

“If more reliably blue states like Michigan, Pennsylvania, and Wisconsin were to award their electoral votes proportionally, Republicans would be able to eat into what has become a deep Democratic advantage.

“All three states have given the Democratic nominee their electoral votes in each of the last six presidential elections. Now, senior Republicans in Washington are overseeing legislation in all three states to end the winner-take-all system.”

“The proposals, the senior GOP official said, are likely to come up in each



**Table 4.51 Political effect of the congressional-district method in six states in 2012**

State	D	R	D districts	R districts	D-EV under CD	R-EV under CD
FL	50%	49%	11	16	13	16
MI	54%	45%	5	9	7	9
OH	51%	48%	4	12	6	12
PA	52%	47%	5	13	7	13
VA	51%	47%	4	7	6	7
WI	53%	46%	3	5	5	5
<b>Total</b>			<b>32</b>	<b>62</b>	<b>44</b>	<b>62</b>

state’s legislative session in 2013. Bills have been drafted, and legislators are talking to party bosses to craft strategy.”

“In the long run, Republican operatives say they would like to pursue similar Electoral College reform in Florida, Ohio, and Virginia. Obama won all three states, but Romney won a majority of the congressional districts in each state.

**“Rewriting the rules would dramatically shrink or eliminate the Democratic advantage, because of the way House districts are drawn.”**

“If Republicans go ahead with their plan, Democrats don’t have the option of pushing back.... **Some consistently blue presidential states have Republican legislatures; the reverse is not true.**”<sup>103</sup> [Emphasis added]

Table 4.51 shows the effect of applying the congressional-district method to the actual 2012 election returns from these six states (Pennsylvania, Wisconsin, Michigan, Ohio, Virginia, and Florida).<sup>104</sup> Columns 2 and 3 of the table show the statewide popular-vote results in each of the six states. Columns 4 and 5 show the number of congressional districts won by President Barack Obama and Governor Mitt Romney in each state. Columns 6 and 7 show the total number of electoral votes (including the two senatorial electoral votes) for Obama and Romney if this method had been applied to the results of the 2012 election.<sup>105</sup>

Under this method, President Obama would have received only 44 electoral votes to Governor Romney’s 62 electoral votes from the six states—even though Obama carried all six states.

If this method had been in place in 2012 in the six states, President Obama would have ended up nationally with a razor-thin 270–268 win in the Electoral College (instead of the actual 332–206 margin).<sup>106</sup>

<sup>103</sup> Wilson, Reid. The GOP’s Electoral College scheme. *National Journal*. December 17, 2012. <http://www.nationaljournal.com/columns/on-the-trail/the-gop-s-electoral-college-scheme-20121217>

<sup>104</sup> Richie, Rob. 2012. Electoral College chaos: How Republicans could put a lock on the presidency. December 13, 2012. <http://www.fairvote.org/electoral-college-chaos-how-republicans-could-put-a-lock-on-the-presidency>

<sup>105</sup> *Ibid.*

<sup>106</sup> In 2012, if the congressional-district method is applied to the election returns in every state, Mitt Romney would have received a total of 274 electoral votes, and Obama would have received 264 electoral votes, despite the fact that Barack Obama received 4,966,945 more popular votes nationwide.

### 2013 Congressional-district proposal in Pennsylvania

The debate was particularly intense in Pennsylvania because Pennsylvania lost its battleground status in 2012. As *PoliticsPA* said:

“Once a reliable battleground state, **Pennsylvania spent most of the 2012 presidential campaign on the sidelines.**”<sup>107</sup> [Emphasis added]

Indeed, Pennsylvania received only five general-election campaign events in 2012 (out of 253 nationally)—compared to 40 that it had received in 2008.

Particularly galling to Pennsylvanians was the fact that neither President Obama nor Vice President Biden bothered to visit the state at all during the 2012 general-election campaign.

Moreover, neighboring Ohio (with two fewer electoral votes than Pennsylvania) received 73 general-election campaign events—almost one-third of the national total of 253.

In short, Pennsylvania was a “jilted battleground” state in the 2012 election.

Shortly after the 2012 election, Pennsylvania state Representatives Robert Godshall (R) and Seth Grove (R) announced that they intended to introduce a bill in 2013 to implement the congressional-district method in Pennsylvania.

The memo soliciting Pennsylvania legislators to co-sponsor the congressional-district bill said:

“I believe that the Congressional District Method will increase voter turnout and **encourage candidates to campaign in all states rather than just those that are competitive...** Most importantly, this method of selecting presidential electors will give a stronger voice to voters in **all regions** of our great Commonwealth.” [Emphasis added]

### 2013 congressional-district proposal in Michigan

Michigan was another “jilted battleground” in the 2012 election.

In fact, Michigan was ignored in the 2012 general-election campaign for President to an even greater degree than Pennsylvania.

Michigan’s only general-election campaign visit in 2012 was an appearance by Republican vice-presidential nominee Paul Ryan in Rochester, Michigan.

President Obama, Governor Romney, and Vice President Biden never bothered to visit the state during the general-election campaign.

Thus, Representative Pete Lund (R), Chair of the House Redistricting and Elections Committee, announced his intention to introduce a bill<sup>108</sup> in the 2013 legislative session to enact the congressional-district method, saying:

<sup>107</sup> Gibson, Keegan. House Republicans resurrect congressional-based Electoral College plan. *PoliticsPA*. December 20, 2012. <http://www.politicspa.com/house-rs-resurrect-congressional-based-electoral-college-plan/44960/>

<sup>108</sup> Oosting, Jonathan. Shake up the Electoral College? GOP proposal would have helped Mitt Romney win Michigan. *MLive*. December 18, 2012. [http://www.mlive.com/politics/index.ssf/2012/12/shake\\_up\\_the\\_electoral\\_college.html](http://www.mlive.com/politics/index.ssf/2012/12/shake_up_the_electoral_college.html)

“It’s more representative of the people... A person doesn’t win a state by 100 percent of the vote, so this is a better, more accurate way... People would feel voting actually matters. It’s an idea I’ve had for several years.”<sup>109</sup>

An Associated Press story reported:

“Pete Lund, Michigan’s House Republican whip, said next year is an opportune time to renew the push for his bill to award two electoral votes to the statewide winner and allocate the rest based on results in each congressional district—the method used by Nebraska and Maine.

“The 2016 election ‘is still a few years away and no one knows who the candidates are going to be,’ said Lund.”<sup>110</sup>

A *Christian Post* article entitled “GOP Operatives Eye Reversal of Democrats’ Electoral College Edge” in December 2012 reported:

**“The current method of calculating electoral college votes in most states gives Democrats an edge in presidential races.** Republican operatives are working to undo that edge, not by supporting a popular vote, though, as most Americans would prefer, but by supporting changes that would give Republicans an edge.

“In all but two states, Maine and Nebraska, the candidate who wins the majority of votes in the state receives all the electors for that state. In Maine and Nebraska, electors are assigned by congressional district. A candidate gets one elector for each congressional district they win and two more electors if they win the popular vote in the state.

**“Republican operatives are working to cherry pick a few select states to change the system to one like Maine and Nebraska in order to pick up a few more electors in the next presidential election.**

“The states they are looking at are Michigan, Pennsylvania and Wisconsin. Obama won all three of those states in 2008 and 2012. Combined, those states netted 46 electors for President Barack Obama. If those states had assigned electors by congressional district, though, at least 26 electors would have likely gone to Republican presidential candidate Mitt Romney instead of Obama, according to calculations by Reid Wilson for *National Journal*. It would not have been enough for Romney to win, but would at least put future Republican candidates in a better position to win in future elections.

