

“The College with No Courses or Credits: The Electoral College”

A Lesson to Accompany *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*

Rationale:

Americans don’t vote directly for our president. Instead, we vote for individuals who represent our voting preferences—we hope—in an organization informally called the Electoral College.

We vote for the members of this group at the state level (not the national level), but the number of members in each state does not exactly reflect the size of its population. Some states count more than others—literally.

States also handle the results of their Electoral College votes differently. Presidential elections can indicate which candidate voters across the country prefer. But the Electoral College sometimes doesn’t let the more popular candidate become president.

There are reasons the Framers did not choose to pick our president through direct election, which is the way we pick other leaders. Even when the Constitution was drafted, this process was controversial. But [we are now] in the twenty first century, and reasons that might have seemed logical in 1787 do not necessarily make sense more than two centuries later.

(Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today* (Atlanta: Peachtree Publishing Company, 2019), 126.)

Essential Question:

- Would abolishing the Electoral College repair a “fault line” in the Constitution?
- To what extent would abolishing the Electoral College change the electoral process?

Objectives: *After this lesson, students will be able to:*

- Discuss why the Framers’ established the Electoral College.
- Explain the Electoral College’s role in deciding presidential elections throughout US history.
- Identify the benefits and detriments of the Electoral College.
- Analyze arguments for changing the Electoral College’s role.
- Assess whether the Electoral College is a relevant institution in the twenty first century.

Common Core Standards:

Middle School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.6-8.1

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-LITERACY.RH.6-8.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.6-8.7

Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.

CCSS.ELA-LITERACY.RH.6-8.8

Distinguish among fact, opinion, and reasoned judgment in a text.

High School:

Key Ideas and Details:

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.3

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

Integration of Knowledge and Ideas:

CCSS.ELA-LITERACY.RH.11-12.7

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-LITERACY.RH.11-12.8

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-LITERACY.RH.11-12.9

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

RESOURCES

I) The Electoral College: A History

Despite their fears of establishing another monarchy, it took only a few weeks for the majority of the Framers to determine that the country should be led by a single individual. Over the next three months, they voted at least sixty times on different ways to choose that person. Methods varied in part depending on which powers delegates felt the leader should have.

Roger Sherman of Connecticut argued that the legislative branch should carry more weight than the executive. Therefore, Congress should choose the leader.

Elbridge Gerry of Massachusetts, Gunning Bedford of Delaware, and others worried that under Sherman's scheme, the national government would overshadow the states. They contended that state legislatures should do the picking.

James Wilson of Pennsylvania proposed direct election—a system in which the president would be selected by eligible voters. *But no one agreed with Wilson.*

There was a somewhat understandable reason for the opponents' view. America was a very different place in 1787.

The roughly three and a half million Americans were dispersed across a vast terrain—as much territory as Britain, France, Germany, Ireland, and Italy combined. Fewer than one hundred newspapers were published in the country, and none was widely distributed. Papers contained only

four pages, half of them devoted to advertisements and the other half to local news. Men in South Carolina, say, would probably know nothing about a candidate from Pennsylvania. In September, after months of wrangling, the Framers were all set to adopt Sherman's idea for Congress to elect the president. At that moment, John Dickinson of Delaware, who had been absent for much of the previous five weeks, reappeared, heard the proposal, and expressed his alarm. Such a plan would give way too much power to Congress. In any case, he warned, people would never ratify the Constitution unless they were somehow involved in choosing the president. Yet again, the Convention was in disarray.

James Madison of Virginia took pen and paper and wrote out a complicated alternative, calling for a system of presidential electors. Each state's legislature would decide how to select a group of trustworthy individuals. These electors would then vote for the person they considered most worthy of serving as president. To account for the differences in sizes of the states, each would be allowed as many electors as the sum of its representatives plus its two senators. By now, the Framers, who had rejected every other notion, were ready to accept this one. They signed on to the plan ten days before adjourning and spent the next several days cranking out the details.

(Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today* (Atlanta: Peachtree Publishing Company, 2019), 129-130.)