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<sup>109</sup>Lund: Divide Electoral College votes by congressional district. *Michigan Information and Research Service*. December 17, 2012. [www.mirsnews.com/alert.php?alert\\_id=1352](http://www.mirsnews.com/alert.php?alert_id=1352)

<sup>110</sup>Associated Press. Changes advocated in Pennsylvania electoral vote counting. *PennLive*. December 22, 2012. [http://www.pennlive.com/midstate/index.ssf/2012/12/changes\\_advocated\\_in\\_pennsylva.html](http://www.pennlive.com/midstate/index.ssf/2012/12/changes_advocated_in_pennsylva.html)

“One aspect that all three of those states have in common is their state governments are controlled by Republicans, making the change possible. It also means that the 2010 redistricting in those states was controlled by the Republicans, thus giving them an advantage in drawing congressional district lines favorable to their party....

**“The current plan pursued by some Republicans is not aimed at fixing perceived flaws in the system, though. Rather, it is aimed at simply helping Republicans win.** (Notice they are not proposing the same system for states like Texas, which would help Democrats gain a few more electors.)”<sup>111</sup>  
[Emphasis added]

### 2013 congressional-district proposal in Virginia

In December 2012, Virginia state Senator Charles Carrico (R) proposed that his state adopt a variation of the congressional-district method.<sup>112</sup>

Under Carrico’s proposal, Virginia’s two senatorial electoral votes would not go to the statewide winner (namely Obama in 2008 and 2012).

Instead, the candidate winning a majority of Virginia’s 11 districts (which were gerrymandered in 2011 to favor the Republican Party) would receive a bonus of two senatorial electoral votes. That is, Carrico’s bill would layer a winner-take-all rule on top of the winner-take-all rule applied at the district level.

Because the Republican legislature and Governor had created congressional districts highly favorable to their own party, President Obama won only four of Virginia’s 11 districts while carrying the state in November 2012. Meanwhile, Governor Romney won seven.

If the congressional-district law used in Maine and Nebraska is applied to the 2012 election returns in Virginia, the state’s electoral votes would have been split 7–6 in favor of Romney.

If Senator Carrico’s variation had been used, Romney would have won Virginia’s two senatorial electoral votes, and the state’s electoral votes would have been split 9–4 in favor of Romney. Note that President Obama won Virginia’s two-party vote by a 52%–48% margin in 2012.

<sup>111</sup> Nazworth, Napp. GOP operatives eye reversal of Democrats’ Electoral College edge. *Christian Post*. December 20, 2012. <http://www.christianpost.com/news/gop-operatives-eye-reversal-of-democrats-electoral-college-edge-87014/>

<sup>112</sup> Lee, Tony. OH, VA Republicans Consider Changes to Electoral Vote System. *Breitbart*. December 10, 2012. <http://www.breitbart.com/Big-Government/2012/12/10/OH-VA-Republicans-Float-Idea-Of-Getting-Rid-Of-Winner-Take-All-System-Of-Awarding-Electoral-Votes>

### 2013 congressional-district proposal in Wisconsin

A December 27, 2012, *Milwaukee Journal Sentinel* article reported that incoming Assembly Speaker Robin Vos (R) had sponsored a bill (Assembly Bill 589) to divide Wisconsin's electoral votes by congressional district in 2008.<sup>113</sup>

A *Milwaukee Journal Sentinel* article entitled "Walker Open to Changing state's Electoral College Allocations" reported on December 22, 2012:

"Gov. Scott Walker is open to having Wisconsin allocate its Electoral College votes based on results from each congressional district—a move that would offer Republicans a chance to score at least a partial victory in a state that has gone Democratic in the last seven presidential elections.

"The idea is being considered in other battleground states that have tipped toward Democrats as Republicans try to develop a national plan to capture the presidency in future years....

"In the weeks since Obama won reelection, Republicans are now eyeing splitting up electoral votes in other key battleground states, according to the *National Journal*. **If Wisconsin, Michigan and Pennsylvania went to such a system, Republicans would have a chance to edge into the national Electoral College advantage that Democrats now enjoy.**

"While those states lend an advantage to Democrats in presidential years, Republicans control all of state government in those three states after the GOP sweep of 2010."

"Republicans last year bolstered their chances in congressional races by re-drawing district lines. Those boundaries have to be redrawn every decade to account for population changes, and Republicans were able to use that opportunity to their advantage since they controlled state government."<sup>114</sup> [Emphasis added]

### 2021 congressional-district proposals in various state legislatures

Interest in the district method of awarding electoral votes has decreased considerably since the flurry of activity between 2011 and 2013.

Nonetheless, such bills are introduced regularly in state legislatures.

Table 4.52 shows the 28 bills to implement the district method of awarding electoral votes that were introduced in state legislatures in 2021 and 2022. District bills were introduced in 14 states, with a total of 87 sponsors.

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<sup>113</sup>Marley, Patrick. Vos previously backed changing electoral vote rules. *Milwaukee Journal Sentinel*. December 27, 2012. <http://www.jsonline.com/news/statepolitics/vos-previously-backed-changing-electoral-vote-rules-jb865ct-184975431.html>

<sup>114</sup>Marley, Patrick. Walker open to changing state's Electoral College allocations. *Milwaukee Journal Sentinel*. December 22, 2012. <http://www.jsonline.com/news/statepolitics/walker-open-to-changing-states-electoral-college-allocations-8884ck6-184566961.html>

Table 4.52 2021–2022 state legislative bills for district allocation of electoral votes

State	Bill	Year	Party that won state in 2020	Sponsors
Arizona	HB2426 <sup>a</sup>	2021	Democrat	3 Republicans
Arizona	HB2476 <sup>b</sup>	2022	Democrat	5 Republicans
Connecticut	HB5012 <sup>c</sup>	2021	Democrat	2 Republicans
Connecticut	HB5322 <sup>d</sup>	2021	Democrat	1 Republican
Connecticut	HB5324 <sup>e</sup>	2021	Democrat	1 Democrat
Iowa	HF519 <sup>f</sup>	2021	Republican	2 Democrats and 1 Republican
Illinois	HB2611 <sup>g</sup>	2021	Democrat	2 Republicans
Illinois	HB2821 <sup>h</sup>	2021	Democrat	1 Republican
Illinois	SB1762 <sup>i</sup>	2021	Democrat	1 Republican
Illinois	SB54 <sup>j</sup>	2021	Democrat	1 Republican
Massachusetts	HB785 <sup>k</sup>	2021	Democrat	1 Republican
Massachusetts	HB799 <sup>l</sup>	2021	Democrat	5 Republicans
Michigan	HB4319 <sup>m</sup>	2021	Democrat	5 Republicans
Michigan	HB4320 <sup>n</sup>	2021	Democrat	5 Republicans
Minnesota	HF453 <sup>o</sup>	2021	Democrat	1 Republican
Minnesota	HF2608 <sup>p</sup>	2021	Democrat	5 Republicans
Minnesota	SF429 <sup>q</sup>	2021	Democrat	3 Republicans
Mississippi	HB176 <sup>r</sup>	2022	Republican	1 Democrat
New Hampshire	HB370 <sup>s</sup>	2021	Democrat	4 Republicans
New York	AB4895 <sup>t</sup>	2021	Democrat	2 Republicans
New York	AB5437 <sup>u</sup>	2021	Democrat	8 Republicans
New York	SB1804 <sup>v</sup>	2021	Democrat	1 Republican
New York	SB2552 <sup>w</sup>	2021	Democrat	1 Republican
Texas	HB1375 <sup>x</sup>	2021	Republican	1 Democrat
Texas	HB3868 <sup>y</sup>		Republican	5 Republicans and 2 Democrats
Virginia	SB1432 <sup>z</sup>		Democrat	1 Republican
Wisconsin	AB35 <sup>aa</sup>		Democrat	8 Republicans
Wisconsin	SB61 <sup>ab</sup>		Democrat	8 Republicans

a <https://apps.azleg.gov/BillStatus/BillOverview/74978>

b <https://apps.azleg.gov/BillStatus/BillOverview/76974>

c [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB05012&which\\_year=2021](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05012&which_year=2021)

d [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB05322&which\\_year=2021](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05322&which_year=2021)

e [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB05324&which\\_year=2021](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05324&which_year=2021)

f <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF519>

g <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2611&GAID=16&DocTypeID=HB&SessionID=110&GA=102>

h <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2821&GAID=16&DocTypeID=HB&SessionID=110&GA=102>

i <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1762&GAID=16&DocTypeID=SB&SessionID=110&GA=102>

j <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=54&GAID=16&DocTypeID=SB&SessionID=110&GA=102>

k <https://malegislature.gov/Bills/192/H785>

l <https://malegislature.gov/Bills/192/H799>

m [http://www.legislature.mi.gov/\(S\(asihliut5srpqo34h2qj4aem\)\)/mileg.aspx?page=GetObject&objectname=2021-HB-4319](http://www.legislature.mi.gov/(S(asihliut5srpqo34h2qj4aem))/mileg.aspx?page=GetObject&objectname=2021-HB-4319)

n [http://www.legislature.mi.gov/\(S\(asihliut5srpqo34h2qj4aem\)\)/mileg.aspx?page=GetObject&objectname=2021-HB-4320](http://www.legislature.mi.gov/(S(asihliut5srpqo34h2qj4aem))/mileg.aspx?page=GetObject&objectname=2021-HB-4320)

o <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF453&ssn=0&y=2021>

p <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF2608&ssn=0&y=2021>

q <https://www.revisor.mn.gov/bills/bill.php?f=SF429&y=2021&ssn=0&b=senate>

r <http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB0176.xml>

s [http://gencourt.state.nh.us/bill\\_status/bill\\_status.aspx?lrs=318&sy=2021&sortoption=&txtsessionyear=2021&txtbillnumber=H370](http://gencourt.state.nh.us/bill_status/bill_status.aspx?lrs=318&sy=2021&sortoption=&txtsessionyear=2021&txtbillnumber=H370)

t <https://www.nysenate.gov/legislation/bills/2021/A4895>

u <https://www.nysenate.gov/legislation/bills/2021/A5437>

v <https://www.nysenate.gov/legislation/bills/2021/s1804>

w <https://www.nysenate.gov/legislation/bills/2021/s2552>

x <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB1375>

y <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB3868>

z <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1432>

aa <https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/ab35>

ab <https://docs.legis.wisconsin.gov/2021/proposals/reg/asm/bill/sb61>

As can be seen from the table, 92% of sponsors (80 of the 87) belonged to the political party that did not carry their state in the 2020 presidential election. The seven exceptions included:

- a Democratic Connecticut state legislator who sponsored a district bill in 2021, even though Biden won the state in 2020;
- an Iowa Republican state legislator who sponsored a district bill in 2021, even though Trump won the state in 2020; and
- five Texas Republican state legislators who sponsored a district bill in 2021 even though Trump won the state in 2020.<sup>115</sup>

All of the bills in the table called for the allocation of electoral votes based on congressional districts, except for the New Hampshire bill.

The New Hampshire bill (HB370) was based on the five districts used to elect the Governor’s Executive Council—a body with considerable power that harks back to Pre-Independence America.

Under the New Hampshire bill, all four of the state’s electoral votes would be awarded to the presidential candidate who receives the most votes in a majority of the five Executive Council districts. That is, like the 2012 Carrico bill in Virginia, this bill would layer a winner-take-all rule on top of a winner-take-all rule. For example, if a candidate were to carry three of the five Executive-Council districts, that candidate would receive all four of New Hampshire’s electoral votes.

By way of background, the current five districts for electing the New Hampshire Executive Council are significantly gerrymandered. Four of the five districts will usually elect a Republican, even when more total Democratic votes are cast for Council members statewide.<sup>116,117</sup> That is, the practical political effect of the New Hampshire bill (HB370) would be to award all four of New Hampshire’s electoral votes to the Republican presidential candidate.

#### 4.3.4. The congressional-district method would not accurately reflect the national popular vote.

The late Curtis Gans and Leslie Francis (opponents of a national popular vote for President) advocated the use of this method of awarding electoral votes by saying:

**“The lack of competition and campaigning in a majority of states owes itself not to the existence of the Electoral College’s indirect method of choosing presidents, but rather to the winner-take-all method of choosing electors** in all but two states. If a party knows either that it can’t win a single elector in a state or has an easy road to winning all of them, it sends its resources to where it has a competitive chance.

<sup>115</sup> Note that Texas voted 62% Republican in 2004, 58% in 2012, 55% in 2016, and 53% in 2020.

<sup>116</sup> Rayno, Gerry. 2022. Gerrymandering Makes the Majority the Minority in the NH State House. *InDepthNH*. November 12, 2022. <https://indepthnh.org/2022/11/12/gerrymandering-makes-the-majority-the-minority-in-the-nh-state-house/>

<sup>117</sup> New Hampshire Election Results. *New York Times*. December 13, 2022. [https://www.nytimes.com/interactive/2022/11/08/us/elections/results-new-hampshire.html?action=click&pgtype=Article&state=default&module=election-results&context=election\\_recirc&region=StateResultsFooter](https://www.nytimes.com/interactive/2022/11/08/us/elections/results-new-hampshire.html?action=click&pgtype=Article&state=default&module=election-results&context=election_recirc&region=StateResultsFooter)



“There are alternatives to winner-take-all that do not involve abandoning the positive aspects of the Electoral College. **All states could adopt the system that now exists in Maine and Nebraska**, where all but two electors are chosen by congressional district, and the other two go to the statewide winner.

“Or states might explore what was recently proposed in Colorado [in a statewide vote in November 2004]—that electors be allocated in proportion to each candidate’s share of the popular vote above a certain threshold.

“Either would provide a reason for both parties to compete in most states because there would be electors to win. Either **would likely produce an electoral vote count closer to the popular vote.**”<sup>118</sup> [Emphasis added]

The claim by Gans and Francis that the congressional-district system would “likely produce an electoral vote count closer to the popular vote” is demonstrably false.<sup>119</sup>

In three of the first six presidential elections of the 2000s (namely 2000, 2012, and 2016), the winner of the most votes nationwide would *not* have won the presidency if the district system had been in use in all states.

In 2016, if the congressional-district method is applied to election returns, Donald Trump would have received a majority in the Electoral College despite the fact that Hillary Clinton received 2,868,518 more popular votes nationwide. Overall, Trump would have received 290 electoral votes in 2016, and Clinton would have received 248 electoral votes. Specifically:

- Trump carried 230 of the nation’s 435 congressional districts, whereas Clinton carried only 205 districts.
- Trump carried 30 states (having 60 senatorial electors), whereas Clinton carried only 20 states (having 40 senatorial electors).
- Clinton carried the District of Columbia with three electoral votes.