Why did the Framers create the Electoral College?

II) The Constitution and the Electoral College

Article II

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Twelfth Amendment (1804*)

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President... The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority... the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote....

**Originally the candidate with the most Electoral College votes became the president and the candidate with the second highest number of votes was the vice president. This arrangement led to problems almost immediately, leading to the passage of the Twelfth Amendment during Jefferson's first term.*

III) The Framers and the Electoral College

Federalist 68 (Hamilton), March 14, 1788 (excerpts)

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.... A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

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.

(https://avalon.law.yale.edu/18th_century/fed68.asp)

Antifederalist Paper 72 (Republicus), March 1, 1788 (excerpt)

Is it then become necessary, that a free people should first resign their right of suffrage into other hands besides their own, and then, secondly, that they to whom they resign it should be compelled to choose men, whose persons, characters, manners, or principles they know nothing of? And, after all (excepting some such change as is not likely to happen twice in the same century) to intrust Congress with the final decision at last? Is it necessary, is it rational, that the sacred rights of mankind should thus dwindle down to Electors of electors, and those again electors of other electors? This seems to be degrading them even below the prophetic curse denounced by the good old patriarch, on the offspring of his degenerate son: "servant of servants". . .

(<https://thefederalistpapers.org/antifederalist-paper-72>)

What were the Framers' arguments for and against the Electoral College?

IV) Controversy and the Electoral College, Part I-- Congress Decides

Election of 1800- Jefferson and Burr Tie!

Candidate	Party	Electoral Votes
Thomas Jefferson*	Democratic Republican	73
Aaron Burr	Democratic Republican	73
John Adams	Federalist	65
Charles C. Pinckney	Federalist	64

Each elector casts two votes in the era before the 12th Amendment

When presidential electors cast their votes they failed to distinguish between the office of president and vice president on their ballots. Jefferson and his running mate Aaron Burr each received seventy-three votes and the vote was thrown to the House of Representatives. Still dominated by Federalists, the sitting Congress loathed to vote for Jefferson—their partisan nemesis. Votes were tallied over thirty times, yet neither man captured the necessary majority of nine states. On the thirty-sixth ballot, Federalists from Delaware, South Carolina, Maryland, and Vermont cast blank ballots, breaking the deadlock and giving Jefferson the support of ten states, enough to win the presidency.

(<https://www.loc.gov/rr/program/bib/elections/election1800.html>)

Election of 1824- The Corrupt Bargain

Candidate	Party	Electoral Votes	Popular Vote
John Quincy Adams*	Democratic Republican	84	113,122
Andrew Jackson	Democratic Republican	99	151,271
William H. Crawford	Democratic Republican	41	40,856
Henry Clay	Democratic Republican	37	47,531

131 votes needed to win

Clay, who came in last and was not eligible to participate in the House vote, supported Adams, whom he knew to share his nationalist agenda. The election went to the House of Representatives, where Adams won on the first ballot. He nominated Clay as his Secretary of State, reigniting rumors that a deal had been struck before the vote. Convinced that the election had been stolen from him, Jackson stormed, “...Was there ever witnessed such a bare faced corruption in any country before?”

(<https://history.house.gov/Historical-Highlights/1800-1850/The-House-of-Representatives-elected-John-Quincy-Adams-as-President/>)

Election of 1876- The Compromise of 1877

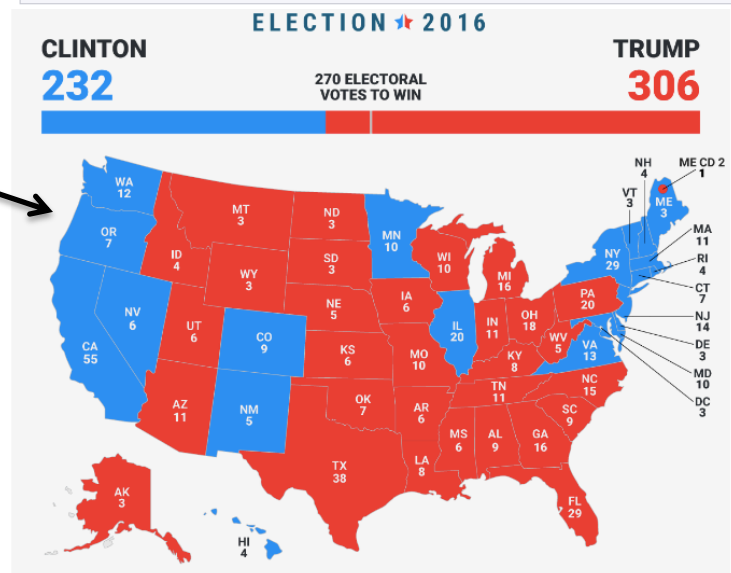
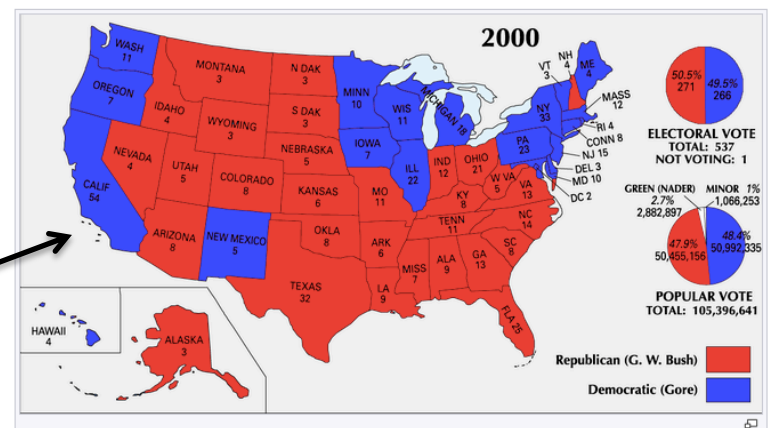
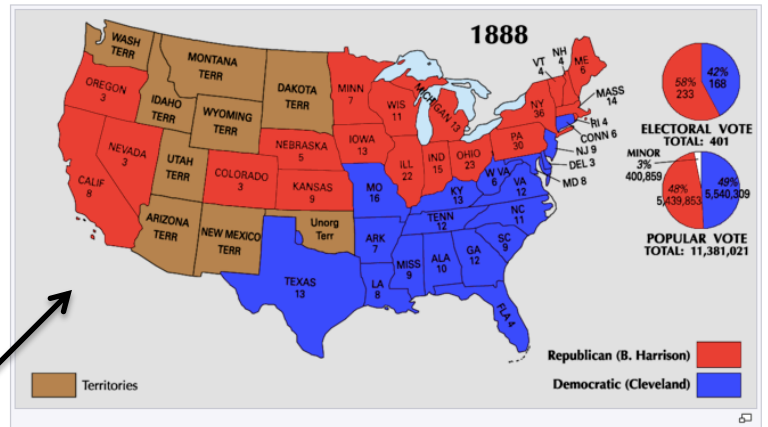
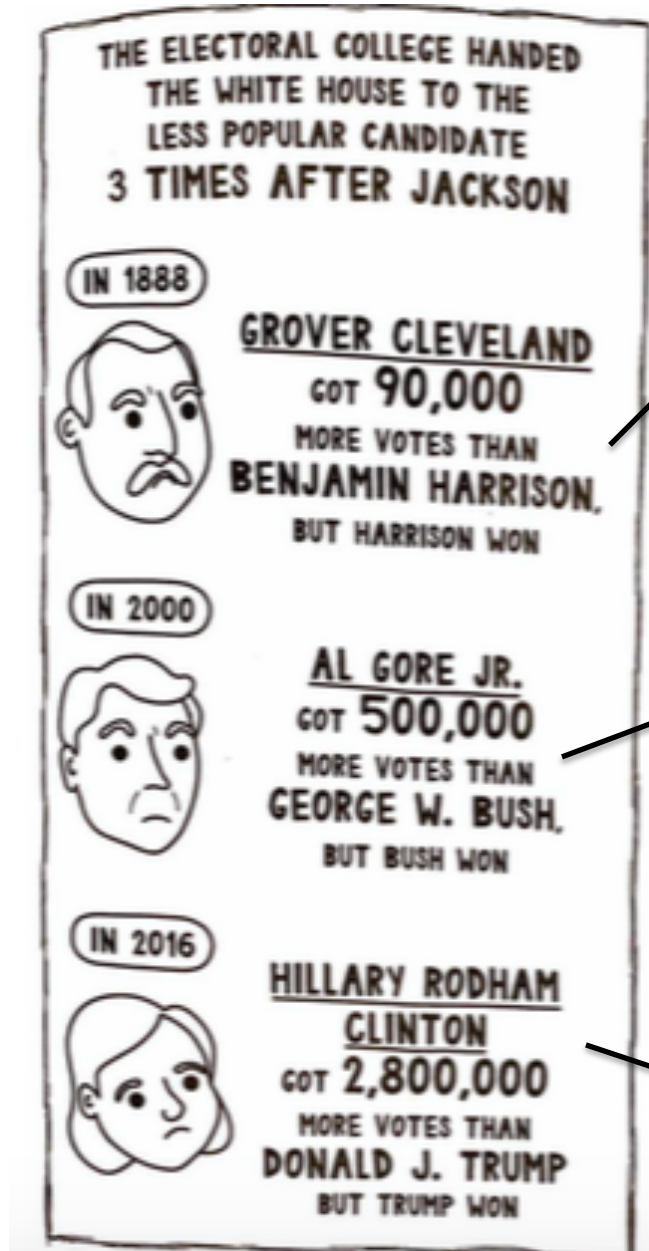
Candidate	Party	Electoral Votes	Popular Vote
Rutherford B. Hayes*	Republican	185	4,036,298
Samuel Tilden	Democrat	184	4,300,590