In 2012, if this method is applied to the election returns, Mitt Romney would have received a majority in the Electoral College despite the fact that Barack Obama received 4,966,945 more popular votes nationwide. Romney would have received a total of 274 electoral votes, and Obama would have received 264 electoral votes.<sup>120</sup>

In 2000, if this method is applied to the election returns,<sup>121</sup> George W. Bush would have

<sup>118</sup> Gans, Curtis and Francis, Leslie. Why National Popular Vote is a bad idea. *Huffington Post*. January 6, 2012.

<sup>119</sup> The claim by Curtis Gans and Leslie Francis that the whole-number proportional method of awarding electoral votes “would likely produce an electoral vote count closer to the popular vote” is also demonstrably false, as discussed in 4.2.4.

<sup>120</sup> Daviss, Claire and Richie, Rob. 2015. *Fuzzy Math: Wrong Way Reforms for Allocating Electoral Votes (Problems with the Whole Number proportional and Congressional District Systems)*. FairVote report. <https://fairvote.app.box.com/v/fuzzy-math-wrong-way-reforms>

<sup>121</sup> 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.

received a majority in the Electoral College despite the fact that Al Gore received 543,816 more popular votes nationwide. Overall, in 2000, Bush would have received a total of 288 electoral votes, and Gore would have received 250 electoral votes.<sup>122</sup> Specifically:

- George W. Bush carried 228 of the 435 congressional districts, whereas Al Gore carried only 207 districts.
- Bush carried 30 states (having 60 senatorial electors), whereas Gore carried only 20 states (having 40 senatorial electors).
- Gore carried the District of Columbia, which has three electoral votes.

The congressional-district method would have given Bush a 6.8% lead in electoral votes over Gore in 2000. However, Gore received 51,003,926 popular votes (50.2% of the two-party popular vote), whereas Bush received 50,460,110 (49.7% of the two-party popular vote). Under the existing statewide winner-take-all system, Bush received 271 electoral votes in 2000 (50.4% of the total number of electoral votes), a 0.8% lead in electoral votes over Gore.

In three of the first six elections of the 2000s (namely 2004, 2008, and 2020), the congressional-district method would have yielded the same winner as the current state-by-state winner-take-all method of awarding electoral votes; however, the winner's percentage of the electoral votes would have differed considerably from his popular-vote percentage.

In 2004, George W. Bush carried 255 of the 435 congressional districts, whereas John Kerry carried 180. Bush carried 30 of the 50 states, and Kerry won the District of Columbia.<sup>123</sup> Bush would have won 59% of the electoral votes (315 of 538) under the congressional-district method in an election in which he received only 51% of the two-party national popular vote. Bush would have won 29 more electoral votes under this method than the 286 electoral votes that he actually won under the current system.

In 2008, Obama would have won 64 fewer electoral votes under the congressional-district method than he won under the current state-by-state winner-take-all method of awarding electoral votes. Instead of winning by 365–173 electoral votes, Obama would have won by the much narrower margin of 301–237.

In 2020, Biden won 224 of the 435 congressional districts, while Trump won 211. Biden and Trump each won 25 states—that is, each won 50 senatorial electoral votes. Biden won the District of Columbia's three electoral votes. If the congressional-district method had been applied to the 2020 election returns, Biden would have won the Electoral College by a slender margin of 277–261 electoral votes, instead of the 306–232 margin produced by the current winner-take-all system.

Table 4.53 shows the closest eight congressional districts that Biden won in 2020.

<sup>122</sup> Daviss, Claire and Richie, Rob. 2015. *Fuzzy Math: Wrong Way Reforms for Allocating Electoral Votes (Problems with the Whole Number proportional and Congressional District Systems)*. FairVote report. <https://fairvote.app.box.com/v/fuzzy-math-wrong-way-reforms>

<sup>123</sup> America's choice in 2004: Votes by congressional district. *Cook Political Report*. 2005.

**Table 4.53 The nine closest congressional districts that Biden won in 2020**

Percent margin	District	Biden	Trump	Total	Winner	Margin (D-R)
0.2%	NV-3	214,184	213,299	435,796	Biden	885
1.1%	VA-7	228,335	223,268	460,031	Biden	5,067
1.5%	NY-19	182,965	177,569	368,128	Biden	5,396
1.5%	CA-48	199,791	193,832	401,845	Biden	5,959
1.8%	AZ-1	187,182	180,673	374,808	Biden	6,509
1.9%	TX-15	119,784	115,315	237,719	Biden	4,469
2.5%	IL-14	203,741	193,889	407,226	Biden	9,852
2.8%	PA-17	221,555	209,683	438,251	Biden	11,872
3.0%	CA-10	154,990	146,084	309,075	Biden	8,906
	<b>Total</b>	<b>1,712,527</b>	<b>1,653,612</b>	<b>3,432,879</b>		<b>58,915</b>

If 29,458 voters across these nine congressional districts had changed their votes from Biden to Trump, Biden would have lost the Electoral College by a 268–270 margin, despite leading in the national popular vote by 7,052,711 votes.<sup>124</sup>

Overall, Thomas, Gelman, King, and Katz concluded that:

“The current electoral college and direct popular vote are both substantially fairer compared to those alternatives where states would have divided their electoral votes by congressional district.”<sup>125</sup>

In summary, the congressional-district method would have been even less accurate than the current state-by-state winner-take-all method of awarding electoral votes in terms of reflecting the national popular vote.

One reason why the congressional-district method would not accurately reflect the nationwide popular vote is the widespread gerrymandering of congressional districts.

A more fundamental reason is that the congressional-district method is a combination of a “winner-takes-one” system at the district level and a “winner-takes-two” system at the statewide level.

<sup>124</sup>In fact, Biden would have lost the presidency if only eight districts had switched, because there would have been a 269–269 tie in the Electoral College. In that event, the presidential election would have been thrown into the U.S. House of Representatives. In the contingent election in the House, each state casts one vote. The newly elected House takes office on January 3. The Republicans had a majority of the state delegations in the House on January 6, 2021 (although not a majority of the 435 House members). However, since the Republicans did not have a majority of the House, it is not clear that the Democrats would have allowed the House to conduct the contingent election. If the House had been given a chance to vote and if the House Republicans supported their party’s presidential nominee, incumbent President Donald Trump would have been selected by the House on January 6, 2021. Two Democrats from Georgia were elected to the Senate on January 5, 2021. However, they had not yet taken their seats as of January 6, so the Senate still had a Republican majority in the Senate on January 6. Thus, if Senate Republicans supported their party’s vice-presidential nominee on January 6, incumbent Vice President Mike Pence would have been selected by the U.S. Senate.

<sup>125</sup>Thomas, A. C.; Gelman, Andrew; King, Gary; and Katz, Jonathan N. 2012. Estimating partisan bias of the Electoral College under proposed changes in elector apportionment. SSRN-id2136804. August 27, 2012. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2134776](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2134776)

Whenever a single office is filled by an electoral process in which the winner-take-all rule is applied to districts that are smaller than the entire jurisdiction served by the office, the candidate who received the most popular votes in the jurisdiction as a whole will frequently be different from the candidate who received the most popular votes in a majority of the districts. That is, the application of the winner-take-all rule to sub-jurisdictions will often lead to the defeat of the candidate receiving the most votes in the entire jurisdiction.

#### **4.3.5. The congressional-district method would not make every vote equal.**

Every vote would not be equal throughout the country if this method of awarding electoral votes were used in all states.

There are six different sources of inequality inherent in this method.

Each of these inequalities is substantial.