By midnight on Election Day Tilden was ahead of his opponent, Republican Rutherford B. Hayes, a Republican, by 250,000 votes and had amassed 184 of the necessary 185 necessary Electoral College votes. But, the counts in three southern states were in dispute and Hayes refused to concede. Finally, in March 1877, the parties reached a compromise. Reconstruction policies in the South ended; in exchange, the presidency was handed to Hayes who became known as “His Fraudulency.”

(Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today* (Atlanta: Peachtree Publishing Company, 2019), 134.)

How did the Electoral College contribute to political controversy in the 1800s?

V) Controversy and the Electoral College, Part II-- Not a Popularity Contest



How has the Electoral College determined elections' outcomes?


VI) The Electoral College Today in Graphics
“Big” States v. “Small” States

YOU COULD WIN JUST THESE 11 STATES BY EXTREMELY NARROW MARGINS AND BECOME PRESIDENT, EVEN IF YOU FAILED TO GET A SINGLE VOTE IN ANY OTHER STATE

CALIFORNIA	55
TEXAS	38
NEW YORK	29
FLORIDA	29
ILLINOIS	20
PENNSYLVANIA	20
OHIO	18
MICHIGAN	16
GEORGIA	16
NORTH CAROLINA	15
NEW JERSEY	14
TOTAL	270
ELECTORAL VOTES	

SMALL STATES PLAY A **BIG ROLE**
IN THE ELECTORAL COLLEGE
BECAUSE THEY RECEIVE
2 VOTES FOR THEIR
2 SENATORS
JUST LIKE THE BIG STATES

THE **ELECTORAL COLLEGE**
DOESN'T SIMPLY GIVE SMALLER STATES
A VOICE IN PICKING THE PRESIDENT

 **IT HANDS THEM A MEGAPHONE!**

Winner Take All

IN THE **2000 ELECTION**

BUSH GOT ALL OF FLORIDA'S 25 ELECTORAL VOTES AND WON THE PRESIDENCY

EVEN THOUGH HE GOT ONLY
537 MORE POPULAR VOTES THAN GORE

IF FLORIDA HAD DIVIDED ITS VOTES PROPORTIONATELY ACCORDING TO THE POPULAR VOTE, GORE WOULD HAVE RECEIVED ALMOST 1/2 OF THE STATE'S ELECTORAL VOTES.

GORE GOT ALL OF CALIFORNIA'S 54 ELECTORAL VOTES

EVEN THOUGH
43% OF VOTERS CHOSE BUSH

IF CALIFORNIA HAD DIVIDED ITS VOTES PROPORTIONATELY, BUSH WOULD HAVE RECEIVED 21 ELECTORAL VOTES

The Power of the Swing State

IN THE **2016 PRESIDENTIAL ELECTION**

CANDIDATES SPENT ALMOST ALL THEIR TIME AND MONEY IN ONLY 14 STATES

1/2 OF THAT WAS JUST IN 4 BATTLEGROUND STATES

FLORIDA PENNSYLVANIA
NORTH CAROLINA OHIO

36 STATES WITH 2/3 OF THE POPULATION WERE PRETTY MUCH IGNORED

Why might the Electoral College be problematic today?

VII) The Debate Over the Electoral College

Pro:

- The Founding Fathers enshrined the Electoral College in the US Constitution because they thought it was the best method to choose the president.
- The Electoral College ensures that all parts of the country are involved in selecting the President of the United States.
- The Electoral College guarantees certainty to the outcome of the presidential election.

Con:

- The reasons for which the Founding Fathers created the Electoral College are no longer relevant.
- The Electoral College gives too much power to "swing states" and allows the presidential election to be decided by a handful of states.
- The Electoral College ignores the will of the people.

(<https://www.procon.org/headline.php?headlineID=005330>)

Why We Need the Electoral College

By Peter J. Wallison, Real Clear Politics
December 06, 2016

Donald Trump's election with fewer popular votes than Hillary Clinton has raised again the question of why the presidency is decided through an Electoral College and not a popular vote. Mr. Trump himself said in a recent interview said that a popular vote seems more sensible. Many people who are currently calling for the abolition of the Electoral College, however, don't realize the chaos that would result.

Two elements of the "Great Compromise" among the large and small states led to the ratification of the Constitution. A House of Representatives would reflect the popular vote—disadvantaging the small states—but a Senate would give the small states equal representation with the large ones. This idea was carried through to the Electoral College, where each state's allocation of electoral votes is simply the total of its representation in the House and Senate. This again gave the smaller states some additional power in the important choice of the president.

Leaving aside the fact that a deal is a deal, there are very practical reasons why we will always need the Electoral College under our current constitutional system.

The most important is that we want the presidential election to settle the question of legitimacy—who is entitled carry on the office of the president. Under the Constitution, the person who receives the most electoral votes becomes the president, even if he or she does not receive either a plurality or a majority of the popular vote. In the election of 1992, Bill Clinton received a majority of electoral votes and was the duly elected president, despite the fact that he received only a plurality (43 percent) of the popular votes. A third party candidate, Ross Perot, received almost 19 percent. In fact, Bill Clinton did not win a majority of the popular vote in either of his elections, yet there was never any doubt—because he won an Electoral College majority—that he had the legitimacy to speak for the American people.

This points to the reason why the Electoral College should remain as an important element of our governmental structure. If we had a pure popular vote system, as many people who are disappointed with the 2016 outcome are now proposing, it would not be feasible—because of third party candidates—to ensure that any candidate would win a popular majority. Even in 2016, for example, although Hillary Clinton won the popular vote, she only received a plurality (48 percent)—not a majority; third party candidates took the rest.

If we abandoned the Electoral College, and adopted a system in which a person could win the presidency with only a plurality of the popular votes we would be swamped with candidates. Every group with an ideological or

major policy interest would field a candidate, hoping that their candidate would win a plurality and become the president.

There would candidates of the pro-life and pro-choice parties; free trade and anti-trade parties; pro-immigration and anti-immigration parties; and parties favoring or opposing gun control—just to use the hot issues of today as examples.