As will be detailed below, these inequalities include a

- 3.81-to-1 inequality in the value of a vote because of 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;
- 3.76-to-1 inequality in the value of a vote because of voter-turnout differences at the district level;
- 1.67-to-1 inequality in the value of a vote created by voter-turnout differences at the state level;
- 1.39-to-1 inequality in the value of a vote caused by the intra-decade population changes after each census;
- 7.1-to-1 differences, from district to district within a state, in the number of votes that enable a candidate to win an electoral vote; and
- 210-to-1 inequality in the value of a vote based on its ability to decide the national outcome.

#### **Inequality because of the two senatorial electoral votes**

First, a vote cast in a large state has less weight than a vote cast in a small state because of the two senatorial electoral votes that each state receives above and beyond the number of electoral votes warranted by the state's population.

Table 1.3 shows, for each state, the ratio of the number of people per electoral vote, compared to the number of people per electoral vote in the nation's smallest state (Wyoming). For example, the ratio of California's population per electoral vote to that of Wyoming is 3.81-to-1.

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

Second, a vote cast in many states has less weight than a vote cast in other states because of inequalities created by imprecision in apportioning U.S. House seats.

There is a 1.72-to-1 variation in the weight of a vote (table 1.35).

### **Inequalities because of differences in voter turnout at the district level**

Third, voter turnout varies considerably from district to district for a variety of reasons. Under the congressional-district system, a voter in a low-turnout district has greater voting power in choosing the President than a voter in a high-turnout district.

Texas' 33<sup>rd</sup> congressional district<sup>126</sup> had the nation's lowest total vote for President in both the 2020 and 2016 elections—only 160,828 votes in 2020.

In contrast, Montana's single congressional district had the nation's highest total vote for President—603,674 votes in 2020.

That is, there was a 3.76-to-1 variation in the value of a vote between these two districts.

The example of Montana is hardly unique.<sup>127</sup>

In fact, under the congressional-district method of awarding electoral votes, the value of a vote in 328 of the nation's 435 congressional districts would have been less than half of that of Texas' 33<sup>rd</sup> congressional district.

Table 4.54 shows the 10 districts where the value of a vote would be less than a third of that of TX-33 under the congressional-district method. The table is sorted according to the district's 2020 total vote for President in column 1.

There are many reasons for this wide variation in turnout from district to district.

Consider, for example, Florida's 11<sup>th</sup> congressional district, which had the nation's ninth highest presidential vote (486,702) in the table.

Turnout is generally higher among older voters, and lower among younger voters. According to U.S. Census Bureau data, turnout in 2020 was:

- 78% among those 65 or over,
- 75% for those 50–64,
- 68% for those 40–49,
- 63% for those 30–39, and
- 53% for those 18–29.<sup>128</sup>

Florida's 11<sup>th</sup> congressional district contains, among other things, The Villages, a vast retirement community. Overall, a third of the population of FL-11 was 65 or older, while only 14% was age 18 to 34.<sup>129</sup> In contrast, only 8% of the people in TX-33 were 65 or over, and 27% were between 18 and 34 in 2020.

<sup>126</sup>Note that the district numbers in this section were those in use for the 2020 election (that is, before the redistricting that occurred after the 2020 census).

<sup>127</sup>Cook, Rhodes, 2023. Where People Voted in 2022—and Where They Didn't: The vast differences in congressional district turnout. *Sabato's Crystal Ball*. July 20, 2023. <https://centerforpolitics.org/crystalball/articles/where-people-voted-in-2022-and-where-they-didnt/>

<sup>128</sup>Clement, Scott and Santamariña, Daniela. 2021. What we know about the high, broad turnout in the 2020 election. *Washington Post*. May 13, 2021. <https://www.washingtonpost.com/politics/2021/05/13/what-we-know-about-high-broad-turnout-2020-election/>

<sup>129</sup>Cohen, Richard and Cook, Charlie. 2019. *The Almanac of American Politics*. Columbia Books and Information Services. Pages 448 and 1752.

**Table 4.54 Congressional districts where a vote's value is less than a third of that of a vote in the 33<sup>rd</sup> congressional district of Texas**

Total	District	Biden	Trump	Winner	Margin (D-R)	Percent margin
603,674	MT-at-Large	244,786	343,602	Trump	-98,816	16.8%
530,867	CO-2	338,261	178,561	Biden	159,700	30.9%
512,062	FL-4	198,414	305,934	Trump	-107,520	21.3%
504,346	DE-at-Large	296,268	200,603	Biden	95,665	19.3%
504,172	NC-2	323,249	171,017	Biden	152,232	30.8%
501,293	NC-4	332,604	160,812	Biden	171,792	34.8%
491,810	FL-16	223,366	262,840	Trump	-39,474	8.1%
487,935	CO-4	198,971	276,309	Trump	-77,338	16.3%
486,702	FL-11	164,285	318,054	Trump	-153,769	31.9%
483,462	OR-3	356,714	112,509	Biden	244,205	52.0%

Hispanic turnout is considerably less than average. According to Census Bureau data, turnout in 2020 was:

- 73% among whites
- 66% among blacks
- 62% among Asians
- 53% among Hispanics
- 49% among American Indians.<sup>130</sup>

TX-33 was 66% Latino, whereas FL-11 was only 10% Latino.

Turnout is generally higher among those with advanced education. According to Census Bureau data, turnout in 2020 was:

- 90% for those with a post-graduate degree,
- 84% for those with a four-year college degree,
- 72% for those with some college,
- 54% for high-school graduates, and
- 36% for those with less than a high-school diploma.<sup>131</sup>

North Carolina's 4<sup>th</sup> congressional district is home to the Research Triangle. In that district, 22% have a post-graduate degree, and an additional 31% have a four-year college degree. That is, 53% of the population have college degrees. In contrast, only 3% of TX-33 have a post-graduate degree, and only 7% have a four-year college degree.<sup>132</sup>

Turnout is generally higher among those with higher income.

Consider Colorado's 2<sup>nd</sup> congressional district, another district in table 4.54. The median income in CO-2 is \$75,021, whereas it is only \$39,089 in TX-33.<sup>133</sup>

<sup>130</sup> Clement, Scott and Santamariña, Daniela. 2021. What we know about the high, broad turnout in the 2020 election. *Washington Post*. May 13, 2021. <https://www.washingtonpost.com/politics/2021/05/13/what-we-know-about-high-broad-turnout-2020-election/>

<sup>131</sup> *Ibid.*

<sup>132</sup> Cohen, Richard and Cook, Charlie. 2019. *The Almanac of American Politics*. Columbia Books and Information Services. Pages 448 and 1752.

<sup>133</sup> *Ibid.*

### **Inequality because of voter-turnout differences**

Fourth, a voter in a low-turnout state has greater voting power 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 in electing a state's two senatorial electors under the congressional-district method (table 1.41).

There are additional turnout differences among districts.

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

Fifth, another source of variation in the value of a vote from state to state arises from the fact that state populations change during the decade after each census.

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

### **Inequalities because of differences in the number of votes needed to win an electoral vote from district to district in the same state**

Sixth, the number of votes required to win one electoral vote varies widely from district to district in the same state.

For example, in Nebraska in 2020, a margin of 22,091 in the 2<sup>nd</sup> congressional district gave Joe Biden one electoral vote, while a margin of 156,325 in the 3<sup>rd</sup> district gave Donald Trump one electoral vote—a 7.1-to-1 difference in the value of a vote within Nebraska.<sup>134</sup>

In Maine in 2020, a margin of 102,331 in the 1<sup>st</sup> congressional district gave Joe Biden one electoral vote, while a margin of 27,996 in the 2<sup>nd</sup> congressional district gave Donald Trump one electoral vote—a 3.6-to-1 difference within Maine.<sup>135</sup>

If the congressional-district method were used across the country, there would be similar differences in almost every state with more than one congressional district.