We see this effect in parliamentary systems, where the party with the most votes after an election has to put together a coalition of many parties in order to create a governing majority in the Parliament. Unless we were to scrap the constitutional system we have today and adopt a parliamentary structure, we could easily end up with a president elected with only 20 percent-25 percent of the vote.

Of course, we could graft a run-off system onto our Constitution; the two top candidates in, say, a 10-person race, would then run against one another for the presidency. But that could easily mean that the American people would have a choice between a candidate of the pro-choice party and a candidate of the pro-gun party. If you thought the choice was bad this year, it could be far worse.

Those who complain now that it is unfair for Donald Trump to become president when he received fewer votes than Hillary Clinton have not considered either the implications of what they are proposing or the genius of the Framers.

https://www.realclearpolitics.com/articles/2016/12/06/why_we_need_the_electoral_college_132499.html

These 3 Common Arguments For Preserving the Electoral College Are Wrong

Time Magazine

November 15, 2016

(Excerpted)

Myth #1: Electors filter the passions of the people

College students first learning about the Electoral College will often defend the system by citing its original purpose: to provide a check on the public in case they make a poor choice for president.

But electors no longer work as independent agents nor as agents of the state legislature. They're chosen for their party loyalty by party conventions or party leaders.

In presidential elections between 1992 and 2012, over 99 percent of electors kept their pledges to a candidate, and there were only two "faithless electors." One Gore elector from Washington, D.C. cast a blank ballot in 2000 to protest a lack of congressional representation for District of Columbia residents. And one Kerry elector in Minnesota in 2004 voted for vice presidential candidate John Edwards for both president and vice president – an apparent mistake, since none of Minnesota's electors admitted to the action afterward.

There have been scattered faithless electors in past elections, but they've never influenced the outcome of a presidential election. Since winner-take-all laws began in the 1820s, electors have rarely acted independently or against the wishes of the party that chose them. A majority of states even have laws requiring the partisan electors to keep their pledges when voting....

Myth #2: Rural areas would get ignored

Since 2000, a popular argument for the Electoral College made on conservative websites and talk radio is that without the Electoral College, candidates would spend all their time campaigning in big cities and would ignore low-population areas.

Other than this odd view of democracy, which advocates spending as much campaign time in areas where few people live as in areas where most Americans live, the argument is simply false. The Electoral College causes candidates to spend all their campaign time in cities in 10 or 12 states rather than in 30, 40 or 50 states.

Presidential candidates don't campaign in rural areas no matter what system is used, simply because there are not a lot of votes to be gained in those areas.

Data from the 2016 campaign indicate that 53 percent of campaign events for Trump, Hillary Clinton, Mike Pence and Tim Kaine in the two months before the November election were in only four states: Florida, Pennsylvania, North Carolina and Ohio. During that time, 87 percent of campaign visits by the four candidates were in 12 battleground states, and none of the four candidates ever went to 27 states, which includes almost all of rural America.

Even in the swing states where they do campaign, the candidates focus on urban areas where most voters live. In Pennsylvania, for example, 72 percent of Pennsylvania campaign visits by Clinton and Trump in the final two months of their campaigns were to the Philadelphia and Pittsburgh areas.

In Michigan, all eight campaign visits by Clinton and Trump in the final two months of their campaigns were to the Detroit and Grand Rapids areas, with neither candidate visiting the rural parts of the state.

The Electoral College does not create a national campaign inclusive of rural areas. In fact, it does just the opposite.

Myth #3: It creates a mandate to lead

Some have advocated continuation of the Electoral College because its winner-take-all nature at the state level causes the media and the public to see many close elections as landslides, thereby giving a stronger mandate to govern for the winning candidate.

In 1980, Ronald Reagan won 51 percent of the national popular vote but 91 percent of the electoral vote, giving the impression of a landslide victory and allowing him to convince Congress to approve parts of his agenda. In 1992 and 1996, Bill Clinton twice won comfortable majorities in the Electoral College while winning less than half of the national popular vote. (In both years, third party candidate Ross Perot had run.)

In 2016, Trump won by a large margin in the Electoral College, while winning fewer popular votes than Clinton nationwide. Nonetheless, former New York City Mayor Rudy Giuliani announced that Trump's Electoral College victory gives him a mandate to govern.

Perhaps for incoming presidents, this artificial perception of landslide support is a good thing. It helps them enact their agenda....

(<https://time.com/4571626/electoral-college-wrong-arguments/>)

What are some of the most significant arguments for and against the Electoral College?

Students should also see...

"The Electoral College: Top 3 Pros and Cons," ProCon.org, September 1, 2017,

<https://www.procon.org/headline.php?headlineID=005330>.

Allen Guelzo and James Hulme, "In Defense of the Electoral College," Washington Post, November 15, 2016,

<https://www.washingtonpost.com/posteverything/wp/2016/11/15/in-defense-of-the-electoral-college/>.

Cynthia & Sanford Levinson, "Can't We Just Get Rid of the Electoral College?," Fault Lines in the Constitution, January 28, 2020, <https://faultlinesintheconstitution.com/2020/01/28/cant-we-just-get-rid-of-the-electoral-college/>.

Natalie Proulx, "Should the US Get Rid of the Electoral College?," *The New York Times*, March 28, 2019,

<https://www.nytimes.com/2019/03/28/learning/should-the-us-get-rid-of-the-electoral-college.html>.

Directions: Students will fill in the following graphic organizer using the information in these resources.

Three reasons the Framers created the Electoral College 1. 2. 3.	Key moments in Electoral College history 1. 2. 3.	Three arguments FOR the Electoral College 1. 2. 3.	Three arguments AGAINST the Electoral College 1. 2. 3.
I believe we should KEEP/ ABOLISH/ CHANGE the Electoral College. (Circle one)			
This information influenced my opinion on the Electoral College because... ● ● ●	This information influenced my opinion on the Electoral College because... ● ● ●	This information influenced my opinion on the Electoral College because... ● ● ●	This information influenced my opinion on the Electoral College because... ● ● ●

Activity #1: Using the resources and their graphic organizers, students will respond to the following questions:

- To what extent should the Electoral College be considered a “fault line” in the Constitution?
- What suggestions would you make to resolve the debate over the Electoral College?

Students can respond to the questions in one of the following ways*: essay; newspaper editorial or letter to the editor; speech (recorded on video); PowerPoint presentation/Google slides; captioned illustration; song (recorded on video); poem; or iMovie. (Other presentation methods at the teacher’s discretion.)

All work must meet the following requirements:

- Clearly state an opinion on the Electoral College.
- Thoughtfully respond to both questions.
- Use evidence from the resources to support claims.
- Acknowledge both sides of the debate.
- Include information on past events and current issues.
- Evaluate information to draw an original conclusion.
- Remain focused on the topic and task assigned.

*The recommended activities refer to work students will complete independently. Teachers may also choose to use this information to prepare students for a debate, Socratic seminar, philosophical chairs activity, or any other large group activity where circumstances allow.

Activity #2: In Chapter 21 of *Fault Lines in the Constitution* Cynthia and Sanford Levinson grade the Constitution based on the way that it fulfills the goals asserted in the Preamble:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The authors divide their report card into the following categories--form a more perfect union; establish justice; insure domestic tranquility; provide for the common defense; promote the general welfare; secure the blessings of liberty to ourselves and our posterity—and assign composite grades based on the various aspects of the Constitution they evaluate in their book.

After studying the Electoral College, including the material in *Fault Lines* and outside sources, it’s your turn to grade the Constitution! Based on what you learned and the ideas you formed about the Electoral College, please grade the Constitution in the following categories. Don’t forget to add comments!

The Constitution’s Report Card

Subject	Grade	Comments
Form a More Perfect Union		
Establish Justice		
Insure Domestic Tranquility		
Promote the General Welfare		
Secure Blessings of Liberty to Ourselves and Our Posterity		
AVERAGE		