### **4.3.6. The congressional-district method would not make every voter in every state politically relevant.**

Gans and Francis say that this method:

“would provide a reason for both parties to compete **in most states** because there would be electors to win.”<sup>136</sup> [emphasis added]

This prediction ignores the political reality that candidates would have no more reason to campaign in unwinnable and unlosable congressional districts any more than they currently campaign in unwinnable and unlosable states.

In their pursuit of electoral votes, presidential candidates do not spend their time and

<sup>134</sup> State of Nebraska. 2020 Electoral College Certificate of Ascertainment. November 30, 2020. <https://www.archives.gov/files/electoral-college/2020/ascertainment-nebraska.pdf>

<sup>135</sup> State of Maine. Certificate of Ascertainment of Electors. November 23, 2020. <https://www.archives.gov/files/electoral-college/2020/ascertainment-maine.pdf>

<sup>136</sup> Gans, Curtis and Francis, Leslie. Why National Popular Vote is a bad idea. *Huffington Post*. January 6, 2012.



money soliciting votes in places where they are safely ahead or hopelessly behind. They do not campaign in places where they have nothing to gain or nothing to lose. Here are the facts about the current state-by-state winner-take-all method of awarding electoral votes:

- In 2020, almost all (96%) of the general-election campaign events (204 of 212) occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 46% and 54%.
- In 2016, almost all (94%) of the general-election campaign events (375 of 399) occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 47% and 55%.
- In 2012, 100% of the 253 general-election campaign events occurred in the 12 states where the Republican percentage of the final two-party vote was in the narrow **six-point range** between 45% and 51%.
- In 2008, almost all (98%) of the general-election campaign events (293 of 300) occurred in the 14 states where the Republican percentage of the final two-party vote was in the narrow **eight-point range** between 42% and 50%.

In other words, under the current winner-take-all method of awarding electoral votes, virtually all campaigning occurs in states where the two leading candidates are within six to eight percentage points of each other.

In the discussion below, we will generously use a margin of eight percentage points.

If electoral votes were awarded by congressional district, virtually all campaigning would necessarily occur in districts where the two leading candidates are within eight (or fewer) percentage points of one another.

The fact is that the presidential results were within eight percentage points in only one sixth (17%) of the congressional districts (72 of 435) in 2020.

Column 1 of table 4.55 shows the percentage margin by which Biden or Trump won the district (that is, the absolute value of the percentage). Column 7 shows the vote margin by which the Democratic vote exceeded the Republican vote in that district. For example, the closest congressional district in the country in the 2020 presidential race was Missouri's 2<sup>nd</sup> district, which Trump won by 0.03% or 115 votes.<sup>137</sup> Column 5 shows the total presidential vote in the district (including votes for minor-party candidates).

Similarly, in 2016, only about one seventh (14.4%) of the congressional districts (63 of 435) were within eight percentage points, as shown in table 4.56.

Likewise, in 2012, the presidential race was within eight percentage points in only 17% of the districts (75 out of 435).

In other words, the presidential race is competitive in only a small fraction of the nation's 435 congressional districts.<sup>138</sup>

Moreover, the fraction of Americans living in presidentially close congressional districts is an even smaller percentage of the population than those living in presidentially close states.

In 2020, almost all (96%) of the general-election campaign events (204 of 212) occurred

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<sup>137</sup>Note that the district numbers in this table were those in use for the 2020 election (that is, before the redistricting that occurred after the 2020 census).

<sup>138</sup>Of course, the vast majority of congressional districts are also noncompetitive in congressional elections.

**Table 4.55 The 72 congressional districts where the 2020 presidential race was within 8%**

Percent margin	District	Biden	Trump	Total	Winner	Margin (D-R)
0.03%	MO-2	222,349	222,464	452,483	Trump	-115
0.1%	IA-3	224,159	224,726	458,496	Trump	-567
0.2%	NJ-3	217,223	218,016	443,175	Trump	-793
0.2%	NV-3	214,184	213,299	435,796	Biden	885
0.8%	MI-8	212,085	215,649	435,141	Trump	-3,564
0.9%	TX-22	206,114	210,011	421,647	Trump	-3,897
1.1%	TX-3	209,859	214,359	430,821	Trump	-4,500
1.1%	VA-7	228,335	223,268	460,031	Biden	5,067
1.3%	TX-2	170,430	174,980	350,554	Trump	-4,550
1.5%	NY-19	182,965	177,569	368,128	Biden	5,396
1.5%	CA-48	199,791	193,832	401,845	Biden	5,959
1.6%	IL-17	145,987	150,764	303,947	Trump	-4,777
1.6%	TX-10	203,975	210,770	421,398	Trump	-6,795
1.8%	AZ-1	187,182	180,673	374,808	Biden	6,509
1.8%	TX-23	146,559	151,964	302,498	Trump	-5,405
1.9%	TX-15	119,784	115,315	237,719	Biden	4,469
2.3%	IN-5	200,376	209,669	420,107	Trump	-9,293
2.5%	IL-14	203,741	193,889	407,226	Biden	9,852
2.7%	TX-21	220,572	232,949	460,886	Trump	-12,377
2.8%	PA-17	221,555	209,683	438,251	Biden	11,872
2.9%	TX-31	192,599	204,096	405,541	Trump	-11,497
2.9%	NJ-2	183,250	194,366	383,596	Trump	-11,116
3.0%	PA-10	189,804	201,367	398,383	Trump	-11,563
3.0%	CA-10	154,990	146,084	309,075	Biden	8,906
3.0%	TX-6	164,746	175,101	344,906	Trump	-10,355
3.2%	FL-27	178,643	167,420	348,765	Biden	11,223
3.2%	OH-1	185,947	198,433	390,655	Trump	-12,486
3.3%	MI-3	194,585	207,752	411,223	Trump	-13,167
3.4%	OH-13	171,221	159,955	336,690	Biden	11,266
3.5%	IA-1	199,259	213,601	421,596	Trump	-14,342
3.5%	IL-13	158,905	170,490	338,909	Trump	-11,585
3.9%	WA-3	198,429	214,391	426,189	Trump	-15,962
4.0%	NV-4	174,851	161,363	343,613	Biden	13,488
4.0%	TX-34	106,771	98,462	207,395	Biden	8,309
4.1%	IA-2	193,437	209,858	411,705	Trump	-16,421
4.1%	OR-4	238,619	219,851	474,234	Biden	18,768
4.1%	NY-2	168,779	183,204	356,856	Trump	-14,425
4.1%	FL-13	211,530	194,721	411,893	Biden	16,809
4.2%	AZ-6	204,365	222,166	433,904	Trump	-17,801
4.2%	NY-1	182,793	198,826	387,224	Trump	-16,033
4.4%	TX-28	125,755	115,160	243,915	Biden	10,595
4.4%	MI-5	189,245	173,179	368,480	Biden	16,066
4.4%	VA-1	213,535	233,398	455,418	Trump	-19,863
4.4%	PA-8	169,148	184,892	358,252	Trump	-15,744
4.5%	OH-10	172,479	188,657	368,121	Trump	-16,178
4.6%	MI-11	237,696	216,799	461,648	Biden	20,897
4.6%	MI-6	180,139	197,508	385,582	Trump	-17,369
4.7%	WI-3	184,306	202,659	394,654	Trump	-18,353
4.8%	VA-2	186,427	169,365	363,766	Biden	17,062
4.9%	PA-7	199,520	180,936	386,112	Biden	18,584
5.1%	NY-18	184,181	166,448	356,255	Biden	17,733

*(Continued)*

Table 4.55 (Continued)

Percent margin	District	Biden	Trump	Total	Winner	Margin (D-R)
5.3%	NJ-5	224,937	202,421	435,160	Biden	22,516
5.5%	OK-5	140,370	156,645	305,082	Trump	-16,275
5.5%	CA-22	146,467	163,584	316,836	Trump	-17,117
5.5%	TX-24	180,609	161,671	347,875	Biden	18,938
5.6%	FL-26	164,356	184,019	351,018	Trump	-19,663
5.7%	CO-3	200,886	224,996	436,225	Trump	-24,110
5.9%	PA-1	233,462	207,442	446,826	Biden	26,020
6.1%	OH-12	206,168	232,995	447,243	Trump	-26,827
6.1%	NH-1	213,662	188,999	410,379	Biden	24,663
6.1%	SC-1	197,130	222,867	427,597	Trump	-25,737
6.5%	NC-8	177,876	202,785	386,816	Trump	-24,909
6.6%	GA-7	199,533	174,869	380,036	Biden	24,664
6.7%	NE-2	176,468	154,377	339,666	Biden	22,091
6.7%	WA-8	218,274	190,801	422,538	Biden	27,473
6.7%	NJ-11	237,986	208,018	454,000	Biden	29,968
7.0%	MN-2	226,589	197,005	434,216	Biden	29,584
7.0%	FL-9	232,318	201,924	439,502	Biden	30,394
7.5%	CA-42	170,481	198,259	376,001	Trump	-27,778
7.7%	ME-2	168,696	196,725	376,349	Trump	-28,029
7.9%	CA-50	166,841	195,430	370,905	Trump	-28,589
7.9%	NC-9	187,012	219,265	411,994	Trump	-32,253
	<b>Total</b>	<b>13,703,300</b>	<b>13,799,454</b>	<b>28,025,776</b>		<b>-96,154</b>

in 12 states where the Republican percentage of the two-party presidential vote was in the narrow eight-point range between 46% and 54%, as shown in table 1.6.

Similarly, in 2016, almost all (94%) of the general-election campaign events (384 of 399) occurred in 12 states where the Republican percentage of the two-party presidential vote was in the narrow range between 47% and 55%, as shown in table 1.8.

If the congressional-district method were used in presidential elections, the promises made by candidates and the actions made by sitting presidents would tend to emphasize decisions of interest to a handful of very localized areas, namely the presidentially close districts. These policies might include federal support for specific local infrastructure projects (e.g., bridges, roads, harbors, airports, waterways, levees), the awarding of job-generating government contracts to specific local employers, and placement of job-generating government facilities (e.g., regional offices of agencies, military bases) employing large numbers of local people.

Note that, under the district system, presidential candidates would probably de-emphasize efforts to win the senatorial electors who would be available in larger closely divided battleground states.

The average state has about 10 electoral votes, but the average closely divided battleground state has about 13 electoral votes.<sup>139</sup> Thus, winning a battleground state's two

<sup>139</sup>Note that the closely divided battleground states are, on average, bigger than the average-sized state, because very few small states are competitive in presidential elections. Only three of the battleground states in 2020, 2016, and 2012 (New Hampshire, Nevada, and Iowa) had fewer than 10 electoral votes.

**Table 4.56** The 63 congressional districts where the 2016 presidential race was within 8%

Percent margin	District	Clinton	Trump	Total	Winner	Margin (D-R)
0.1%	OR-4	180,872	180,318	406,334	Clinton	554
0.2%	PA-8	185,685	186,607	388,182	Trump	-922
0.6%	PA-6	177,639	175,340	372,927	Clinton	2,299
0.7%	IL-17	133,999	136,017	290,469	Trump	-2,018
0.9%	NJ-11	182,334	185,696	384,811	Trump	-3,362
1.0%	NV-3	151,552	154,814	325,602	Trump	-3,262
1.0%	AZ-1	132,874	135,928	291,816	Trump	-3,054
1.1%	NJ-7	180,525	176,386	374,404	Clinton	4,139
1.1%	NJ-5	173,969	178,058	367,796	Trump	-4,089
1.2%	KS-3	161,479	157,304	349,308	Clinton	4,175
1.2%	MN-2	171,396	176,088	382,067	Trump	-4,692
1.4%	TX-7	124,722	121,204	258,953	Clinton	3,518
1.5%	GA-6	155,087	160,029	338,532	Trump	-4,942
1.6%	NH-1	173,344	179,259	377,574	Trump	-5,915
1.7%	CA-48	152,035	146,595	320,355	Clinton	5,440
1.7%	FL-25	126,668	131,320	266,103	Trump	-4,652
1.8%	TX-32	134,895	129,701	283,843	Clinton	5,194
1.9%	NY-18	146,188	152,142	313,121	Trump	-5,954
2.2%	NE-2	131,030	137,564	291,680	Trump	-6,534
2.3%	PA-7	190,599	181,455	389,508	Clinton	9,144
2.4%	NH-2	175,182	166,531	366,722	Clinton	8,651
2.9%	CT-2	165,799	155,975	341,409	Clinton	9,824
2.9%	CA-10	116,335	109,145	245,251	Clinton	7,190
2.9%	WA-8	153,167	143,403	332,795	Clinton	9,764
3.2%	FL-13	178,892	167,348	364,512	Clinton	11,544
3.3%	VA-2	147,217	158,067	326,515	Trump	-10,850
3.4%	TX-23	115,157	107,273	233,235	Clinton	7,884
3.5%	IA-3	178,937	192,960	402,164	Trump	-14,023
3.5%	IA-1	176,535	190,410	395,633	Trump	-13,875
3.6%	NY-24	151,021	139,763	310,431	Clinton	11,258
3.8%	IL-14	154,058	167,327	347,995	Trump	-13,269
4.1%	IA-2	170,796	186,384	384,495	Trump	-15,588
4.1%	OR-5	180,404	164,548	389,157	Clinton	15,856
4.1%	CT-5	161,142	147,901	323,202	Clinton	13,241
4.3%	MI-5	162,982	148,953	329,869	Clinton	14,029
4.3%	MI-11	177,143	194,245	394,639	Trump	-17,102
4.5%	WI-3	160,999	177,172	363,271	Trump	-16,173
4.6%	NJ-2	147,656	162,486	323,778	Trump	-14,830
4.8%	AZ-2	156,676	141,196	322,180	Clinton	15,480
4.9%	NV-4	137,070	123,380	276,932	Clinton	13,690
5.4%	IL-13	141,540	159,013	324,629	Trump	-17,473
5.4%	CA-45	162,449	144,713	329,076	Clinton	17,736
6.1%	NY-3	178,288	156,942	348,016	Clinton	21,346
6.1%	NJ-3	165,090	187,703	368,671	Trump	-22,613
6.2%	TX-24	122,872	140,128	279,514	Trump	-17,256
6.3%	GA-7	132,012	150,845	299,946	Trump	-18,833
6.5%	VA-7	172,544	198,032	394,604	Trump	-25,488
6.5%	OH-13	163,600	142,738	322,976	Clinton	20,862
6.6%	OH-1	160,988	185,025	363,580	Trump	-24,037
6.6%	CA-25	137,491	119,249	275,282	Clinton	18,242

*(Continued)*

Table 4.56 (Continued)

Percent margin	District	Clinton	Trump	Total	Winner	Margin (D-R)
6.6%	UT-4	89,796	108,421	280,350	Trump	-18,625
6.7%	PA-16	140,186	161,763	321,358	Trump	-21,577
6.7%	MI-8	164,436	189,891	378,440	Trump	-25,455
6.7%	NY-19	140,517	162,266	323,115	Trump	-21,749
6.8%	IL-6	177,549	152,935	360,943	Clinton	24,614
6.9%	RI-2	121,843	105,033	243,824	Clinton	16,810
7.1%	WA-3	134,009	157,359	327,002	Trump	-23,350
7.2%	OH-10	153,346	178,674	351,828	Trump	-25,328
7.2%	FL-7	186,658	160,178	367,614	Clinton	26,480
7.4%	CA-49	159,081	135,576	317,552	Clinton	23,505
7.5%	PA-15	148,078	173,596	338,011	Trump	-25,518
7.7%	MI-9	183,085	155,597	357,076	Clinton	27,488
7.8%	TX-22	135,525	159,717	308,653	Trump	-24,192
	<b>Total</b>	<b>9,805,043</b>	<b>9,911,686</b>	<b>21,129,630</b>		<b>-106,643</b>

senatorial electoral votes requires campaigning among about 5½ times more people than winning a congressional district's single electoral vote.<sup>140</sup>

Because a candidate would have to run a statewide campaign in order to win the two senatorial electoral votes, the pursuit of these particular electoral votes would not be cost-effective when compared to the cost of winning at the district level.

One reason why so few congressional districts are competitive in presidential races is that the dominant political party in a state's government usually tries to draft districts to its advantage. This gerrymandering typically involves creating numerous noncompetitive districts where the dominant party is safe, but not too safe (perhaps giving the dominant party a comfortable 55%–45% advantage), while simultaneously creating a significantly smaller number of noncompetitive districts that are excessively safe for the opposing party (say, giving the minority party an advantage of 70%–30% or even more).<sup>141</sup>

If the presidential election were based on congressional districts, the incentive for, and the impact of, gerrymandering would be even greater than it is today.

Moreover, the perverse effect of many efforts to reform the redistricting process is to create even more noncompetitive districts. The reason is that many reform measures require districts to be geometrically compact, to disrupt as few local government boundaries as possible, and to create “communities with common interests.” Districts drawn in compliance with criteria such as these will frequently contain like-minded people—which is another way of saying that they will be politically one-sided and noncompetitive.<sup>142</sup> In many cases, the only way to achieve competitiveness (in the context of the single-member

<sup>140</sup>Note that a state with 13 electoral votes has about 11 times more people than an average congressional district.

<sup>141</sup>In states with divided government, gerrymandering is sometimes done to protect the congressional incumbents of both parties, thereby creating a great many noncompetitive districts.

<sup>142</sup>Gimpel, James G. and Harbridge-Yong, Laurel. 2020, Conflicting Goals of Redistricting: Do Districts That Maximize Competition Reckon with Communities of Interest? *Election Law Journal: Rules, Politics, and Policy*. Volume 19, number 4. <https://www.liebertpub.com/doi/10.1089/elj.2019.0576>

districts) is to allow the creation of irregularly shaped districts so that competitiveness can be the top priority (after, of course, population equality).<sup>143</sup>

In summary, the congressional-district method:

- *would not* accurately reflect the nationwide popular vote;
- *would worsen* the current situation 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; and
- *would not* make every vote equal.

#### 4.3.7. Prospects of adoption for the congressional-district method

This method could be adopted either on a state-by-state basis (as Maine and Nebraska have done) or as a federal constitutional amendment.

##### Adoption on a state-by-state basis

There are two prohibitive practical impediments to the adoption of the congressional-district method on a state-by-state basis.

First, a state reduces its own influence if it divides its electoral votes while other states continue to use winner-take-all.

In his January 12, 1800, letter to Virginia Governor (and later President) James Monroe, Thomas Jefferson argued that Virginia should switch from its then-existing district system to a statewide winner-take-all system because of the political disadvantage suffered by states (such as Virginia) that divided their electoral votes by districts in a political environment in which other states used the winner-take-all method:

“All agree that an election by districts would be best, if it could be general; but while 10. states chuse either by their legislatures or by a general ticket, **it is folly & worse than folly** for the other 6. not to do it.”<sup>144</sup> [Emphasis added; spelling and punctuation as per original]

Indeed, the now-prevailing winner-take-all method of awarding electoral votes was adopted by Virginia in 1800 and became widespread in the period between 1800 and 1830 precisely because dividing a state’s electoral votes diminishes the state’s political influence relative to states employing the winner-take-all method.

Once the winner-take-all method became established, state-by-state adoption of this method of awarding electoral votes would penalize first movers and early adopters.

This point was made during a debate in Florida in 1992 on adopting the congressional-district method.

“[Opponents of the bill] say they are also worried that the proposal would weaken the state’s growing political clout. If Florida is the only large state to

<sup>143</sup> A federal law, not the U.S. Constitution, requires the use of single-member congressional districts. The use of multi-member congressional districts in conjunction with ranked-choice voting (RCV) has been proposed as one possible way to make congressional races more competitive.

<sup>144</sup> See section 2.6.1 for more extensive quotations from this letter.

abolish the winner-take-all system, they argue, candidates will be less inclined to campaign here and take the state's needs into account."<sup>145</sup>

The proposal passed the state House and had the Governor's support, but ultimately failed because of concern that it would reduce the state's political importance in presidential elections.<sup>146</sup>

A second practical impediment to state-by-state adoption of this method of awarding electoral votes is that if a significant number of states ever were to start adopting this method, each additional adherent would increase the influence of the remaining winner-take-all states. That, in turn, would decrease the incentive of the remaining states to adopt the congressional-district method. Thus, a state-by-state adoption process would become a self-arresting process, because each new adherent would increase the influence of the remaining winner-take-all states.

### **Adoption as a federal constitutional amendment**

Both of the above obstacles to adoption of the congressional-district method would, of course, be eliminated if it were adopted in the form of a federal constitutional amendment.

## **4.4. ELIMINATING SENATORIAL ELECTORS**

### **4.4.1. Summary**

- A federal constitutional amendment would be adopted to eliminate the two senatorial electors, thereby aligning each state's number of presidential electors more closely to its population.
- The elimination of each state's senatorial electors would not have changed the outcome in three of the five presidential elections in which the Electoral College winner did not receive the most popular votes nationwide. For example, the candidate who lost the national popular vote in 2016 (i.e., Donald Trump) would still have won the Electoral College by a comfortable margin even if there had been no senatorial electors. The two elections in which elimination of senatorial electors would have mattered were exceptional—namely, those in which the winner's margin was either zero or one electoral vote. In 2020, the elimination of senatorial electoral votes would have reduced Biden's margin by a mere two electoral votes.
- Eliminating each state's two senatorial electors would not make every voter in every state relevant in presidential elections. Given that the state-by-state winner-take-all method of awarding electoral votes would still be in place, the

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<sup>145</sup> Rohter, Larry. 1992. Florida is rethinking the way presidents are elected. *New York Times*. June 7, 1992. <https://www.nytimes.com/1992/06/07/us/1992-campaign-electoral-college-florida-rethinking-way-presidents-are-elected.html>

<sup>146</sup> As it happened, George W. Bush carried 13 of Florida's 23 congressional districts in the 2000 presidential election, and Gore carried 10. If the congressional-district method had been used in Florida in 2000, Gore would have received 10 of Florida's 25 electoral votes (instead of zero) and would therefore have won a majority of the Electoral College, and would therefore have become President.